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## How to Tame the Insurers: No Rollback, No Business

■ **Proposition 103:** The latest plan to give consumers what they voted for falls far short—and still the industry sues to block it.

By **Harvey Rosenfield**

**T**he greed and arrogance of the insurance industry should never be underestimated. Determined to discourage the spread of Proposition 103 clones across the country, the insurers refuse to acknowledge that their rates were ever excessive—even by one dollar.

This explains why not one company in California has broken ranks to secure a competitive advantage by voluntarily granting consumers the rollback mandated by Proposition 103. Egged on by their lawyers, who are making an estimated million dollars a day relentlessly challenging 103's every clause, insurance companies have even filed a massive suit to delay rollbacks ordered by their friend in Sacramento—the Deukmejian administration.

One might have thought that the companies would happily have acquiesced to Insurance Commissioner Roxani Gillespie's election-year strategy, announced last month, of paltry rollbacks offset by new rate increases.

It should have been far worse for the insurers. A comprehensive study issued in May showed that California's top 14 auto-insurance companies could reduce their rates, on average, by 19.4% without giving up their constitutional right to a "fair rate of return." That is, if Gillespie used the formula for analyzing industry profitability advocated by Atty. Gen. John K. Van de Kamp and such consumer organizations as Voter Revolt.

Two years of public pressure forced Gillespie to adopt most of the consumer formula. Her plan caps annual profits, including investment income, at 11.2%. It bars insurers from using bookkeeping practices that inflate their losses and forbids them from making consumers pay for the industry's lobbying and political activities. But Gillespie's refusal to curb the insurance industry's bloated overhead, which eats up an average 35 cents of every premium dollar, cuts Proposition 103's 20% rollback in half. Worse, Gillespie's plan may harbor a subterfuge: Insurance companies can apparently obtain future rate increases even as they roll back premiums.

Still, the industry preferred a court battle. But this time, their lawsuits could backfire. If Gillespie's decision gets tied up in court, the state's first elected commissioner, who takes office in January, will be able to rewrite the formula assessing industry profitability and order even greater rollbacks next year. He will also have the power to undo Gillespie's regulations on territorial rating.

One of Proposition 103's most important provisions requires auto insurance rates be based primarily on a motorist's safety record, not on the policyholder's ZIP code. Consistently good drivers are also entitled to a permanent 20% discount.

Gillespie's rewrite of this reform is based on a falsehood—that eliminating the ZIP-code rating system would increase rates for rural drivers. She and her industry allies then turned logic on its head. The resulting increase would violate Proposition 103's aim of lowering rates, they argued; therefore territorial rating is needed to carry out the measure's intent.

This ridiculous interpretation of 103 was accepted, in May, by L.A. Superior Court Judge Miriam Vogel, who was subsequently promoted to a higher court by the governor. Even industry officials privately expect it to be reversed on appeal. That will put the matter back in the hands of the elected commissioner.

State Sen. John Garamendi of Walnut Grove is the likely choice for that job. A 16-year veteran of the Legislature, he refused to campaign for the Democratic nomination until a week before the June primary, when his multimillion-dollar advertising blitz hit the airwaves and mailboxes. The Republican nominee, an insurance agent, is said to have little chance of defeating Garamendi in November.

Garamendi's record as a legislator offers little reason to assume that he will rigorously enforce Proposition 103. Twelve years ago, he sponsored the insurance industry's no-fault legislation. And like most of his colleagues, Garamendi has frequently voted with the insurers.

But the same public pressure that forced Gillespie to reverse herself and order rollbacks—and killed her ambition to be the first elected commissioner—will be brought to bear on her successor. Indeed, it may be greater. Proposition 103 made the office elective because public accountability is the consumers' best chance for a commissioner who will work hard to lower rates.

The insurance industry will doubtless offer the new commissioner a Sacramento-style "compromise." The deal might look something like this: The industry agrees to a modest rollback in rates, thereby giving him a political boost. In return, the insurers get no-fault or a similar proposal limiting compensation to policyholders, leaving industry profits untouched.

That's no deal. Substituting no-fault for tough regulation will lead to large rate increases, as it has in other states.

Rather than attempt to placate the insurers, the new commissioner can become a consumer hero by imposing law and order on the industry. In so doing, he can renew the public's faith—strained by the continuing attempts to gut 103—in government and democracy. The authority to do this is at his disposal.

Insurers, as always, will threaten to leave the state. The commissioner will need a backup plan that promises to escort them to the border—namely, "The Proposition 103 Enforcement Act." Voter Revolt will seek to qualify the initiative beginning tomorrow.

Its premise is simple. If the auto insurers refuse to lower their rates and obey Proposition 103 within a year after the enforcement measure is passed, they will be relieved of the privilege of doing business in California. In their place would be a non-profit, publicly controlled auto insurance company. Estimates are that the California Non-Profit Insurance Fund would reduce rates drastically by eliminating all profit, slashing excessive salaries and expenses, speeding up payment of claims and using its massive purchasing power to negotiate lower medical-care and car-repair costs for consumers.

Two years ago, the need for this measure would have seemed unnecessary, if not unthinkable. Today, it is indispensable. Faced with the loss of a \$25-billion market, the insurance industry will find Proposition 103 and its 20% rollback quite appealing by comparison. □

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