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Prop. 51 Sets Stage for Fight on Regulating State Insurers

By Harvey Rosenfield

Question: What did California voters get when they approved an initiative that promised to lower insurance rates by limiting damage awards?

(a) Nothing.
(b) Two or three more initiatives.
(c) A field day for special-interest lobbyists.
(d) All of the above.

Six months after California voters approved Proposition 51, the so-called "deep pockets" measure, the answer is (d).

Proposition 51 was sold to the California public as a solution to the skyrocketing insurance premiums that had forced the closure of parks and child-care centers and left many businesses and professionals without insurance at any price.

Today, most cities, counties and child-care centers still can't get insurance. Those that can haven't seen any reduction in rates that insurers promised would result from passage of Proposition 51. In fact, rates continue to explode. By the end of 1986, general-liability premiums nationally had risen 79% from the preceding December.

The rate increases have allowed the insurance industry to amass record profits of $11.5 billion during 1986, a 605% increase over 1985 earnings.

The insurance crisis has spread beyond liability policies to auto rates, which in the last year and a half in California have increased at a rate eight times that of the consumer price index and have quadrupled in some parts of the state, as The Times recently reported.

In fact, Proposition 51's sole effect has been to set the stage for a major confrontation in Sacramento over attempts to regulate the insurance industry and proposals that would further restrict or eliminate the legal rights of consumers.

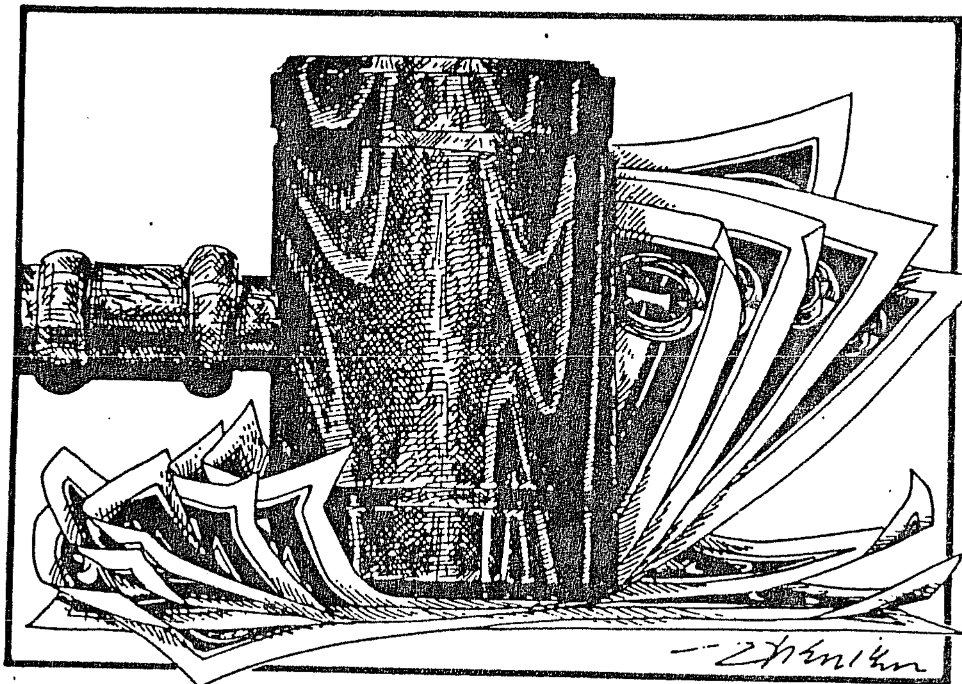
This conflict, involving citizen groups, insurance companies, manufacturing firms, the medical lobby and trial attorneys, will severely test the Legislature's independence from special interests.

The insurance companies, which supported Proposition 51, contended that the measure would lower insurance rates by limiting the amount of money insurers would be forced to pay out in damage awards involving several defendants.

Citizen groups, which fought the measure as an unwarranted restriction on legal rights, argued all along that it would have no effect on insurance rates.

Documents obtained by Florida authorities from two of the nation's largest insurance companies—Aetna Life & Casualty and St. Paul Fire & Marine—confirm this view.

When forced by the Florida Legislature to divulge how much rates would go down in exchange for the passage of legislation restricting an array of victims' rights, Aetna confessed that all the restrictions combined would lower rates by no more than .04%. St. Paul said the effect on rates



NANCY OHANIAN / for The Times

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Please see INSURERS, Page 6

Insurers

Continued from Page 3

would be "negligible." Proposition 51's failure has helped focus blame for the insurance crisis where it really belongs: on the insurance industry itself. California is one of only five states in the nation that does not regulate insurance rates. Demands for control of the insurance industry will almost certainly head the legislative agenda this year.

The key reform will be to place some bounds on the industry's perpetual cycle of making risky investments when interest rates are high, and then dramatically raising prices when falling interest rates and imprudent business decisions hurt profits.

A law requiring government approval of rate increases and decreases that exceed a specific range would protect consumers and also allow insurers to remain competitive while protecting them from their own excesses.

Implemented on a retroactive basis, such a "flex rating" scheme would roll back the unjustified rate increases that allowed the insurance industry to register record profits last year.

Obviously, the Legislature is best equipped for the complicated task of insurance reform. But the political reality is that the insurance industry is the mightiest of the business lobbies, with more than 30 lobbyists in Sacramento and a multimillion-dollar budget for contributions to legislators.

It also has a powerful friend in Gov. George Deukmejian, who received more than $180,000 in pre-campaign gifts from insurer groups between July, 1984, and June, 1986. Deukmejian has dismissed one insurance commissioner and is rumored to be getting rid of his replacement (although the governor's office denies it). Both proposed mild supervision of insurance companies. The governor is unlikely to sign a bill opposed by the industry. But if state government doesn't act, a bruising, multimillion dollar initiative campaign pitting consumer groups against a $30-billion-a-year California industry is likely.

The campaign for insurance reform will coincide with a sweeping assault on legal rights, led by a variety of corporations and trade associations. Many of them were deeply involved in Proposition 51 and the campaign to defeat Chief Justice Rose Elizabeth Bird and two other state Supreme Court justices. They believe their success in both cases has generated a positive climate for further efforts to create a judicial system with a so-called "pro-business" bias.

The legal "reforms" recently proposed in Sacramento by an assemblage of special interests would make it difficult, if not impossible, for a citizen to bring a lawsuit in the first place.

One favorite proposal would discourage attorneys from taking the tough, costly cases against big corporations by forcing lawyers to pay for the costs of some suits out of their own pockets.

Another would place an arbitrary limit on how much money a jury can award an injured person, no matter how grievous the harm. Victims would be denied justice, while wrongdoers escape full responsibility for the harm they cause.

Rather than abridge the rights of victims, policy-makers should consider legitimate proposals for improving the effectiveness of our system of justice:

—Increase the punishment for wrongdoers. Victims, insurance companies and society have a vested interest in deterring the misbehavior that injures others and leads to lawsuits. Expanding consumer protection laws would do that.

For example, toughening doctor discipline rules would ensure that physicians who repeatedly malpractice do not continue to treat patients, as they do today. Similarly, companies found guilty of marketing defective products which they know will kill or maim might be prohibited from doing business in California. Such a "corporate death penalty" would provide a powerful incentive for manufacturers to make safer products.

—Cut the costs of justice. Under the current system, victims often pay too high a price for invoking their legal rights.

Limiting legal and medical fees would cut the costs of compensatory justice tremendously but ultimately hurt victims: Professionals strongly dislike wage and price controls. Doctors will no longer treat injured patients and lawyers won't represent them.

A better approach would be to expand alternatives to our crowded courts by enlarging the jurisdiction of do-it-yourself small-claims courts and encouraging the use of alternative methods for resolving disputes, such as private arbitration.

In addition, lawyers who clog the courts with frivolous lawsuits or defense attorneys who wield legal procedures as shields in order to delay bringing the guilty to justice should be summarily and severely punished.

Improving the efficiency and fairness of the system of justice, like reform of the insurance system, deserves the careful legislative scrutiny that would have exposed Proposition 51 for what it was—a misrepresentation of a complex problem.

Unfortunately, the special interests don't want that kind of consideration. They are planning to place their proposals before the public through the initiative process, where the outcome of the debate rests on which side has the larger budget for 30-second commercials and how the media wizards package the attack on legal rights to appeal to voters.

The prospect of two complex initiatives on the ballot in 1988—one a sequel to Proposition 51, the other a package of insurance reforms sponsored by citizen groups—is a sobering one.

If it comes to that, however, the only alternative may be a consumer-oriented super-initiative that covers all the bases—insurance, expanded victims' rights and genuine legal reform. Though this is clearly a last resort, contingency plans for such an initiative are already under way. □