Initiative Combatants Stocking War Chests

BY SIGRID BATHEN
RECORDER CAPITAL CORRESPONDENT

SACRAMENTO — Insurance companies, trial lawyers and consumer groups nationwide say they expect to pour more than $50 million into California's November electoral battle over five major consumer and industry-backed initiatives to restructure the state's insurance laws.

Among their many provisions, two of the initiatives would mandate reduced rates, one would limit the amount recoverable because of pain and suffering, one would limit lawyers' contingency fees and another would institute a no-fault compensation system.

The advertising blitz, in terms of money and vitriol, could dwarf the vicious $11-million fight over Proposition 51, the successful "deep pockets" initiative approved two years ago.

It comes as the California Legislature remains hopelessly deadlocked on any substantive revisions in the law, an impasse critics say is a result of the enormous political clout of the industry.

"The industry is willing to make an investment in an affordable, quality product," said Scott Carpenter, press secretary for the industry-backed no-fault campaign. He noted that the industry originally opposed no-fault in other states, but said that no-fault since has been effective in controlling the costs of payouts in New York and Florida.

Internal industry campaign documents, released last week by the Ralph Nader-backed Voter Revolt to Cut Insurance Rates, indicate that the insurance industry is planning to spend at least $23 million to pass its no-fault insurance initiative — in a campaign that will attempt to discredit consumer groups by tying them to ever-unpopular trial lawyers, who enjoy almost as much public enmity as insurers.

"The entire U.S. insurance industry, with its multibillion dollar resources, has joined forces to stave off insurance reform in California," Nader said in a prepared release, "because the insurers know that the voter revolt in California will spread to other states."

Nader said insurers' campaign documents obtained by Voter Revolt show that more than 240 insurance companies already have contributed at least $8.5 million toward passage of the California no-fault initiative.

The total cost for the five insurance initiative campaigns could range from $40 million to $100 million, with the insurance industry expected to outspend all other groups, according to consumer and industry sources.

"They have spent an outrageous amount of money, even before their initiative qualified," said Steven Miller, chairman of the Consumer Insurance Reform Coalition, which includes California Trial Lawyers Association, Consumers Union, Common Cause and Attorney General John Van de Kamp. The coalition is backing another consumer initiative on the November ballot.

Industry spokesmen say they are optimistic about their chances for success.

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"The indications are very good for no-fault. Our polling indicates that it will pass," said Carpenter. Insurers maintain that their initiatives would result in lower insurance costs for consumers, more benefits for injured parties and reduced legal fees.

"The insurance industry is continuing their campaign to do everything but confront the issue," said Miller. "The CTLA is vulnerable in public opinion, so their campaign is to persuade people that it is a lawyers' issue. But it's much more than a lawyers' issue — it's a consumer issue and the continuation of a three-plus-year campaign for insurance reform . . . The venue has shifted from the Legislature to the ballot."

Miller, a longtime insurance reform advocate and executive director of the Los Angeles-based Insurance Consumer Action Network (ICAN) said the consumer-trial lawyers' coalition will "spend as much as we can raise," although he declined to name a specific figure.

"I hope every lawyer in this state gives as much money as they can," said CTLA President Gary J. Gwilliam of Oakland's Gwilliam and Ivary. "Our whole system of justice is under attack by a monolithic, bloated, powerful industry. If I could raise $50 million, I would."

Will Glennon, legal analyst and insurance expert for CTLA, said the association will not be able to raise nearly as much as the insurers are prepared to spend. "We spent $5 million [in an unsuccessful effort to defeat] Proposition 51, and that was an unbelievable amount of money to raise," he said. "There is no way we can raise [as much as the insurers]. We're talking about an industry that has more assets than many countries in the world, and the CTLA has 5,000 members."

Of the more than seven initiative campaigns begun in the past year, five have survived to be placed on the November ballot. Several, including separate initiative campaigns originally launched by CTLA and Consumers Union, which have now joined the ICAN initiative effort, were combined to have a chance at gathering the necessary 372,000 valid signatures to meet the June 30 qualifying deadline.

If more than one initiative passes — which is probable — then the initiative with the most votes will take precedence in areas of conflict.

The process already has been complicated by a blizzard of suits, campaign practices complaints and other legal maneuvers that challenge various aspects of certain initiatives.

A successful CTLA-backed challenge to the no-fault initiative, on the basis that it violated the constitutional single-subject rule, forced the insurers to rewrite the initiative and regather signatures in the midst of the critical signature-gathering process.

The California Supreme Court on June 30, in *Insurance Industry Initiative Campaign Committee v. March Fong Eu*, S005716, directed the Third District Court of Appeal in Sacramento to hear the industry challenge of the ICAN/CTLA initiative which the appellate court on May 12 had declined to hear. In addition, the Voter Revolt initiative has been challenged by insurers on constitutional grounds, in a case pending before the Third District appellate court.

The five qualifying insurer or consumer/trial lawyer-backed initiatives, as summarized by the Secretary of State's office, are:

• Proposition 100, Insurance Rates and Regulation, sponsored by ICAN, CTLA, Consumers Union, Common Cause, Attorney General Van de Kamp and Assemblyman Lloyd Connelly, D-Sacramento, the principal insurance reform advocate in the Legislature. It would require a 20 percent minimum reduction in good driver rates from those in effect last Jan. 1, and would mandate that companies insure any good driver in counties where they sell insurance and provide those drivers with a 20 percent discount.

• Proposition 101, Motor Vehicle Accident Claims and Insurance Rates, sponsored by Assemblyman Richard Polanco, D-Los Angeles, and Coastal Insurance Co. It would limit accident claims for noneconomic losses such as pain and suffering to 25 percent of the economic losses, and would prohibit contingent fees greater than 25 percent of economic losses for accidents which occur from Nov. 9, 1988, to Dec. 31, 1992.

• Proposition 103, Insurance Rates and Regulation, sponsored by the Nader-backed Voter Revolt consumer organization. It would regulate the manner in which automobile and other property-casualty insurance rates are established, and would lower insurance rates at least 20 percent from the Nov. 8, 1987, levels, and freeze those rates until Nov. 8, 1989, unless the insurance company is "substantially threatened" with insolvency.

• Proposition 104, Automobile and Other Insurance, sponsored by the Association of California Insurance Companies and the insurance industry generally. It would establish no-fault insurance for automobile accident injuries to cover medical expenses, lost wages and funeral expenses. Accident victims could recover from the responsible party only for expenses beyond the established no-fault limits; recovery for noneconomic injuries would be prohibited except in cases of serious and permanent injuries and certain specified crimes.

• Proposition 106, Attorney Fees Limit for Tort Claims, sponsored by the insurance industry. It would prohibit attorney contingent fees in excess of 25 percent of the first $50,000 recovered, 15 percent of the next $50,000 and no more than 10 percent of the amount recovered over $100,000.