

Insurance Initiative War Likely

Special-Interest Groups Gear Up for Multimillion-Dollar Campaigns

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SACRAMENTO — With the Legislature unlikely to offer a solution to the crisis of escalating insurance rates, a bruising and expensive initiative campaign battle appears certain this fall.

"Efforts have been started to enact legislation — some kind of compromise to compel proponents and opponents to withdraw their initiatives," said Gene Erbin, counsel to the Assembly Judiciary Subcommittee on the Administration of Justice and a key capital insurance reform advocate.

"But it's not going to be easy," he added. "I haven't seen movement on anything. It's all entirely speculative as to what will happen."

While leaving the door open for a last-minute legislative proposal, Erbin and others involved in the high-stakes insurance wars are proceeding with the signature gathering and campaign planning essential to a successful initiative effort.

The initiatives range from proposals to reduce auto insurance rates sharply, to end the industry's exemption to antitrust laws, to impose strict rate-structuring regulations and to institute industry-sponsored no-fault coverage.

Slick, expensive, full-page ads have already appeared in the state's major newspapers, even though the election is eight months away.

Estimates of the costs of such an initiative campaign are staggering, with some sources close to the conflict saying insurance companies are prepared to spend more than \$28 million to pass theirs and to defeat the opposition, led by the state's trial lawyers.

Neither insurers nor trial lawyers will offer any precise figures, but total estimates from knowledgeable sources range from \$40 million to \$100 million.

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Groups Gear Up for Big Insurance Battle

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"We're all moving forward to qualify our initiatives, and at the same time we're willing to meet to work out some kind of compromise," Erbin said.

"The parties now realize that the clock is ticking and the alarm is about to ring," said Steven Miller, executive director of the Los Angeles-based Insurance Consumer Action Network (ICAN), which is pushing a consumer reform initiative backed by the California Trial Lawyers Association (CTLA) and Erbin's boss, Assemblyman Lloyd Connelly, D-Sacramento, author of unsuccessful insurance reform last year.

"I have not heard anything from the insurers that a legislative compromise is likely, but people are looking to exhaust any intermediate measure," Miller added.

"If a legislative compromise is to occur, now is the time.

"The time for posturing is surely over. If something comes together that magically gets the support of the legislative leadership and the governor and consumer groups and insurers and trial lawyers, you'd be surprised how quickly things can move."

Various powerful special interests sponsoring initiatives have continued to meet in the capital and elsewhere, and there were several get-togethers last week involving trial lawyers, insurers and consumer groups. But thus far the optimistic and unusual coalition that agreed last summer to a historic "memorandum of understanding" for legislative reform supported by major elements of the traditionally warring factions, has produced no concrete results.

"Right now that agreement is dormant," Erbin said ruefully. "It may be revived, but I'd say it's in hibernation, over a long winter."

"I don't see the raw material for a legislative solution, although the insurers and the CTLA devoutly hope there will be one," said Special Assistant Attorney General Michael Strumwasser, who is Attorney General John Van de Kamp's spokesman on insurance issues.

"This Legislature has shown itself incapable of crafting any kind of serious solution and has turned away every substantial proposal to date," said James Wheaton, supervising attorney for the Northern California office of the Center for Public Interest Law in San Francisco.

"The climate has certainly changed, and as a result the insurance industry has displayed a scorched-earth policy [in its initiative campaign] . . . The industry is shameless. Their initiative guarantees high rates in perpetuity," he added.

At least seven initiative drives have been officially launched and are in various stages of completion. Several are expected to be dropped or consolidated, leaving at least the "big two," sponsored or financed primarily by the insurers and the trial lawyers.

Clayton Jackson, the San Francisco lawyer who is the principal lobbyist for the insurance industry in California, said the \$40 million-to-\$100 million range total for all initiatives is not unrealistic.

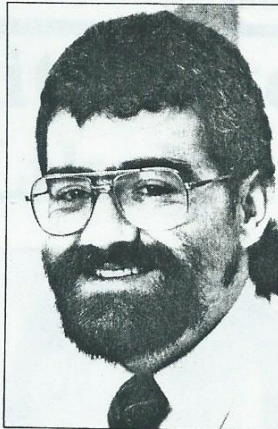
Everyone connected with the conflict says the ultimate cost will dwarf the \$20 million-plus that was spent on Proposition 51, the so-called deep pockets initiative, in 1986.

"The insurers have the means to wage a vigorous campaign," Miller said. "We likewise have the resources. I'm sure their polling looks the same as ours — that we're likely to win, which should make them [insurers] highly motivated."

Jackson said industry polling "indicates that no-fault [the insurance industry proposal] will win."

Delia Chilgren, counsel for the Association of California Insurance Companies, Jackson's major client in Sacramento, said "there is a commitment that [insurers] are willing to pay whatever it takes to defeat [any] initiative that would put the industry out of business."

She said the insurance industry is still open to a possible legislative solution. "Our only bottom line is that there has to be a genuine reduction in cost on both sides," she said. "In order to reduce premiums, we have to reduce our loss



RICH PEDRONCELLI

GENE ERBIN: "It's not going to be easy," he says of the insurance legislation fight.

costs," including the cost of lawsuits, claim padding, fraud and medical care.

Nancy Drabble, legislative advocate for the CTLA in Sacramento, said that "contrary to some reports, the negotiations [for a legislative solution] are not dead and are continuing."

But she agreed that time is running out. "Our polling shows that people are very unhappy with the outrageous rates they are being charged for insurance, and that no-fault is not popular."

In addition to pursuing a legislative solution, CTLA is also pressing the matter in the courts, contending in a Feb. 29 suit filed with the Third District Court of Appeal in Sacramento that the insurers' no-fault initiative violates the constitutional single-subject rule because it contains a provision affecting campaign contributions.

The rule requires that legislation and initiatives contain only one topic.

The CTLA is not pressing its own initiative proposal, instead choosing to back the ICAN initiative, which is also supported by the California Bankers Association and is reportedly favored by Attorney General Van de Kamp, who may announce his support for the proposal later this month.

The ICAN/CTLA and insurers initiatives are well on their way to qualifying for the November ballot, with the necessary 372,000 signatures expected to be submitted for qualification in May.

Another consumer-oriented initiative proposed by Consumers Union and the Center for Public Interest Law is not being pushed, its backers say, for lack of funding, but an identical version has been filed by Sen. Alan Robbins, D-Van Nuys — a version that may have been filed too late to qualify.

Robbins, who chairs the Senate Committee on Insurance, Claims and Corporations, apparently hoped to have the support of Consumers Union and the Center for Public Interest Law, but neither group said it was backing Robbins.

"We were not able to secure the funding that we needed, and we made a decision not to press it," said Wheaton. Wheaton said Robbins offered to provide "a chunk of cash" to help qualify the initiative, "but it wasn't enough."

"So [Robbins] took a Xerox copy over to the attorney general's office," Wheaton said. "There's certainly nothing to stop him from doing that."

Sheldon Davidow, a Robbins aide who is chief consultant to the Senate Insurance Committee, said Robbins has been joined by Los Angeles consumer activist Adam Burton in a last-minute initiative drive, re-filing the Wheaton-Consumers Union initiative, while Burton continues to maintain his own initiative drive. Davidow said a legislative compromise is still possible.

"All the parties would like to see a legislative solution," Davidow said, adding that such a solution is unlikely because of intransigence on the part of trial lawyers

Insurance Initiative Battle Seen Likely

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and insurers.

Judith Bell, legislative advocate for Consumers Union in San Francisco, called the Robbins effort "an obvious political ploy — there's just not enough time to qualify."

If one or more of the initiatives survive and are approved by voters, lengthy litigation is almost certain to follow. One knowledgeable source, who asked not to be identified, predicted, "Two to four will pass, they will be enjoined, will go into litigation for three to five years and will end up in the Supreme Court. It would then be back to the Legislature."

Of the surviving initiative drives, some proposals overlap, particularly among consumer groups. "We've all agreed that the antitrust exemption [for the insurance industry] should be stopped, and that there would be an institutional advocate for consumers [within state government]," Erbin said in December, after all the proposals had been filed.

Among the major initiatives are:

- The Insurance Rate Reduction and Reform Act, sponsored the Ralph Nader-backed Access to Justice Foundation, a coalition of consumer and civic groups based in Santa Monica. The measure would roll back current insurance rates by 15 percent and require future rate increases to be justified and approved by the state. It would also eliminate geographic rate classifications and end the industry's antitrust exemption. The group has mounted a grass-roots, direct-mail signature gathering effort to qualify the initiative.

- The "no-fault" solution to auto insurance costs, sponsored by the Association of California Insurance Companies. The industry-backed initiative would create no-fault auto insurance for most auto claims, require the state to provide price-comparison information, prohibit rate regulation and protect the industry's antitrust exemption.

- An initiative sponsored by Consumers for Lower Auto Insurance Rates, headed by Assemblyman Richard Polanco, D-Los Angeles. The proposal would cut by half the premiums for auto bodily injury liability and restrict damages for pain and suffering.

- ICAN. Backed by the CTLA, the



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CLAYTON JACKSON: "Polling indicates that no-fault will win."

proposal requires "good driver" policies as well as a 20-percent reduction in rates for good drivers. It would prohibit no-fault insurance, limit the use of territorial rating, end the antitrust exemption, permit banks to sell insurance and provide stronger regulation of the industry.

- The Burton initiative. Proposed by Los Angeles consumer activist Adam Burton, the proposal would require state approval of all rate increases, establish a state consumer advocate and end territorial rating.

- The dormant CTLA proposal. Pushed by the trial lawyers, who now are supporting the ICAN initiative, the proposal would establish a "good-driver rating plan" to reduce auto insurance for good drivers and would prohibit no-fault.

- A measure proposed by Consumers Union and Center for Public Interest Law. Not being pressed by either group, the initiative has been re-filed by Sen. Robbins. It would establish a state-run auto insurance plan to cover each California registered vehicle for approximately \$300 a year and would impose "strict review" and regulation of rates.

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