

12-14-1988

# Hearing on Proposition 103 Insurance Reform

Senate Committee on Insurance, Claims and Corporations

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## Recommended Citation

Senate Committee on Insurance, Claims and Corporations, "Hearing on Proposition 103 Insurance Reform" (1988). *California Senate*. Paper 99.

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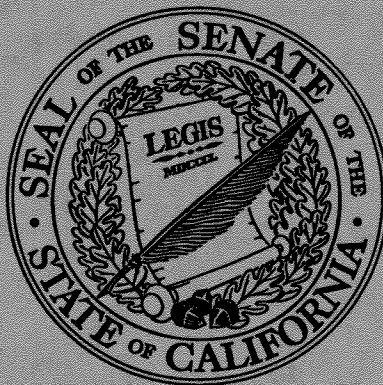
CALIFORNIA LEGISLATURE  
SENATE COMMITTEE ON  
INSURANCE, CLAIMS AND CORPORATIONS  
SENATOR ALAN ROBBINS, CHAIR

Hearing on  
**PROPOSITION 103**  
**INSURANCE REFORM**

DEPOSITORY

APR 4 1989

RECEIVED



December 14, 1988  
107 South Broadway  
Los Angeles

KFC  
22  
L500  
I59  
1988  
no. 3

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KFC  
22  
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1988  
no. 3

# California Legislature

## SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS

ALAN ROBBINS  
CHAIRMAN

SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE  
December 14, 1988

### AGENDA

LAW LIBRARY

APR 4 1989

GOLDEN GATE UNIVERSITY

1. OPENING STATEMENT

- Senator Alan Robbins

2. DEPARTMENT OF INSURANCE

- Roxani Gillespie, Commissioner

3. PROBLEM ON NON-RENEWALS - TRAVELERS INSURANCE

- Evelyn Adler -- Travelers cancelled auto and homeowner's insurance
- Russell Press, Vice President  
Travelers Insurance Companies

4. PROPOSITION 103 AUTHOR

- Harvey Rosenfield, Voter Revolt

5. INSURANCE CONSUMERS

- Mary L. Bess -- single parent, auto insurance increased by 52% since election
- Howard & Beatrice Gurkewitz -- seniors, auto insurance increased 82% in October 1988
- Vincent Schaub -- president of company that provides medical rides for seniors, insurance premium increased over 200% from \$101,000 to \$346,000, faces closure of business

JIM CATHCART  
CHIEF CONSULTANT

SAL BIANCO  
PERSONAL CONSULTANT

MAUREEN BROOKS  
COMMITTEE SECRETARY

ROOM 5122  
STATE CAPITOL  
SACRAMENTO, CA 95814  
(916) 445-0825

- Nate DiBiasi -- union representative, insurance availability problems
- Gary Naman -- president of trucking company, carrier refuses to renew liability insurance despite no change in risk
- Bud Wilson -- Northern California Insurance Agent

6. CONSUMER GROUPS

- Dr. Regene Mitchell, President  
Consumer Federation of California
- Steven Miller, Executive Director  
Insurance Consumer Action Network
- Clifford Holliday  
Congress of California Seniors

7. INSURANCE COMPANIES AND TRADE ASSOCIATIONS

- Ed Levy, Executive Director  
Association of California Insurance Companies
- Tom Bone  
American Insurance Association
- Samuel Sorich  
National Association of Independent Insurers

Rough Draft -- sr/am  
Interim Hearing -- Senate Committee on Insurance, Claims, & Corporations  
"Proposition 103"  
December 14, 1988  
Room 1138, State Bldg., Los Angeles

SENATOR ALAN ROBBINS, CHAIRMAN: Our committee will continue with the practice of trying to start our hearing on time. With everyone's cooperation, I think we'll have everyone out of here by noon. I'm Senator Alan Robbins. I'm the Chair of the committee. Allow me to introduce to my right, Senator Cecil Green; to my left, Senator Dan McCorquodale, members of the committee who have come for our hearing this morning. Let me, if I may, give you a brief overview of where we are and what we're going to try to cover this morning. Let me say, first of all, that since the voters passed Proposition 103, on November 8th, the politics of insurance in California have changed. The stranglehold that the insurance companies had, and the absolute veto power that the insurance companies and the trial lawyers had on the ability to block legislative reform efforts no longer exists. The people have voted for a system of full rate regulation in California and the Supreme Court has placed that system, with the exception of two provisions, into effect. The people rightfully expect to see that what they voted for is going to take place. There are issues that have come up since then. We will be dealing with those issues at this hearing. Principally, they come in two areas: #1, relatively few companies who have violated the provisions of Proposition 103 by refusing to renew their existing policyholders. In the packets that we gave out this morning is a memorandum dated December 13 from our committee staff that deals with the five companies that have refused to renew in the area of auto insurance. I can probably best summarize that by reading the fourth paragraph: "The Supreme Court's announcement that the Section 1861.03 of Proposition 103 is now effective makes Travelers withdrawal procedures as they relate to the non-renewal of automobile insurance policies relating to those subsidiaries that write personal automobile insurance policies unlawful". Travelers will be on our agenda along with one of their policyholders this morning and will have the opportunity to comment but, in the opinion of our staff, I've talked to her about it and the opinion of the Insurance Commissioner as well, the action to date by Travelers in refusing to renew their existing policyholders is clearly unlawful and clearly places their tens of thousands of policyholders in a very unfair position... where they are required to go out in the market and obtain automobile insurance from another company at a time when companies are being very picky about who they accept as a new policyholder. The legislation that we have introduced, Senate Bill 103, deals specifically with that question... deals only with the question of companies that violate Proposition 103 by refusing to renew insurance and places those companies in what I think would be when the bill passed a very unattractive economic position.



Number one, it requires those companies to, at that time, give the policyholders who were declined renewal an option to renew; number two, it gives the company the requirement that if the policyholder has purchased insurance from another company at a higher premium, it requires the company to pay the increased premium; and, number three, it imposes a penalty assessment of up to fifty percent of the premium amount... for a company the size of Travelers, that would be a penalty assessment of \$25 million... and, then, the company is placed back in the position where it still has to deal with the responsibility of having those policyholders. But Proposition 103 makes it very clear that at least in the area of auto insurance a company can only refuse to renew for the three reasons stated in Proposition 103... non-payment of premium; fraud or material misrepresentation affecting the policy or insured; or substantial increase in the hazzard insured against. A blanket non-renewal does not qualify under those provisions and, therefore, I concur with the staff report that the actions to date of Travelers are clearly unlawful. We will deal also and hear from individuals who have had problems on increased premiums... some with increases of up to or in excess of one hundred percent of the premium amount since the election. Obviously, the intent of the voters was not to allow such increases and, ultimately, the Legislature is going to have to deal with that issue and, obviously, we'll deal with it. There is legislation that's been introduced by Pat Johnston in the Assembly; I'm introducing legislation in the Senate. His will put a freeze on rates; ours will say, in the event that his legislation does not take effect in time and any company makes an increase in premiums subsequent to the election, that that will be declared to be excess profits and they will be required to effectively return that money to their policyholders when the rate regulation provisions kick in

Enough of my comments. Our order of business will be to first hear from the Insurance Commissioner and then to hear from, on the Travelers issue, I've then scheduled Harvey Rosenfield, the author of Proposition 103; then, individual insurance consumers and consumer groups; and, finally, from the insurance company trade associations. Harvey, if you choose to, and you prefer to testify immediately after the Commissioner, we'll give you the courtesy of juggling the agenda accordingly. Roxani, you were gracious enough to subject yourself to a grilling by the members of the Press Corp. for a brief period this morning before coming in here and they... I won't say they treated you gently... they didn't, but that's the sort of thing that those of us who are in public office learn to live with as part of the process. I have some good news and some bad news for you... we have a verbal opinion from Leg Counsel that, with the passage of Proposition 103 and the implementation of it by the Supreme Court, that for the balance of the current term running through 1990, that the Governor no longer has any authority to remove you as Insurance Commissioner and, therefore, you are in the status of having the position for the next two years, until an Insurance Commissioner is

elected in 1990 and sworn in, I say that's good news and bad news for you because I'm sure there are times you're going to find the seat a bit warm. Let me say that there has been a public perception. that you have not moved as aggressively as you might have to implement Proposition 103. One of the reasons that we have given you the opportunity to come before the committee this morning is to give you the opportunity to dispel that image. and, in particular, with the independence and job security of not having to be concerned of removal, that you will I think have the opportunity to become a different person and to engage in more of the type of political statements that those of us in public office get to engage in. I do think, however, and I'd like to ask you publicly what I had asked you privately before, that it is very important that there be a continuity in the office. The very worse thing that could possibly happen at this time would be if facing implementation of Proposition 103 there were to become a vacancy... were to be created in the position which effectively would leave no one in charge and I asked you the question privately as I'm going to ask you publicly now that I feel you should commit to remaining in the position until an Insurance Commissioner is elected and sworn in in 1990 and that I would urge you to make that commitment... ask you in your remarks to, again, by responding to your intentions on that point. With that introduction, the Chair is yours and we'll start with your remarks and, then, myself and members of the committee will have some questions to ask you about the implementation of Proposition 103.

ROXANI GILLESPIE: Thank you, Mr. Chairman, this, I must say, has been the longest introduction that I have ever heard from you...

SENATOR ALAN ROBBINS: Well it was a combination introduction and direction of questions...

ROXANI GILLESPIE: ... I have no intention from vacating the seat, warm as it may be, and what I would like to do today is respond to the specific questions and concerns that your committee has expressed. Basically, what you have asked me to respond to is first of all the types of reactions we have received from the consumers. We have heard from them and we can tell you very clearly what they are saying. You also want to talk about the insurance companies and what their reactions have been and you want to know how the Department is reacting to the implementation of the law. Finally, you want to know apparently whether there is a gentler, kinder insurance market out there and all I can tell you is that we're trying to work to build one. Taking each one of the areas that I have been asked, I will go down them... if, and I will try and do it rapidly... I know how you like to move your meetings... if there are areas that you want to move from, just let me know.

The first question that you asked was the reaction of the consumers. Our "800" line receives 11,000 to 12,000 telephone calls a month so it's a pretty good gauge of what is

happening out there. And what we have been hearing since the Proposition 103 is, basically, a couple of peaks about questions regarding 103 but those peaks were relatively short. We had a peak right after the Proposition came into effect. We had one when the court stayed certain provisions but most of the time the... most of the questions we get, actually ninety percent of the questions that we continue to get, are the ones that consumers want to know on a day by day basis. What they are asking us about 103 in the ten percent or remaining questions that we get and remaining offers... or requests for assistance, they can be translated down to two percent regarding cancellation notices, three percent non-renewal notices, three percent regarding the rollback, and two percent are just miscellaneous. So, I think at this point, what the public is telling us is that they have a lot of concerns about insurance irrespective of Proposition 103. The market place has reacted, as you know, very positively to the State Supreme Court's actions. The first day after Proposition 103 went into effect, there was all kinds of communications from the market that were negative but a recent survey... and we take them on a regular basis... we took one again yesterday... show us that, pretty much, with very few exceptions that we're going to be talking about today... the market is going pretty much as usual. I am certain that there is more caution overall but it's not translated in specific illegal or sort of negative types of activities by insurers. The areas where we have anything different to report from the list that we gave you at your prior committee meeting is only with regards to Safeco and State Farm. Safeco was one of the companies that was giving new customers higher rates. They have decided to accept our request according to the Insurance Code that this was not the right thing to do and now they are offering all their customers the same kinds of rates. State Farm, however...

SENATOR ALAN ROBBINS: And they're doing it retroactively for the people, as well, who have signed policies?...

ROXANI GILLESPIE: That is correct... that is correct. That is.. that has been our request and they have accepted it. State Farm, however, has not agreed with us and there will, in all likelihood, be a hearing with State Farm in the beginning part of 1989.

You have also asked what other actions the Department has taken during this period. The first case that arose was the case of Coastal that started non-renewal on policyholders before the election. They were advised at the time that if Proposition 103 went into effect, those policies that became effective after the effective date of the proposition could not be non-renewed according to the terms of the law. They also told us that they would like to transfer their business to another company but we told them that they would have to have our approval to do that. Since then, very recently, Coastal has retreated and is now offering their customers their usual facilities. Travelers is the only company that, at any point,



told us that it wanted to withdraw from the State of California. It has also...

SENATOR ALAN ROBBINS: But only from auto... they wish to keep in place their book of almost a billion dollars a year business in other areas...

ROXANI GILLESPIE: That is the case now. Their first request was everything... they have now retreated and they're saying all they want to move out of is automobile. We have told them that, according to 103, we believe that they cannot do that because of the language of the statute and it may very well be a situation that would have to go to court if they continue to disagree with us.

Finally, we have three other cases that arose... the case of State Farm, Safeco and Geico which were all doing what we felt was illegal according to the traditional insurance code and that is treating new customers with more expensive prices than their current customers and State Farm has gone for a hearing, Safeco has complied, Geico has told us that they would prefer to simply not write any new business, and that is where each of these cases stands. The other question you asked was what happened basically throughout 1988 as a result of the State's review of insurance increases of ten percent or more in any classification or territory. Basically, that has encompassed most rate increases that did occur during 1988. The State has reviewed them. There were 74 filings that were made with the Department of Insurance. There were 11 orders of non-compliance that were sent out. Most of those cases are being wrapped up. I expect that they will be wrapped up before the end of the year. And we will be coming to you with a full report at the beginning of 1989. What the Department has been asking in the cases of the orders of non-compliances is full refunds to the customers in those areas where the rates were excessive. And I must say that we have had excellent cooperation from some companies, notably the Fireman's Fund has already agreed to reimburse \$450,000 to their customers. We are, as I told you, going to be in a position to give you a full report by the beginning of 1989. The withdrawals from the State have, at this point, remained with the... Travelers. As far as consumers' complaints from the Travelers action, so far they have been extremely few. Only .2 percent of our calls have anything to do with it. We suspect that there have been plenty of situations where the agents whose customers became subject to this action were actually able to replace the business with other carriers. But this is something that we're monitoring because we will watch the development.

SENATOR ALAN ROBBINS: Well, generally replace it with other carriers at a higher rate.

ROXANI GILLESPIE: If it is at a higher rate, I suspect we're going to hear, Senator. So, it's one that we're watching for. When it is being replaced at a higher rate, and it

has not happened with Travelers yet, but it has happened in the case of Coastal, then what we do is we go back to the company and come to an understanding with them... if that is what is happening. But with the Travelers, we have not seen it yet. We're waiting to see what occurs.

You asked about applications for rate increases that may have been filed in accordance with Proposition 103, I would like to say that, at this point, that information is public. Anyone is welcome to come in and see it. Fourteen companies originally applied for increases in accordance with the provisions of Proposition 103; however two, subsequent to the court's stay of the rollback provision, have withdrawn their application. The twelve remain at the Department of Insurance, at least, as of yesterday, and anyone can go in and see them during regular business hours... just let us know a reasonable period of time before.

SENATOR ALAN ROBBINS: Could I impose for you to provide our committee with a copy of each of those applications?

ROXANI GILLESPIE: Sure. We will be glad to do that and I do want to say for the record though, Senator, two things. First of all, that from the standpoint of the Department, those applications are going to be dated because, no matter what happens, whether or not we have to implement those provisions, those numbers were as of a certain date. They would, obviously, not be satisfactory as of another date. And the other thing that I would like to say is that the material is, obviously, not going to be anything that we would be asking for because those companies had no idea what we would be asking for so I do want to make that totally clear. As far as the implementation of Proposition 103, those parts of it that the court has lifted the stay, we have been implementing as of the date when the stay has lifted -- has been lifted, and we are, as a matter of fact, going into a mode where we are preparing BCP's to be submitted to the Governor's office, to the Legislature in order to determine what additions to staff we will be permitted to get in order to implement the Proposition. But we have redirected internally our resources... we did that as a result of the rate review provisions that we did during 1988 and we have now a new rate regulation division within the Department of Insurance which is charged with reviewing the rate filings that we will continue to be getting and, basically, implementing the rate regulation provisions.

Those are the general large areas that you have asked me to address. Now, I am going to narrow my focus on other narrower issues that your staff has asked for and it will be up to you to tell me what you want to know about. I have been asked to address the issue of cancellations and what does material change mean in the opinion of the Department. We feel that, at this point, it is premature for us to say exactly what material change means.

I'll tell you what we're doing. We're watching the market. We have established an internal committee within the Department to monitor cancellations so that we can establish what is happening and try and get a feel for what appears to be reasonable to us and what unreasonable and when we have a better understanding of what is happening, we will be coming forth with a report in that area. The other area that you have asked is whether or not the cancellation provisions somehow affect the withdrawal of insurance companies... they do not. Those two provisions have nothing to do with each other so, as far as we're concerned, people cannot use that in order to withdraw or anything like that. You, also, have asked about the confidentiality of information and how does Proposition 103 affect Insurance Code 1219. Any communication done with regards to Proposition 103 material is no longer a matter of confidential information it is a matter of public record. You, also, have asked that we address the new rating system. If the Supreme Court, obviously, is going to be looking at that whole area, but according to Proposition 103, the new rating system would not come into effect until 1989 with certain exceptions. There is a new standard for what is excessive, what is inadequate, and what is unfairly discriminatory. So there is a new standard out there which is applicable immediately but the various other segments of the Proposition would not be rolling in until November 1989. What we intend to do is study the various issues that are going to be coming up. We will be holding public hearings soon within 1989 in order to start airing the issues. As far as what other rating factors will be taken into consideration, we will be taking into consideration all the factors that are brought before us and that will be an area where we will have to be very careful and do what is the fairest for the greatest number of people. And there will be plenty of opportunity for everyone to react as this whole issue unfolds but, at this point, I cannot tell you exactly where it's all going to end up. We consider incidentally that rates, premiums, and charges as are used in one of three somewhat interchangeably to us mean the cost to the customer and, therefore, the effect will be rather different in personal lines versus commercial lines. Personal lines rates have been increasing, the cost to the customer has been increasing, whereas, commercial lines, the cost to the customer is much more competitive in 1988 than it was in 1987, therefore those customers are not likely to feel as big a difference as the personal lines customer if that provision does go into effect.

You have asked how the JUA portion of the Code now is to be translated when you look at it with regards to the language of Proposition 103 and, obviously, Proposition 103 language is controlling so the Commissioner has discretion to go ahead and implement a joint underwriting association without having to go through a MAP if the circumstances are such that it doesn't look like a Market Assistance Program would work.

You have asked about banks... can banks now get into the insurance business. From

the standpoint of the Department and from the standpoint of the Department of Banking, we don't see that the Proposition allows banks to start underwriting activity. However, we do believe that they can indeed sell insurance with a proviso that there are certain sections of the law that were not addressed by Proposition 103 and which may possibly be negating its intent. We have received a legal opinion from the Banking Department as to the effect of the Proposition versus current law and we're looking at that right now in order to determine whether we believe that that part of the Proposition can become self implementing or whether the banks will have to come to you first. The implementation of 103 will be done in... with the full complement of regulatory tools... sometimes it will be a bulletin; sometimes it will be regulations. There will be plenty of public hearings and the only thing that we do not intend to do because of the fact that so many of these areas are so new and different is we do not intend to put any emergency regulations into effect. We would prefer to have a full hearing first before committing ourselves one way or the other. I have finished all the questions that your staff has asked about.

SENATOR ALAN ROBBINS: Let me zero in on what I think are some of .... and I appreciate your giving us the overview and the completeness of your response... Let me focus in on what I think are some of the key... the key issues of concern. It would appear as an overview that most of the insurance companies that in the early days after the Proposition's passage indicated that they were going to defy it, have retreated, some quicker than others. The one glaring exception in the field... especially in the field of auto, seems to be Travelers. We're going to hear from them... we're going to hear from one of their policyholders...

ROXANI GILLESPIE: I'm not happy with State Farm either...

SENATOR ROBBINS: Pardon...

ROXANI GILLESPIE: I'm not happy with State Farm either.

SENATOR ALAN ROBBINS: I agree. State Farm is at least renewing their existing policyholders. The problem with State Farm is that they are trying to implement a two-tier system where they are trying to put into effect rate increases by switching people from their preferred company to, who would normally qualify for the preferred company to a company that has a higher premium structure. We have one of our proposed pieces of legislation on our list would be legislation that would specifically deal with that by making it illegal for a company to change underwriting guidelines which is what State Farm has done in order to evade the rate regulation provisions of Proposition 103 and that is a piece of legislation that your office may want to look at in terms of dealing with that particular aspect of the State Farm problem. With respect to the non-renewal, which I'm focusing in on because the problem is, if you have 70,000 people out there... how many?

ROXANI GILLESPIE: 25,000.

SENATOR ROBBINS: Pardon me. 25,000 people out there who are suddenly non-renewed, then that can potentially have a snowball effect if other companies follow suit; and number two, it can create a panic in the market where you have 25,000 people who are out desperately looking for insurance and, therefore, driving up rates. With respect to the action of Travelers, do you agree with our staff analysis that the action of Travelers is unlawful because they have refused renewal at a time when Proposition 103 requires renewal and their renewals refusal does not fall into any of the legal three categories that they can refuse to renew an auto insurance policy for, and presuming that you agree that they've acted unlawfully, what action has your office taken or is your office going to take and do you feel we need... it would be helpful in going after them to have in effect the legislation we've proposed, Senate Bill 103, that would require, in this case or any company that violates Prop 103 by refusing to renew, to require that they offer their policyholders a renewal, if they have gone to a different company, you pay them a hundred percent of the increased premium cost and to give your office the authority to levy a penalty assessment of up to fifty percent of the premium amount.

ROXANI GILLESPIE: I would like to say something for the record as far as the Travelers case is concerned. The Travelers is basically a diversified company. They write relatively few automobile policyholders when taken as a whole and, in all frankness, Senator, what our office has found and what was glaringly clear when we reviewed the rate filings during 1988, is that the diversified companies have not been particularly successful in the field of automobile. It appears that specialists have done a far better job so I do want to say that from my perspective, even though Travelers is, at this point, the only company that is telling us that they are not going to... or...there could be another one possibly in the future, but right now they're the only ones that are telling us that they will not renew. I don't see this as a very horrendous debacle for the people of California. I feel that what we have to do is implement the statute and what it tells us is that they have to renew and, therefore, the normal course of action if they continue with their interpretation, which they're telling us they feel that the statute is unconstitutional, is to issue a cease and desist and go to court on that basis. I'm assuming that they will then mandate the Department to withdraw the cease and desist and we will be going to court. And, I suspect that that may very well be an area where we will probably be getting an answer sooner or later.

SENATOR ROBBINS: Oh, I suspect, in every area we're going to get an answer sooner or later... it's the sooner that we prefer rather than the.... rather than the later.

ROXANI GILLESPIE: And you and I really agree on that... particularly, from our standpoint, it's very difficult to be challenged... we like to get things done.

SENATOR ROBBINS: Yes, absolutely. Now, under Proposition 103, there is a procedure where the company, if they want to stop writing auto insurance, can, if they make contractual arrangements with another company to assume their legal responsibility with respect to those policies. Travelers clearly has not done that.

ROXANI GILLESPIE: Not at this point...

SENATOR ROBBINS: Okay... Now... Therefore, you agree that they have acted unlawfully.

ROXANIE GILLESPIE: Yes... Yes, Senator... I do.

SENATOR ROBBINS: Okay... Your Department has the authority to issue a cease and desist order...

ROXANI GILLESPIE: Yes we do.

SENATOR ROBBINS: Okay... Are you going to issue one?

ROXANI GILLESPIE: Yes we are.

SENATOR ROBBINS: When are you going to issue it?

ROXANI GILLESPIE: Probably early 1989.

SENATOR ROBBINS: Why will it take until early 1989? The problem is, I mean, when you look at it in terms of percentages of the whole market, it's a quote, unquote a small problem. It's .2 percent of the telephone calls that your Department has had. If you're one of those 25,000 policyholders...

ROXANI GILLESPIE: Oh..., I agree with you...

SENATOR ROBBINS: ...who have been set adrift...

ROXANI GILLESPIE: I agree with you...

SENATOR ROBBINS: ...into the murky seas of trying to get an auto insurance policy...

ROXANI GILLESPIE: I know, it's not an easy time and...

SENATOR ROBBINS: ...just before Christmas... it is a catastrophe.

ROXANI GILLESPIE: Yes... and believe me, the independent agents that represent the people that have been told that their non-renewed... that they're being non-renewed, are really having to do a yeoman's job in order to replace those policies, so I couldn't agree with you more. There is the possibility always that companies change their minds, as you have seen throughout this process, and that could very well happen too, so we always give people an opportunity to change their minds...

SENATOR ROBBINS: But don't you think...

ROXANI GILLESPIE: You'd like to see something dramatic before Christmas?

SENATOR ROBBINS: Well... don't you think their inclination to change their minds might be greater if you set a firm date for filing the cease and desist and...if in doing so,



and recognizing that it's a personal and individual tragedy for the individuals that are directly affected, don't you think that the Department could have the cease and desist order prepared at an earlier date other than early 1989?

ROXANI GILLESPIE: I'm sure we could do that, Senator.

SENATOR ROBBINS: Would you like to set a date?... and, then, Travelers will know and I'll know and their policyholders will know...

ROXANI GILLESPIE: I don't decide something like that without consulting with my staff but I will be delighted to give you a telephone call later today and tell you what that would be.

SENATOR ROBBINS: Okay. That would be appreciated. Let me go on to the next part of the question of recognizing that we're both in the process of trying to get Travelers to comply with the law and... do you feel it would be helpful to have the passage of Senate Bill 103 to define both their obligations to the individual policyholders and, as well, to authorize penalty assessments of up to fifty percent of the amount of premium?

ROXANI GILLESPIE: Senator, you're going to have to excuse me. I have to read 103... and, last time I checked, it wasn't in print, is it in print now?

SENATOR ROBBINS: Allow me to a...

ROXANI GILLESPIE: You have a typewritten version?

SENATOR ROBBINS: ...provide you with a copy... my understanding, if I could a... Miriam, ... a... actually, Miriam has a copy... My understanding was that your office already had been provided with a copy...

ROXANI GILLESPIE: ...and that may very well be the case...

SENATOR ROBBINS: We would... a ...

ROXANIE GILLESPIE: ...you have a conscientious staff.

SENATOR ROBBINS: a... we would like to have the input of your office and certainly, if there are technical aspects in which your office has suggestions, we as always are interested in them. From a policy standpoint, do you feel that the concept of Senate Bill 103 would be helpful?

ROXANI GILLESPIE: Senator, you know our process here and the way that the Department works is we do not give policy opinions until such time as we have checked with the Governor's office..

SENATOR ROBBINS: Okay, I'm aware of that policy, though, you have been by the passage of Proposition 103... you've been given a declaration of independence. While the Governor originally appointed you, the Insurance Department is now an independent regulatory agency and the Governor cannot remove you and you are an independent agency as the Public Utilities Commission is an independent regulatory agency..as a number of agencies are and therefore, you are no longer subject to the old rules that you can't take positions. You...

being an independent person, you've been liberated, you've been freed... you can take

positions... You, also, can choose not to and I won't harass you on the point... I get the impression that for today you've chosen not to on that particular issue...

ROXANI GILLESPIE: Thank you, Senator.

SENATOR ROBBINS: ...so I'll be gracious... I'll go onto something else...

SENATOR GREEN: Senator Robbins, before you leave this subject, if you would, I find it kind of hard to accept that you, as the head of the Department, do not insist upon the law. I can't see any reason...

ROXANI GILLESPIE: Senator, what makes you say that? I have just finished saying that we're implementing the law...

SENATOR GREEN: Yeah, but sometime in 1989...

ROXANI GILLESPIE: No...no...

SENATOR GREEN: ...If someone's breaking into a house, they don't take a...

ROXANI GILLESPIE: No.. that's not it at all..

SENATOR ROBBINS: No...No..., Senator, she did tell me that she will set a date by which she will file a cease and desist order and she will advise us by telephone today what that date will be.

SENATOR GREEN: I understand that, Senator Robbins, but I want to make that point a little more clear... is that, when someone is breaking the law, the agency involved should be immediately and not two or three weeks or a month later implementing the law... And I would hope ...

ROXANI GILLESPIE: Senator, we are implementing it now...

SENATOR GREEN: ...that the answer from you today is that it would be done immediately.

ROXANI GILLESPIE: Senator, we have already been doing it. We have notified Travelers; we have written them a letter; they have given us back their memorandum as they are perfectly a... a.... you know, how shall I say it, a... at free to do, and the next step is the regulatory process... and, it's under way...

SENATOR GREEN: That's what I'm saying, Ms. Gillespie...

ROXANI GILLESPIE: But, it's under way, Senator... it's under way.

SENATOR GREEN: The way that you have and the tools that you have for law enforcement, regardless of memorandums, regardless of understandings, is a tool called a cease and desist.

ROXANI GILLESPIE: Yes, and the process is that first you tell a person of what they're accused, then you give them an opportunity to respond, and then you issue the cease and desist... and that's exactly what we have been doing.

SENATOR MCCORQUODALE: Well, Senator... a... Senator Robbins...

SENATOR ROBBINS: Senator McCorquodale.

SENATOR MCCORQUODALE: ...Just so to refresh everybody's memory that Ms. Gillespie did say that she would consider filing that order in 1989... January of 19... sometime in January

of 1989... You pressed her, and then she said that she would call you today about a firm date. She did not say that she would call you and give you a firm date.

SENATOR GREEN: That's right.

SENATOR ROBBINS: Well, maybe I misunderstood... Roxani, didn't I.... You're going to notify... give us ... you will set a date...

ROXANI GILLESPIE: Yes... yes, I will be glad to do that, Senator... Yes...

SENATOR ROBBINS: ...You will set a date on which your Department is going to file the cease and desist order against Travelers?

ROXANI GILLESPIE: Yes... Yes... that I will....

SENATOR MCCORQUODALE: The possibility is that it could be in December of 88?

ROXANI GILLESPIE: Yes, it is thoroughly possible that that would be the case. Now, we have worked with Senator Robbins consistently over the years and have very much enjoyed the association.

SENATOR ROBBINS: And if, perhaps, you could get back to us by noon then we could let those people here who are concerned know.

The subject I'm going to move on to is the subject that you were grilled warmly on by members of the press before which is that your Department... you are named as a defendant in the litigation on Proposition 103 and the question is, on the twenty percent rate roll-back, is your... when you respond, are you going to respond by defending the rollback or by opposing it? What is your response as a defendant going to be?

ROXANI GILLESPIE: What I will reiterate for the people that are here now is what I was trying very hard to explain to the press that that is a decision that is going to be made at the level of the Governor and the Attorney General and, as far as I'm concerned, no such decisions have been made yet. I have seen nothing from either the Governor or the Attorney General on that subject. And I know that I'm newly liberated but, unfortunately, I... I do have to explain that it's going to be a process which will take me, at least, a few hours to get to because, up to now, I have been feeling that I am part of the Administration and that I belong to the Executive and that, basically, I have a boss.

SENATOR ROBBINS: I think when you say belong to the Executive, you are making a, perhaps, a Freudian slip. Slavery having been abolished in this country, you belong to Roxani Gillespie and Roxani Gillespie is the Insurance Commissioner, not George Deukmejian. George Deukmejian is the Governor. Under Proposition 103, you have the authority and the responsibility to be the State's Chief Executive with respect to the subject of insurance; and I feel that as such and as a named defendant in litigation, you're going to have to take a position whether you are coming before the court on the side of the people who voted, the majority of the electorate who voted in favor of the rate rollback, or whether you're going to come before them in defense of the insurance companies in opposing the rate rollback. I have to tell you candidly, as a Policy Chair of this committee, I think since the majority vote

was in favor of the rate rollback, you have no real option except to come before the court in support of the rate rollback. But, you're going to have to take a position, as Insurance Commissioner, and take it publicly, either through... you know, we'll have the Attorney General or through independent counsel, appear to present that position with the court. But I must tell you, I'm a little disappointed that you're not ready to take your new found independence and take a position until the Governor's office gives you a... sends down a slip of paper saying which position you should take. You certainly don't want to be in the position as you ruled on exemptions from Proposition 103 and on rate provisions in insurance policies that you're going to wait until the Governor's office sends down an instruction telling you which way you're going to rule.

ROXANI GILLESPIE: No, I don't and they have no wish to be the insurance regulator as I think very few people, right now, have the wish to be.

SENATOR ROBBINS: A... but you are and it's a position you're going to have to take...

ROXANI GILLESPIE: I hear you, Senator, and, you know, I appreciate what you're saying but I think, at this point, it's premature for me to comment.

SENATOR MCCORQUODALE: Mr. Chairman?

SENATOR ROBBINS: Senator McCorquodale.

SENATOR MCCORQUODALE: Ms. Gillespie is quoted in the San Francisco, I mean the Los Angeles Times today as saying that she beleives her career was stunted in the male dominated industry because she's a woman. Here's your chance to make insurance a woman dominated industry and to change that policy for good.

ROXANI GILLESPIE: I appreciate the comment, Senator.

SENATOR ROBBINS: Okay... let me go on to clarification in one other area... No, on second thought, I'm not going to go to clarification in one other area unless the other members of the committee have other questions for you. What I'm going to do is let you go so you can get back to us by noon with the date when the cease and desist order will be filed against Travelers. Senator Green, any other questions?

SENATOR GREEN: That's the only thing I would have is a little comment on the cease and desist. When a law is broken, immediately that law should be implemented. Your tool is only a cease and desist and that's the point I want to bring out.

SENATOR ROBBINS: Without... we'll then go on..., Roxani, thank you...to the issue of Travelers unless Harvey wants to elect to switch spots with them on the agenda?

HARVEY ROSENFELD: No, Senator, I'll (inaudible)...

SENATOR ROBBINS: Okay. Let me ask Evelyn Adler to come forward who is a constituent of mine from the San Fernando Valley and, either was or is, I don't know what the effective date was, a Travelers policyholder. And let me ask Russell Press, the Vice President of Travelers Insurance, to come forward. Good morning. Move over, so he can sit next to

his counsel... put their chairs next to each other, we don't want to put Travelers at a disadvantage of having to answer questions without having counsel close at hand.

Let me first ask Evelyn Adler to tell us your situation and a... is your Travelers policy still in effect or has the expiration date expired?

EVELYN ADLER: No... no, it expires 1/15/89 and I'm one of those people that the Insurance Commissioner talked about that would be left in a debacle situation because, without a cease and desist, I am in a situation where I either get insurance somewhere else, if I can, or I wait until it expires and then try to pick it up somewhere else because Travelers now has the upper hand. They are in control of my destiny. I'm a policyholder with Travelers and I have received this notification of termination on the date that the Supreme Court acted, it was there in the mail. The...

SENATOR ROBBINS: What day was that?

EVELYN ADLER: A... last Thursday, I believe. Without the calendar, I'm not sure of the date. They both arrived at the same day. My question is, with the implementation of 103, it's clearly illegal for them to have sent out a termination notice. This notice of termination is not due to a risk, or not due to bad driving; it clearly states ... due to the current insurance environment in the State of California, we have elected to discontinue writing personal line businesses in the state. But accompanying this termination letter, and I'll pass it around so you can all see, is a letter telling me that they have not cancelled my life or health insurance with Travelers, only my automobile and personal line automobile. I spoke to my agent and she said she'll try and find me other insurance but, as of this date, she has not. I have three options: I can drive illegally ... violating the uninsured underinsured motorist rule of the State of California; I can take out insurance at, if I can get it, at about a hundred percent increase of the premium I have now been paying; or I can sell my car and take the bus. My... really, argument with Travelers has been that why should they be allowed to write other insurance in the state if they're not going to write auto insurance. That's one of the things I have to say. The other thing is, if they elect to get out because you can't constitutionally hold somebody in the State to do business if they feel they can't do business, then, what are the provisions for letting them come back to the State and practice selling insurance if the climate changes? I mean, I think they have to take the good along with the bad and everybody's in this situation right now. And, why should they be a privileged group of carrier and I think that, if SB 103 is implemented, there has to be a penalty provision in that bill for any insurance company that pulls out and then wants to come back in.

SENATOR ROBBINS: Okay... Let me ask you a question... was the renewal... was their non-renewal in any way based upon any conduct of yours as a driver... any accident, any drunk driving conviction, any major traffic violation?

EVELYN ADLER: Not to my knowledge because there hasn't been any. It clearly states here the action was taken because of the climate in California and the passage of Prop 103.

SENATOR ROBBINS: Okay...

EVELYN ADLER: The letter that accompanies that says that clearly. Would you like to see the cancellation notice ...

SENATOR ROBBINS: We'll take it for our files. Let me ask you two other questions, not because I in any way suggest that you've done either of these things but because these are the legal basis that they can refuse renewal under Prop 103. We've established that there's been no substantial increase in the hazzard based upon your conduct. Have you engaged in any fraud or material misrepresentation with Travelers?

EVELYN ADLER: Absolutely not.

SENATOR ROBBINS: And have you engaged in non-payment of premium? Did you...

EVELYN ADLER: Absolutely not.

SENATOR ROBBINS: You sent... You've paid your premiums?

EVELYN ADLER: Yes... as a matter of fact, it was paid in full and this is a renewal notice for 1/15/89.

SENATOR ROBBINS: Okay... Mr. Press.

RUSSELL PRESS: Yes, I'd like to offer a statement, please, for the record... and one I believe will be responsive to the concerns that this lady has raised as well as to some of the questions and points which you put forth earlier in the hearing. It's a very short statement; it's not more than three pages and I think this will help to explain our current actions and the basis for which we are pursuing them.

SENATOR ROBBINS: Okay... make your statement and, then, I have some questions for you and you should understand while you're making your statement that the Insurance Commissioner has been sent to her office and, in the next hour and a half, is going to give us the date on which she's going to file a cease and desist order against your company. In the staff analysis and in the opinion of the Insurance Commissioner who has been very friendly to the insurance industry, your conduct is unlawful at this point and, on January 11th, we're going to have a hearing on the legislation which, if your company continues to decline to renew policies, will not only result in a legal obligation for you to offer policyholders, such as Mrs. Adler, an opportunity to renew and require you pay any increased rate that she is required to pay to get other insurance but, in addition, will provide for a penalty assessment that for, based upon your company's book of business, would be just under \$25 million.

RUSSELL PRESS: May I read my statement?

SENATOR ROBBINS: Please.

RUSSELL PRESS: Thank you. We'd like to update the committee on our California market place actions regarding Proposition 103 since your last hearing. As of December 12, 1988, Travelers is offering to renew policies and most casualty property lines in California other



than private passenger automobile, and will consider applications for new business in those lines except private passenger and commercial lines automobile. This modifies the decision we made in November when we ceased renewing existing business or writing new business. We took this action because of what we feel are positive steps by the California Supreme Court to continue to stay Prop 103's rate rollback and its decision to rule on the constitutionality of the entire measure by Spring. And, after evaluating the overall impact of our earlier actions on our California agents and policyholders, Travelers is still strongly opposed to Proposition 103 and will continue to work for a more responsive solution to California's insurance problem. As I said, the action we took on December 12th, however, does not affect our decision to withdraw from the private passenger automobile market. We'll continue to pursue that process and we are not renewing existing policies nor writing new business. Travelers believes that the automobile policies it is in the process of non-renewing are not affected by Proposition 103. These policies were issued at a time when Proposition 103 was not the law and renewal rights are governed by the law as it existed prior to the passage of Proposition 103. We indicated at your November 18th hearing...

SENATOR ROBBINS: Wait... just a second... Well, I'd like to ask...

RUSSELL PRESS: May I just finish... I'll be glad to answer questions but I'd just like ... to get this whole flavor, I'd just... would you please let me finish. I mean you accorded other people the opportunity... I'm more than half way through... Just let me finish.

SENATOR ROBBINS: Just let me ask you one quick question... about what you just said. Do I correctly understand what you've said? Is it the position that Travelers is taking is that the renewal provisions of Proposition 103 do not apply to your 25,000 policies that were in effect on the date of the election?

RUSSELL PRESS: That is what our position is on that issue, Senator. Can I just finish my statement and we can go into more detail. We indicated at your November 18th hearing that our market share in private passenger automobile in California is less than one half of one percent. From 1985 through 87, the profit for our automobile insurance business including investment income on reserves and that of tax charges or credits was \$765,000 on earned premiums of \$154 million. No one could argue that this return is sufficient for the risk we take.

SENATOR ROBBINS: Could you repeat those numbers please?

RUSSELL PRESS: From 85 to 87, I have a copy of this statement I'll provide the committee... I'll give that to you...

SENATOR ROBBINS: Okay... Miriam, if you'll get the copy of the statement, please.

RUSSELL PRESS: Should I go on or should I just....

SENATOR ROBBINS: Just if you'll just give me ... just those numbers.

RUSSELL PRESS: Yeah.... from 85 through 87, the profit for our automobile insurance business including investment income on reserves and that of tax charges or credits was \$765,000 on earned premiums of \$154 million. Our analysis of the provisions of Proposition

103 including rate rollbacks and regulatory measures indicates it would result in significant personal automobile insurance losses. For example, in just the first year, we would expect to lose \$3.7 million. Such losses are unacceptable. No sane businessman would go into business with a prospect of losses on that scale. The argument that because Travelers is a multi-line company, it can absorb continued losses in one line is wrong. Over the long-term, each line of insurance in a state must be able to stand on its own financially. That's just plain simple good business sense. One line cannot subsidize another. We cannot ask our policyholders across the nation to subsidize the California insurance system anymore than we can ask the people of California to subsidize policyholders in other states. And I might add, Senator, you may have heard that one commissioner already is considering legislation of his own, or at least an order to his own domestic insurers, that they not write in a state that requires them to write business at a loss thereby requesting policyholders in that state to subsidize other policyholders. So 103 is getting...

SENATOR ROBBINS: Which... which insurance commissioner have you been able to prod to come forward to do that?

RUSSELL PRESS: I haven't prodded anybody... This is the Commissioner in Iowa and I'd be happy to provide you with a copy of his statement which he made this week at the NAIC meeting. I think it's something that would be of interest to your committee to look at. We agree with California consumers that the cost of automobile insurance is too high but Proposition 103 is not the way to sensibly get premiums down. To simply lower rates without taking steps to lower costs is an incomplete and faulty solution. The right way to deal with rising insurance prices is to focus on the underlying causes of such increases. Rising medical cost fraud and expensive litigation or repair costs. We continue to be anxious and willing to work with your committee, other legislators, the Insurance Department, consumer groups, and others in an effort to reduce the factors that are driving these costs upward. These problems require well thought-out, effective solutions which ought to be all of our mutual objectives. I want to also add here that it is Travelers policy to comply with applicable laws. We strongly disagree with the characterization that was made early in the hearing that we're violating 103. That is not our position. I have not had a chance to look at your counsel's material and wouldn't expect to study it fully here, but we will be in compliance with all applicable laws of the State of California subject, of course, to our ability to test the applicability of those laws to our situation. And I'd, also, like to say that I'm very sorry that you find yourself in this situation as a result of this action but our company felt it necessary to take this action in terms of the losses that we are going to sustain. Not from your policy specifically, but we cannot do this without cancelling or of non-renewing of policies across the board because we're in the process of withdrawing from this line. And, again, I want to say I'm very sorry about that and I'm sorry I had to meet you under this kind of circumstance because we feel our policyholders

are important and the fact of what we're doing in the homeowners and commercial area, I believe, is testimony to that fact. We feel strongly about our policyholders. Thank you very much for allowing me to present our statement.

EVELYN ADLER: Senator, can I respond to that?

SENATOR ROBBINS: Sure, why don't... if you'll take one mike and Mr. Press will take the other, I have.... No, you need to use that one... yes... and you need to speak close to it.

EVELYN ADLER: I appreciate your comments and I thank you for saying that but I am one of 25,000 people in this state and you have thrown my life and their life, probably, into utter chaos. I feel that Travelers owes the state something. They owe the people, the residents of the state their support in this time. They're not willing to give it so, therefore, I think the Travelers should pull out of the state entirely and do no business here whatsoever. This is protection for the residents of the state of California. You have no right to come in here and write insurance in other areas if you're not going to write automobile because you have to take the good with the bad. Other companies are staying in and other companies are complying and you are not. You are only here for the good time and not the bad and I feel that, in that way, you have violated the confidence of the people who have supported you and become policyholders over this period of time. Why should you be allowed to write life, health, homeowners and everything else if you won't write the auto just because you have losses. Well, we are shareholders, too, as policyholders in your company. That's one point I would like to make. The other is, what is to prevent you, at some future time, to come back into this state to do business when everything is fine? Why should you not be penalized for that? And I feel that that's the important part of this right now. You have cancelled with no reason at all; you have violated the law that was passed, Prop 103, by the residents of this state, and, you feel that you have some language written in your policy that allows you to escape with that saying that these policies were written before 103 became effect. In addition to that, you violated the Supreme Court of this state when they issued the order that 103 was in effect, you sent out cancellation notices or termination notices saying that you were in violation of 103 and, yet, you flaunt this in front of the State and I feel that you haven't any right to do this to the policyholders of the state. I thank you for allowing me to be a policyholder and... but, you know, at the same time, I paid premium dollars to have my policy with Travelers and never changed over to another company and never had to but now... and this is not the only policy I have with Travelers... There will be others that will be coming up for renewal and I'm sure to get notices on them too and you have just managed to increase my premiums by a hundred percent if I can get insurance.

RUSSELL PRESS: I understand... I fully understand your concerns and, as I said, it's an action that we did not want to take but we feel each line of insurance, in terms of profitability, must stand on its own and that was the decision we made in light of the losses that

we expected to undertake in this... under Proposition 103. I don't know what other policies you have coming due; I'd be happy to talk to you about those but the ones that are affected under our action are auto insurance.

SENATOR ROBBINS: Okay... let me ask you, Mr. Press, and also you need to speak closer to the mike...

RUSSELL PRESS: I'm sorry... Is this on?... Can you hear me now?... Oh, all right; I'm sorry. Pardon me.

SENATOR ROBBINS: Now... let me see if I understand the legal basis for Travelers' action. What your position is, is that the renewal provisions of Proposition 103 do not apply to your 25,000 policies that were in effect on the date Proposition 103 passed?

RUSSELL PRESS: Right.

SENATOR ROBBINS: If you follow that argument, which I have to be honest sounds like something out of Alice in Wonderland, to its logical conclusion, then the renewal provisions in Proposition 103 do not apply to any of the insurance policies of any company that were in effect on November 8th. Is that correct?

RUSSELL PRESS: Right... Until the first renewal.

SENATOR ROBBINS: And, therefore, Proposition 103's provisions with respect to auto insurance are totally meaningless.

RUSSELL PRESS: I don't know the answer to that. I didn't write Proposition 103... I don't know what they had in mind. All I know is what our ...

SENATOR ROBBINS: Isn't it reasonable to conclude what they had in mind by passing a proposition that says you're required to renew unless you fall into one of three very distinct categories and that you're required to cut rates by twenty percent... Isn't it fairly obvious that that's what they had in mind?

RUSSELL PRESS: We have some contractual rights, Senator, that shouldn't be impaired by some retroactive legislation and I think that's how we feel about it and I think that's something the court has not ruled yet, by the way, that this is constitutional. That question is still up in the air.

SENATOR ROBBINS: On the rate rollback question, they haven't ruled; but on ....

RUSSELL PRESS: They haven't ruled on anything as to whether it's constitutional or not; they've said it can go forward...

SENATOR ROBBINS: Yes... and they've said, the Supreme Court, the highest court in the State of California has said that all of the other provisions of Prop 103, including the provision in Prop 103 that says it's illegal to refuse to renew... they've said that those provisions are all in effect...

RUSSELL PRESS: Right... but they haven't said as to which policies they're in effect on.

SENATOR ROBBINS: You think maybe they had in mind that they apply to all the other

companies and not to Travelers?

RUSSELL PRESS: I don't know, Senator. We're waiting for the decision on that but our position is as I have stated it.

SENATOR ROBBINS: Mr. Press, I understand your position. The Insurance Commissioner of the State of California who is the person vested with the regulatory authority, who has been a very, very friendly person with respect to the insurance industry, she's been criticized for being too friendly with the insurance industry. The Insurance Commissioner has said, sitting in the same chair you're sitting in a few minutes ago, that she clearly agrees that your actions at this time are unlawful, that they are in violation of California law, and she's going to issue a cease and desist order against your company. She is in her office now, going over with her staff, she had intended to issue it in early 1989, she's going over it with her staff, by what date she is going to issue the cease and desist order. Isn't it reasonable to conclude from that that your company is not on firm legal ground in refusing to renew the automobile insurance policies.

RUSSELL PRESS: We'll obviously relate to the Commissioner's actions and, as I said before, we're in the habit of complying with appropriate laws and orders; however, we would preserve our legal rights to challenge any order of that nature.

SENATOR ROBBINS: A number of companies have renewed policies with a reservation of rights; a number of companies, 12 companies, have filed with the Insurance Commissioner for exemptions from... for relief from the provisions. To be honest, a number of those companies are in worse positions than yours. A number of companies have lost money in auto insurance over the past few years; your company has made, while you consider it a very small amount, your company has made a profit on auto insurance over the last few years.

RUSSELL PRESS: \$700,000 on \$154 million in premiums.

SENATOR ROBBINS: Well, that's a lot better position than being in the position of a company that has lost money over the last three years and when you say your profits that small, you've included within that an allocation for reserves... Correct?

RUSSELL PRESS: That's true... but I don't have that information with me.

SENATOR ROBBINS: It would be probably safe to say that there's tens of millions of dollars that you've set aside in reserves?

RUSSELL PRESS: I would assume that whatever is appropriate is set aside...

SENATOR ROBBINS: Pardon?

RUSSELL PRESS: Whatever would be appropriate is set aside.

SENATOR ROBBINS: Okay. And if you've been generous to yourselves in providing for very large reserve accounts, then your profit may be substantially larger than the \$700 and some thousand.

RUSSELL PRESS: We try to be accurate in the setting of our reserves; not trying to be overly generous or underly generous.

SENATOR ROBBINS: But if you have established reserves that are, in fact, larger than the amount that you're required to pay out, your profit will be larger than the \$700 and some thousand?

RUSSELL PRESS: That plays out that way.

SENATOR ROBBINS: I'll just say one thing and then turn it over to the other committee members. But, how can you say that your company follows the law when the Supreme Court said and announced very clearly that all of the provisions except Proposition 103 were in effect other than the rate rollback. They're still ruling on the rate rollback question and, I don't think it will happen, but they may rule that you're correct on that point. They've ruled that the provision requiring renewal of policies is in effect and they have ruled that the stay has been lifted with respect to that provision. How can you say you're complying with the law when you're refusing to renew? It's different to say there's a law and you're going to refuse to follow the law. Something akin to the civil disobedience of Dr. Martin Luther King. I'm not sure that's the policy that Travelers Insurance has always associated itself with but that's a different position from saying you're following the law. How can you say you're following the law when the Supreme Court of the State said the stay is lifted, the provision is in effect, and you're choosing not to follow it?

RUSSELL PRESS: Senator, as I said before, it's our position that that provision in 103 does not apply to the actions we are taking and I've said that several times... that is our position... our legal position.

SENATOR ROBBINS: Well, it's the most absurd legal position I've ever heard someone try...

RUSSELL PRESS: Lawyers differ all the time on these issues but that's our view at this point.

SENATOR ROBBINS: Senator McCorquodale.

SENATOR MCCORQUODALE: I suppose that puts them in a very good position because Prop 103 repealed the cancellation provision that existed before 103 so they don't have to comply with those because they were obviously repealed on November 8th and they don't have to provide... they think they don't have to provide ... abide by the new one, so I guess they can do whatever they want to in that regard. I just wanted to pursue a little bit what you do in California, at this point. This notice supplied the business insurance, property insurance, and auto insurance. Is that the three that it covers?

RUSSELL PRESS: I'm sorry, Senator?...

SENATOR MCCORQUODALE: I'm sorry but I have a cold... but this applies to automobile, homeowners, and business insurance... the property of homeowners?

RUSSELL PRESS: The non-renewal, you mean?

SENATOR MCCORQUODALE: Yes.



RUSSELL PRESS: The non-renewal, at this point, applies to auto insurance only. We are renewing, as I indicated earlier in the statement, we changed our position on that, we are renewing homeowners and commercial coverages that we previously said that we were not going to renew and we are going to reinstate those notices that went out in advance or went out so far. Not too many have gone out because they would have... these non-renewals wouldn't have taken effect until the end of the new year.

SENATOR McCORQUODALE: At one time, you wrote errors and omissions coverage for professionals in California. Do you do that anymore or will that apply here?

RUSSELL PRESS: I don't know how much of that we write now, Senator, I don't... I'm not aware of how much of that we write but whatever we're writing, you know, basically we're continuing to write in those areas.

SENATOR McCORQUODALE: But, no new ones in that area?

RUSSELL PRESS: No, I didn't say that. We will entertain applications for new business in these lines as well. Just not private passenger auto or commercial auto for new business.

SENATOR McCORQUODALE: The... what about a... now, life insurance isn't affected?

RUSSELL PRESS: That's true.

SENATOR McCORQUODALE: And medical insurance is not affected?

RUSSELL PRESS: That is true. Frankly, I don't see any benefit to taking taking steps that would prohibit companies from providing other markets. It's been our feeling prior to Prop 103 and some of the things that have gone on that businesses ought to have the opportunity to write profitable or unprofitable business as they see fit. This seems to me that this is basically the way American business works and it ought to be able to work that way.

SENATOR McCORQUODALE: Well, the problem is then is you have people like this lady here who then, what's her recourse? I mean, she doesn't have a recourse.

RUSSELL PRESS: I understand that but we have a contract that allows us that renewal time and our customer to seek coverage elsewhere and that's the way we've been writing our business. Now, if 103 changes that in some way and it's applicable to policies at some point, then that's what we have to live with and I would only say that I think that is counter-productive to a competitive market place. California has been one of the most competitive market places in this country and it's done very well without a lot of excess regulation which 103 brings about. In fact, a recent hearing in Washington with Congressman Forio(?)... he made the point, raised the question with some of the proponents of 103 to the extent that New Jersey already has some of this stuff and they've got a terrible insurance environment. What makes them think that 103 is gonna make it any better in California?

SENATOR McCORQUODALE: I read... I heard about the hearing but my reaction to that was that the Congressmen are a lot further out of touch with their constituents than the City

Councilmen and the County Supervisors and the Legislators are... and they'll get the message pretty quick and all at once he'll be very concerned about the insurance environment in his district.

RUSSELL PRESS: No, he is very concerned and he's concerned because they have an environment there where they have strict rate regulatory controls, they have an assigned risk plan that's boomed because the private market hasn't been interested in writing there...

SENATOR McCORQUODALE: Yeah, but they don't have the law that Senator Robbins is talking about. If they had the law that Senator Robbins is talking about they may be able to handle it...

RUSSELL PRESS: ... well, I don't know about his state.... I'm talking about Prop 103...

SENATOR McCORQUODALE: I know, but we're not doing like New Jersey did... We're a little different.

RUSSELL PRESS: Well... it's close. Prop 103 is very close.

SENATOR ROBBINS: Okay, thank you... I would appreciate it if you wouldn't mind remaining here til noon cause I wanna... I'd appreciate if you'd be here when we get the date from the Insurance Commissioner on when the cease and desist order will be issued against your company.

RUSSELL PRESS: I'm sorry, Senator?

SENATOR ROBBINS: I'd appreciate it if you would remain until noon so that you'll be here when we get the date from the Insurance Commissioner on when the cease and desist order will be issued against your company.

RUSSELL PRESS: Senator, if we get such an order we will comply with it subject to our rights to challenge it in court.

SENATOR ROBBINS: You certainly have those rights and no one in this committee is in any way objecting to your ability to go into court... no one in this committee is objecting to you, under Prop 103, you can apply to the Commissioner for an exemption or for relief, nor is anyone objecting to the fact that there is a provision under Prop 103 where, if you withdraw and you don't want to renew, you have the legal right to do so if you make contractual arrangements for another insurance company to pick up the policies of Mrs. Adler and the other people affected. The one thing we've objected to is the fact that your company alone amongst the major companies has refused all the requests of this committee and the Insurance Commissioner to follow the law and to renew your existing automobile insurance policies. That's the one thing we disagree with what the conduct of your company has been.

RUSSELL PRESS: Well, thank you very much for the opportunity to present our position. We appreciate it and we'll continue to cooperate with the committee and its deliberations.

SENATOR ROBBINS: Okay and there will be a representative of your company here til at least noon.

RUSSELL PRESS: Someone will be here... I may not be here myself cause I got a plane...

SENATOR ROBBINS: That's fine. Thank you very much. Harvey, have a seat. You've had a chance to observe and participate in our previous hearing. I'm sure you were very interested to hear the rather unique interpretation of Travelers Insurance that the provisions relating to renewals... requiring renewal on automobile insurance policies do not apply to the policies that were in effect on the date of the election. The floor is yours.

HARVEY ROSENFELD: It's hard to understand how Travelers could be confused about what the public had in mind when they wrote 103. All you have to do is read 103 and it states quite clearly that what Travelers is doing is wrong, unlawful... it's unfortunate... it's... I guess, today, it's Travelers that we have to say is... still hasn't read the election results. They're still arguing the campaign why 103's no good for consumers... that's over. Prop 103's law. I mean... you know, George Bush is going to be President... Prop 103's the law. It's not in their hands anymore to determine for themselves how they're going to carry on in California and what kind of mess they're gonna make and how they're gonna run away when it's over. That's really upsetting and it's upsetting to see 25,000 consumers who should be protected by Prop 103 be so brazenly treated. It's very upsetting.

Mr. Chairman, let me talk a little bit about the bigger picture here for a moment. With the Supreme Court's action last week, ninety percent of Prop 103 is now in effect. California voters today have the most comprehensive reform in consumer protection of any state in the United States in the area of insurance; however, they're are two portions which are not in effect. One is the rate rollback; the immediate relief that we feel consumers were entitled to after years of excessive rate increases; and the ability for consumers to form a permanent watchdog organization to represent their interests in insurance matters before the Legislature, the courts and the Department of Insurance. We will not stop... Voter Revolt will not cease fighting for that rate reduction. We're very confident that the Supreme Court will put it into effect.

I want to talk a little bit about the point that you mentioned about the oral opinion that you received that the Insurance Commissioner has been emancipated as it were from the Governor's office. I certainly agree and think that the Insurance Commissioner has to act independently and forthrightly to protect consumers under Prop 103 but I'm a little bit concerned about who the Commissioner is going to be accountable if not to the Governor. I think, notwithstanding whatever that opinion says about the Commissioner's legal responsibilities, the Commissioner has got to be responsible to somebody and I think Governor Deukmejian today bears a great degree of responsibility for what's going on in the Insurance Department, particularly with respect to Prop 103. I'm aghast at the fact that the Governor has not urged the State's Supreme Court to implement all of 103 immediately. Instead, in fact, has suggested to the Court that in the past that parts of it be stayed or all of it be stayed. When the Governor is behind the initiative, he's never hesitated to say that the Court should not interfere with the will of the people and it should go into effect

immediately. Why now? Why just because the voters disagree with his opinion and voted for insurance reform, should they not be entitled to have the State's chief-elected official demand what they've demanded which is immediate relief. So it is a little bit distressing and I don't think we can let the Governor off the hook no matter what... and I haven't seen that opinion..., I'd like to see that... Leg Counsel, if they've put it into writing.

SENATOR ROBBINS: We have asked for a written opinion on the question of can the Governor remove the Insurance Commissioner.

HARVEY ROSENFELD: With respect to what the Commissioner should be doing, I think so far everything we've heard sounds okay...It's just not happening fast enough; you've made that point. We, particularly, think the Insurance Commissioner should be immediately punishing the companies which do not comply. There are 25,000 people, I would suspect, based on the calls we've received at the Voter Revolt Office in Santa Monica, I would suspect there are hundreds of thousands of people in the State of California who are being abused by some of the insurance companies who just don't read the... read Prop 103 or prefer to have their own interpretation of it. We need immediate enforcement. At the same time, I would urge the Commissioner to immediately begin implementation of all of 103 including the provision for example that states that the Commissioner shall develop comparison shopping guides for consumers. I think it's appropriate under 103 for the Commissioner to add, at this point, a weekly survey of which companies are doing what, for and to whom so that consumers out there who are in need of this information can determine where they should go. If they have been treated poorly by one company they should be able... the Commissioner can provide a list of companies with their rates and they'll know where to go to find that help. The Commissioner's post election activities, as she lays them out, they sound good but we would urge her to act much more expeditiously, much more forceably to prevent abuse.

I want to also mention... or respond to the Commissioner's point about the pre-election rate increases that almost all the companies took under the mistaken assumption that their own initiative would go into effect which would permit unlimited insurance increases under the guise of actually reducing some rates. There were grossly excessive rate increases during the election campaign by the insurance companies. The Commissioner mentioned, I think, eleven companies had been sent a notice saying that their rates were too high, but all that occurred under the pre-103 laws which were basically irrelevant and ineffective. All of that has occurred apparently... she's mentioned that Firemans Fund has been fined. All of that has occurred behind close doors. There has been no hearings, no opportunity for consumer groups to intervene to find out whether the fine for Firemans Fund shouldn't have been two million instead of four hundred thousand... we don't know. So there's some concern on our part that when the Commissioner implements these reforms that go into effect right away, they be implemented expeditiously and in the public arena so that we can tell

what's going on. I want to mention a few of the other reforms that either are in effect now or will immediately be addressed...or should be immediately addressed by the Insurance Commissioner under 103. In effect now is the exemption from the antitrust laws; in effect now is the comparison shopping data, which I mentioned a moment ago; in effect now is the requirement that homeowners be permitted to get together, for example, and negotiate a group insurance policy with the company of their choice, same with small businesses, the expansion of group insurance is in effect. Brokers for the first time are empowered to give discounts on insurance rates by cutting their commissions which sometimes can be as high as forty percent, so there's a tremendous opportunity today to shop among brokers for the opportunity for consumers to lower their own rates. The intervention of consumer groups is provided for by Prop 103 as well as the opportunity for citizens to challenge what the insurance companies do themselves. All those options need to be implemented through regulations at the Department of Insurance. So, too, does the establishment of a rate regulation system that was scheduled to go into effect in November of 1989 which requires the insurance company simply to open up their books and prove they need all future rate increases before they go into effect. The so-called prior approval system. The permanent twenty percent discount for good drivers which begins in November 89. The replacement of the zip code as the primary determinant of auto insurance rates with driving safety record and other driving characteristics; all of those factors that will turn the system of insurance into a just and reasonable system must be implemented by the Insurance Commissioner over the next weeks and months so that they too go into effect in November 89; and, assuming that the Supreme Court agrees with us that there's nothing unconstitutional about this permanent watchdog organization, the implementation of that must go into effect as soon as the Court acts. Finally, exemptions from the rollback... I have here today several of the submissions made by some companies to the Insurance Commissioner demanding as their...is their right into 103 to be exempted from the rollback. Now, I'm not going to talk much about the merits because I have only had them for twenty-four hours; as you might expect, there is some of the hocus-pocus bookkeeping that the insurance industry excels at to make it look as if they're always losing money when they're really not. It's a... without prejudging the merits of those things, one thing is interesting about their presence at the Insurance Department... first of all, they weren't made public til just a few days ago which was wrong; number two, it proves that these companies can work through the process under 103 to ask for an exemption from the rate rollback and, in fact, some of the companies... at least one company even suggested the procedure under which the Insurance Commissioner could expeditiously grant those reductions or, at least, consider the application, which obviously flies right in the face of what the insurance companies have told the State Supreme Court in arguing that it's not fair for them to have to reduce their rates since the procedures aren't there to have it happen quickly.

In short, the focus in our mind really shifts now to the Department of Insurance and it's the Insurance Commissioner Gillespie's mission to transform the Department of Insurance from an extremely unresponsive, pro-industry bureaucracy to a tight, efficient, hard-hitting protector of consumer rights under Prop 103, and that is what Voter Revolt intends to monitor during the next months, not the statements, not the press releases, not the promises, but the actions of the Commissioner and others as Prop 103 is implemented under its provisions. Thank you for the opportunity to appear here today.

SENATOR ROBBINS: Thank you very much. You've caused the passage of Proposition 103 and your efforts has caused a transformation in insurance law in California. Prior to the passage of Proposition 103, virtually every legislative effort to have the Commissioner reduce rates or hold them down was defeated. The basic insurance law of the State of California was the Insurance Commissioner had the authority to intervene on rates if, only if, insurance company rates were too low and had the authority to intervene to make sure the rates were increased to protect the solvency. That's all changed. The Insurance Department is slowly learning its new mission and the way they do business has changed a little bit and, hopefully, will be changing more. Senator Green.

SENATOR GREEN: Thank you, Senator Robbins. I think for me to you is that a comment that good job on 103...

HARVEY ROSENFELD: Thank you, Senator

SENATOR GREEN: Last year, as you remember, I put a bill through to make them elect a Commissioner. Your bill did do that and what better boss does a Commissioner have or any department in the State than the people. I think that's where we're going down the long road and that office should be, as you have said, a very responsive Department to the people which it has not been in the past because it has been, and you heard Ms. Gillespie here today say she had to go to the Governor's office for direction, she worked for him,... now,

SENATOR ROBBINS: She said she belongs to the Governor.

SENATOR GREEN: and she belongs to the Governor, well, now she belongs to the people of the State of California and they're the best bosses out there. And I would suggest to you that within the next two years, by the way I read it, she will be sitting there for sure until an election is held and, if that Department does not run as the people and you being the watchdog, then I'm certain she wouldn't be looked at as a good candidate. And I'm looking for great things if she will come out from under the shield of the Governor and with being a part of his administration.

HARVEY ROSENFELD: She and the Governor have the opportunity to be consumer heroes or they have the opportunity to earn the tremendous anger and enmity of the voters of California... it's their decision, their choice.

SENATOR GREEN: Right. I'm happy to see that it is an elected position and it will no longer be under the thumb of the Governor of the State of California, no matter who it is.



SENATOR ROBBINS: Okay, thank you very much. Next segment of the hearing is individual consumer problems... We have assured each... Let me ask Mary Bess and Howard and Beatrice Gurkewitz to please come forward. We've asked... we have told each of the individual consumers that they're welcome if they want to state the name of their insurance company that they've had a problem with; they're also welcome since in many cases they have a continuing contractual relationship with the insurance company to state their problem without getting into the name of the insurance company and that we will not ask them the name unless they choose to state it. Let me first ask Mary Bess and then Mr. and Mrs. Gurkewitz to please tell us each, take a few minutes and tell us about your individual problem with insurance.

MARY BESS: Thank you, Mr. Chairman and Members of the Committee. I have lived in the San Fernando Valley in a mobile home for the past nineteen years. I've had the same job as a church secretary in Burbank for eleven years. I'm a stable person. I drive a 1986 Buick and my insurance has gone up from \$1184 to \$1808 since last June. I've had no tickets, I've had no accidents in over thirty years of driving. I could not afford those kinds of payments. Because of that, I've had to go on assigned risk with no coverage whatsoever on my car and even that is \$880 a year and I have not one dime of coverage on my car as of tomorrow

SENATOR GREEN: ... Your policy has been cancelled?

MARY BESS: No, it wasn't cancelled. I could not afford to renew it at that price.

SENATOR GREEN: ... the rate increase was so much that ...

MARY BESS: It was so much, I was given an offer to conditional extension of my coverage and they stated in this letter that it was because of Proposition 103 that they had raised it this high and I just simply cannot pay that... those kinds of premiums... I support myself and \$20,000 a year, you have other things to do besides pay car insurance, so I just couldn't do it.

SENATOR GREEN: So, you're one of those that find yourself without insurance because of what a company did in their rate increases after Prop 103?

MARY BESS: Yes, my policy was due to expire tomorrow and I could not pay that enormous premium so I had to go on assigned risk, just the minimum the State requires. My car is not covered after tomorrow.

SENATOR GREEN: Thank you for coming out this morning.

MARY BESS: Thank you, Mr. Chairman.

HOWARD GURKEWITZ: Mr. Chairman and Members, my name is Howard Gurkewitz and this is my wife, Beatrice. We're both retired, live in North Hollywood, we own a 1987 Toyota Camry which is insured by Hartford. Hartford is the insuring arm of AARP which advertises as being the essence of insurance for retired people. Our driving records are clean, no tickets or accidents; we recently both took the defensive driving course called "Fifty-five Alive" which insures a minimum of a ten percent discount. I guess, according to testimony we

heard earlier, we should be very grateful that our insurance came due before Prop 103 went into effect. Our insurance was renewed on the twentieth of October. That was the fortunate part... was renewed... the unfortunate part was that, instead of \$943 for a twelve month period, we went to \$1714 which figures to approximately an eighty-two percent increase for no apparent reason except that Proposition 101 was on the ballot. This is the only reason that we can see to justify the increase for the insurance company.

SENATOR GREEN: So, in other words, you had no tickets, no accidents, no claims?...

HOWARD GURKEWITZ: Nothing on our records... as a matter of fact, my wife hasn't had to take a test with the DMV for twelve years. She has been automatically renewed as a good driver.

SENATOR ROBBINS: Have you asked your insurance company for any justification on the eighty-two percent increase?

HOWARD GURKEWITZ: Yes. I called them and their response was that... how did they put it? Their experiences in the state have been very bad but that was all I got was a.... on top of that, I ... since I am retired, I have a little time to do a little research and I contacted a minimum of fifteen other insurers, whether it be agents or direct insurers, at least fifteen. I had several responses of stay where you are which was practically unheard of for anyone to tell you we can't compete, stay where you are. This was the essence of the response. There was only one insurer who came close to the Hartford rate but their quote was for only six months and I saw the handwriting on the wall and, since theirs was a six month rate, I figured I'd better pay a couple of dollars more and, at least, have it for twelve months until this mess may be cleared up within the year.

SENATOR ROBBINS: Well, if you don't mind, we're going to write to your insurance company and inquire as to the justification for the eighty-two percent increase and Mrs. Bess, we're going to write to your, if you don't mind, we're going to write to your insurance company as well to ask for justification on their fifty-two percent rate increase.

Okay, thank you all for coming before our committee today. Vincent Schaub... Why don't you just leave the one chair in the middle since we have the rest of the people seem to all be in wheelchairs. Mr. Schaub, as I understand it, your company is in the business of having contracts with our various governmental agencies to provide medical rides for seniors who require them, that your insurance was renewed initially for \$101,000 and that you were then given a premium increase to \$346,000. I don't want to state the case for you, please tell us about the situation and Seargent, perhaps, you could have the people move closer to the table with their wheelchairs in case they want to say anything. Mr. Schaub, will the other people be speaking or will you be the only person speaking?

VINCENT SCHAUB: I will be speaking unless you will have some questions for the other people. We provide about five hundred trips a day for people who essentially are confined to wheelchairs and have to go to hospitals and doctors offices for out-patient therapy.

We have ~~been~~ doing this for a period of about twelve years and I invited a few of these people down in the event that you might have some questions to them...essentially, as life sustaining transportation for our people. And we have had insurance on the Assigned Risk Plan for three years with the same company and we received a notice of renewal in January, excuse me, in June of 1988 for \$101,000. In July we received a confirmation of the renewal and because of a few equipment changes the price became \$110,000. Now again, this was the third year of renewal. On October 20 I received an additional premium notice of \$111,138 and I was searching for an explanation for that one and shortly following that on November 3 I received an insurance increase of \$247,763 more. Now I am not too sure how much my insurance bill is. I don't know. I have three or four premiums here and I don't know how much it adds up to, but it could add up to \$400,000 or \$500,000 which is completely beyond what the State reimburses me for or the City of Los Angeles reimburses me for to transport these clients of ours to the hospitals and medical clinics.

We are on the Assigned Risk Program in California, and I would perhaps like to take this opportunity to do a couple of things. One would be to make a plea for anybody who could help us untangle this problem that we have here because these people need this transportation to essentially stay alive. The second problem that I have here is with the assigned risk insurance. We find out that we have had accidents. We find out that we have had losses, but the problem is that we have had reserves on this policy for three years that have had no momentum one way or the other. The reserves just sit there. And frankly, I think the reserves are extremely high and when settlements come in on the reserves... therefore probably ten or fifteen percent of the reserved amount...so the picture looks much worse than in reality it is as you had mentioned earlier in other peoples testimony.

And, we would like to make a plea for some loss control help from our insurance carrier. We would like to make a request that some of the false claims that we get some help in reaction and response from them. We know they are false.

So, essentially what we want is help in solving our problems here. This transportation is vital. It is vital to the community, it is vital to the people and I really feel as though this is a situation that should be looked into.

SENATOR ROBBINS: Well, obviously if you have had a premium increase from \$110,000 to \$346,000 that is a substantial amount. Let me briefly ask the people who are here with you the question of what type of medical needs do you require transportation to the doctor for and what alternative do you have if Mr. Schaub's company is no longer able to continue their contract to provide you with medical transportation.

JESSIE GARLAND: You mean he can't no longer provide the medicine for us...to get this medicine? Is this what you say?

SENATOR ROBBINS: Well, what type of medical needs do you need the transportation for and what alternatives, if any, do you have to be able to get to those needs - the

doctor, if his company is unable to continue in business.

JESSIE GARLAND: Well, without him doing that I wouldn't have no way of getting there, because I can't walk. My husband passed in January and I don't have..I had a stroke after he passed away.

PERRY MC GEE: May I say something?

SENATOR ROBBINS: Sergeant, if you will hold the mike for the. . . .

PERRY MC GEE: Senator Robbins and the Committee, I am a blind, wheelchair bound, insulin dependent diabetic with heart condition, high blood pressure and kidney failure which requires that I have dialysis three times a week without fail...or else subject myself to fluid in the lungs along with possible congestive heart failure. So, the availability of a viable means of medical transportaiton is absolutely necessary for me to continue living and I have been with Medi-Ride for two and one-half years and they have provided excellent service. And, under those conditions I have been able to obtain the kind of medical care that would help me extend my life. I am 67 years old, almost 68, and there is very little else in life to enjoy, except living. Anything that threatens that is of great concern to me and I can readily understand how unwarranted increases in operation would cause the company to go out of business. And, there are very few reliable medical transportation companies to begin with and were there others their cost would be prohibitive. I would not be able to participate...so that is my plea.

SENATOR ROBBINS: Okay. Thank you very much.

CHARLES BEHE: Medi-Ride - I have been with them for about two years now and I am 75. If it don't be for Medi-Ride I don't know what I would do...because I don't have legs, I got heart trouble, kidney trouble and I got several different other troubles which I haven't mentioned. But, if it don't be for them I don't know what I would do. I don't have no other means of going to the doctor or going out to this kidney outfit. I go to the kidney outfit three times a week. And sometimes I get sick I have to go to the hospital. So, I don't know what I would do if it don't be for them. I would say it is one of the best organizations I ever met for old folks - because I have never seen nothing like this before and they are about the best that I would attempt to try to contact. When I contact them they are right on time and they have been giving me good service ever since the last two years - would be in April - they have been giving me very good service and it is one of the best services I have ever had in my life. I would like for them to continue. Thank you, sir.

SENATOR ROBBINS: Okay, well thank you...

JESSIE GARLAND: And forgive me, sir, again. Without this service I don't know what we would do because there is no other way and like this young man said, when they say they are coming for you at a certain time - they are coming for you. And, you haven't got nothing to do but be ready and they load you on and carry you. They are very careful carrying you and bringing you back and put you in the house. Very nice.

SENATOR ROBBINS: Well, I certainly don't want to have to come and tell you that they are no longer going to come and pick you up because their company couldn't remain in business, because their insurance company gave them a premium increase of over 200%. Obviously, I recognize since Mr. Schaub's...since the needs of your company do involve a life threatening situation I will not even wait to write to your insurance company. I will be on the telephone with them this afternoon to obtain from them their justification and their response and since, obviously, it involves your work under contract to the City of Los Angeles - I will bring this to Mayor Bradley's attention, to whatever assistance or involvement he would like to be on it. But we certainly understand your situation and certainly you have the commitment of this Committee that we are going to do everything that can humanly, possibly be done and we will be on it as quickly as this afternoon. I thank you very much for coming before our Committee.

VINCENT SCHAUB: Thank you, sir.

SENATOR ROBBINS: Let me ask Nate DiBiasi, who is union representative, to come forward and Gary Naman who is the president of a trucking company and Bud Wilson who is an insurance agent from Northern California. Please tell us of the individual problems that you have had with insurance companies.

NATE DI BIASI: This is somewhat broader if you don't mind Senator. Actually...well let me start it this way. My name is Nate DiBiasi, I am with the International Longshoremen's and Warehousemen's Union. I have a few short points to make as the insurance relates to wage earners.

In order to earn a living, as you know, in the State of California it is essential to own an automobile. In order to look for a job in the State of California, an automobile certainly is needed. In fact, one of the main questions that most applications ask: "do you have a valid driver's license?". And the Legislature, and you have been up there a long time Senator, through the years have enacted all type of legislation pertaining to automobile insurance especially...which finally made it mandatory for all intent and purposes for any citizen in the State of California that is going to drive a car to have insurance.

At the same time, it also gave the insurance companies unlimited power to set their own rates with nobody to bother them. While they were doing that, working men and women in the last eight years especially were being pressured to give back some of their wages and some of their fringe benefits...or, and to start at a minimum wage. These same working men and women, at the same time were having their premium's raised. And, if by some chance, the wage earner did get a little bit of a raise, along comes higher insurance premiums that took care of that raise.

Labor understands that insurance companies are needed. They are part of the American way of life and allowing reasonable profits is also a way of the American life.

Unreasonable profits, willfully arrived at are something else. At the risk of putting some of the blame on the Legislature ... for years, some of us have been coming to you for protection, for consumers especially in the field of auto insurance. Sometime you listened, sometime you didn't. And when you did listen, along comes the Governor - you passed good legislation and bingo comes a veto.

And, at the same time for years, we were pleading with the insurance industry to play fair when setting rates. They didn't listen. Now the people said: "hey, you are going to listen!", and it just so happens that the people are the consumers. We think that perhaps Prop. 103 is going to be in limbo for some time, especially part of it. But I think that you legislators owe it to the consumer to pass legislation...however temporary, to protect those consumers until the Supreme Court has acted. Some kind of freeze. Whatever you think, but at least we would appreciate if you would say to us...and I would say to the insurance companies - if there are still some present here - perhaps you may not agree that the customer is always right, but the majority of the business community agrees that the customer is always right. I would suggest to the insurance companies to please try it - you might like it.

Now just a word before you stop me, Senator, on the proposed legislation that you have. I have got copies of it. But especially as far as Senate Bill 103. The question that I would like to ask is did the insurance companies sincerely believe that the State Legislature and the consumers were going to capitulate to all of their threats? It is beyond me that the insurance industry would say ... would be able to threaten the State Legislature, threaten the consumer to pass the law, and these very same consumers who had just voted for a law for relief were going to say we quit, we are asking the State Legislature to answer those cancelled policies, the raising of premiums, the leaving of the state - I think those problems are in your hands and we hope that you will do what we hope you will do into helping the consumers. After all, we looked at 103, SB 103, as an answer to those threats in a justifiable reaction. The consumers have no other place to go. We are coming to you, the Legislature. Thank you very much.

SENATOR ROBBINS: Well, Nate, thank you and we will work together on this and perhaps I can prevail on your assistance to see if we can get an official State AFL-CIO position in support of SB 103, so that some of the legislators who tell me that they are hesitant to vote for the legislation because they don't want to deal with the political consequences of what the insurance companies will do to them, will recognize there are some other major political forces out there as well.

NATE DI BIASI: Although we are affiliated with the AFL-CIU, we are independent and I can assure you that this whole problem is going to be taken up two weeks from this... one week from this coming Friday...and I really don't see any problems as far as our organization is concerned.

SENATOR ROBBINS: Good! Thank you very much. We are pleased to have the support

and pleased to be working together with you. Gary, you have a...you are from Northern California, you have a trucking company, you operate fifteen trucks and your carrier refused to renew. Why don't you tell us briefly what that does to your business and what happened and where you are.

GARY NAMAN: Thank you very much, Senator. I appreciate this opportunity to talk to you. I appreciate your hearings, and this opportunity as I have said, to speak directly to you. I am the president of a small trucking company, fifteen unit trucking company in San Leandro. We are a truckload carrier, we operate within a 100 mile radius. Out of about 8,000 loads we handle, maybe, twenty-five loads outside of that. We handle about... we are within a 100 mile radius operation.

My problem is reasonably simple, it should seem to me. We operate a clean company, we have no losses either in PL and PD or Worker's Comp., which I think if taken together as a picture, show that we try to operate a clean company. And yet on August 18 my insurance company sent me a letter indicating that they were not going to renew our policy. When I asked my agent why that would be, he said...

SENATOR ROBBINS: What was your policy termination date?

GARY NAMAN: My policy termination date was November 13. When I asked my agent why the company had sent me a notice of cancellation, he said: "Well, we are looking at your weak financial statement". I said: "Well, Chuck, that doesn't make an awful lot of sense because last year when they wrote me I wasn't making any money and this year we are, and in addition to that my revenues are up about 50 percent over what we were last year". He said: "Well, don't worry about it Gary. It's just a real technicality. When they take a look at your losses you only had about two percent of losses on your premium, so out of \$50,000 in premiums they paid \$900.00 in losses...I think that we can take care of that. That's not a problem".

As the date towards my cancellation drew closer it was, in fact, two days before your hearings last month...and I had requested that I speak directly to the underwriter and speak directly with the company so that I could tell them my story. I was told that: a.) they wouldn't speak to me, and b.) the issue was closed.

As I said my losses...we have a history of a clean company that goes back probably since 1983 where our losses are less than, generally less than \$2,000 or \$3,000 and have always been less than ten percent of premiums. So I am just at a loss to understand why we have not been renewed. It seems to me that the insurance companies ought to be banging on my door, knocking it down, saying give me your money...you're a good risk. But they are not doing that and I'm surprised...

SENATOR ROBBINS: Okay, where do you stand now? Do you have insurance?

GARY NAMAN: No, I don't. I was given...because the company erred, they made an error - they didn't send the filing to the PUC giving the PUC thirty days notice of cancellation until November 13 - and as a consequence they gave me until December 13 and

tonight at midnight was to have been my final gasp for breath, and I have no insurance. They have graciously given me until December 27 to get insurance, however, the coverage has dropped from the \$1 million in coverage down to \$600,000 which is the PUC minimum and we don't have any of the collisions or any of the other carrier coverages that we should be getting. I did get one quote, that is interesting that we got one quote that was an assigned risk quote and it was exactly double - it was \$99,000 and change. That is a little bitter pill to swallow when we had a \$50,000 premium and no losses last year. Interestingly enough, the...one of the triumvirate of companies that writes the assigned risk program would be one of the companies that has cancelled me.

And so as a consequence, I am just at an absolute loss. I just don't understand. We don't have insurance. We have walked our thirteen steps down to the gallows; we are facing our last gasp of breath; we don't have any...we are about to be put out of business; we have some very good customers and I have been talking to some major food chains and some major box manufacturers and we tell them our plight and just let them know that we are having some major problems. Hopefully, we can get insurance at a reasonable rate before the end of the year.

SENATOR ROBBINS: Okay, we will, as in the other cases contact your insurance company and see what kind of justification we get from them and we will stay in touch with you.

GARY NAMAN: Thank you very much and I appreciate, again, this opportunity and your taking a personal interest in doing that.

SENATOR ROBBINS: Well, thank you. We are trying to do the best that we can.

GARY NAMAN: You are. Thank you.

SENATOR ROBBINS: Mr. Wilson, you're from Northern California also.

BUD WILSON: No, no I'm not. Can I correct the record on that. I am from the magnificent city of Chula Vista, which as anyone knows is in San Diego County. Which, of course, is in Southern California.

SENATOR ROBBINS: That is true. We didn't note the direction you came through the door this morning, but we now do, and we knew you were travelling to Los Angeles but we didn't realize...

SENATOR MC CORQUODALE: Mr. Chairman, I'd also like to say that at one time I had the pleasure of running against Mr. Wilson for an elected office and as a candidate he is one of the most fantastic insurance salesmen I've ever met.

BUD WILSON: That was president of JC's, I think in those days Dan.

SENATOR ROBBINS: Anyway, if you could give us a digest of your ten pages of comments.

BUD WILSON: Thirty-five. I am the Chairman of the Insurance Agents and Brokers Legislative Council which represents five statewide trade associations, representing more than eighty percent of all the independent insurance agents and brokers writing property



and casualty in the State of California. We are appearing here today in response to the committee's request for information on the status of the current insurance marketplace from the viewpoint of the consumer - as seen through the eyes of their independent insurance agents and brokers. We would also like to comment on the effects of Proposition 103 on agents and brokers whom we believe you will agree are the unintended victims of 103. For insurance agents, brokers and their customers the passage of Proposition 103 was nothing short of a disaster. The day following the election, The Independent Insurance Agents and Brokers of California, one of the five ABL member associations, conducted an insurance market survey to determine the impact of Proposition 103 on private passenger auto insurance policyholders and their agents or brokers.

The results indicated that immediately following passage of Proposition 103, sixty-seven percent of the insurance companies we contacted, representing seventy-five percent of the total private passenger auto insurance market in California had announced plans to temporarily suspend writing new business and/or processing renewal policies. The effect of such suspension significantly affected the ability of agents and brokers to keep their own doors open for business. Some agents had absolutely no markets to place coverage and no prospects that they could replace their carriers with other insurers. More important, many consumers were effectively shut out of the insurance market. It is apparent that Proposition 103 had a significant effect on the availability of property and casualty insurance in California - particularly private passenger automobile insurance.

It is also apparent that the 'Stay Order' issued by the Supreme Court helped restore, temporarily, a substantial portion of this market. However, should all provisions of Proposition 103 be implemented, initial survey results indicate that a severe availability crisis is likely to occur in virtually all lines of property and casualty insurance. Today, while it may seem insurance carriers return to business as usual, we can tell you they have not. Until the Supreme Court delivers its ultimate decision, many insurance markets will remain in disarray. Every day the court waits to decide the constitutionality of Proposition 103, insurers that remain in the market build up a potential contingent liability for premium roll backs which might well average thirty to thirty-five percent of premium in effect today. At some point, if the court has not acted, companies who cannot or will not risk any further losses will again suspend or restrict underwriting insurance and the insurance marketplace will be further restricted.

There is substantial confusion among insurers and agents and brokers stemming from the many gray areas contained in Proposition 103. Despite its proponents contention that the initiative was written in plain language, Prop. 103 was poorly drafted, it is devoid of almost all definitions and repeals many sections of the insurance code in a manner inconsistent with the intent of the initiative. We estimate it will take months, and perhaps years to figure out the application and effects of the initiative. The

practical effect of these many uncertainties is that the companies who decide to stay in California won't be able to rely on the Department of Insurance to clarify all the ambiguities of Prop. 103. The Department will likely be bogged down with administrative hearings on new rules to implement Prop. 103 and the many requests by companies for relief from the mandated reduction required by this statute.

As a result, each company will have to make its own determination of how to implement this statute and take the risk that they have done it right. In many cases, companies will not know for sure whether they have implemented Prop. 103 correctly until such determinations are challenged and litigated in court. The prospect of these uncertainties and delays will no doubt cause additional carriers to reconsider their decision to stay in California.

Lastly, the consequences of Proposition 103 on the insurance agency force in California are substantial. If Proposition 103 is held constitutional, all evidence suggests that markets for all lines of insurance will be reduced - thereby limiting the ability of agents and brokers to find available coverage for their customers. Agents and brokers will have to utilize non-admitted carriers to write more of their business. This is particularly true in commercial lines. This means these customers will be without the protection of the California Insurance Guarantee Association. This will also substantially increase the cost of agent and brokers professional liability insurance. Agents revenues will be slashed to the same extent as insurance companies - some thirty to fifty percent without any change in the cost of rent, lights, stamps, paper or salaries.

Insurance companies, attempting to cut costs and pass on the effects of 103 will unilaterally reduce agents commissions, which currently average between twelve and eighteen percent in all lines of property and casualty insurance contrary to the forty percent that you heard earlier - and will eliminate or cut their profit sharing plans and make themselves unavailable to a large number of California consumers and businesses by cutting the number of agents representing them. Agents and brokers will be faced with these obstacles at a time when major money center banks, flush with record profits from leverage buyouts, with access to federal discount funds - FDIC guaranteeing them against failure, the ability to tie the sale of insurance however subtly to the issuance of a loan will be license to sell insurance.

The consequence of this combination of factors ultimately can only be a constriction of the outlets to purchase insurance which will in turn leave consumers with fewer options and less competition as they attempt to purchase insurance products. What evidence do we have that this constriction of the market will take place? Let me give you a few examples of things that are already happening - already taken by insurance carriers which demonstrate that it will occur. Now we have all tacked Traveler's to the board by now but their action in suspending insurance in California had a devastating effect on many,

many customers in the State of California. We applaud their decision to come back in, we hope that they will come back in, in its entirety. Progressive Insurance Company reduced agents commissions on renewal business from fifteen to five percent...a sixty-seven percent reduction and they have eliminated some budget payment plans that are very helpful for people paying their premium.

SAFECO is now accepting new personal auto, but only through seventy-two of its 858 agents in California. The remainder have no SAFECO insurance market at all - effective immediately.

Great American is eliminating budget payment options for automobile so that the full six months premiums are due at once, in a lump sum.

An action which Signa has taken provides an example of a smaller agencies are particularly hard hit by Prop. 103. A rural agency which was operating prior to 103 under a rehabilitation provision of its contract for not meeting their minimum volume requirements was shut off from binding any new business after the election. That makes it impossible for that agency to comply with the minimum volume requirements and they will, therefore, be precluded from writing business with CIGNA.

The Continental Insurance Company closed up shop for new and homeowner businesses by rescinding binding authority without notice in violation of the ninety-day notice in its agency contract.

Fireman's Fund Personal Insurance notified its agents their binding authority was revoked for auto and preferred homeowners products.

Republic Insurance Group in an apparent attempt to avoid 103, terminated agents for not producing enough life insurance business to meet certain quotas.

What can the Legislature do to alleviate the adverse affects of Prop. 103? We as a coalition of associations look forward to working with this committee, in a forum for calm deliberation, where all aspects of the insurance crisis can be examined carefully. In the meantime, however, the Department of Insurance or the Legislature must provide insurance consumers and agents and brokers clear direction regarding the many gray areas of 103.

The companies and their agents are to implement the new law as it was intended to be implemented. The partial court stay only provides breathing room. The Legislature must deal with the underlying costs that drive up the cost of insurance. One such cost cutting measure that can be enacted is a New York type 'no fault auto law'. We continue to believe that a good 'no fault law' is the most effective means available of providing a more efficient, less costly auto insurance product.

Now that the public has decided that the insurance prices should be strictly regulated, we believe every component part of the insurance product must be examined as a

result of similar regulation. Such costs and issues of medical and hospital fee schedules, the use of after market parts, the ability of companies to offer reductions to consumers who utilize specific repair facilities, additional incentives for anti-theft and fraud systems, fast track arbitration, mini-policies and reduction of minimum insurance requirements are all aspects and components of the auto insurance system that our associations will be exploring. We urge the Legislature to do likewise. We also wish to offer the Legislature our grave concern as it considers proposals which will merely force insurance companies to choose between staying in California or paying a penalty to leave. Once the specific price of leaving is known, it is too easy to reduce such a decision to purely an economic one and to find it attractive to leave. Especially when it is likely to be cheaper to do so than to stay.

Yes, the majority of voters want more regulation and control over insurance pricing. But price controls without regard to the cost will not reduce prices. They will only reduce the supply of insurance. Carriers cannot provide coverage if premiums do not cover costs. That is an undeniable fact, that no form of punitive legislation will prevent.

And, I thank you very much for the opportunity to appear. I will be happy to answer a question if there are any.

SENATOR ROBBINS: Bud, thank you for your statement. Certainly you have covered a number of important issues and certainly it is important for the brokers to be part of the process as we go forward on this - though the broker is unfortunately the person who is the messenger of the bad news, rarely is he the person who has set the rate. Often there is no one else for the policyholder to be angry at.

BUD WILSON: That is correct! And, we accept that and we know that we deal in that environment on a daily basis and we hope that we can, and we want to play a role in working out these gray areas and the problems. We very definitely do!

SENATOR ROBBINS: There is no question about that. Let me ask - the first legislative vote is going to come on January 11 on Senate Bill 103. We have worked to try to keep the marketplace of insurance out there, because if there is no marketplace of insurance, if the companies aren't in the market, your people can't sell it and my constituents can't buy it. And, toward that end, we proposed in Senate Bill 103 basically to put teeth into the provisions of 103 that require renewal in the area of auto insurance - to state that any company that refuses to renew between December and June of next year would;

- 1) Be required to give their policyholder an option to renew when the bill is passed.
- 2) Would be required, if the policyholder has gone with another company to pay that increase...any increase in premium the policyholder should have to pay.

- 3) Would pay a penalty assessment of fifty percent of the amount of premium.

Most of the companies have come back into the auto market. There is one large company that hasn't and we have talked about them. The Insurance Commissioner has promised us by noon, to give us the date on which she is going to issue her cease and desist order against them. But that kind of legislation, in my opinion, is going to be necessary to make certain that all the companies stay in the market - particularly in what will be as things change and as the tides go back and forth over the next few months, some very difficult times in the insurance industry. It is probably safe to say the most difficult and volatile period that the insurance industry has ever gone through in its history in this state will be over the next few months ahead.

Where will the brokers be? In the past the brokers have tended to ally themselves with the insurance companies, and did on pursuing passage of Proposition 104. The question will become where will you be and can we get the brokers to join us in supporting the legislative effort for the passage of SB 103. You'll have to keep the marketplace available so that you will have a product to sell.

BUD WILSON: That is what we are vitally interested in, obviously, because we want to sell that product to the consumer. The consumer needs it for their financial well-being. Let me comment, though, about supporting the insurance companies. We have been supporting consumer style legislation for years. We have been an advocate of 'no fault insurance' in the State of California for many, many years and continue to do so. We feel that our action was very independent of the insurance companies in that regard, because we believe that is absolutely in the interest of the consumer to have that form of insurance.

As to specifically your Bill 103, we are definitely in favor of keeping the marketplace open. We do not like to come to the Legislature and ask for that to be done. We hope that can be done in the free marketplace ... failing that we recognize the need for the Legislature to act.

SENATOR ROBBINS: Did Travelers Insurance sound to you like they were going to voluntarily be part of the free market. The Supreme Court wasn't good enough for them. The next step will be the Insurance Commissioner and hopefully they will then start renewing policies.

BUD WILSON: If I could just point out that several insurance companies, as our survey indicated, made what I will call a knee jerk reaction in California. Perhaps the Travelers contraction is just coming unloose now and perhaps they will come back into the market completely on their own without a cease and desist. But I would have to make certain that you understand that is just a personal opinion by me as an insurance broker and not by the agents and brokers council.

SENATOR ROBBINS: Well, we hope that when your council meets that - between now and January 11 when the Bill is heard in committee that - I think your natural place to go on questions of maintaining a marketplace is with the policyholders and with the people who are buying the policies - not to join with the insurance companies in defending their right to not write insurance policies.

BUD WILSON: That is the very first thing we look at...if it's good for the public.

SENATOR ROBBINS: Good! Thank you very much.

BUD WILSON: Thank you!

SENATOR ROBBINS: We have three consumer groups represented here today. Let me ask them to come forward. Dr. Regene Mitchell, President Consumer Federation of California; Steve Miller, Executive Director Insurance Consumer Action Network; Clifford Holliday, Congress of California Seniors. Now I told everybody that we would get out of here by 12:00 - we're not going to make 12:00, but we are going to finish it in this morning session. After this, we do have three representatives of insurance industry organizations. So, let's shoot for 12:30 as our target time to wrap up. Dr. Mitchell, you are the first on our list. Do you want to begin or defer to one of the other consumer groups to start first.

DR. REGENE MITCHELL: I'd like to begin.

SENATOR ROBBINS: Take the mike and get close and please state your name for the record.

DR. REGENE MITCHELL: I am Dr. Regene Mitchell, President of the Consumer Federation of California. I am here to make some proposals for both government and voluntary citizens action. These suggestions are being made in hope that the insurance industry is now ready to extend at least some degree of cooperation to the consumer and public. After spending more than \$6 million in a failed effort to brainwash the voters, followed by a campaign to bully the public, and then an unsuccessful attempt at manipulation, perhaps the industry will now turn to some more conciliatory and accommodating tactics. The industry is entitled to its day in court. But regardless of the decision of the California Supreme Court, and without waiting for the outcome of the litigation, certain steps are demanded by the public.

To begin with, total disclosure by each insurer of its financial position is a prerequisite for any other action. Every insurer should provide a detailed accounting of premiums, payouts, profits, investments and costs. This data should be furnished to the Insurance Commissioner for release to the public. Such disclosure is the clear intent of the voters as expressed in support of Proposition 103. The industry would well be advised to be accommodating. This information would be a step forward toward resolving the ongoing dispute over profitability of the industry. It would help to point a direction

for future legislation.

If the financial information revealed by some insurers is incomplete, or if some insurers fail to file data, or if the relevant regulations promulgated by the Insurance Commissioner are inadequate to elicit the data, then the Legislature should enact legislation spelling out and mandating the disclosure.

Further, each insurer should release its data on casualty experience. Presumably, each insurer has compiled and analyzed this information. The need to exchange such information among insurers has always been an excuse insurers advance for exemption from anti-trust laws. They can now exchange this data without violating anti-trust standards by simply making the data available to the public. Again, the Legislature can expedite this process. We hope that those insurers who have referred clients to other company subsidiaries in an effort to circumvent 103 will cease from pursuing this subterfuge. This Legislature should require that any company which does any insurance business in California should fully maintain all of its lines of insurance. These are first steps. They would help to implement 103.

The Policy Board of the Consumer Federation of California will shortly hold a meeting in which further action will be considered. Thank you.

SENATOR ROBBINS: Thank you, and I certainly agree with your statement - particularly the part of it that all the companies have got to stay in the picture if we are going to solve the problems. I would commend to you Senate Bill 103 and some of our other proposed legislation as being legislation that you may wish to consider supporting. We are going to need all the support that we can get when we go before the Legislature in California. Thank you. Steve, you like a number of others played the initiative game in November and I think Prop. 100, while it failed, certainly raised a number of issues and certainly, in comparison to the percentage of votes that some of the other propositions received, could be considered a moral victory, though obviously it did not become law. In any event, we are pleased to have you remain in the process and would like your comments now and would look forward to having your continued involvement as our Committee proceeds with legislation in Sacramento.

STEVE MILLER: Well thank you Senator for the opportunity to be here. Naturally, Insurance Consumer Action Network intends to continue the hard work of representing the California consumers on insurance issues. And, now that we have achieved a significant consumer victory in insurance reform, we must move forward, of course, in the appropriate implementation of the measure.

Proposition 103 provides us with the framework within which we must operate to define the terms; to establish its implementation, largely through regulation. We're encouraged

by the appearance that the Commissioner is providing. We are encouraged by her attitude that will give us an opportunity to work with her. She will have a significant role in just what the outcome of insurance regulation in California will be. Now the Commissioner must promulgate regulations in virtually every aspect of 103 to implement the measure. The Legislature should appropriately monitor those actions and it may very well have much of the initiative back to consider if the Commissioner doesn't do it right. But, we are anxious to work with her in that process.

There are significant changes in effect today, as other witnesses have testified. No question about it - major changes in the structure of the marketplace. By structure, we have a more competitive market. The repeal of the anti-trust exemption, more data that is available, the public release of information that is submitted to the Department of Insurance can all contribute to a much more competitive environment, but we must work together to get that information effectively into the hands of the consumers. And, the Commissioner again is going to have a major role in just how that information works along with consumer groups.

Some legislation that has already been introduced is very encouraging as well in the implementation of Prop. 103...Senator Roberti's Bill SB 3 in particular. The establishment of an institutionalized consumer representation. Today, the Consumer Advocate's office is critical to assure that Proposition 103 and the regulations that will be developed by rule making and the decisions that the Commissioner will make with respect to rates and so forth, will be donned in an accountable fashion - offers an opportunity for the Consumer Advocate and I think that legislation is essential.

But, now that we see our way to a regulatory environment - now that we know that the consumer goal of insurance reform is well on its way to being crafted and to be established, we need to move beyond that. And, we need to move into the areas that affect the cost of insurance to consumers and insurance companies alike. A renewed emphasis, if you will, on risk management - on those health and safety factors that are directly cost related, both in human and in economic terms.

Fraud in California was not resolved by Proposition 103. It is the major problem that affects the cost to all of us. There is an agreement on a very conservative figure - some insurance companies think the number is higher. But there seems to be a consensus that the number is at least \$ .5 billion per year, maybe more, and we must vigorously work on programs to provide resources to the prosecutors; provide more tools to the investigation and prosecution of automobile insurance fraud to mitigate that problem.

Law enforcement has continued to raise a host of issues that impact on insurance costs. Some of those were addressed in other initiatives and some articulated in the campaign. Insurance Consumer Action Network expects to continue working with our law enforcement coalition, addressing those specific issues. Auto theft, as a matter of fact,



is a grossly increasing problem in California. There are some measures that have been implemented in other states that are creative, that we ought to take a look at in California. The seat belt enforcement. Since California implemented mandatory seat belt use a little over two years ago, we've seen a significant increase in the compliance. And, we have seen a similar decrease in bodily injury cost. Those efforts should be continued to be monitored - now especially that will see the costs being passed on to consumers and have a way to track those.

But, the encouragement of passive restraints, air bags, provide incentive into the marketplace for consumers to use those greater law enforcement tools to monitor a compliance with seat belt use can contribute to lower costs to consumers and insurance companies.

California Highway Patrol has been advocating a program for safer driving. ..red light cameras, programs working with Mothers Against Drunk Driving to mitigate driving under the influence. A cost that affects society in general. Radar detectors that are common place in California today have only one purpose, and that is to evade the law. We would encourage the Legislature to take a look at whether radar detectors serve a good public purpose and whether their use ought to be outlawed in order to provide greater safety.

Medical cost containment is another issue that must be addressed. The cost of health care has been the fastest growing component of automobile insurance claims in the State of California. Medical cost containment is a fact of life today. The intermediaries, the insurance companies, are requiring hospitals and doctors to operate under restricted fee schedules. Workers Compensation has done well with that. Programs of that sort may have a usefulness with automobile insurance.

Analysis must be made of the use of alternative crash parts. After market parts, the cost to consumers in the monopoly that automobile manufacturers enjoy is extraordinary. Reduction in the bumper standard has had a substantial affect on increased collision damage. You have an announcement to make?

SENATOR ROBBINS: Yes. The Insurance Commissioner had promised to get back to us by noon. We won't quibble with the exact time on receipt of the facts. I have just been handed a memo fax from the Department of Insurance. It is brief, so I will read it to you. "Insurance Commissioner, Roxani Gillespie, is still attempting to reach her legal counsel who is attending the National Association of Insurance Commissioners meeting in New Orleans. However, she advised that a cease and desist order will be issued to Travelers by the end of this month."

I will ask - there is still someone here from Travelers? In the rear, I'll ask Mr. Bianco will you give a copy of this please to the representative from Travelers, so that they will be aware of their notification. Let me just say to the people from Travelers that you have the right to go to court with respect to your, what I think is a

somewhat novel interpretation of what the word renewal means. But I would urge you not to wait until December 31 to start renewing policies because we have...Jim, would you provide them with multiple copies please and for anyone else who would like it. We are making some more Xerox copies right now and they will be made available to anyone in the room who would like to have them. But the representative from Travelers has it and if you wish to make any comment we will put you back on the agenda afterwards. I presume you have commented as much as you wish to for the day - I'll interpret the gesture as a declination on the invitation to comment. I'm sorry, I didn't mean to interrupt you, but at the point people were passing forward your testimony will receive much better attention by the fact that we took that brief interruption.

STEVE MILLER: And it is very good news, indeed. We are again encouraged by that prompt action by the Commissioner and thank you Senator for holding the Commissioner's feet to the fire.

There are a host of other opportunities that can be explored with law enforcement organizations, with other experts in the field of safety and risk management programs and we fully intend to do that. In addition to the health and safety aspects of cost containment, we intend to explore other methods to more efficiently, more effectively, more promptly and fairly compensate victims of automobile accidents.

Those notions include a variety of alternative dispute, resolution concepts. Most notably the fast track arbitration method. Within the next three weeks, Insurance Consumer Action Network is convening a meeting of nationally recognized experts in the field of each of these issues. The law enforcement issues; the automobile theft; the automobile parts; alternative dispute resolution; medical cost containment; a full range of issues of risk management and safety and we would hope to provide to you, Senator, and other members of the Legislature - by early in this session - a list of comprehensive reforms that could be implemented in California to specifically address those cost containment items. Those health and safety factors that have a direct relationship and the cost of product to consumers, in the cost of insurance, in the cost that insurance companies must pay by way of losses in order to continue our efforts to represent the consumers of California in a desire to have more affordable and more available insurance of all sorts.

Thank you for giving me the opportunity to appear here and, again, I look forward to continuing to work with you in the future.

SENATOR ROBBINS: Thank you. I commend your attention to Senate Bill 103 and some of the other proposed legislation - if we can build a broad spectrum of support for insuring that they comply with the law, I think that we can obtain passage in the California Legislature. Mr. Holliday.....you are representing.....

CLIFFORD W. HOLLIDAY: Senator Robbins, my name is Clifford W. Holliday. I am a past president of the Congress of California Seniors which is a coalition of some

over 400 organizations throughout the state. We are also the representation within the State of California for the National Council of Senior Citizens, and I am also a member of the governing board of the National Council, and in charge of the Los Angeles office - or rather the Western Regional office here for the past five years. I have had considerable exposure to the problems of insurance. I do have a written script here, but my eyes are not that good that I can read it as well as I could, so I will try and run a resume on it here and submit it afterwards to you.

The problem with the Seniors - our phones have been ringing for the last six or eight months with the constant complaints of how the insurance rates have been increasing. Of course, I would like to mention one thing that the National General Insurance Company carries the National Council of Senior Citizens insurance. So what I am saying may not apply to every insurance company, but it is indicative of what is happening.

The first complaint I had was probably about six months ago. A couple, man and his wife, have two cars that are over five years of age. They are compact cars...I am going to try to read this part of it because it is important that you have the exact figures. To illustrate these premium increases I cite three typical examples for hundreds of complaints received in our office during the last few months. The first one is a man and his wife - each driving an automobile over five years old, compacts, no accidents and no reason for raising. They carried them under one policy. The premium for the early part of 1987 was \$631. For the first six months of 1988, they were billed \$1,053 which, for the first six months this increase forced this couple to dispose of one of their cars because of the sixty-seven percent increase.

The second example was a man, it was a late type of Ford - a late 1987 Ford and the premium on this car was \$1,551.08 for the first half of the year. It was raised to \$3,593.97 for the year of 1988. That is a years premium. By the way, that was 1987 - \$1,551 for the whole year of '87 and \$3,593.12 for the year of 1988. Now this car, and the accidents do come into that, while he was parked in a market parking lot he had one claim of which was some \$600.00 and then again he was run into the second time and had another claim. But there was no fault on his part.

SENATOR ROBBINS: While the car was parked?

CLIFFORD W. HOLLIDAY: Well, they were both off highway and parked, yes. The third example is a 1981 Chevrolet Cavalier. For the first half of 1987 this car was \$357. The renewal for the first half of 1988 - that was the last half of '87 by the way. The first half of 1988 it was \$654, an increase of eighty-three percent. The premium for the last half of 1988 was billed at \$1,024 - approximately a 290% increase over a two year period.

The sad part of these exorbitant insurance increases is that it is putting thousands of people, and I say thousands because I hear them every day...they just have to give up their automobile. We cannot afford the insurance. And the insurances

is jumping up from \$1,000 to \$2,000 almost as they are coming due. So it is a great increase...it is really affecting the older people and taking away their transportation.

Now, in addition to giving a little testimony, your letter asks to give some suggestions probably as to how prices could be controlled. That reminds me when I was testifying on one other occasion, Assemblyman Felando says we hear so many of you old people - we hear so many of your problems, we'd like you to come along and give us some suggestions how we solve them. I think that is important.

So, as a matter of solving, as I have been in business and through the spectrum of my lifetime worked a great deal with compensation and so on, and I have always looked at the California State Compensations mechanism for handling insurance for its liabilities. I think we have to be fair with the insurance company in the sense that they are entitled to a reasonable profit. They can't stay in business without it. However, I think there needs to be something done to kind of regulate their business in a way that they can make a little bit of money without having such extreme premiums.

The State Compensation Law has factors - so much for a life, so much for a limb, so much for an injury, so much for so and so as you go on. And, the insurance companies know, and I paid compensation insurance for many, many years. Never any problem. Somebody got hurt, there was no question, Once in a while there would be something come up that would require, would result to legal action. But normally, the compensation works very good. I think this could be set up in a way that these insurance companies would be... liability. Just for instance, Sunday's paper had an account of somebody getting \$3-1/4 million award for a death of a young person which was not even in the work force yet. So, you have to have somewhere where there is a liability that the people can compute what the actual cost of the insurance coverage is.

The other feature was mentioned here...is no fault. This is my personal thinking, that the answer really could be, if properly written, and I want to emphasize very strongly, properly written, because the last no fault that we voted on was not - in my opinion - properly written. It was written for the people who wrote it. And, I feel that if no fault were really written in a practical way that we would all be carrying our own insurance, we could carry as much as we want, we wouldn't have the problem of having people with no coverage to bother with because we carry our own insurance. I suppose there would have to be a limit on the amount recovered, but I feel that the no fault, apart from along the lines of the compensation law - that the no fault would be the next best.

The third thing that I felt I should mention is that due to the fact that the insurance premiums have risen to the point that you take, probably two-thirds of the retired older people are living on less than \$1,000 a month. So they are not going to be able to pay \$100 or \$200 per month for automobile insurance. So therefore, what they save - like this gentlemen...the first, or the second example that I used - he said I am

driving now without insurance because I can no longer afford it. And, he says, I am going to have to sell my car because I can't afford that either. So the thing that strikes me probably would be a solution - not a solution really - but it would help out a lot, if the state compulsory insurance law would be suspended or repealed so that it's not going to make a lot of criminals out of old people, and also low income people that are going to drive cars without insurance. I thank you for the privilege of being here.

SENATOR ROBBINS: We don't want to make criminals out of old people. We thank you for being here. We look forward to having your continued involvement and we would like your response and input and perhaps joining the support group on Senate Bill 103 and some of the other pieces of legislation.

CLIFFORD W. HOLLIDAY: It is eighteen years since I retired, and I have been a full-time volunteer ever since and love every minute of it.

SENATOR ROBBINS: Great! A good way to do it. Thank you. Our last group of very patient people who testify are the insurance company associations - Ed Levy, Executive Director ACIC; Tom Bone, American Insurance Association; Samuel Sorich, National Association of Independent Insurers. Travelers has had an extensive opportunity, as much as they wanted, probably a little more than they wanted, to testify and in some ways it has been a rough morning...I understand...for them. Please feel free to testify. We will certainly incorporate the full comments in our committee record. Whatever you wish to add in the way of stated comments, we would be pleased to hear.

ED LEVY: Thank you very much, Mr. Chairman. My name is Ed Levy, General Manager of the Association of California Insurance Companies. We were asked to testify on the issue of cost containment proposals that the Legislature may wish to consider at this session. A good deal of my statement, which you have, deals with the reasons why automobile insurance is particularly high in California as opposed to other states.

Simply put, the frequency and average cost of automobile claims in California are higher here than elsewhere. Among other things, among other reasons for that is the urbanization of California. Nearly eighty-five percent of California cars are located in urban areas, thus increasing congestion and the opportunity for cars to come in contact with one another. Whereas, on a national basis only fifty-two percent of the cars are located in urban areas.

Another factor is the size of cars. Small cars consistently have more injuries and collision claims than large cars. And a greater proportion of the total fleet of cars in California - forty-four percent to thirty-two percent are small cars.

Californians tend to drive higher valued cars, and as you know the insurance for collision, comprehensive coverage is based partly on the value of the vehicle that is being insured. In California, twenty-two percent of the cars are in the sports specialty

class as opposed to fifteen percent nationally. That drives the cost up higher in California.

Auto thefts in California were eighty-three percent higher than our nearest competitor - New York. I believe it was up to 226,000 cars were stolen in California and although the Highway Patrol maintains they have a very high recovery rate, what they recover are usually shells of automobiles, which they count as a recovery - after it has been stripped or trashed or whatever people do.

SENATOR ROBBINS: I have been asked to tell you that your rental car, unfortunately, has been stolen while you were testifying here...by a mad policy holder.

ED LEVY: Well, you leave them in the lots and you don't know what you are going to get back. But the fact that we are located on an international border, which makes it somewhat easier - quite frankly, in California, to drive stolen cars across the border into Mexico. I am told there are... even when the Mexican authorities seize the vehicles down there, I am told there are huge lots filled with stolen vehicles down there, which you generally have to ransom to get out, to get back over here. It is a significant problem in this state, one that George Deukmejian, when he was Attorney General tried to do something about. The pilot program was called the border check point program. Unfortunately, it was stopped because of considerations of constitutional rights for search and seizure in stopping cars at random at the border. I have talked to representatives of the Attorney General's Office and have asked them to review the viability of that kind of a program so it may be something again that they could look at, given some new constitutional decisions on kind of random drunk driving stops that have upheld the right of police to make those kind of stops.

Bodily injury claimants in California file more than twice as many lawsuits as in other tort states. Fifty percent more claimants are represented by lawyers in California than in comparable states. Insurance payments for subjective damages, such as pain and suffering are forty-two percent higher in California than in other states. Hospital and medical care payments and auto accident cases are seventy-two percent higher in California. And if you read the newspapers lately, you will have noticed that most of the health insurers are predicting that health insurance premiums are going to go up twenty-five to thirty percent this year because of the rising costs of health insurance. Since we pay for a tremendous amount of health insurance, those increased losses are going to be reflected in the cost of our product.

Auto insurance fraud is rampant in California. Now, last year the Legislature did pass a bill by Senator Lockyer which imposed a thirty cent per policy fee on automobile insurance policies sold in California, which money is to be used for a...for two different avenues. One, I believe that forty percent of that money is to go to the Department of

Insurance Fraud Bureau to increase their activities - particularly the hiring, we hope, of investigators. Sixty percent of that money is to be given to the District Attorneys in California for them to use to increase enforcement of anti-fraud laws in California. You have relatively enough anti-fraud laws, the problem is getting prosecutors interested in prosecuting; investigators interested in and staffed up to investigate this. Hopefully, this new money will encourage that activity.

There is a lot of extra data in the paper that I have given you, but as to the solutions - they really lie in, largely we have always thought, in the adoption of a balanced, strong no fault law. We hope that the Legislature, and you Senator, will pursue the activities that you were engaged in last session in that avenue...an attempt to craft a reasonable balanced no fault proposal. I realize no fault, at least that...Proposition 104 was defeated, perhaps more because of the messenger than the message; perhaps for a lot of other reasons. I am reminded that at one time Governor Reagan once tried to get a property tax limitation initiative passed - I think it was 1A or 1, and it was defeated. Three or four years later, maybe it wasn't even that long, Howard Jarvis got Proposition 13 passed. You know, things change and I would hope you would consider to pursue that.

SENATOR ROBBINS: There is no question that in the long run we are going to have to deal with bringing down the cost of the product in order to keep down the cost of the premiums. And as I am able to shift some of my focus from keeping everyone as being part of the solution, it is certainly my intention to work with Senator Lockyer and other members of the Legislature on some long-term cost containment proposals. While there are some things that we don't listen a lot of what the insurance companies say, we certainly want all the insurance companies to share with us their full list of ideas for long-term cost containment.

ED LEVY: Some others that you should look at include the modification of the collateral source rule; the modification of California's comparative negligence rule. We have the most liberal comparative negligence statute in the United States and we ought to examine scaling that back, quite frankly.

Medical cost containment, as both the consumer groups and others have said, is another area that has to be looked at - not only for the salvation of the automobile insurance buyer, but for purchases of all kinds of health coverage in this state. And limitations on general damages outside of a no fault scheme. Perhaps a system where general damages are paid on a first party basis and a person can make their own election as to whether they want to be covered by...for first party benefits. We remain willing to work with you Senator and your staff, in trying to find ways of reducing the high costs of the coverage and we will stand ready to do that. Thank you.

SENATOR ROBBINS: Good! Tom, you can take his remarks and start with what you agree or disagree with.

TOM BONE: Mr. Chairman and members, Tom Bone representing the American Insurance Association. And a lot of the comments that we would make, obviously, do mimic many of those that were made by Mr. Levy. To reiterate and provide you, in the way of a list, we also have at the top of our list - quite candidly - no fault insurance. That is, to our way of thinking the long-term cost containment mechanism that is best designed to serve the particular problem in the auto insurance area. But also medical cost containment, collateral source and comparative negligence - potentially some look at a cap on pain and suffering. I don't like what we have done in the medical malpractice area - not only in California, but in some other states to try to get a handle on some of the costs that are being paid out. Also, although I must confess that there are a number of companies that may not share as much enthusiasm for this issue as the others, but there is a need to at least explore the issue and that is the question of a lower FR limit - or a mini policy type of approach which you've looked at over the past couple of years. As I indicated, there is some difference of opinion I suspect about the application and how that might be implemented. It is a problem particularly in the inner city, with the poor populations and perhaps with the seniors that perhaps some kinds of protection needs to be available to them. But, you have to find a way to make it affordable for them at the same time.

As you well know, all of these issues did not surface since the adoption of Prop. 103. They have been around for a long time. Maybe it is partly our fault because over the last - at least with the last eight or nine years that I have been associated or affiliated with the insurance industry I think there has been a general feeling - rightly or wrongly - that issues of this kind were not generally adaptable in California law. Or there was some concern about their adaptability. Maybe the bright spot of 103, if there is one from our perspective is that - maybe for the first time, we are going to have some focus on this...not only from our side, but from other parties and interests in this issue as well, to take a real good, fair, honest look at these issues and see if there isn't a way of adapting those.

In furtherance of that, rather than have those provisions, those proposals come directly from us - although we would certainly want to make those kind of suggestions to you, I believe each year our association, as do most of the national groups, conduct a survey of the state laws in each of the states. I believe that is not yet completed. It should be done shortly for 1988. And, in connection with how their automobile insurance laws operate in those states and what kind of cost savings that they have been able to develop as a result as some of the tort reforms that may have been enacted in the last year or two. A number of the states have taken that course recently.



As Mr. Levy mentioned, the fraud issue is an interesting one. We have had some conversations about it, even this morning. I'm hopeful that the Lockyer bill that was adopted this year will provide the incentive that is necessary. I think up until now, unless you could find a fraud scenario that involved a rather large ring, that could justify the expenditure of both time and money...there was no strong incentive for the D.A.'s and others to pursue that. So we would like to look at that as a possible solution, but maybe there is other things in that area that we could pursue. We look forward to working with you. We will be cooperative and I hope that we have been in the past - but we certainly will be in the future.

SENATOR ROBBINS: Thank you. Mr. Sorich you are our last witness of the day and if you can make your remarks brief there is about seventy-five or eighty people in the room who would be very happy.

SAMUEL SORICH: Senator Robbins, Senator Green, I am Sam Sorich, I'm Assistant Vice President with the National Association of Independent Insurers. Fortunately, the problems causing high automobile insurance rates have been examined in great detail. Last year the Department of Insurance issued a study on the availability and affordability of automobile insurance in Los Angeles County. The study put forward several considerations to lower the cost of automobile insurance. These suggestions deserve serious consideration.

The Department's recommendations include:

- 1) Lower financial responsibility limits.
- 2) Coordination of benefits and elimination of the collateral source rule.
- 3) A no fault law with a verbal threshold.
- 4) A mini policy which provides payments for personal injury protection only and limited property damage liability.
- 5) A limited liability policy that provides payment for economic damages only.
- 6) A state subsidy to low income families so that they can afford insurance.

Some of the considerations in the Department's study were included in proposed amendments to Senate Bill 986 - last June. Those amendments offered a no fault system with a reasonable, verbal threshold and a \$35,000 benefit package. The amendments also included proposals to lower financial responsibility limits and a section that reduced automobile awards by the amount of collateral benefits that a claimant received. Other ideas in the amendments to SB 986, which deserve to be revisited, include the exclusion of general damages for uninsured motorist coverage; the exclusion of diagnostic expenses from consideration of general damages; penalizing attorneys who knowingly encourage

clients to undergo medical care and treatment in order to inflate claims; more funding and greater authority to the Department of Insurance's Bureau of Fraudulent Claims; and, the creation of an Automobile Theft Prevention Bureau within the California Highway Patrol.

The provisions of the SB 986 amendments, and the considerations put forward in the Department of Insurances April 1987 study provide a solid foundation for legislative efforts to control the costs that are driving up auto insurance premiums. NAIL is committed to working with you to build on this foundation.

SENATOR ROBBINS: Good! On that note, let me thank the last witness and all of the witnesses who have testified. The process will continue on January 11 when our Committee will hear Senate Bill 3 in Sacramento. We will continue to hold hearings also as well at different times outside of the Capitol. With respect to those who are concerned about the Travelers situation, the Insurance Commissioner has - if you were not in the room when we previously announced it - committed to issue a cease and desist order to them not later than December 31. Thank you.

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Corrected

TESTIMONY BY RUSSELL PRESS JR.

VICE PRESIDENT, THE TRAVELERS

SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS

DECEMBER 14, 1988

Good morning. My name is Russell Press Jr. and I am a vice president for Government Affairs at the Travelers Companies in Hartford. With me is Kent Keller, our California counsel.

Travelers welcomes the opportunity to update the committee on its California marketplace action regarding Proposition 103 since your last hearing.

As of December 12, 1988, Travelers is offering to renew policies in most property-casualty lines in California other than private passenger automobile and will consider applications for new business in those lines except private passenger and commercial lines automobile. This modifies a decision we made in November when we ceased renewing existing business or writing new business.

We took this action because of what we feel are positive steps by the California Supreme Court to continue to stay Proposition 103's rate rollback and its decision to rule on the constitutionality of the entire measure by spring and after evaluating the overall impact of our earlier actions on our California agents and policyholders.

Travelers is still strongly opposed to Proposition 103 and will continue to work for a more responsive solution to California's insurance problems.

As I said the action we took on December 12, however, does not affect our decision to withdraw from the private passenger automobile market. We will continue to pursue that process and will not renew existing policies nor write new business. Travelers believes that the automobile policies it is in the process of non-renewing are not affected by Proposition 103. These policies were issued at a time when Proposition 103 was not the law, and renewal rights are governed by the law as it existed prior to the passage of Proposition 103.

We indicated at your November 18 hearing that our market share in private passenger automobile in California is less than 1/2 of 1 percent. From 1985 through 1987, the profit for our automobile insurance business including investment income on reserves and net of tax charges or credits was \$765,000 on earned premiums of \$154 million.

No one could argue that this return is sufficient for the risk we take.

Our analysis of the provisions of Proposition 103, including rate rollbacks and regulatory measures, indicates it would result in significant personal automobile insurance losses. For example, in just the first year, we would expect to lose \$3.7 million. <sup>Over a three year period, we would lose \$20.2 million.</sup> Such losses are unacceptable. No sane businessman would go into business with the prospect of losses on that scale.

The argument that because Travelers is a multi-line company it can absorb continued losses is one line is wrong. Over the long term, each line of insurance in a state must be able to stand on its own financially. That's just plain, simple, good business sense. One line cannot subsidize another.

We cannot ask our policyholders from across the nation to subsidize the California insurance system, anymore than we can ask the people of California to subsidize policyholders in other states.

Travelers agrees with the California consumers that the cost of automobile insurance is too high. But Proposition 103 is not the way to sensibly get premiums down. To simply lower rates without taking steps to lower costs is an incomplete and faulty solution.

The right way to deal with rising insurance prices is to focus on the underlying causes of such increases: rising medical costs, fraud and expensive litigation and repair costs.

Travelers continues to be anxious and willing to work with the Legislature, the Insurance Department, consumer groups and others in an effort to reduce factors that are driving costs upward. The problems require well-thought out, effective solutions. That ought to be our mutual objective.

Thank you.

Testimony of the

**INSURANCE AGENTS AND BROKERS  
LEGISLATIVE COUNCIL OF CALIFORNIA**

before the

**SENATE INSURANCE, CLAIMS AND  
CORPORATIONS COMMITTEE**

December 14, 1988  
Los Angeles

Presented by

**David F. Wilson, President  
Wilson-Cox Insurance Agency  
Chula Vista, California**

Mr. Chairman and members of the Committee, my name is David F. Wilson. I am the Chairman of the Insurance Agents and Brokers Legislative Council which represents five statewide trade associations representing more than eighty percent of all the of independent insurance agents and brokers writing property and casualty insurance in this state.

We are appearing here today in response to the Committee's request for information on the status of the current insurance marketplace from the viewpoint of the consumer as seen through the eyes of their independent agents and brokers. We would also like to comment on the effect of Proposition 103 on agents and brokers, whom we believe you will agree are the unintended victims of 103.

For insurance agents and brokers and their customers, the passage of Proposition 103 was nothing short of a disaster. On the day following the election, the IIABC, one of the five ABL member associations, conducted an insurance market survey to determine the impact of Proposition 103 on private passenger auto insurance policyholders and their agents or brokers.

The results indicated that immediately following passage of Proposition 103, sixty-seven of the insurance companies we contacted, representing 75.6% of the total private passenger auto insurance market in California, announced plans to temporarily

suspend accepting new business and/or processing renewal policies.

The effect of such suspensions significantly affected the ability of agents and brokers to keep their own doors open for business. Some agents had absolutely no markets to place coverage and no prospects that they could replace their carriers with other insurers. More important, many consumers were effectively shut out of the insurance market.

Following the issuance of a stay order on all provisions of Proposition 103 by the California Supreme Court on November 10, 1988, follow-up surveys were conducted to determine the effect of the stay order on the insurance marketplace. The survey was broadened to determine the insurance companies accepting new business and/or processing renewal policies for homeowners insurance and commercial multi-peril insurance, as well as private passenger auto insurance. This survey has continued to be updated regularly since.

Results as of Tuesday, December 13, are:

PRIVATE PASSENGER AUTO: 41 companies representing 91.1% of the auto insurance capacity in California are accepting some new auto business; 62 companies representing 98.1% of the auto insurance market are renewing policies.



HOMEOWNERS: 52 companies representing 87.4% of the homeowners market insurance capacity in California are accepting new business; 64 carriers representing 93.5% of the homeowners market are renewing policies.

COMMERCIAL MULTI-PERIL: 56 companies representing 81.6% of the total commercial multi-peril capacity in California are accepting new commercial multi-peril business; 63 carriers representing 91.2% of the total commercial multi-peril market are renewing existing commercial multi-peril policies.

It is apparent that Proposition 103 had a significant effect on the availability of property and casualty insurance in California, particularly private passenger auto insurance coverage. It is also apparent the stay order issued by the Supreme Court helped restore temporarily a substantial portion of this market. However, should all provisions of Proposition 103 be implemented, the initial survey results indicate that a severe availability crisis is likely to occur in virtually all lines of property and casualty insurance.

Today, while it may seem insurance carriers returned to business as usual, we can tell you they have not. Until the Supreme Court delivers its ultimate decision, many insurance markets will remain in disarray. Every day the Court waits to decide the constitutionality of Proposition 103, insurers that remain in the market build up a potential contingent liability for premium rollbacks which might well average 30% to 35% of premiums in effect

today. At some point, if the Court has not acted, companies who cannot or will not risk any further losses will again suspend or restrict writing insurance, and the insurance marketplace will be further restricted.

There is substantial confusion among insurers and agents and brokers stemming from the many gray areas contained in Proposition 103. Despite its proponents' contentions that the initiative was written in "plain language", Proposition 103 was poorly drafted, is devoid of almost any definitions, and repeals many sections of the Insurance Code in a manner inconsistent with the intent of the initiative.

We estimate it will take months, and perhaps years, to figure out the application and effects of this initiative.

The practical effect of these many uncertainties is that the companies who decide to stay in California won't be able to rely on the Department of Insurance to clarify all the ambiguities of Proposition 103. The Department will likely be bogged down with administrative hearings on new rules to implement Proposition 103 and the many requests by companies for relief from the mandated reductions required by this statute. As a result, each company will have to make its own determination of how to implement this statute and take the risk that they have done it right. In many cases, companies will not know for sure whether they have implemented Proposition 103 correctly until such determinations are challenged

and litigated in court. The prospect of these uncertainties and delays will no doubt cause additional carriers to reconsider the decision to stay in California.

Lastly, the consequences of Proposition 103 on the insurance agency force in California are substantial. If Proposition 103 is held constitutional, all evidence suggests that:

- \* Markets for all lines of insurance will be reduced, thereby limiting the ability of agents and brokers to find available coverage for their customers;
- \* Agents and brokers will have to utilize non-admitted carriers to write more of their business. This means these customers will be without the protection of the California Insurance Guarantee Association. This will also substantially increase the cost of agent and broker professional liability insurance;
- \* Agents' revenues will be slashed to the same extent as insurance companies' -- some 30% to 50% -- without any change in the cost of rent, lights, stamps, paper, or salaries;
- \* Insurance companies attempting to cut costs and pass on the effects of 103 will unilaterally reduce agent commissions which currently average 12% to 14% in all lines of property and casualty insurance; will eliminate or cut their profit sharing plans: and make themselves unavailable to a large

number of California's consumers and businesses by cutting the number of agents representing them;

- \* Agents and brokers will be faced with these obstacles at a time when major money center banks, flush with record profits from leverage buyout loans, with access to federal discount funds, with FDIC insurance guaranteeing them against failure, and with the ability to tie the sale of insurance to the issuance of a loan, will be licensed to sell insurance.

The consequences of this combination of factors ultimately can only be a constriction of the outlets to purchase insurance, which will in turn leave consumers with fewer options and less competition as they attempt to to purchase insurance products.

What evidence do we have this constriction of the market will take place? Let us give just a few examples of actions already taken by insurance carriers which demonstrate this will occur:

- \* The Travelers has suspended accepting new business and issuing renewals for all property and casualty lines. It announced its intention to withdraw from California and it suspended agents' binding authority without notice required in their contracts. This week it announced it will return in all lines except personal and commercial auto. The Travelers has also informed agents who bought computer systems with company production

incentives that they have to pay up right away, since there is no production coming in.

- \* Progressive reduced agent commission on renewal business from 15% to 5%, a 67% reduction. It has eliminated some budget payment plans. It has also stopped accepting minimum limits auto business so customers will be forced to buy higher limits even if they can't afford it or don't need it.
- \* Safeco is now accepting new personal auto, but only through 72 or its 850 agents in California. The remainder have no auto insurance market at all, effective immediately. Remember, this means Safeco is not only selecting what agents it will drop, but it also is selecting which of its tens of thousands of customers it is turning away.
- \* Great American is eliminating budget payment options for auto. Full six-month premiums are due all at once in a lump sum.
- \* The action which CIGNA has taken provides an example of how smaller agencies are particularly hard hit by 103. A rural agency which was operating prior to 103 under the Rehabilitation provision of its contract for not meeting CIGNA's minimum premium volume requirement of \$500,000 was shut off from binding new business after the election. This makes it impossible for the agency to comply with the minimum volume requirement.

- \* Continental closed up shop for new auto and homeowners business by rescinding binding authority without notice in violation of the 90-day notice in its agency contract.
- \* Fireman's Fund Personal Insurance notified its agents their binding authority was revoked for auto and preferred homeowners' products. Its bulletin said it was providing 90 days' notice, but it went on to "ask" that agents not bind any new auto business effective immediately.
- \* Fireman's Fund Commercial Insurance removed commercial auto production from agency profit sharing agreements retroactively in spite of the 90-day notice provision in the contract.
- \* Republic Insurance Group, in an apparent attempt to avoid 103, terminated agents for not producing enough life insurance business to meet certain quotas.
- \* Unigard closed down its preferred market, Unigard Security Insurance Company, and will accept new preferred business only in Unigard Insurance Company which has substantially higher rates. This is exactly the same approach taken by State Farm and Safeco, which was cited by the Department of Insurance recently.

What can the legislature do to alleviate the adverse effects of Proposition 103? We look forward to working with this Committee in a forum for calm deliberation where all aspects of the insurance crisis can be examined carefully. In the meantime, however, the Department of Insurance or the Legislature must provide insurance consumers and agents and brokers clear direction regarding the many gray areas of 103, if companies and their agents are to implement the new law as it was intended to be implemented. The partial Court stay only provides breathing room. The Legislature must deal with the underlying costs that drive up the cost of insurance.

One such cost-cutting measure that can be enacted is a New York-type no-fault auto law. We continue to believe that a good no-fault law is the most effective means available of providing a more efficient, less costly auto insurance product.

Now that the public has decided insurance prices should be strictly regulated, we believe every component part of the insurance product must be examined as a subject of similar regulation. Such costs and issues as medical and hospital fee schedules; the use of after market parts; the ability of companies to offer reductions to consumers who utilize specific repair facilities; additional incentives for anti-theft and fraud systems; fast track arbitration; mini-policies and reduction of minimum insurance requirements are all aspects and components of the auto insurance system that our associations will be exploring. We urge the Legislature to do likewise. We also wish to offer the legislature our grave

concern as it considers proposals which will merely force insurance companies to choose between staying in California or paying a penalty to leave. Once the specific price of leaving is known, it is too easy to reduce such a decision to purely an economic one and to find it attractive to leave, especially when it is likely to be cheaper to do so than to stay.

Yes, the majority of voters wants more regulation and control over insurance pricing. But price controls, without regard to costs, will not reduce prices. They will only reduce the supply of insurance. Carriers cannot provide coverage if premiums do not cover costs. That is an undeniable fact that no form of punitive legislation will prevent.



## Press Release

## For Immediate Release

Contact: William Hager or Kevin Howe  
NAIC Message Center (before 12/16/88)  
515-281-5705 (after 12/15/88)

New Orleans, LA  
December 13, 1988

Iowa Insurance Commissioner William Hager is studying ways to protect Iowa consumers from the effects of legislative or regulatory policy in other states which force insurance companies to do business at a loss. Hager released draft language for discussion at the National Association of Insurance Commissioner's meeting today. The proposed language directs Iowa domestic insurers to cease doing business in states where laws force them to operate at a loss.

Commissioner Hager said: "Some states could elect to address insurance cost issues simply by confiscating a portion of the companies' surplus. My concern is that insurers will pass these costs to consumers in Iowa. Proposition 103 is an example. Iowans enjoy the lowest auto premiums in the nation and I don't intend to stand by while Iowans are forced to subsidize rate rollbacks in another state."

Hager will continue to study the legal and economic impact of various actions and make a decision early next year.

**DRAFT**  
FOR DISCUSSION  
PURPOSES ONLY

BULLETIN

TO: All Domestic Insurers

FROM: William D. Hager, Commissioner of Insurance

RE: Doing business in states where legislative or regulatory policies force the doing of business at a loss

DATE:

Because it is a business impressed with the public interest, the business of insurance is peculiarly subject to requirements of supervision and control. See Chicago Title Insurance Company v. Huff, 256 N.W.2d 17, 29 (Iowa 1977). To this end, the Commissioner is clothed with broad powers over the control, direction, and supervision of all insurance business transacted in this state. See Huff v. St. Josephs Mercy Hosp., 281 N.W.2d 695, 698 (Iowa 1978); Iowa Code section 505.8 (1987). In the exercise of that authority, if the Commissioner becomes aware of certain conditions in other states which force domestic insurers to consistently operate at a loss, the Commissioner possesses the further authority to order those insurers to cease doing business in those states. This is, of course, done to prevent insolvencies of domestic insurers, which is the Commissioner's paramount responsibility.

It has come to the attention of the Commissioner that certain states have adopted legislative or regulatory policies, or have created general regulatory environments, which have the effect of forcing domestic insurers to operate at a loss on the

business written in those states. In effect, a portion of the domestic insurer's surplus is being confiscated by the insurer being forced to continue writing in the state. Alternatively, rates in other states, including Iowa, would have to be raised, to an extent not justified by experience, to counterbalance the losses in other states.

Accordingly, it is hereby ordered that all domestic insurers shall, in a deliberate but expeditious fashion, cease doing business in such states where legislative or regulatory conditions leave the insurers no choice but to consistently operate at a loss. Domestic insurers shall bring those situations to the attention of the Commissioner so that an orderly withdrawal may be undertaken.

**DRAFT**  
**FOR DISCUSSION**  
**PURPOSES ONLY**

**Statement of the National Association of Independent Insurers**

**Presented by Sam Sorich before the Senate Committee on Insurance,**

**Claims and Corporations**

**Los Angeles, California**

**December 14, 1988**

The National Association of Independent Insurers (NAII) is a trade association composed of more than 500 property/casualty insurers. NAII member companies write approximately 20% of all California property/casualty insurance premiums.

NAII has been asked to testify on ways to reduce automobile insurance premiums. We have a long commitment to efforts to contain the price of automobile insurance. It is unfortunate that recent cost control efforts in California have been paralyzed by rhetoric about insurance profitability.

Insurance profitability has been monitored, studied and reported on by objective, independent observers. The results are there for anyone to see. According to the National Association of Insurance Commissioners (NAIC), property/casualty insurers operating in California recorded an underwriting loss of \$15 billion, or 15% of the premiums earned during the period 1981-1986. The NAIC operating income analysis shows that over the 1981-1986 period, insurers had an operating loss in California of 1.1% of earned premiums.

Looking at just private passenger automobile, the underwriting loss in California from 1981-1986 was 9%. For operating results there was essentially a breakeven situation.

As stated by Commissioner Gillespie in a hearing before this Committee last September, insurers in California and elsewhere earn profits that are less than or comparable to those made in other industries. The NAIC results and the commissioner's testimony are included in an amicus brief that NAI, the AIA and the Alliance of American Insurers filed with the California Supreme Court last month. I am supplying Committee staff with a copy of the amicus brief.

Finally, to put further questions about profitability to rest, I am also supplying staff with a study prepared by UCLA Professor Arthur Hofflander that analyzes automobile insurance profitability in California. Professor Hofflander's study concludes that California auto insurers failed to realize the required return on equity in each year from 1981 through 1987.

The major argument of Proposition 103 proponents was that premiums charged for automobile insurance in California have increased because of a desire on the part of insurers to make excessive profits. The fact is that insurers have not approached anything near to excessive profits in California during the last seven years.

Other reliable data shows that the costs of paying auto claims are higher in California than in most other states and have been increasing at a rapid rate. This does not appear to be due to more serious accidents, but to other factors. These factors include:

- medical care
- auto repair
- the legal system
- new car prices

auto parts prices

the mix of vehicles on the road

urbanization

auto related crime, notably theft and fraud.

Some of these factors are beyond the control of legislation. However, some of these factors, especially litigation costs, can be controlled with bold, creative new legislation.

Fortunately, the problems causing high automobile insurance rates have been examined in great detail. Last year the Department of Insurance issued a study on the availability and the affordability of automobile insurance in Los Angeles County. That study put forward several considerations to lower the cost of automobile insurance. These suggestions deserve serious examination. The Department's recommendations include:

1. Lower financial responsibility limits.
2. Coordination of benefits and elimination of the collateral source rule.
3. A no-fault law with a verbal threshold.
4. A mini-policy which provides payments for personal injury protection only and limited property damage liability.
5. A limited liability policy that provides payments for economic damages only.
6. A state subsidy to low income families so that they can afford insurance.

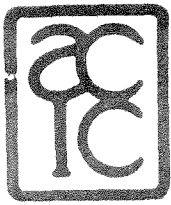
Some of the considerations in the Department's study were included in proposed amendments to Senate Bill 986 last June. Those amendments offered a no-fault system with a reasonable verbal threshold and a \$35,000 no-fault benefit package. The amendments also included proposals to lower financial responsibility limits and a section that reduced automobile awards by the amount

of collateral benefits that a claimant receives.

Other ideas in the amendments to SB 986 which deserve to be revisited include the following:

- o The exclusion of general damages for uninsured motorist coverage.
- o The exclusion of diagnostic expenses from consideration of general damages.
- o Penalizing attorneys who knowingly encourage clients to undergo medical care and treatment in order to inflate claims.
- o More funding and greater authority to the Department of Insurance's Bureau of Fraudulent Claims.
- o And the creation of an Automobile Theft Prevention Bureau within the Department of the California Highway Patrol.

The provisions of the SB 986 amendments and the considerations put forward in the Department of Insurance's April 1987 study provide a solid foundation for legislative efforts to control the costs that are driving up auto insurance premiums. NAII is committed to working with you to build on this foundation.



# NEWS RELEASE

## Association of California Insurance Companies

915 L Street, Suite 1160 • Sacramento, CA 95814 • (916) 442-4581 • Telecopier (916) 444-3872

TESTIMONY OF  
EDWARD LEVY, GENERAL MANAGER  
ASSOCIATION OF CALIFORNIA INSURANCE COMPANIES

SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE  
DECEMBER 14, 1988

LOS ANGELES, CALIFORNIA

THANK YOU FOR THE OPPORTUNITY TO TESTIFY TODAY ON THE WAYS TO REDUCE THE COSTS OF AUTO INSURANCE IN CALIFORNIA.

BEFORE WE CAN DETERMINE THE WAYS TO REDUCE AUTO INSURANCE COSTS, WE NEED TO UNDERSTAND WHY AUTO INSURANCE COSTS SO MUCH HERE IN CALIFORNIA.

PUT QUITE SIMPLY, THE FREQUENCY AND THE AVERAGE COST OF AUTO ACCIDENT CLAIMS ARE MUCH HIGHER IN CALIFORNIA THAN ELSEWHERE.

THE REASONS FOR THIS SITUATION ARE MANY AND VARIED. TO BEGIN WITH, CALIFORNIA IS A VERY URBANIZED STATE WITH PEOPLE HIGHLY DEPENDENT ON THEIR AUTOS FOR THEIR EVERYDAY ACTIVITIES. THE EXTENT OF URBANIZATION HAS A DRAMATIC EFFECT ON INSURANCE LOSSES. INSURANCE STATISTICS FROM THE HIGHWAY LOSS DATA INSTITUTE TELL US THAT BOTH THE FREQUENCY OF CLAIMS AND THE AVERAGE COST OF CLAIMS ARE SUBSTANTIALLY HIGHER IN URBAN AREAS. NEARLY 85 PERCENT OF CALIFORNIA'S CARS ARE LOCATED IN URBAN AREAS, WHEREAS ON A NATIONAL BASIS, ONLY 52 PERCENT OF CARS ARE LOCATED IN URBAN AREAS.

ANOTHER FACTOR IS THE SIZE OF CARS. SMALL CARS CONSISTENTLY HAVE MORE INJURY AND COLLISION CLAIMS THAN LARGE CARS. THIS DRIVES UP INSURANCE COSTS IN CALIFORNIA BECAUSE WE HAVE A MUCH GREATER PROPORTION OF INSURED SMALL CARS (44 PERCENT OF THE FLEET) THAN DOES THE REST OF THE UNITED STATES (32 PERCENT).

ON AVERAGE, CALIFORNIANS DRIVE HIGHER VALUED CARS THAN OTHER STATES. SPECIALTY MODELS OF ALL SIZES, ESPECIALLY EUROPEAN LUXURY AND SEMI-LUXURY CARS, HAVE HIGH COLLISION AND THEFT LOSSES. AGAIN, CALIFORNIA HAS MORE INSURED SPORTS/SPECIALTY CARS THAN THE REST OF THE COUNTRY (22 PERCENT IN CALIFORNIA; 15 PERCENT FOR THE REST OF THE COUNTRY).

AUTO THEFTS IN CALIFORNIA LAST YEAR WERE 83 PERCENT HIGHER



THAN OUR NEAREST COMPETITOR, NEW YORK.

ALSO, BODILY INJURY CLAIMANTS IN CALIFORNIA FILE MORE THAN TWICE AS MANY LAWSUITS AS IN OTHER TORT STATES AND 50 PERCENT MORE CLAIMANTS ARE REPRESENTED BY A LAWYER IN CALIFORNIA THAN IN OTHER COMPARABLE STATES.

INSURANCE PAYMENTS FOR SUBJECTIVE DAMAGES SUCH AS PAIN AND SUFFERING ARE 42 PERCENT HIGHER IN CALIFORNIA THAN IN OTHER STATES.

HOSPITAL AND MEDICAL CARE PAYMENTS IN AUTO ACCIDENT CASES ARE 72% HIGHER IN CALIFORNIA THAN OTHER TORT STATES. IN ADDITION, RECENT NEWS STORIES HAVE INDICATED THAT HEALTH CARE COSTS ARE EXPECTED TO INCREASE SOME 25 TO 35 PERCENT OVER THE NEXT YEAR.

AUTO INSURANCE FRAUD IS RAMPANT IN CALIFORNIA, COSTING CONSUMERS AN ESTIMATED \$500 MILLION TO \$1.5 BILLION A YEAR.

PLEASE ALSO CONSIDER THESE FACTS, DERIVED FROM AN INDUSTRY STUDY CONDUCTED LAST YEAR:

IN CALIFORNIA, COMPARED TO OTHER TORT STATES:

--CLAIMANTS WITH THE SMALLEST ECONOMIC LOSSES RECEIVED SUBSTANTIALLY MORE MONEY PER DOLLAR OF LOSS.

--A LARGER PROPORTION OF CLAIMS WERE MADE FOR INJURIES THAT WERE NOT SERIOUS ENOUGH TO REQUIRE HOSPITALIZATION.

--CLAIMANTS WERE LESS LIKELY TO LOSE TIME FROM WORK AND WERE MORE LIKELY TO BE ABLE TO CONTINUE TO PERFORM THEIR USUAL DAILY ACTIVITIES.

--THERE WERE PROPORTIONATELY MORE SPRAIN OR STRAIN TYPES OF INJURIES.

--CLAIMANTS WERE MORE LIKELY TO HAVE BEEN TREATED BY CHIROPRACTORS AND PHYSICAL THERAPISTS.

--A GREATER AMOUNT OF TIME ELAPSED BETWEEN THE ACCIDENT AND THE REPORT OF THE ACCIDENT TO THE INSURANCE COMPANY.

--PROPORTIONATELY MORE LAWSUITS WERE FILED ON BEHALF OF CLAIMANTS, BUT SIMILAR PERCENTAGES WERE TRIED TO VERDICT.

OF ALL THESE CAUSES OF HIGH AUTO INSURANCE COSTS AND DELAY IN OBTAINING BENEFITS, WHICH ONES LEND THEMSELVES TO LEGISLATIVE SOLUTION?

CAN LEGISLATION REVERSE THE TREND TOWARD URBANIZATION?  
NOT LIKELY.

CAN LEGISLATION REQUIRE CALIFORNIANS TO DRIVE LOWER VALUED  
CARS? NOT LIKELY.

CAN LEGISLATION DO SOMETHING ABOUT HIGH LITIGATION RATES?  
YES, IT CAN.

CAN LEGISLATION LIMIT LARGE PAYMENTS FOR GENERAL DAMAGES?  
YES, IT CAN.

CAN LEGISLATION DO SOMETHING ABOUT HIGH HOSPITAL AND  
MEDICAL COSTS AND OVERUTILIZATION OF MEDICAL TREATMENT?  
YES, IT CAN.

CAN LEGISLATION REDUCE ATTORNEY INVOLVEMENT AND RETURN  
MORE INSURANCE DOLLARS TO INJURED ACCIDENT VICTIMS AT LESS  
COST? SURE, IT CAN.

CAN LEGISLATION ADDRESS THE FRAUD THAT IS RAMPANT IN THIS  
STATE? YES, IN FACT A BILL CARRIED BY SENATOR LOCKYER  
WILL TAKE EFFECT JANUARY FIRST, PROVIDING FOR INCREASED  
FUNDING FOR BOTH THE INSURANCE DEPARTMENT'S FRAUD BUREAU  
AND FOR COUNTY DISTRICT ATTORNEYS TO HEIGHTEN EFFORTS TO  
COMBAT FRAUD.

IN THE FACE OF THE NOVEMBER 8TH VOTE, YOU ARE PROBABLY  
SKEPTICAL THAT THE VOTERS WOULD WANT TO LIMIT THEIR RIGHTS  
IN RETURN FOR SIGNIFICANT PREMIUM REDUCTIONS.

I DON'T KNOW. CLEARLY, THEY REJECTED PROP 104, BUT I  
BELIEVE THE REJECTION WAS BASICALLY DRIVEN BY A DISTRUST  
OF THE INDUSTRY AND PROP 104'S LACK OF ANY PROVISIONS TO  
REGULATE INSURANCE RATE INCREASES. I SUSPECT THAT VOTERS  
MAY BE MUCH MORE SUPPORTIVE OF A BALANCED LEGISLATIVE  
REFORM THAT GAINS THE BACKING OF RESPONSIBLE CONSUMER  
GROUPS AND THE MEDIA IN CALIFORNIA.

-0-

WE RECOGNIZE THAT YOUR FIRST PRIORITY IS TO INVESTIGATE  
INDUSTRY PRICING PRACTICES. YOU MUST SATISFY YOURSELVES  
THAT INSURANCE COMPANIES ARE NOT GOUGING CONSUMERS.

THEN, IT WILL BE TIME FOR YOU, AS RESPONSIBLE PUBLIC  
OFFICIALS, TO JOIN WITH OTHERS TO PUSH FOR EFFECTIVE  
REFORMS.

WE BELIEVE A STRONG NO-FAULT LAW IS THE BEST METHOD OF  
COST CONTROL, BUT OTHER AREAS THAT COULD BE EXPLORED  
INCLUDE:

--MODIFICATION OF THE COLLATERAL SOURCE RULE;

--MODIFICATION OF OUR COMPARATIVE NEGLIGENCE RULE;

--MEDICAL COST CONTAINMENT PROVISIONS; AND

--LIMITATIONS ON GENERAL DAMAGES OUTSIDE OF A NO-FAULT SCHEME. PERHAPS A SYSTEM WHERE GENERAL DAMAGES ARE PAID ON A FIRST-PARTY BASIS, GIVING THE POLICYHOLDER THE RIGHT TO DELETE COVERAGE FOR GENERAL DAMAGES IN RETURN FOR A LOWER PREMIUM.

WE REMAIN WILLING TO WORK WITH YOU TO FIND WAYS TO REDUCE THE HIGH COST OF PROVIDING INSURANCE IN CALIFORNIA AND TO DEVELOP A SYSTEM THAT WILL HOLD DOWN ANY FUTURE INCREASES TO THE LOWEST POSSIBLE LEVELS.

THANK YOU VERY MUCH FOR YOUR ATTENTION.

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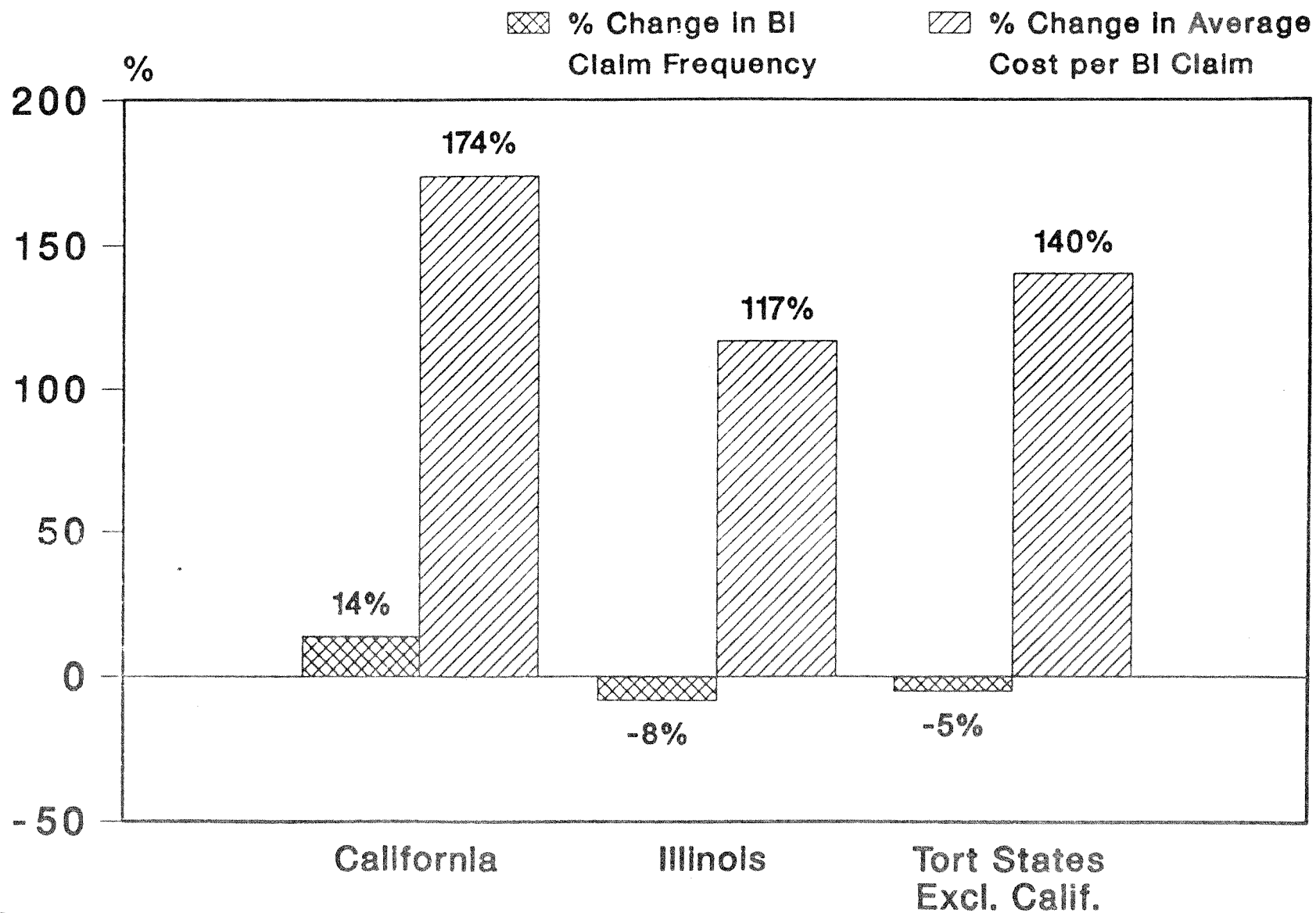
Auto Injury Claims

- California Compared to Other Selected States -

Report #1 of the Research Committee  
to the  
Insurance Industry Initiative Campaign Committee

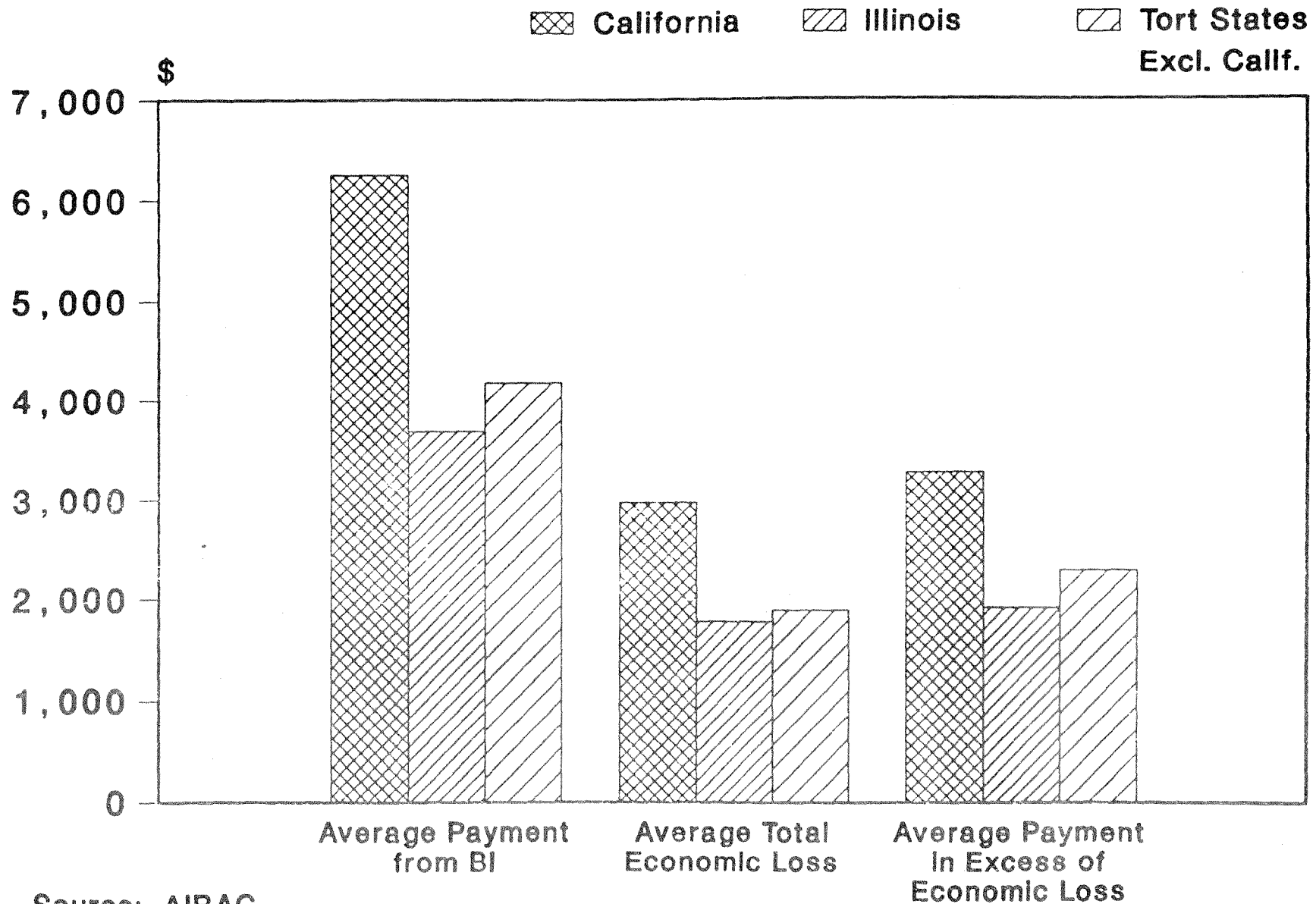
April 1988

## Change in Claim Frequency and Average Cost Per Claim (1977-1987)



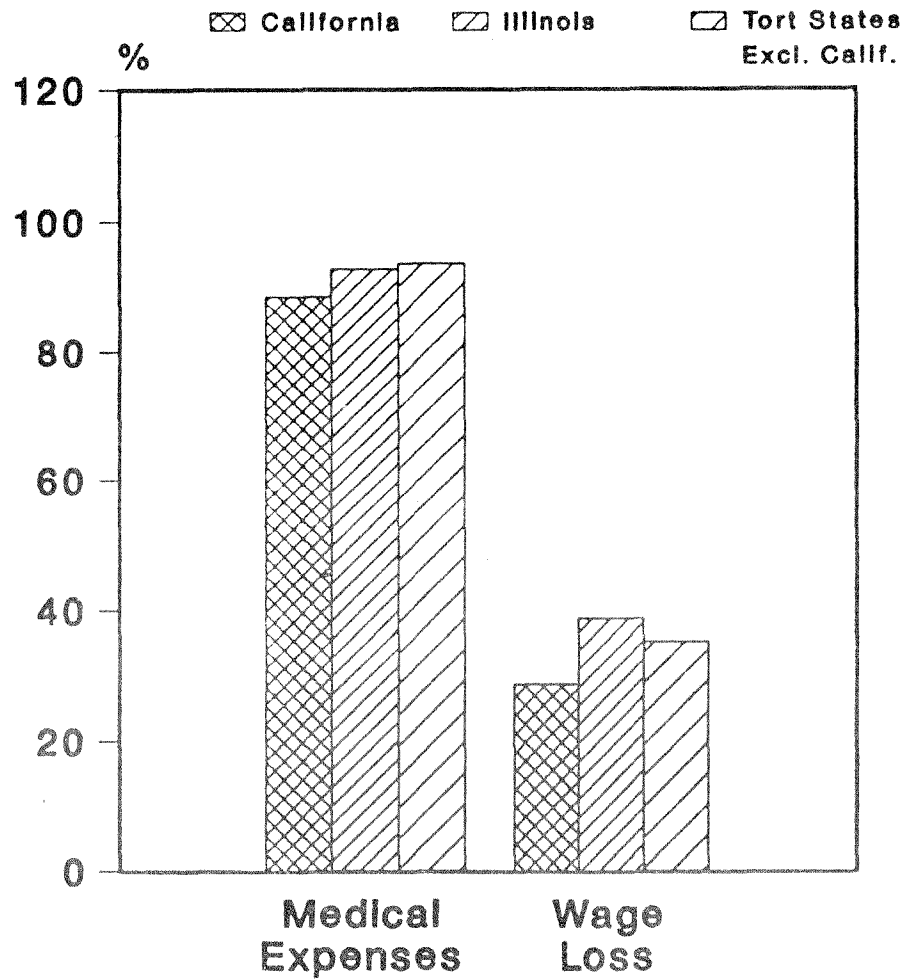
Source: Fast Track

## Average Total Payment and Average Economic Loss BI Claimants

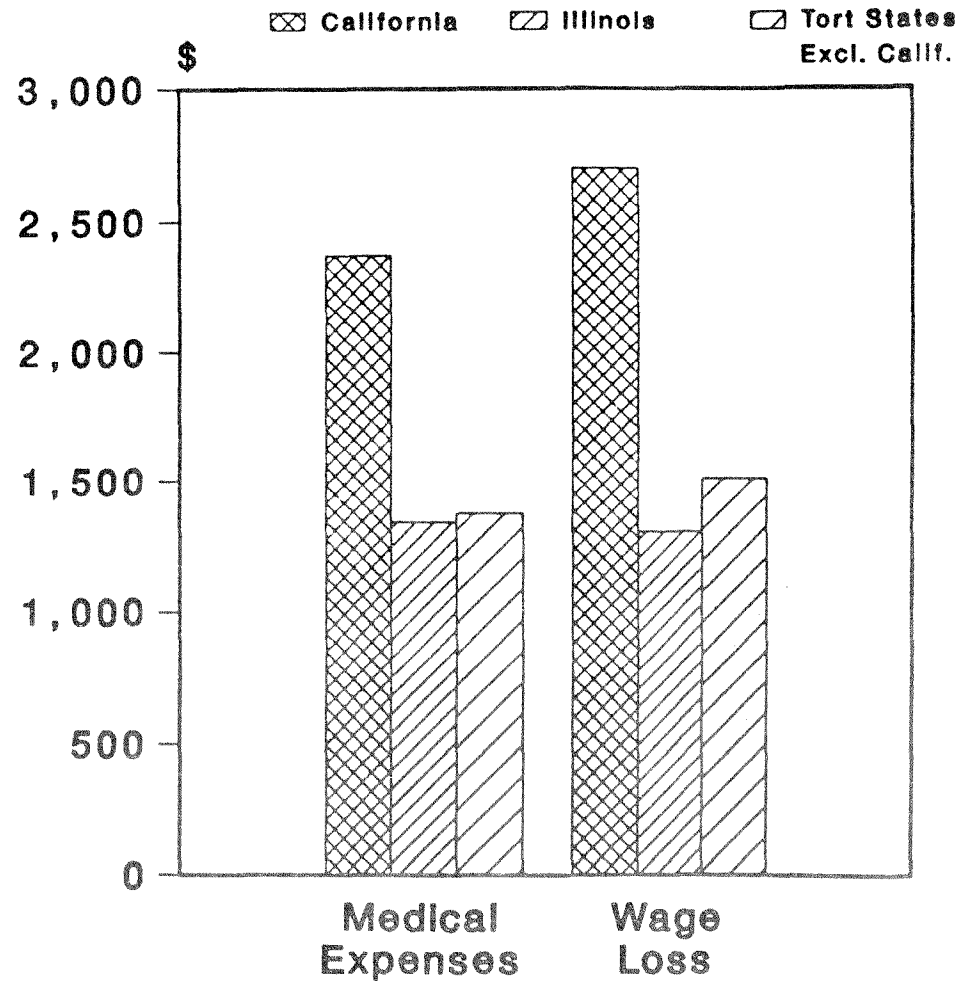


## Economic Loss by Type of Loss - BI Claimants

### % of Claimants

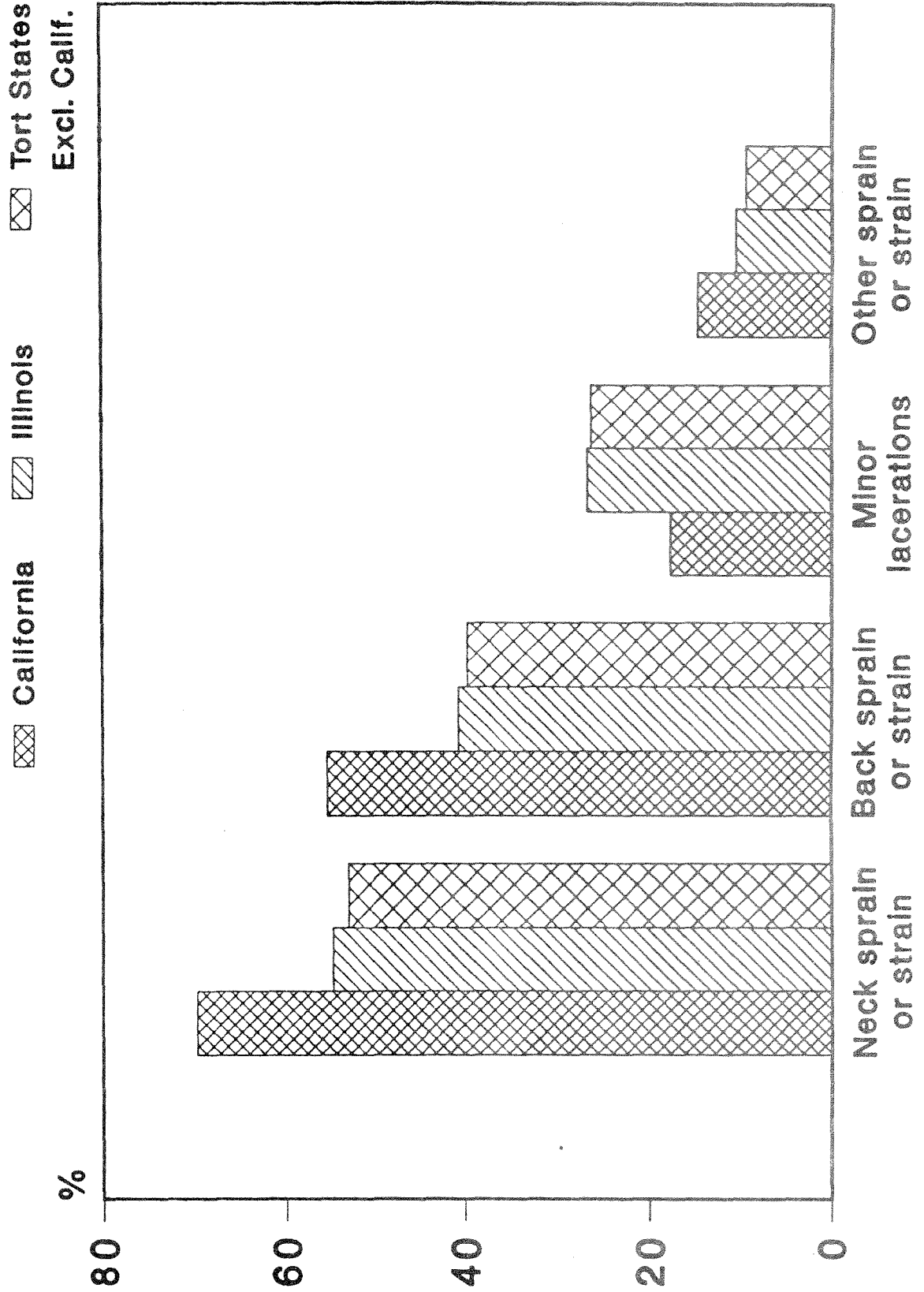


### Average Economic Loss



Source: AIRAC

## Type of Injury - BI Claimants



Source: AIRAC

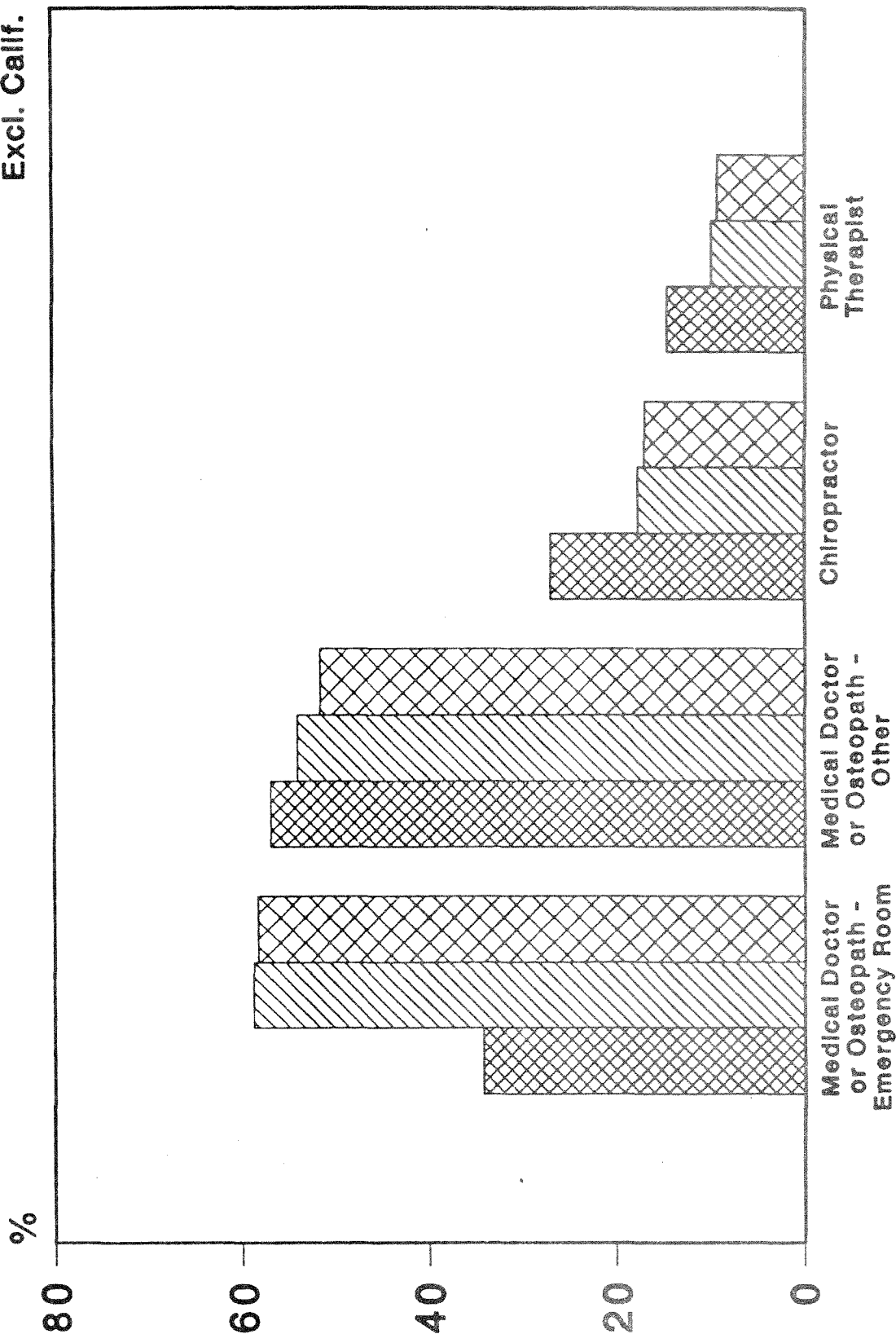


# Types of Professionals Who Treated BI Claimants

Tort States  
Excl. Calif.

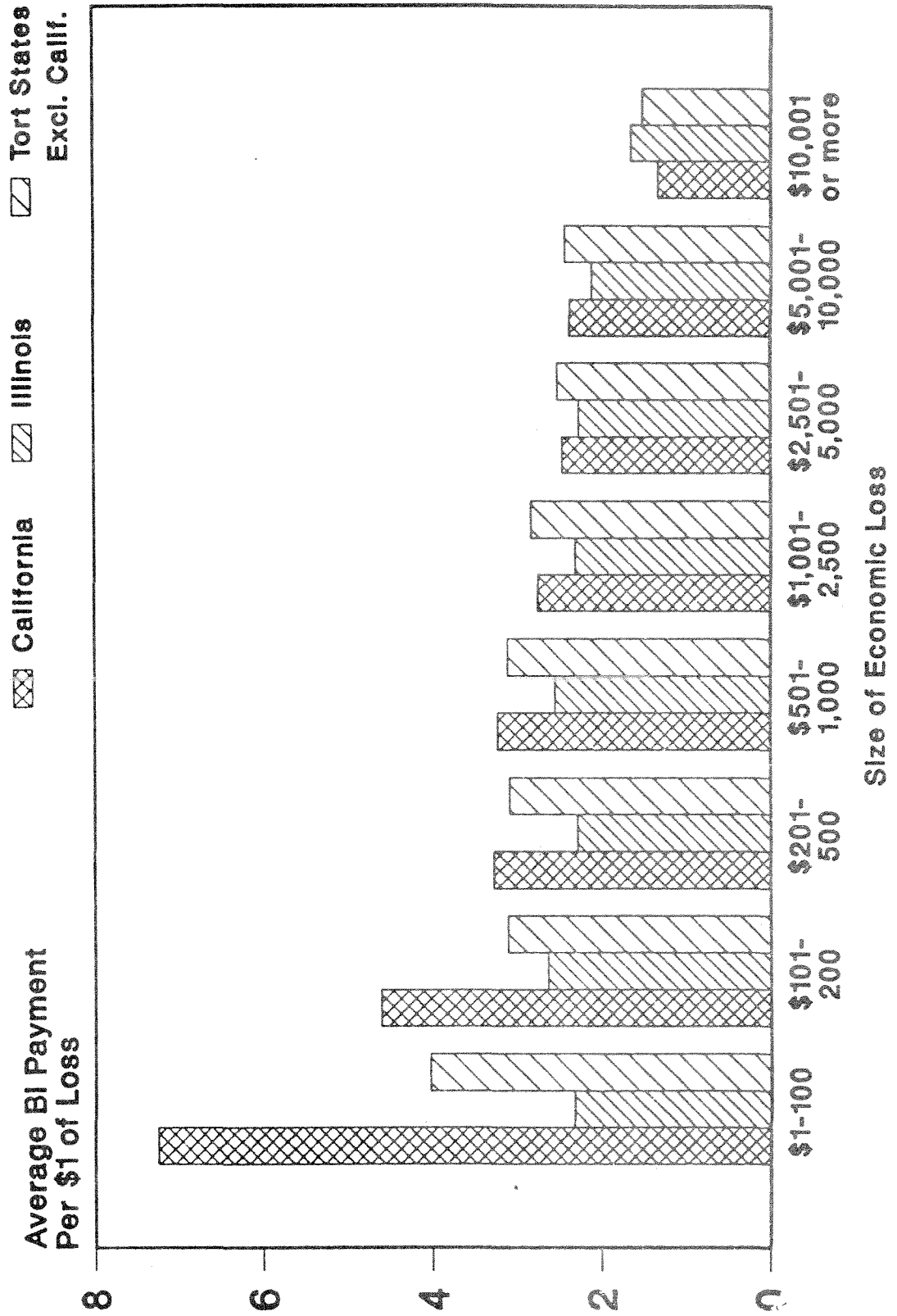
Illinois

California



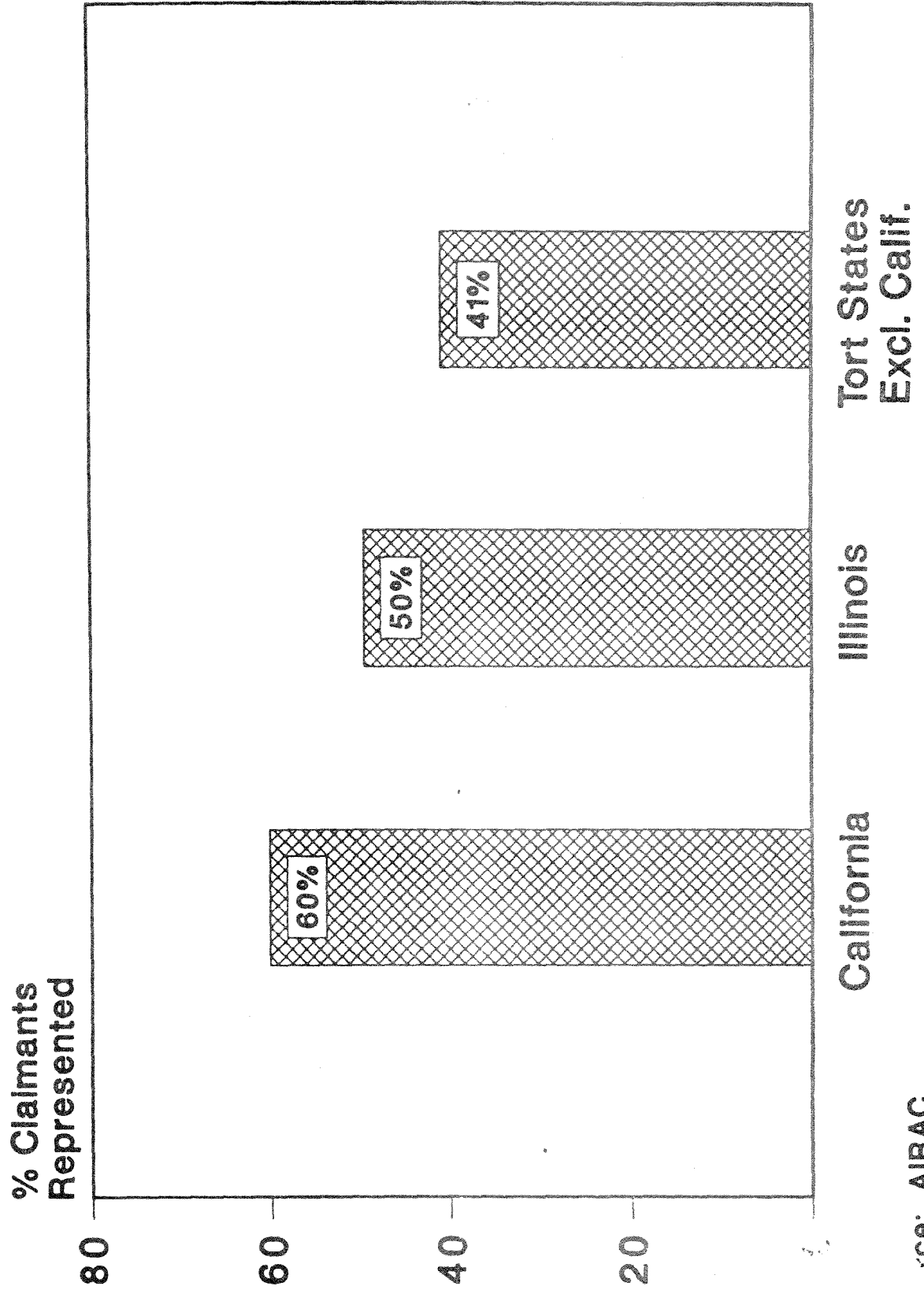
Source: AIRAC

# Average BI Payment Per Dollar of Economic Loss by Size of Economic Loss - BI Claimants



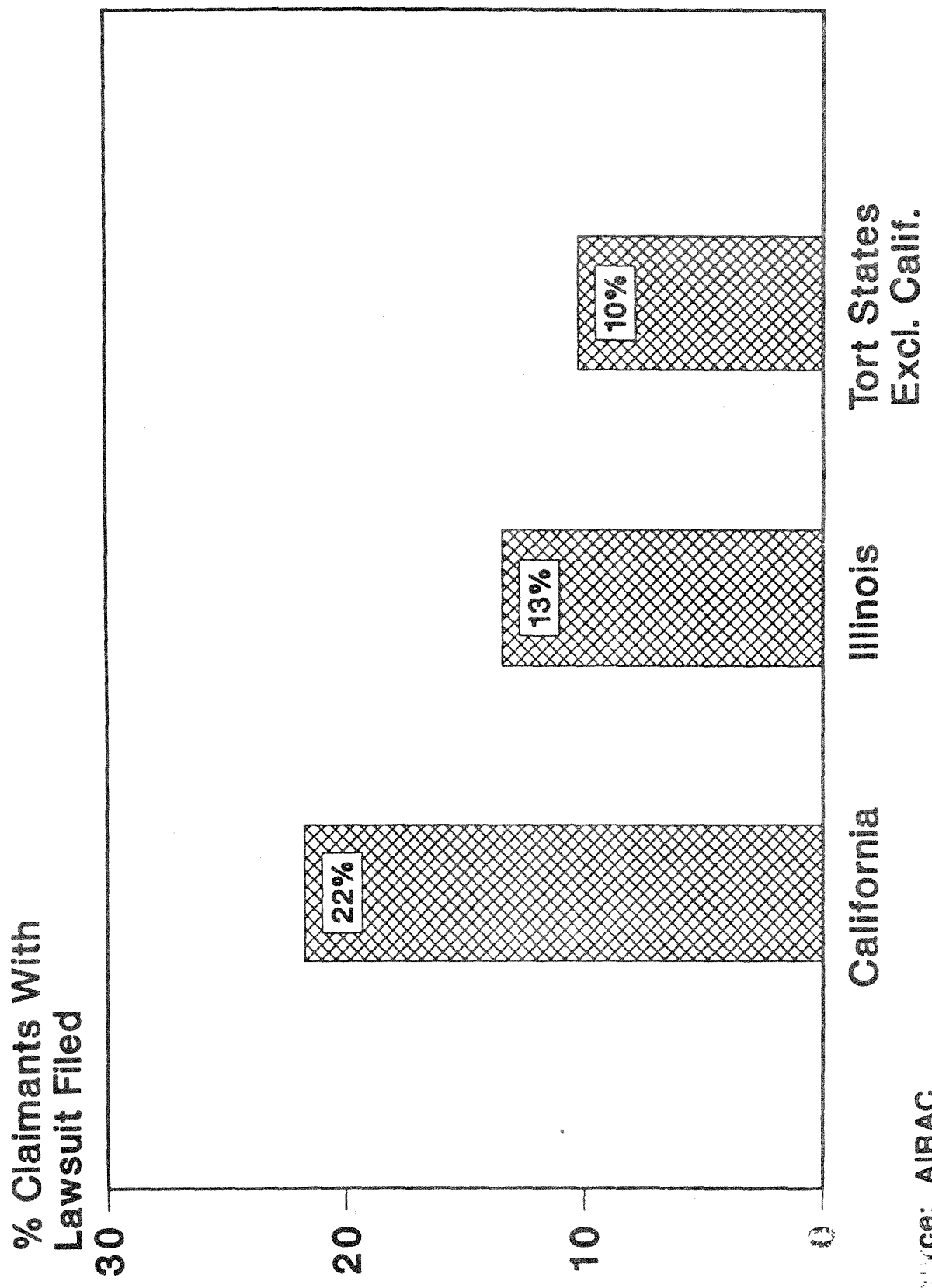
Source: AIRAC

## Claimant Represented by Attorney - BI Claimants



Source: AIRAC

# Lawsuit Status - BI Claimants



Source: AIRAC

STATEMENT  
OF THE  
ALLIANCE OF AMERICAN INSURERS  
TO THE  
SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE  
Los Angeles, California  
December 14, 1988

Marialee Neighbours  
Associate Vice President and Counsel  
111 Maiden Lane, Suite 530  
San Francisco, California 94108

THE ALLIANCE OF AMERICAN INSURERS IS A NATIONAL TRADE ASSOCIATION OF 177 PROPERTY AND CASUALTY INSURANCE COMPANIES. WE SHARE THE CONCERNS OF PUBLIC OFFICIALS, BUSINESS, AND THE GENERAL PUBLIC ABOUT THE DEVELOPMENTS WHICH AFFECT THE PROPERTY AND CASUALTY INSURANCE IN CALIFORNIA FOLLOWING THE PASSAGE OF PROPOSITION 103. LITIGATION IS PENDING WHICH WE HOPE WILL ALLEVIATE THE CURRENT INSURANCE SITUATION BY RESOLVING THE CONSTITUTIONAL AND OTHER SIGNIFICANT ISSUES RELATED TO PROPOSITION 103.

INSURANCE PREMIUMS REFLECT THE COST TO INSURANCE COMPANIES OF PAYING CLAIMS. AS CAR REPAIRS, INSURANCE FRAUD, THEFT, LEGAL, MEDICAL, AND OTHER COSTS ASSOCIATED WITH AUTOMOBILE ACCIDENTS INCREASE, SO DO PREMIUMS. THE ALLIANCE HAS CONSISTENTLY MAINTAINED THAT THE ONLY WAY TO STABILIZE THE PRICE OF INSURANCE IS TO CONTROL THE UNDERLYING CLAIMS COSTS. THE ALLIANCE, TOGETHER WITH THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS AND THE AMERICAN INSURANCE ASSOCIATION, FILED AN AMICI CURIAE BRIEF IN THE SUPREME COURT OF THE STATE OF CALIFORNIA IN SUPPORT OF THE PETITION FILED BY CAL-FARM INSURANCE COMPANY ET AL. AS WE INDICATED IN THAT BRIEF, "THE COSTS OF PAYING AUTOMOBILE INJURY CLAIMS ARE HIGHER IN CALIFORNIA THAN IN MOST OTHER STATES AND HAVE BEEN INCREASING AT A RAPID RATE. THIS DOES NOT APPEAR TO BE DUE TO MORE SERIOUS ACCIDENTS, BUT TO OTHER FACTORS."

IN THE ABOVE-MENTIONED BRIEF, WE STATED:

"ACCORDING TO A REPORT PREPARED BY THE ALL-INDUSTRY RESEARCH ADVISORY COUNCIL ('AIRAC') IN APRIL OF 1988 THE AVERAGE TOTAL ECONOMIC LOSS AND THE AVERAGE BODILY INJURY PAYMENT WERE SUBSTANTIALLY HIGHER FOR CLAIMANTS IN CALIFORNIA THAN FOR CLAIMANTS IN OTHER STATES WHICH UTILIZE THE TRADITIONAL TORT SYSTEM (RATHER THAN NO FAULT) FOR ADJUDICATING AUTOMOBILE ACCIDENTS. THE AVERAGE TOTAL ECONOMIC LOSS FOR CALIFORNIA CLAIMANTS WAS \$2,975, 57% HIGHER THAN THE AVERAGE LOSS FOR CLAIMANTS IN OTHER TORT STATES. THE AVERAGE BODILY INJURY PAYMENT FOR CALIFORNIA CLAIMANTS WAS \$6,250, 49% HIGHER THAN THE AVERAGE PAYMENT FOR CLAIMANTS IN OTHER STATES. THE AVERAGE PAYMENT IN EXCESS OF ACTUAL ECONOMIC LOSS WAS 43% HIGHER IN CALIFORNIA (\$3,275) THAN IN OTHER TORT STATES (\$2,294).

"IN CALIFORNIA THE AVERAGE COST PER BODILY INJURY CLAIM INCREASED 174% FROM 1977 TO 1987 AND THIS WAS COUPLED WITH A 14% INCREASE IN CLAIM FREQUENCY. IN ALL OTHER TORT STATES DURING THE SAME PERIOD, THE CLAIM FREQUENCY DECREASED AND THE AVERAGE COST PER BODILY INJURY CLAIM INCREASED 140% COMPARED TO THE 174% FOR CALIFORNIA.

"NOT ONLY COSTS PER CLAIM WERE HIGHER IN CALIFORNIA, BUT ALSO COSTS PER INSURED VEHICLE WERE HIGHER. THE STUDY SHOWED THAT THE 1987 AVERAGE BODILY INJURY LOSS COST PER INSURED VEHICLE IN CALIFORNIA WAS \$158, MORE THAN TWICE THE AVERAGE LOSS COST IN OTHER TORT STATES. THE AVERAGE BODILY INJURY LOSS COST PER INSURED VEHICLE IN CALIFORNIA INCREASED 211% FROM 1977 TO 1987. IN TORT STATES EXCLUDING CALIFORNIA THE FIGURE INCREASED BY 128%. IF COSTS PER VEHICLE ARE HIGHER IN CALIFORNIA AND INCREASING MORE RAPIDLY THAN IN OTHER STATES, IT NECESSARILY FOLLOWS THAT PREMIUMS MUST BE HIGHER IN CALIFORNIA AND INCREASING MORE RAPIDLY THAN IN OTHER STATES. IT HAS BEEN COSTS, NOT THE DESIRE FOR PROFITS, THAT HAS DRIVEN UP RATES."

WHILE AUTOMOBILE INSURANCE PREMIUM INCREASES ARE LARGELY DUE TO INCREASES IN THE COST AND FREQUENCY OF INJURY CLAIMS, COSTS ASSOCIATED WITH REPAIRING AND REPLACING MOTOR VEHICLES HAVE ALSO DRIVEN UP PREMIUMS. A NEW CAR COSTS 90 PERCENT MORE THAN IT DID 10 YEARS AGO, AND ACCORDING TO AN ANNUAL ALLIANCE STUDY, IT WOULD COST THREE TIMES THE STICKER PRICE OF A TYPICAL AUTOMOBILE TO REBUILD THE CAR WITH REPLACEMENT PARTS.

THE ALLIANCE HAS EVALUATED A NUMBER OF PROPOSALS THAT WE BELIEVE COULD AFFECT THE ESCALATING COST OF AUTOMOBILE INSURANCE. OF THE PROPOSALS WE EVALUATED, A PROPERLY BALANCED NO-FAULT AUTOMOBILE LIABILITY INSURANCE APPROACH PROVIDES THE GREATEST OPPORTUNITY FOR STABILIZING AUTOMOBILE INSURANCE COSTS. THIS TYPE OF APPROACH TO AUTOMOBILE LIABILITY INSURANCE WOULD PROVIDE THESE BENEFITS TO CONSUMERS:

- GUARANTEED BENEFITS FOR AUTOMOBILE ACCIDENT VICTIMS ARE PAID REGARDLESS OF FAULT.
- SIGNIFICANT SAVINGS TO CONSUMERS AND TAXPAYERS FROM LOWER TRANSACTIONAL COSTS (LEGAL FEES AND COURT COSTS).
- TIMELY PAYMENT OF BENEFITS.
- A GREATER PERCENTAGE OF THE PREMIUM DOLLAR IS PAID IN THE FORM OF BENEFITS RATHER THAN ADMINISTRATIVE AND LEGAL COSTS.
- LESS MONEY IS WASTED ON FRAUDULENT CLAIMS.
- CREATES MORE INCENTIVE FOR UNINSURED MOTORISTS TO PURCHASE INSURANCE COVERAGE.
- LONG-TERM STABILIZATION OF RATES.

OTHER PROPOSALS WE BELIEVE COULD HAVE A POSITIVE EFFECT ON THE UNDERLYING AUTOMOBILE INSURANCE LOSS COSTS ARE:

#### COLLATERAL SOURCE RULE

ABOLITION OF THE COLLATERAL SOURCE RULE WOULD PERMIT EVIDENCE TO BE INTRODUCED OF PREVIOUS PAYMENTS/RECOVERY FOR INJURIES SUSTAINED WHICH SUBSEQUENTLY BECOME THE BASIS OF TORT ACTION. IF COUPLED WITH A MANDATORY OFFSET, DOUBLE RECOVERY IS PREVENTED. EVIDENCE IN MEDICAL MALPRACTICE CLAIMS INDICATES THAT ABOLITION OF THIS RULE CAN BE AN EFFECTIVE COST-SAVING DEVICE (SEE ATTACHED PROPOSED LANGUAGE-- COLLATERAL SOURCE).

#### MODIFIED COMPARATIVE NEGLIGENCE

THE ALLIANCE SUPPORTS ENACTMENT OF MODIFIED COMPARATIVE NEGLIGENCE WITH SPECIAL AND/OR ITEMIZED JURY VERDICT PROVISIONS TO REPLACE THE EXISTING PURE COMPARATIVE NEGLIGENCE SYSTEM. UNDER A MODIFIED COMPARATIVE NEGLIGENCE SYSTEM, A PLAINTIFF MAY RECOVER FROM A DEFENDANT ONLY IF HIS OR HER CONTRIBUTORY NEGLIGENCE IS LESS



THAN THE NEGLIGENCE OF THE DEFENDANT. WHEN A PLAINTIFF IS MORE NEGLIGENT THAN THE DEFENDANT, OR IS EQUALLY NEGLIGENT, THE PLAINTIFF CANNOT RECOVER.

THE ALLIANCE SUPPORTS A SYSTEM OF MODIFIED COMPARATIVE NEGLIGENCE BECAUSE THIS SYSTEM STRIKES AN EQUITABLE BALANCE BETWEEN THE HARSHNESS OF TRADITIONAL CONTRIBUTORY NEGLIGENCE AND THE INEQUITY OF THE PURE COMPARATIVE NEGLIGENCE SYSTEM WHICH ALLOWS RECOVERY BY HIGHLY CULPABLE PLAINTIFFS (SEE ATTACHED LANGUAGE OF MODIFIED COMPARATIVE NEGLIGENCE LAW).

ADDITIONALLY, THE ALLIANCE SUPPORTS THE INCLUSION OF SPECIAL JURY VERDICT PROVISIONS IN COMPARATIVE NEGLIGENCE SYSTEMS BECAUSE SUCH PROVISIONS CAN HELP TO ENSURE THAT THE INTENT OF THE COMPARATIVE STATUTE WILL BE CARRIED OUT. THE PROVISION REQUIRING A JURY TO APPORTION NEGLIGENCE OR ALLOWING THE COURT TO REQUIRE APPORTIONMENT MAKES SURE THAT THE JURY WILL, IN FACT, COMPARE A PLAINTIFF'S NEGLIGENCE WITH THAT OF THE DEFENDANT.

#### PAIN AND SUFFERING AWARDS

THE ALLIANCE STRONGLY ADVOCATES PLACING REASONABLE LIMITATIONS ON PORTIONS OF AWARDS MADE FOR PAIN OR SUFFERING EITHER BY MEANS OF A CAP ON THE AMOUNT RECOVERABLE OR THROUGH THE ESTABLISHMENT OF STANDARDS FOR MEASURING SUCH DAMAGES OR BOTH. ANY SUCH RESTRICTIONS WOULD ALLOW FOR THE PROVISION OF REASONABLE REHABILITATION BENEFITS. THE ALLIANCE BELIEVES THAT LIMITING AWARDS FOR PAIN AND SUFFERING WILL GREATLY INCREASE THE PREDICTABILITY OF RISKS SINCE PAIN AND SUFFERING AWARDS MAY BE HIGHLY SPECULATIVE.

MEDICAL COST CONTAINMENT

THE COST OF HOSPITAL CARE AND PHYSICIANS' FEES ARE MAJOR CONTRIBUTING FACTORS TO THE HIGH COST OF AUTOMOBILE AND OTHER INSURANCE. ACCORDING TO THE CONSUMER PRICE INDEX, DURING THE PAST 10 YEARS, THE COST OF A HOSPITAL ROOM HAS INCREASED 151 PERCENT AND PHYSICIANS' FEES HAVE INCREASED 107 PERCENT. INSURANCE COMPANIES ARE ACTIVELY INVOLVED IN MEDICAL COST CONTAINMENT PROGRAMS, INCLUDING CASE MANAGEMENT, SECOND OPINIONS, MEDICAL BILL AUDITS, AND PEER REVIEW. NEVERTHELESS, LEGISLATION TO ADDRESS MEDICAL COST CONTAINMENT ISSUES WILL BE NEEDED IF THESE COSTS ARE TO BE CONTROLLED.

WE HAVE BEEN ASKED TO DETERMINE THE COST SAVINGS THAT COULD BE EXPECTED FROM IMPLEMENTATION OF OUR RECOMMENDED PROPOSALS. THE ALLIANCE IS NOT A STATISTICAL GATHERING OR RATEMAKING ORGANIZATION. ADDITIONALLY, THE PROVISIONS OF PROPOSITION 103 RELATED TO ANTITRUST MAKE IT DIFFICULT TO PROVIDE ANY COST SAVINGS INFORMATION TO THE COMMITTEE AT THIS TIME. WE ARE CURRENTLY EXPLORING WITH ANTITRUST COUNSEL WHAT ACTIVITIES ARE LEGALLY PERMISSIBLE UNDER SECTION 1861.03(a) OF PROPOSITION 103. WE HOPE THE COMMITTEE WILL APPRECIATE THAT WE DO NOT IN ANY WAY WANT TO VIOLATE THE INTENT OF THE LAW.

FINALLY, AS A NATIONAL TRADE ASSOCIATION, WE ARE COMMITTED TO WORKING WITH PUBLIC POLICYMAKERS, REPRESENTATIVES OF THE PUBLIC, AND OTHER BUSINESS AND TRADE ASSOCIATION GROUPS TO ACHIEVE A BALANCED APPROACH TO RESOLVING CONCERNS REGARDING PROPERTY/CASUALTY INSURANCE.

# # #

COLLATERAL SOURCE - PROPOSED LANGUAGE

New Section \_\_\_\_\_ is added to the California Code of Civil Procedure and is enacted to read:

(1) Subject to the provisions of subsection (2), in any action for damages arising from bodily injury or a contractual obligation triggered by bodily injury, and plaintiff's recovery shall be reduced by the amount of payments made to the plaintiff under any scheme of compensation, public or private, by any amount which would result in a compensation more than once for the same loss.

(2) Subsection (1) does not apply to the extent that the amount paid or payable from the collateral sources described in subsection (1) constitutes a benefit directly attributable to premiums, payments, or work that the plaintiff or persons or entities acting in behalf of the plaintiff, including plaintiff's family, have paid or contributed, directly or indirectly, for the applicable policy or benefit.

(3) The reduction provided for in subsection (1) shall be made as follows:

(a) The verdict shall be determined without deduction for any of the benefits set forth in subsection (1) and without having heard evidence of the existing or nonexistence of collateral benefit; and

(b) The trial judge shall then reduce the verdict upon a separate submission to him of evidence relevant to the existence and amount of deductible payments.

(4) Benefits from a collateral source which has a statutory, contractual, or equitable right of subrogation or repayment shall not be used to reduce a verdict under subsection (3).

(5) The trial court may order that security be provided to ensure payment of the damages awarded pursuant to the verdict pending the determination of the amount of any reduction of the verdict pursuant to subsection (3).



# CONGRESS OF CALIFORNIA SENIORS - LOS ANGELES

An Affiliate of the National Council of Senior Citizens

## SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS

ALAN ROBBINS, CHAIRMAN

HEARING ON THE IMPLEMENTATION OF PROPOSITION 103  
December 14, 1988

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My name is Clifford W. Holliday, Past President of the Congress of California Seniors, a statewide senior citizen organization and the state affiliate of the National Council of Senior Citizens based in Washington, D.C., of which I am a Board member.

It is an honor to have the privilege of testifying before this distinguished Senate Committee on the insurance problems with which we are faced today and to support the implementation of Proposition 103. My testimony is relative to the great hardships imposed on California's older population and all automobile drivers who have to live on fixed low incomes. Astronomical increases of automobile insurance premiums are literally forcing thousands of drivers to give up driving their automobiles or to drive without insurance coverage because they can no longer pay the cost of premiums which, in some cases, have more than doubled in the past two years.

To illustrate these premium increases, I cite three typical examples from hundreds of complaints received in our office during the last few months: (1) A man and wife, each driving automobiles over five years old and insured under one policy, paid \$631 for the first six months of 1988 and were billed \$1053 for the last six months. This increase forced this couple to dispose

## COMPARATIVE NEGLIGENCE

### Alliance Model Legislation - Comparative Fault

#### Sec. 1. Effect of Contributory Fault.

- (a) Contributory fault shall not bar recovery in an action by any person or his legal representative to recover damages for death or injury to person or property if such contributory fault was not as great as the fault of the person against whom recovery is sought, but any damages shall be diminished in proportion to the amount of fault attributable to the person recovering or for whose injury, damage or death recovery is made.
- (b) "Fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

#### Sec. 2. Judgments.

The plaintiff shall be awarded judgments only in that percentage of his damages equal to the percentages found against each defendant. The judgments shall be entered severally and not jointly, against each defendant in an amount equal only to the percentage of damages causally attributable to that defendant.

#### Sec. 3. Joinder.

Subject to rules of procedure and to lawful defenses, any party may cause joinder as a party defendant of any entity claimed to be causally responsible for some percentage of plaintiff's damages.

#### Sec. 4. Third Party Action Prohibited.

Except where a contractual relationship otherwise permits, no defendant shall have a right to recover any portion of the percentage of his cause of plaintiff's damages from any other defendant or entity.

#### Sec. 5. Application of Act.

This Act shall apply to all causes of action accruing on or after the effective date.

of one car because of the 67% increase in the cost of their insurance. (2) A premium paid for 1987 of \$1551.00 was increased to \$3593.12 for the year 1988. (3) On a 1983 Chevrolet Cavalier, the premium for the last half of 1987 was \$357; the renewal for the first half of 1988 was \$654, an 83% increase; the premium for the last half of 1988 was billed at \$1024 - approximately a 290% increase over a two year period.

The sad part of these exorbitant insurance costs is that thousands of older retired people are having to give up driving their automobiles because they can no longer pay the one to two thousand dollars per year for auto insurance. This is a cruel ending for people who have worked a lifetime now having to walk or use the buses. Proposition 103 when implemented will provide relief. However, consideration should be given to claims, liabilities and insurance corporation management of operating costs, all of which contribute to the cost of insurance premiums.

A good example for controlling claims and liabilities is the California Employment Compensation Act which stipulates specific amounts for the loss of life, limb, permanent injury, etc. If liabilities are fixed, insurers would know the liabilities involved when computing insurance costs. The establishment of a State insurance corporation that would provide insurance for those who are assigned risks and also available to those preferring to have State insurance would have a great impact on insurance costs.

No fault insurance realistically drafted is another approach to controlling prices. Every driver would be responsible for insuring against the hazards of traffic exposure. No fault insurance would relieve the uninsured driver from accident liability.

AS a final suggestion for providing urgently needed relief from exorbitantly high automobile insurance costs, serious consideration can be given to suspending or repealing the Compulsory Automobile Insurance Act. This would prevent making Criminals out of thousands of drivers who will continue driving because they have a car and cannot pay for the required insurance.



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