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**HEADLINE:** WHY Prop. 103 WILL FAIL;  
Insurers will cut costs, and buyers probably won't like what is left

**BYLINE:** Stephen D. Sugarman, Sugarman is a professor of law at the University of California, Berkeley (Boalt Hall). His *Doing Away With Personal Injury Law* (Quorum Books) will be published this summer.

**BODY:**

Advocates for Proposition 103 sold this measure to California voters on the ground that the auto insurance industry is engaged in price gouging.

Is it? The passage of this initiative does not, of course, prove that insurers can roll back auto liability insurance prices 20-30 percent simply by lowering their profits to a reasonable level. Indeed, many who voted for Prop. 103 were indifferent to the theory behind it.

For example, the people in Los Angeles and Orange counties who backed it so strongly, and stand to benefit most from it, probably had their own pocketbooks in mind.

To them, being given the chance to vote for dramatic insurance price reductions was not very different from being asked to vote to reduce the price of stereo equipment or trips to Hawaii. Or maybe it was even more irresistible.

Insurance, after all, is something people generally hate to buy and hope they never need.

Vacations and good sound, by contrast, represent immediate pleasure that we are more willing to pay for. Moreover, before voting to slash the price of amplifiers and beach holidays, many people might worry about what would happen to the quality of those same things.

Although people are less likely to think of it this way, product quality in insurance ought to be a serious concern, too, especially now that the California Supreme Court has upheld Prop. 103. What if the theory behind Prop. 103 turns out to be wrong and there just isn't the profit slush in liability insurance that industry opponents have claimed?

True, the court has left open a window of hope for the insurers, allowing them to argue to the insurance commissioner that the price rollback denies them a fair rate of return.

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And if they succeed, those big refunds that people voted for won't materialize after all. But if instead, for understandable political reasons, the insurance commissioner does not give the companies the financial relief they seek, what then?

To stay in business without running large, long-term losses, insurers would have to cut considerably their actual costs.

How might they do that? To be sure, some executives might wind up with lower pay, less plush offices and fewer on their personal staffs.

But that sort of cutting, as appealing as it is to us on the outside, can't take the companies very far. Real cuts are more likely to come in claims processing.

This could mean that auto accident victims will find the insurance company they claim against more hard-nosed than ever.

Victims also can expect new delays as fewer adjusters process the same number of claims.

Individual insurance agents and brokers might find their commissions cut, leading those who stay in this industry to spend less time on personal contact with and assistance to their customers.

In short, those encounters people have with liability insurers, stressful as they often are now, could become even more unpleasant. Prop. 103 also embraces the belief that there is something fundamentally wrong with territorial rating.

Backers ask, why should motorists with similar driving records who live in Los Angeles and Sacramento pay radically different amounts for their auto insurance?

Of course, according to the insurance industry, a person's chance of causing an accident in Los Angeles is far greater than in Sacramento even if the drivers have the same records.

That explains why, they add, no company has been willing to come into Los Angeles and generally offer insurance at Sacramento prices.

Prop. 103 supporters seem to believe either that this shows that there is an insurance cartel out to charge Los Angelenos too much, or else that it simply isn't right for individual motorists to be ruled by the impersonal tyranny of actuarial science. Now that Prop. 103 has been upheld by the court, and assuming that territorial rating is going to have to be sharply reduced or eliminated, how will the industry respond?

Some companies probably will try to sell relatively little insurance in the high-risk counties.

Others will search for allowable criteria that serve the same function that place of residence did previously.

Look, for example, for higher auto insurance premiums for smokers.

This is not, I suggest, because people are apt to look away from the road when reaching for their cigarette lighters, but rather because smoking will turn out to be reasonably well correlated with other factors that are correlated with a higher accident risk. Prop. 103 supporters argue that higher costs should be loaded onto those who have caused accidents.

But I fear that to keep rates down for good drivers in non-urban counties, rates for those with bad records would have to become so steep that many of them would drive illegally without insurance. Of course, the backers of Prop. 103 could be right after all.

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Maybe those hundreds of liability insurers now doing business in California really are engaged in a cruel conspiracy to increase their bottom line at our expense. Maybe what I perceive, as a shopper for insurance, to be a highly competitive market is actually a wicked cartel run through the magic of insurance rating bureaus that are masquerading as information-sharing mechanisms.

If so, and if the implementation of Prop. 103 really breaks up that cartel, then the promised refunds and long-term lowering of prices (without a worsening of the product) shortly should be ours. But if not, then there is a very pressing need for further reform that would responsibly take costs out of the liability insurance system without sharply sacrificing product quality.

One way to do that is to curtail litigation, thereby reducing the need for lawyers to take so much of the pie.

Another is to cut down the the "pain and suffering" awards that victims now get, especially in the non-serious injury cases. A responsible auto no-fault insurance plan is a straightforward way to make considerable headway against both of these cost excesses.

I do not mean the chintzy no-fault plan represented by the failed Prop. 104 from last November's election, which came festooned with undeserved Christmas presents for the insurance industry. Rather, we need proven, balanced no-fault of the sort New York has had for several years.

That plan does away with the need for a lawsuit (and a lawyer) in three-quarters of the cases, and eliminates excessive payouts for "whiplash" that adjusters often approve just to get claims off the books.

Assemblyman Patrick Johnston, with the support of Consumers' Union, is now sponsoring such a proposal. If that plan can't garner the political backing it deserves, then serious support should be given to the "elective auto no-fault" plan introduced in Sacramento by Senators Quentin Kopp, I-San Francisco, and Ed Davis, R-Northridge.

Under that plan, motorists would be given a choice between the no-fault system and the current system.

I would certainly select the no-fault option, and I think that, over time, the overwhelming majority of Californians would also do so. If, in the end, the disproportionate political clout of trial lawyers can be overcome, and Prop. 103 turns out to be the engine that drives us to a good auto no-fault solution along with lower auto insurance rates, that would be an unexpected but very happy result. Sugarman is a professor of law at the University of California, Berkeley (Boalt Hall). His *Doing Away With Personal Injury Law* (Quorum Books) will be published this summer.

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