

# Business

THE SAN DIEGO UNION-TRIBUNE • SUNDAY, FEBRUARY 26, 1995

## Quackenbush seeks to refine the intervenors

By JAMES P. SWEENEY  
Copy News Service

SACRAMENTO — Not long ago, former Insurance Commissioner John Garamendi publicly skewered insurance companies as "pigs at the trough."

Garamendi is gone now, replaced by Chuck Quackenbush, a Republican and industry ally. Quackenbush stopped short of direct name-calling, but recently said some consumer advocates "have gotten fat off the public trough."

Quackenbush's broadside may have been shy — his office has since been forced to admit that most of its figures were inflated and an incomplete data — but he drew attention to an obscure program that even some advocates agree needs more refining. Something called the intervenor com-

pensation programs, public advocates receive fees for involving themselves in legal and regulatory disputes over insurance rates.

Slightly more than \$2.3 million has gone to attorneys and advocates since the program began six years ago. That's not much when compared to the multi-billion dollar insurance industry in California.

But it has spurred a nasty squabble between two prominent consumer figures. The program also remains a particularly prickly source of irritation to the industry, which picks up most of the tab.

Insurance activist Harvey Rosenfield, the author of the Proposition 103 measure intended to roll back auto insurance rates, inserted the program into the reform initiative to provide a source of income for self-styled public advocates

like himself.

The system was modeled after a similar California Public Utilities Commission program that has paid public advocates more than \$6.3 million over the past decade.

Ironically, former Republican Gov. George Deukmejian signed the PUC measure on the advice of another Republican, former Assemblyman Bill Bagley. Paid public advocates were better than the alternative, Bagley argued then.

"I said if it wasn't for some entity voicing a consumer concern, you would probably have a thousand consumers throwing rocks at the building," he recalled recently.

Under fire for approving a series of rate

See Intervenor on Page H-6

# Intervenor

## Quackenbush says some refinement is in order

Continued from H-1

increases during his first month in office, Quackenbush countered recently with an order for a thorough review of the intervenor program.

In tandem, he froze a \$555,000 payment that was about to be issued to Rosenfield and his attorneys for their work on a landmark legal case that upheld the heart of the initiative — the commissioner's authority to regulate rates and to order more than \$2 billion in roll-backs promised by Proposition 103.

Rosenfield called the moves a bald attempt to silence him and other consumer advocates. Worse, Rosenfield said, he fears Quackenbush is preparing to seek legislation to abolish the intervenor program.

"As long as I've got a voice and a telephone," Rosenfield vowed, "I'm going to be there."

Richard Wiebe, a spokesman for Quackenbush, says no decision has

been made on how the Department of Insurance will take the ongoing review of the program. But, he said, "We don't have a problem with the intervenor program in general."

Like its forefather at the PUC, the program was designed to create a level playing field between industry and public representatives. Attorneys like Rosenfield can bill the department and insurance companies for market-rate wages. In Rosenfield's case, he contends that is near the top industry attorney rate of \$300 to \$325 an hour.

Another intervenor, Selwyn Whitehead, president of the Oakland-based Economic Empowerment Foundation, charges \$200 an hour, although she is not an attorney. Proposition 103 does not require intervenors to be attorneys.

The playing field, however, is hardly level. While insurance intervenors have a more liberal system than that used by the PUC, they still must demonstrate a "substantial contribution" to a proceeding, and they cannot duplicate efforts. Their industry counterparts have no such constraints.

Further, while Quackenbush has suggested the \$555,000 payment

to Rosenfield and his attorneys is excessive, State Farm alone paid private attorneys some \$800,000 in the same case, and it was just one among a number of insurance companies that joined the lawsuit.

### Barnyard metaphors

Quackenbush was alluding to Rosenfield and Whitehead when he referred to the public trough. Rosenfield has been awarded more than \$1.8 million, Quackenbush claimed, while Whitehead's foundation has requested nearly \$1 million.

In fact, Rosenfield and his consumer organizations — Voter Revolt and the Proposition 103 Enforcement Project — have been awarded less than \$1.3 million, according to the department, and the \$1.3 million includes the disputed \$555,000.

Those same records show that Whitehead's foundation has received \$43,000 and has \$302,000 in outstanding billings. The figures do not include a \$120,000 settlement that the foundation negotiated directly with 20th Century Insurance Co.

Rosenfield and Whitehead said they receive no direct personal benefit from the intervenor awards. Both said all such payments go to their nonprofit organizations, which pay their salaries. Rosenfield said he is paid \$60,000 a year, and Whitehead receives \$50,000.

Rosenfield, however, has requested intervenor checks — including a pending \$89,000 payment — to be issued in his name. He said all that money is turned over to a nonprofit foundation.

The 20th Century settlement, in which the company received a 6 percent rate increase for auto policies, ultimately drew Rosenfield and Whitehead into a heated disagreement. It also prompted the handful of consumer groups that appear as insurance intervenors to review some ethical and competitive questions that had arisen.

Rosenfield attempted to block the settlement and subsequently argued that it was improper to negotiate directly for intervenor fees with an insurer who has a rate increase hanging in the balance. Intervenor payments typically are screened by the department.

Whitehead lashed back, saying she had done nothing that other intervenors had not done before.

Rosenfield and others concede that point. Indeed, the consumer group Utilities Consumer Action Network of San Diego signed off on the same 20th Century settlement and received \$89,000 in fees, said Lisa Briggs, the UCAN attorney in the case.

Bakersfield, CA  
(Kern Co.)  
Californian  
(Cir. D. 61,600)  
(Cir. S. 88,600)

FEB 9 - 1995

Allen's P C R Feb 1995

# Insurance chief may cut critics' finances

SACRAMENTO (AP) — State Insurance Commissioner Chuck Quackenbush threatened to cut off fees billed by a consumer group after the group issued a scathing report on the commissioner's campaign contributions.

Harvey Rosenfield, director of the Proposition 103 Enforcement Project, blasted Quackenbush for accepting more than \$2.4 million in campaign contributions from the industry he regulates.

Quackenbush shot back that Rosenfield is "picking his pockets" with taxpayer money collected for attorney's fees, travel and expenses when his group represents consumers at regulatory and court hearings.

"While some consumer groups have legitimately and effectively represented consumers in insurance-related issues, others have gotten fat off the public trough," Quackenbush said.

"It's curious (Rosenfield) would launch this attack while he has a bill on our desk for \$555,523.42 in fees for the Prop. 103-20th Century Insurance case," said Quackenbush spokesman Richard Wiebe.

"The insurance industry spent tens of millions of dollars; we had a bill for a half-million, including

some of my time," Rosenfield responded.

Quackenbush, a Republican in office for one month, already has made decisions that could cost consumers \$221 million, charged Rosenfield, the author of Proposition 103, the insurance rate-cutting initiative passed by voters in 1988.

"Unfortunately, every action Quackenbush took in his first 30 days in office rewarded insurance companies at the expense of California consumers — costing them about \$7.3 million a day," Rosenfield said.

Under Proposition 103, consumer groups are allowed reimbursement from the Department of Insurance for legal fees, time and travel expenses while working to enforce the initiative.

Quackenbush promised to "crack down on frivolous legal bills." He has already demanded return of \$34,198 awarded by former Insurance Commissioner John Garamendi to the Economic Empowerment Foundation of Oakland.

Of the \$2.8 million awarded to consumer intervenor groups in insurance cases, Quackenbush said, Rosenfield has been awarded \$1.8 million and the Oakland group has

requested nearly \$1 million.

The commissioner offered no apologies for his campaign contributions. Quackenbush ran on a platform that espoused free market principles, said spokesman Wiebe. "The insurance industry agrees philosophically with that, and supported him for commissioner."

Analyzing campaign finance reports, Rosenfield's group found that insurance companies with business before the Department of Insurance gave Quackenbush about 70 percent of the money and other donations to his campaign.

More than \$225,000 of the \$2.4 million given to Quackenbush came after the Nov. 8 election, the group said.

In his first month in office, Quackenbush granted rate increases, cut the amount of money insurers have to pay in overdue Proposition 103 rollbacks, and adopted policies favored by insurers, Rosenfield said.

Wiebe said Quackenbush has withdrawn all regulations regarding Proposition 103 "to review them to insure they are consistent with both the law and with his agenda."

Quackenbush's predecessor, Democrat John Garamendi, conducted a similar review after he

took office, Wiebe said.

Large rate increases were approved by Quackenbush to help companies absorb staggering costs of the Northridge earthquake, Wiebe said. They included a 100 percent jump in Allstate's earthquake insurance premiums and a \$33 million increase for State Farm Insurance Co.'s homeowner policyholders.

Allstate gave \$67,416 to Quackenbush's campaign. State Farm did not contribute as a company, but some of its independent agents did. A State Farm spokesman said the Proposition 103 group's complaints amounted to post-campaign sour grapes.

"Harvey (Rosenfield) forgets, the law that he designed gives near unrestricted authority to any insurance commissioner to set those rates of return," Bill Sirota said. "That's the law Harvey wanted — he didn't get the commissioner he wanted."

Rosenfield's group also blasted Quackenbush for removing consumer representatives from a board that sets rates for the California Automobile Assigned Risk Program.

Wiebe said Quackenbush will appoint his own consumer members to the board.

FEB 17 1995

Allen's P.C.B. Est. 1888

# Quackenbush declares 'war'

By **ILANA DeBARE**  
McClatchy News Writer

Insurance Commissioner Charles Quackenbush declared bureaucratic war this week on two consumer groups that have sharply criticized his record, placing a hold on more than \$700,000 in legal fees they were to receive.

Quackenbush slammed the two groups, including one headed by Proposition 103 author Harvey Rosenfield, as "special interests" that "have gotten fat off the public trough."

"I will continue to work closely with responsible consumer groups, but I will not tolerate special interests intent on lining their pockets with taxpayer dollars," the newly-elected commissioner said on Wednesday.

The two groups called Quackenbush's attack an attempt to

divert attention from his own track record. Earlier in the day, Rosenfield had charged him with making rulings that cost California policyholders \$221 million in his first month in office.

The groups also accused Quackenbush of trying to gut a key section of Proposition 103 that was aimed at leveling the playing field between traditionally low-budget consumer groups and deep-pocket insurance companies.

That section requires insurance companies or the Department of Insurance to pay the legal fees and travel expenses of consumer advocates whose testimony provides a "substantial contribution" in rate cases. Since Proposition 103 was approved in 1988, department officials said, consumer groups have been awarded about \$2.8 million this way.

"They've been trying to figure out a way for some time to not pay us our attorneys' fees," said Rosenfield.

Specifically, Quackenbush granted a request by State Farm Insurance Co. to reconsider \$550,000 in legal fees that his predecessor, John Garamendi, had awarded to Rosenfield's group, the Los Angeles-based Proposition 103 Enforcement Project. That money was for testimony in a long-running lawsuit aimed at overturning Proposition 103.

Quackenbush also announced that he had placed a hold on about \$200,000 that Garamendi had awarded to the Economic Empowerment Foundation for testimony opposing a State Farm homeowners insurance rate increase that Quackenbush recently approved.

Quackenbush's staff criticized the two groups as overpaid.

Redding, CA  
(Shasta Co.)  
Redding Record-  
Searchlight  
(Cir. D. 37,800)

MAR 1 1 1995

# Prop. 103 backers sue Quackenbush over fees

SAN FRANCISCO (AP) — Sponsors of Proposition 103 took their feud with new state Insurance Commissioner Charles Quackenbush to court Friday, accusing him of illegally blocking \$555,000 in legal fees owed to them.

The fees are for the sponsors' help in the state's successful defense of former insurance commissioner John Garamendi's rules for rate rollbacks under the 1988 initiative.

The state Supreme Court upheld Garamendi's regulations last year and the U.S. Supreme Court denied review of an insurance company appeal early this year. Garamendi, a Democrat, approved the fees to a group called

the Proposition 103 Enforcement Project, led by Harvey Rosenfield, auditor of the initiative, before leaving office in January.

Quackenbush, a Republican whose campaign drew financial support from the insurance industry, said soon after taking office that some consumer advocates "have gotten fat off the public trough." On Feb. 8, at the request of State Farm Insurance, he said he was reconsidering Garamendi's fee order.

Earlier the same day, Rosenfield's group issued a news release accusing Quackenbush of granting numerous unjustified rate increases and sweetheart settlements to insurers who sought

to reduce Garamendi's rollback orders.

On Friday, the group sued Quackenbush in San Francisco Superior Court, seeking the legal fees approved by Garamendi.

The suit contends Quackenbush's 30-day legal deadline for reconsidering Garamendi's decision had expired two days before the new commissioner acted.

The suit also says Rosenfield's group, and the lawyers who represented it, had made substantial contributions to the case and were entitled to the fees.

"It is highly disturbing that an elected insurance commissioner would use his taxpayer-funded powers to attempt to deny con-

sumers the modest representation that will provide balance to the overwhelming number of insurance industry lawyers and lobbyists," Rosenfield said.

Richard Wiebe, a spokesman for Quackenbush, said the commissioner's lawyers are confident he acted within his authority, although the legal deadline involved in the case is a "gray area."

"Mr. Rosenfield has billed California consumers \$300 an hour for his services to interpret a law that he himself wrote," Wiebe said. "The commissioner's going to scrutinize this bill very carefully before he approves."

PLEASE DELIVER TO/

**PROPOSITION  
103  
ENFORCEMENT  
PROJECT**

NEWS RELEASE

For Immediate  
Release:

February 9, 1995  
11:30 AM P.S.T.

CONTACT:

Jamie Court  
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Ed Howard  
310-441-8300

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## **Consumer Advocates Respond To Quackenbush's Retaliatory Attack**

### **Quackenbush Makes Good On Political Vendetta Against Watchdog Group, Illegally Tries To Block Compensation**

Yesterday, February 8, the Proposition 103 Enforcement Project released a report on Insurance Commissioner Chuck Quackenbush's first thirty days in office. Today, consumer groups received notice that Quackenbush has acted illegally to try to block the payment of fees to attorneys for consumer groups defending Proposition 103 and fighting rate increases. Although Quackenbush no longer had jurisdiction to deny payment of intervenor fees for consumer groups and their attorneys, he purported to do just that today under a political vendetta in response to yesterday's report which detailed that the new insurance commissioner's actions have thus far cost California consumers \$221 million. Quackenbush's ability to reconsider John Garamendi's order awarding fees expired January 28, 1995.

In a press release, Quackenbush also attacked Harvey Rosenfield, Chair of the Proposition 103 Enforcement Project and author of Proposition 103, and made numerous false and misleading statements. Rosenfield today issued the following statement:

"Like every action he has taken so far, Quackenbush's statement and illegal order parrot the insurance industry. It is not surprising that Commissioner Quackenbush would like to obstruct the consumer advocates who have fought the insurance industry for six years. The insurance industry has filed more than 100 lawsuits to delay Proposition 103 and reduce the rollbacks that 103 requires them to pay. Insurers have been frustrated that, despite spending \$80 million in their unsuccessful effort to defeat 103 in 1988, and another \$150 million to \$200 million to delay it in court since 1988, consumer groups, operating on tiny budgets, have consistently prevailed, and insurers have lost every single legal challenge they have brought."

"As our report reveals, the Proposition 103 Enforcement Project has been closely monitoring Quackenbush's actions in his first month in office, during which Quackenbush took more than a dozen official actions which undermine Proposition 103, reduce the rebate money consumers are entitled to and increase the premiums

we all have to pay for insurance. A number of Quackenbush's actions violate the provisions and mandates of Proposition 103, and our lawyers are presently reviewing our legal options to protect the voters from arbitrary or illegal actions. Now Quackenbush is threatening to limit the ability of legitimate consumer groups to challenge his anti-voter, anti-consumer actions as the law allows. Quackenbush knows well that Proposition 103 requires insurance companies to pay the costs of lawyers for the public because otherwise there would be no one there to represent the interests of consumers, even though insurance companies have unlimited lawyers -- which consumers must pay for." Consumer groups intend to seek a judicial writ of mandate to compel compliance with the law.

"However much Quackenbush seeks to silence his critics, Proposition 103 specifically requires the insurance commissioner to pay the fees for lawyers representing the public. We are already looking into the legality of his use of state resources to undertake a political vendetta against his critics, and we will ask law enforcement authorities to take whatever action may be appropriate."

### **Numerous False Statements Corrected**

Rosenfield also itemized falsehoods in Quackenbush's knee jerk order and hastily prepared press release:

- Quackenbush's order seeking to block fees for intervenors incorrectly states the date of Garamendi's original order dated December 29, 1994. In addition, in an unlawful attempt to provide himself the ability to rescind Garamendi's order, Quackenbush's order falsely suggests that Quackenbush extended the time period during which he could reconsider Garamendi's order. As California Government Code Section 11521 clearly indicates, Quackenbush no longer had any jurisdiction to reconsider Garamendi's order.

"Today the Commissioner charged with enforcing the law has broken the law," said Ed Howard, an attorney with the firm of Hall & Phillips which represents the Project.

- Quackenbush's press outburst suggested that there is something inappropriate in the order issued by Commissioner Garamendi to pay attorneys defending Proposition 103's rollbacks a total of \$550,000 for their work over a four year period, culminating in the unanimous victory in the California Supreme Court last August in the 20th Century case. In fact, that case precisely illustrates the crucial importance of the intervenor reimbursement requirement in Proposition 103.

Without the assurance of reimbursement, no consumer group could afford to hire the attorneys needed to fight the insurance industry's attempt to derail 103 through lawsuits. That is why 103 established the intervenor system, modeled after that in effect in other states and similar to that in California for public utility cases. The system requires the insurance commissioner to order insurance companies to reimburse attorneys for consumer groups at a rate equal to that charged by the industry's attorneys.

The \$550,000 awarded to consumer groups are a pittance compared to the \$150 million to \$200 million insurers spent -- and policyholders must pay -- on their unsuccessful and often frivolous challenge to the regulations. Another way to view the sum is that for every dollar consumer groups paid their lawyers on the case, the California public gets back \$5,000 in rollbacks.

- Quackenbush stated that a total of \$1.8 million in reimbursement of fees and expenses has been paid by the DOI to cover the attorneys and expenses of consumer groups associated with Harvey Rosenfield in the six years since the voters approved

Proposition 103. This figure is incorrect. Over the past five years, consumer groups and attorneys fighting with Rosenfield for Proposition 103's enforcement in court and regulatory proceedings have received \$692,019.91 in intervenor fees. More than 80% of this money went to outside law firms working on Proposition 103's behalf.

A total of 7 fee requests were awarded and received, principally to reimburse the fees and expenses of attorneys defending 103 against insurance industry lawsuits challenging (1) Prop 103's rollback; (2) the requirement that insurers to base their auto premiums on a motorist's driving safety record, rather than zip code (3) the legislatures attempts to repeal matters (4) Other matters including ensuring that consumers cannot be non-renewed for no-good cause. Of these amounts, almost the entire amount was paid directly to the outside law firms representing Rosenfield and the consumer groups he has worked with.

- Quackenbush's news release suggests that the Proposition 103 Enforcement Project has "refuse[d] to cooperate with the Department's efforts to manage the program" by refusing to provide the names of its board of directors. Indeed, over the last few days, as the Department became aware of the impending report, Department staff repeatedly called the Project and other consumer groups demanding to know who our board members are. While it is now clear that the purpose of these calls was to assist Quackenbush in pursuing a political vendetta, the fact is that the Project gave the Department of Insurance the names of the board of directors of the Project last September 15, 1994, as part of a filing required by the intervenor regulations, and that the Department therefore had the information in its possession.

The Proposition 103 Enforcement Project has asked counsel experienced in ethics and law enforcement matters to review whether the Commissioner or his staff violated any law in using the authority and power of the agency to attempt to compile information for political purposes.

- Contrary to his statement that he will 'continue to work closely with responsible consumer groups,' Quackenbush has not established any working relationship with any consumer group on any insurance matter.

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Finally, Rosenfield stated, "I was out fighting for California consumers while Chuck Quackenbush was hustling bucks in the Silicon Valley, and I'll be doing the same thing long after Quackenbush is gone, which could well be sooner rather than later. No matter what Quackenbush tried to do, he will not escape the scrutiny of the public."

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PLEASE DELIVER TO ↗

**PROPOSITION  
103  
ENFORCEMENT  
PROJECT**

NEWS RELEASE

**For Immediate Release:**  
March 10, 1995  
10:00 AM P.S.T.

**CONTACT:**  
Jamie Court  
Harvey Rosenfield  
310-475-0883

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## Consumer Advocates Sue Quackenbush For Illegally Blocking Payment Of Consumer Fees In \$2.5 Billion Rate Rollback Case

The consumer advocates who won the California and U.S. Supreme Court rulings upholding \$2.5 billion in rate rollbacks under Proposition 103 filed suit today to enjoin Insurance Commissioner Quackenbush from blocking the payment of their attorneys' fees in the case.

Commissioner Garamendi ordered the payment of \$550,000 in attorneys fees, as required by Proposition 103, to the advocates who won the conclusive victory after six years of legal challenges to the Prop 103 rollbacks brought by the insurance industry. The lawsuit, filed in San Francisco Superior Court, charges that Commissioner Quackenbush was two days too late under state law when he issued an order to "reconsider" Garamendi's decision.

The consumer groups' suit asks the court for a writ ordering Quackenbush to refrain from "taking any action inconsistent" with Commissioner Garamendi's order. The suit was brought by Fred Altshuler of the San Francisco firm Altshuler, Berzon, Nussbaum, Berzon and Huron. That firm is recognized as preeminent specialists in the field.

### Silencing the Consumer's Watchdog

Mr. Quackenbush's effort to block the payment appeared to be motivated by political considerations. Under state law, the time for reconsideration of Garamendi's order expired on January 28, 1995. On January 30, 1995, State Farm filed a request with Commissioner Quackenbush that he reconsider the decision. On February 8, the Proposition 103 Enforcement Project issued a report highly critical of Mr. Quackenbush's performance during his first thirty days in office, estimating the cost of his actions to consumers during January alone at \$221 million. On February 8, 1995, Commissioner Quackenbush purported to issue an order granting State Farm's petition for reconsideration and complained about the Proposition 103 consumer representation program.

Commissioner Quackenbush's action was widely viewed as an overt effort at political retaliation against The Project and its director, Harvey Rosenfield, the

author of Proposition 103. Quackenbush's office subsequently admitted that it had disseminated grossly inaccurate information on the cost of the intervenor program. The Department of Insurance acknowledged that in the six years since 103 passed, advocates for consumer groups associated with Rosenfield have received slightly over \$600,000 in legal fees for their work defending 103 in the courts against over one hundred lawsuits brought by insurers.

In announcing today's legal action, Rosenfield said, "Mr. Quackenbush acted improperly in his effort to block the reimbursement of the fees and expenses which consumer advocates incurred in their lengthy legal battle to protect the public's right to \$2.5 billion in rollbacks approved by the voters in 1988. The insurance industry spent an estimated \$150 million -- paid ultimately by its policyholders -- in their attempt to keep the money that they owed the voters. But they lost that battle in the courts."

"There is no doubt that the insurance industry would like to eliminate the consumer representation that has successfully defended 103 since its passage. But it is highly disturbing that an elected insurance commissioner would use his taxpayer-funded powers to attempt to deny consumers the modest representation that will provide balance to the overwhelming numbers of insurance industry lawyers and lobbyists," said Rosenfield.

"However, Proposition 103 is the law and it specifically requires that the insurance commissioner to order the compensation of consumer advocates for defending the public interest. Without that guarantee, it would have been impossible to find the lawyers -- many of whom worked at reduced rates -- and pay the expenses to protect the will of the People against the industry's often frivolous litigation."

### Advocates Urge Prompt Resolution

"Mr. Quackenbush ought to realize that it is in his interests, as well as the public's, that policyholders have someone representing their views in insurance matters. The effort to block these reasonable fees has needlessly wasted taxpayer funds, and, of course, has forced consumer groups to spend their own limited resources in response," Rosenfield added. "Under the law, Mr. Quackenbush will have to reimburse the attorneys we have hired in this proceeding as well. Hopefully, the Commissioner will realize that no one's interest is served by attempting to block the compensation of consumer intervenors in these matters, and this matter can be promptly resolved."

Ironically, according to the Daily Journal (2/15/95), even the industry's chief lawyer in the 20th Century case acknowledges that intervenors might provide an important service under the circumstances:

Gary Fontana, who represents 20th Century, states that consumer groups probably didn't add much to a regulatory environment headed by a commissioner like Garamendi who was already pro-consumer. But now, Fontana says, they actually might be a necessary counterweight to a pro-business commissioner like Quackenbush. "In this administration...they probably do have a different perspective."

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18 Attorneys for Petitioner Voter Revolt

19 SUPERIOR COURT OF CALIFORNIA

20 CITY AND COUNTY OF SAN FRANCISCO

21 HALL & ASSOCIATES; PHILLIPS & COHEN;  
22 HARVEY ROSENFIELD; KARL MANHEIM; and  
23 VOTER REVOLT,

24 Petitioners,

25 v.

26 CHARLES QUACKENBUSH, Insurance  
27 Commissioner of the State of  
28 California,

Respondent.

20th CENTURY INSURANCE COMPANY; 21st  
CENTURY CASUALTY COMPANY; STATE FARM  
MUTUAL INSURANCE COMPANY; STATE FARM  
FIRE & CASUALTY COMPANY; [CONTINUED ON  
NEXT PAGE],

Real Parties In Interest.

ENDORSED  
FILED  
San Francisco County Superior Court

MAR 10 1995  
ALAN CARLSON, Clerk  
BY: MONICO SD. MATEO, JR. Deputy Clerk

967918  
CASE NO.

PETITION FOR WRIT  
OF MANDATE AND/OR  
PROHIBITION AND/OR  
OTHER APPROPRIATE  
EXTRAORDINARY RELIEF

ALTSHULER, BERZON, NUSSBAUM, BERZON & RUBIN  
ATTORNEYS AT LAW  
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SAN FRANCISCO, CALIFORNIA 94108

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Real Parties in Interest (continued): STATE FARM GENERAL INSURANCE COMPANY; HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY; FEDERAL INSURANCE COMPANY; VIGILANT INSURANCE COMPANY; SEA INSURANCE COMPANY; NORTHWESTERN PACIFIC INDEMNITY COMPANY; SUN INSURANCE OFFICE, LIMITED; ALLIANCE ASSURANCE COMPANY, LIMITED; PACIFIC INDEMNITY COMPANY; HOUSTON GENERAL INSURANCE COMPANY; AVMCO INSURANCE COMPANY; EASTERN AVIATION AND MARINE INSURANCE COMPANY; NATIONAL INSURANCE UNDERWRITERS; CHARTER OAK FIRE INSURANCE COMPANY; TRAVELERS INDEMNITY COMPANY; TRAVELERS INDEMNITY COMPANY OF RHODE ISLAND; TRAVELERS INDEMNITY COMPANY OF AMERICA; PHOENIX INSURANCE COMPANY; TRAVELERS INDEMNITY COMPANY OF ILLINOIS; BANKERS & SHIPPERS INSURANCE COMPANY OF NEW YORK; CENTURY NATIONAL INSURANCE COMPANY; GREAT AMERICAN INSURANCE COMPANY; STONEWALL INSURANCE COMPANY; TRANSPORT INSURANCE COMPANY; GENERAL ACCIDENT INSURANCE COMPANY; PENNSYLVANIA GENERAL INSURANCE COMPANY; CAMDEN FIRE INSURANCE COMPANY; COAST NATIONAL INSURANCE COMPANY; HOME INSURANCE COMPANY; HOME INDEMNITY COMPANY; HOME INSURANCE COMPANY OF INDIANA; CITY INSURANCE COMPANY; BALBOA INSURANCE COMPANY; MERITPLAN INSURANCE COMPANY; NEWPORT INSURANCE COMPANY; FARMERS HOME MUTUAL INSURANCE COMPANY; WESTERN HOME INSURANCE COMPANY; AMERICAN CONTINENTAL INSURANCE COMPANY; STERLING CASUALTY INSURANCE COMPANY; TOPA INSURANCE COMPANY; HIGHLANDS INSURANCE COMPANY; HIGHLANDS UNDERWRITERS INSURANCE COMPANY; AMERICAN BONDING COMPANY; CONTINENTAL INSURANCE COMPANY; BOSTON OLD COLONY INSURANCE COMPANY; FIDELITY & CASUALTY COMPANY OF NEWARK, NEW JERSEY; FIDELITY & CASUALTY COMPANY OF NEW YORK; FIREMAN'S INSURANCE CO. OF NEWARK, NEW JERSEY; GLEN FALLS INSURANCE COMPANY; KANSAS CITY FIRE & MARINE INSURANCE COMPANY; MAYFLOWER INSURANCE COMPANY, LTD.; NIAGARA FIRE INSURANCE COMPANY; PACIFIC INSURANCE COMPANY; FARMERS INSURANCE EXCHANGE; FIRE INSURANCE EXCHANGE; MID-CENTURY INSURANCE COMPANY; TRUCK INSURANCE EXCHANGE; ALLSTATE INSURANCE COMPANY; ALLSTATE INDEMNITY COMPANY; NORTHBROOK PROPERTY AND CASUALTY INSURANCE COMPANY; NORTHBROOK INDEMNITY COMPANY; NORTHBROOK NATIONAL INSURANCE COMPANY; USAA CASUALTY INSURANCE COMPANY; USAA GENERAL INDEMNITY COMPANY; UNITED SERVICES AUTOMOBILE ASSOCIATION; AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA; SEQUOLA INSURANCE COMPANY; NATIONAL CHIROPRACTIC MUTUAL INSURANCE COMPANY; REPUBLIC MORTGAGE INSURANCE COMPANY; OLD REPUBLIC INSURANCE COMPANY; ZURICH INSURANCE COMPANY; AMERICAN ZURICH INSURANCE COMPANY OF ILLINOIS; AMERICAN ZURICH INSURANCE COMPANY; AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY; EMPIRE FIRE & MARINE INSURANCE COMPANY; UNIVERSAL UNDERWRITERS INSURANCE COMPANY; HERITAGE INDEMNITY COMPANY; MONTGOMERY WARD INSURANCE COMPANY; FORUM INSURANCE COMPANY; MOTORS INSURANCE CORPORATION; MIC GENERAL INSURANCE CORPORATION; MIC PROPERTY & CASUALTY INSURANCE CORPORATION; CIM INSURANCE CORPORATION; NATIONAL GENERAL INSURANCE COMPANY; (continued . . .)



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Real Parties in Interest (continued): PREFERRED RISK MUTUAL  
INSURANCE COMPANY; MID-WEST MUTUAL INSURANCE COMPANY; GOVERNMENT  
EMPLOYEES INSURANCE COMPANY; GEICO GENERAL INSURANCE COMPANY;  
GEICO INDEMNITY COMPANY; and CRITERION CASUALTY COMPANY.

1 TO THE HONORABLE SUPERIOR COURT:

2 Petitioners seek an extraordinary writ enjoining Charles  
3 Quackenbush, Insurance Commissioner of the State of California,  
4 from exceeding his authority and jurisdiction by reconsidering a  
5 final decision notwithstanding that his power to do so has  
6 expired, and, in support of their Verified Petition, allege as  
7 follows:

8 PARTIES

9 1. Petitioner Hall & Associates is a law firm with  
10 offices in Los Angeles, California.

11 2. Petitioner Phillips & Cohen is a law firm with offices  
12 in Washington, D.C. Phillips & Cohen is the successor to the  
13 law firm of Phillips, Cohen & Goldstein.

14 3. Hall & Associates and Phillips & Cohen are the  
15 successors to the law firm of Hall & Phillips.

16 4. Petitioner Harvey Rosenfield is a member of the  
17 California Bar. Mr. Rosenfield is a resident of California and  
18 has paid taxes to the State of California within the past year.

19 5. Petitioner Karl Manheim is a member of the California  
20 Bar. Mr. Manheim is a resident of California and has paid taxes  
21 to the State of California within the past year.

22 6. Petitioner Voter Revolt is a non-profit public benefit  
23 corporation with its principal offices in Los Angeles,  
24 California.

1 7. Respondent Charles Quackenbush is the Commissioner of  
2 Insurance for the State of California (the "Insurance  
3 Commissioner").

4 8. Real Parties in Interest, listed in the above caption,  
5 are insurance companies doing business in California.

6 FACTUAL ALLEGATIONS

7 9. On December 29, 1994, Insurance Commissioner John  
8 Garamendi issued his Findings and Order for Award of Advocacy  
9 and Witness Fees and Expenses to Voter Revolt (the "Decision")  
10 in Department of Insurance File No. REB-5173. A true and  
11 correct copy of the Decision is attached as Exhibit A and  
12 incorporated herein.

13 10. Real Parties in Interest appeared as parties in the  
14 proceedings known as Department of Insurance File No. REB-5173  
15 and/or in related judicial proceedings.

16 11. Petitioner Voter Revolt was granted party status as an  
17 intervenor in Department of Insurance File No. REB-5173 and  
18 related judicial proceedings.

19 12. The Decision provides, in part:

20 IT IS ORDERED, that Voter Revolt is entitled  
21 to receive compensation for its  
22 representation and participation in the  
23 Judicial Proceeding identified as 20th  
24 Century v. Garamendi. Therefore, Voter  
25 Revolt is hereby awarded compensation in the  
26 amount of \$483,224.85 for advocacy and  
27 paralegal fees, and \$48,939.57 for out-of-  
28 pocket disbursements.

13 13. The award of compensation made by the Decision is for  
14 work performed by Petitioners, other than Voter Revolt, on

1 behalf of Voter Revolt and for out-of-pocket disbursements made  
2 by Petitioners, other than Voter Revolt, on behalf of Voter  
3 Revolt.

4 14. Pursuant to retainer agreements, Petitioners Hall &  
5 Associates and Phillips & Cohen are assignees of Voter Revolt  
6 with respect to compensation awarded by the Decision.

7 15. Petitioners each claim an interest in the compensation  
8 awarded by the Decision.

9 16. The Decision was mailed by the Department of Insurance  
10 on December 29, 1994. A true and correct copy of the  
11 Certificate of Service by Mail for the Decision is attached as  
12 Exhibit B and incorporated herein.

13 17. On January 2, 1995, Respondent Charles Quackenbush  
14 became Insurance Commissioner, replacing John Garamendi.

15 18. The thirtieth (30th) day after the mailing of the  
16 Decision was January 28, 1995.

17 19. No petition for reconsideration of the Decision was  
18 filed on or before January 28, 1995.

19 20. The Insurance Commissioner did not order a  
20 reconsideration of the Decision on or before January 28, 1995.

21 21. The Insurance Commissioner did not grant a stay for  
22 the purpose of filing an application for reconsideration of the  
23 Decision on or before January 28, 1995.

24 22. On January 30, 1995, Real Parties in Interest State  
25 Farm Mutual Insurance Company, State Farm Fire & Casualty  
26 Company and State Farm General Insurance Company filed a



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1 Petition For Reconsideration of the Decision, pursuant to  
2 Government Code section 11521 (the "Petition for  
3 Reconsideration"). A true and correct copy of the Petition For  
4 Reconsideration is attached as Exhibit C and incorporated  
5 herein.

6 23. On February 8, 1995, the Insurance Commissioner issued  
7 an Order Granting Petition for Reconsideration of "Findings and  
8 Order for Award of Advocacy and Witness Fees to Voter Revolt"  
9 (the "Reconsideration Order"). A true and correct copy of the  
10 Reconsideration Order is attached as Exhibit D and incorporated  
11 herein.

12 24. The Reconsideration Order provides, in part:

13 Having received State Farm's Petition For  
14 Reconsideration . . . and this matter having  
15 been stayed for ten days in accordance with  
16 Section 11521(a) of the Government Code,

17 IT IS HEREBY ORDERED, that the Petition For  
18 Reconsideration is granted. The  
19 Commissioner will now reconsider this case  
20 in accordance with California Government  
21 Code Section 11521(b), and thereafter will  
22 issue his final decision.

23 25. The Insurance Commissioner's reconsideration of the  
24 Decision pursuant to the Reconsideration Order will require the  
25 expenditure of public funds.

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FIRST CAUSE OF ACTION

(For a Writ of Mandate and/or Prohibition  
and/or Other Appropriate Extraordinary Relief)

26. Government Code section 11521(a) provides:

The agency may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied. [Emphasis supplied.]

27. Pursuant to Section 11521(a), the Insurance Commissioner's power to order a reconsideration of the Decision expired 30 days after the mailing of the Decision on December 29, 1994, which is January 28, 1995 (the "Expiration Date"). The Insurance Commissioner did not, on or before the Expiration Date: (i) order a reconsideration of the Decision, (ii) grant a stay for the purpose of filing an application for reconsideration, or (iii) grant a stay for the purpose of considering a petition for reconsideration filed on or before the Expiration Date.

1 28. The Insurance Commissioner lacked the power to order  
2 reconsideration of the Decision after the Expiration Date and  
3 his Reconsideration Order is therefore void ab initio, in excess  
4 of the Insurance Commissioner's jurisdiction, and of no legal  
5 effect whatsoever.

6 29. The Insurance Commissioner has a clear, present and  
7 ministerial duty to act within his lawful authority and not to  
8 exceed his jurisdiction. The Insurance Commissioner does not  
9 have discretion to exceed his lawful authority or to act in  
10 excess of his jurisdiction.

11 30. At all times relevant hereto, the Insurance  
12 Commissioner has had the ability to perform his duty, by not  
13 proceeding with a reconsideration of the Decision.

14 31. Notwithstanding such ability, the Insurance  
15 Commissioner has failed to perform his duty in that the  
16 Insurance Commissioner is proceeding with a reconsideration of  
17 the Decision.

18 32. Unless extraordinary relief is granted by this Court,  
19 the Insurance Commissioner will continue to fail to perform his  
20 duty by proceeding with a reconsideration of the Decision.

21 33. Petitioners are beneficially interested in a writ  
22 because they each claim an interest in the compensation awarded  
23 by the Decision.

24 34. Petitioner Voter Revolt is also beneficially  
25 interested in a writ because it was granted party status as an  
26 intervenor in Department of Insurance File No. REB-5173 and



1 related judicial proceedings, and because the Decision awards  
2 advocacy and witness fees to Voter Revolt.

3 35. Petitioners Hall & Associates and Phillips & Cohen are  
4 also beneficially interested in a writ because, pursuant to  
5 retainer agreements, they are assignees of Voter Revolt with  
6 respect to compensation awarded by the Decision.

7 36. Petitioners Harvey Rosenfield and Karl Manheim are  
8 also beneficially interested in a writ because they are  
9 taxpayers, and reconsideration of the Decision will result in an  
10 unlawful expenditure and waste of public funds on such  
11 reconsideration. Petitioners Rosenfield and Manheim are also  
12 beneficially interested in a writ because, where the question is  
13 one of public duty, each citizen has an interest in seeing that  
14 the law is followed.

15 37. Petitioners have no further administrative remedies to  
16 prevent the Insurance Commissioner from proceeding with a  
17 reconsideration of the Decision, and Petitioners have no appeal  
18 or plain, speedy and adequate remedy at law.

19 38. If the Insurance Commissioner is not prevented by this  
20 Court from proceeding with a reconsideration of the Decision,  
21 Petitioners will be irreparably harmed in that payment of  
22 compensation awarded by the Decision will not be made in  
23 accordance with the Decision, in that public funds will be  
24 unlawfully expended and wasted on such reconsideration, and in  
25 that Petitioners will be required to participate in an unlawful  
26 proceeding. Damages in a suit at law do not constitute

1 sufficient relief where a public official must be compelled to  
2 obey the law.

3 34. Unless this Court enters a temporary stay order  
4 enjoining the Insurance Commissioner from proceeding with a  
5 reconsideration of the Decision, pending the outcome of this  
6 proceeding, the Insurance Commissioner will proceed with such  
7 reconsideration, and Petitioners will be irreparably harmed in  
8 that public funds will be unlawfully expended and wasted on such  
9 reconsideration and in that Petitioners will required to  
10 participate in an unlawful proceeding. Damages in a suit at law  
11 do not constitute sufficient relief where a public official must  
12 be compelled to obey the law.

13 PRAYER

14 WHEREFORE, Petitioners pray that the Court:

- 15 1. Issue a temporary stay order, enjoining  
16 Respondent from proceeding with a reconsideration of the  
17 Decision until this Petition is heard and decided;
- 18 2. Issue an alternative writ directing Respondent to  
19 refrain from proceeding with a reconsideration of the Decision,  
20 to vacate his Reconsideration Order, and to refrain from taking  
21 any action inconsistent with the Decision having become final  
22 and binding on Respondent, or to show cause at a date and time  
23 set by the Court why he should not be so directed;
- 24 3. Upon hearing the alternative writ, issue a  
25 peremptory writ granting the relief set forth above and also  
26 declaring that the Reconsideration Order is void; and

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4. Grant Petitioners their costs, attorney's fees  
and such other and further relief as is just and proper.

Dated: March 9, 1995

Fred H. Altshuler  
Lowell Finley  
Scott A. Kronland  
ALTSHULER, BERZON, NUSSBAUM,  
BERZON & RUBIN

By: Scott Kronland  
Scott A. Kronland

Attorneys For Petitioners  
Hall & Associates, Phillips &  
Cohen, Harvey Rosenfield, and Karl  
Manheim

Carlyle W. Hall, Jr.  
Edward P. Howard  
HALL & ASSOCIATES

By: Edward Howard / SAK  
Edward P. Howard

Attorneys for Petitioner  
Voter Revolt

VERIFICATION

I, HARVEY ROSENFELD, hereby declare as follows:

I am one of the Petitioners herein. I have read the foregoing Petition and know the contents thereof. The statements therein are true and correct of my own personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on this 7<sup>th</sup> day of March 1995 at Los Angeles, California.

  
\_\_\_\_\_  
HARVEY ROSENFELD