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CALIFORNIA ENACTS PREJUDGMENT INTEREST:
A CASE STUDY OF LEGISLATIVE ACTION

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PREFACE

This Note describes the passage of prejudgment interest legislation in California. It complements other analytic work on prejudgment interest by The Institute for Civil Justice. (See Stephen J. Carroll, *Jury Awards and Prejudgment Interest in Tort Cases*, N-1994-ICJ, May 1983.) It should be of interest to practitioners and analysts concerned with the politics of tort reform.

SUMMARY

Most political "insiders" were surprised when legislation proposed by the California Trial Lawyers Association (CTLA) requiring that prejudgment interest be paid on personal injury awards actually passed the California legislature over the opposition of tort defense interests. The CTLA had in the past been able to stop previous defense-oriented tort reform proposals, but this was the first time in recent memory that they had successfully promoted legislation.

As enacted, SB 203 specifically permits a plaintiff in a personal injury action to claim 10 percent prejudgment interest if his offer to compromise is not accepted and the plaintiff receives a more favorable judgment at trial. It also requires 10 percent interest on unsatisfied judgments.

During the 1981-82 biennial session, SB 203 pitted the CTLA against more than 30 interest groups led by the Association of California Insurance Companies and the California Medical Association. The CTLA claimed that defendants were unjustly receiving "an interest-free loan" on money actually owed to victims from as early as the date of injury. They argued that this created an incentive for defendants to delay payment and clogged the courts with cases that might otherwise be expeditiously resolved. Prejudgment interest, they said, would not only be equitable but it would also reduce court costs, help litigants by speedier resolution of their claims, and benefit the public generally, since these costs would not have to be borne by taxpayers and consumers.

Tort defense interests countered by arguing that prejudgment interest was nothing more than a "tax on losing." They argued that money was not owed until the amount was determined at trial, that such interest would permit "double recovery," and that it would boost insurance costs and consumer prices.

As initially introduced, SB 203 was a judgment interest bill designed to implement a Constitutional Amendment approved in 1978 by California voters permitting an increase in interest paid on unsatisfied judgments from 7 to 10 percent. However, after it passed the Senate it

was significantly amended in the Assembly Judiciary Committee to provide for 10 percent prejudgment interest calculated from the date the defendant was served. Negotiations pressed by Assembly Speaker Willie Brown resulted in significant amendments which tied the calculation of prejudgment interest to the date the plaintiff submits an offer to compromise. Interest is to be paid only if the defendant fails to accept the offer within 30 days and the plaintiff obtains a more favorable judgment.

After SB 203 was favorably reported out of the Assembly Judiciary Committee, it was the subject of a major battle on the floor of the Assembly over tort-defense-sponsored amendments designed to weaken its provisions. With the Speaker's support, the bill passed the Assembly with a few votes to spare.

When SB 203 was returned to the Senate for a vote on the bill as amended in the Assembly, its fate was uncertain. A similar CTLA-sponsored bill (SB 1176) did not have enough Senate support to be called up for a vote and many anticipated that SB 203 would meet the same fate. The bill was reported directly to the Senate floor with the understanding it would not be voted on until after the fall recess.

During the recess period the CTLA worked vigorously to mobilize support for SB 203. Opponents remained supremely confident the bill would remain bottled up in the Senate and even publicly predicted it would not get more than 15 votes (21 are required for passage in the 40-member Senate). On April 25, 1982 it got 18 favorable votes on the first roll call, and passed shortly thereafter with the help of Senate President Pro Tem David Roberti (D-Hollywood) and Republican leader William Campbell (R-City of Industry).

How was it that the trial lawyers were able to prevail in the legislature over opposing tort defense interests? They had the support of powerful legislative leaders who were able to help persuade enough of their colleagues to vote for SB 203. They were significant contributors to political campaigns of key legislators, which assured them of at least a fair hearing on the merits of their case. They effectively mobilized their constituency (i.e., members of the plaintiffs bar) many of whom proved to be effective spokesmen for the bill, especially during the recess period before the 1982 session convened. They had the

support of Governor Brown, important judges, and a consumer group--all of whom were helpful both in securing legislative support and helping them to make the case that SB 203 had a valid social purpose and was not just a measure to enrich the plaintiffs bar. This case study illustrates how a narrowly focused interest group which targeted a specific legislative objective was able to achieve victory over a broad-based coalition of opponents.

The CTLA was aided by problems and errors of the opposition. The tort defense community were never truly unified in their opposition to SB 203. They failed to develop an agreed-upon bargaining strategy. They failed to accurately assess and counteract the growing strength of the CTLA. They were caught "flatfooted" when prejudgment interest legislation (SB 1176) cleared the Senate Judiciary Committee, thereby paving the way for easier passage of SB 203. The failure of opponents to agree to a negotiated settlement of the issue probably accounted for passage of the bill in a form most distasteful to them.

The primary social purpose of SB 203 is to provide just compensation for injured victims and reduce court congestion and delay. Whether these objectives will be achieved is a matter of great uncertainty. As the bill moved through the legislature, there was much rhetoric but little careful analysis of the nature of the problems the legislation was designed to cure and little systematic review of its likely effects.

ACKNOWLEDGMENTS

I thank those involved in the legislative struggle over prejudgment interest in California who participated in confidential interviews and gave me access to their files. This study could not have been undertaken without their cooperation.

Rand colleagues Deborah Hensler and Mark Peterson reviewed an earlier draft of this Note. I have incorporated many of their suggestions in the final version.

John Gardenal, former President of the California Trial Lawyers Association, and Clayton Jackson, chief lobbyist for the Association of California Insurance Companies, also reviewed an earlier draft and provided helpful comments.

CONTENTS

PREFACE iii

SUMMARY v

ACKNOWLEDGMENTS ix

Section
I. INTRODUCTION 1
Background 1
Study Objectives and Method 3

II. THE LEGISLATIVE STRUGGLE 5
The Issues 5
Legislative Action 12

III. THE ROLE OF POLITICS AND ANALYSIS 19
Political Dynamics 19
The Role of Analysis 25

APPENDIX: CHRONOLOGY OF EVENTS 29

I. INTRODUCTION

BACKGROUND

This Note presents a case study of one of the most controversial actions of the 1981-82 California legislative sessions: passage of mandatory prejudgment interest on personal injury awards (SB 203). California thus became one of at least 20 states that since 1980 have enacted some form of prejudgment interest statute applying to tort actions.[1] These laws entitle successful plaintiffs to interest, which accrues prior to judgment and in some states from as early as the date of injury.

Proponents of prejudgment interest argue equity demands that plaintiffs be compensated for defendants' use of money legitimately owed to the victim before judgment. They also contend that defendants' profitable free use of these funds for investment creates an incentive to delay resolution of tort cases, which ultimately leads to congestion with its attendant costs to the courts, litigants, and the public.

Opponents argue that prejudgment interest unjustly inflates awards because the specific amount of money owed is not determined until judgment, and assert that it would create a "double recovery" in cases where juries already consider the time the injury occurred. Moreover, they contend that prejudgment interest will not reduce court congestion because legal and other defense costs are increased by delay and therefore defendants have no incentive to prolong case settlement.

Because of recent legislation, 26 states now allow prejudgment interest either by statute or court rule. By 1982, 19 states had passed statutes requiring some form of prejudgment interest in tort claims; 6 others permitted it upon discretion of the court. New Jersey and Pennsylvania authorized it by court rule.[2] The federal courts have

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[1]Stephen J. Carroll, *Jury Awards and Prejudgment Interest in Tort Cases*, The Rand Corporation, N-1994-ICJ, May 1981. Appendix A of that Note summarizes prejudgment interest statutes by feature.

[2]Ibid.

recognized it in some recent tort and admiralty cases.[3] Many states are now considering legislative proposals permitting prejudgment interest. Bills on this subject were introduced in 20 states during the first three months of 1983.

The President of the California Trial Lawyers Association (CTLA) described the legislative struggle during the 1981-82 session over applying prejudgment interest to personal injury judgments as an "epic battle" and its passage as the most significant legislative achievement by trial lawyers in many years.

The author of the legislation, State Senator Omer Rains, called it "one of the most important bills affecting the court process enacted in a decade" and "one of the most hard-fought battles we will see on the Senate floor for the entire year. . . Everybody who ever thought they might be sued were lined up against us."

The legislation pitted the CTLA, representing the plaintiffs bar, against property and casualty insurers and health professionals, who were supported by manufacturers, agribusiness, railroads and other business organizations. Insurance industry spokesmen labeled defeat of the bill to be one of their highest priorities; its passage was a major defeat.

The trial lawyers' victory represented their "coming of age" as a proactive force in the legislature. In the past they had relied primarily on the courts to broaden civil liability rules. In the legislature they generally followed a defensive strategy, successfully blocking no-fault insurance and most significant tort reforms sought by defense interests. They suffered rare setbacks in 1975 with the enactment of medical malpractice reform, and in 1978 with passage of the dramshop repealer.[4] Gaining passage of prejudgment interest showed their

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[3]The U.S. District Court in Chicago allowed prejudgment interest in lawsuits stemming from a 1979 DC-10 air crash. The ruling was hailed by plaintiffs as "a strong blow in favor of prejudgment interest generally." *American Bar Association Journal*, February 1980.

[4]The dramshop repealer reversed court rulings which held the host or owner of an establishment responsible for serving alcohol to an obviously intoxicated person who then caused damage to persons or property.

ability to successfully promote legislation.

STUDY OBJECTIVES AND METHOD

The purpose of this study is to shed some light on the politics of tort reform in California. It is intended to improve our understanding of the factors that may generally affect legislative outcomes in states where the plaintiffs bar and tort defense interests are at loggerheads. It also examines the information that was available to decisionmakers and the extent to which objective analysis was used during the legislative debate on this important issue. Studies like this should help analysts to better understand their role in the political process and aid policymakers to consider ways they might improve the outcome of their deliberations by better use of analysis.

How was it that the trial lawyers were able to prevail in the legislature over powerful opposing interests? Political theory would suggest that the usual result of a contest over vital interests between opposing powerful groups would be stalemate or negotiated compromise. However, this case study will illustrate how a narrowly focused interest group which targeted a specific single objective was able to skillfully marshal political resources to achieve victory over a broad-based group of opponents.

Much of the material upon which this paper is based was obtained from confidential interviews with some of the major participants in the legislative debate over prejudgment interest. We interviewed legislators and legislative staff, key aides to Governor Brown, and members of important groups on both sides of the issue. We also reviewed the legislative bill files which describe the positions of those who took part in the legislative consideration of this important measure. In addition, we read newspaper accounts describing legislative activity, and appropriate legal and political science literature. Our review of the record indicates that the debate on prejudgment interest produced little objective information that would have enabled the legislature to assess the impact of the bill on the outcome or pace of litigation.

Section II below reviews the major contested issues and how they were resolved in the legislature. Section III analyzes the political dynamics that help to explain passage of this important bill, considers the role of analysis in the debate, and finally draws some conclusions and generalizations from this exercise.

II. THE LEGISLATIVE STRUGGLE

Before SB 203, California law provided for 7 per cent interest on unsatisfied judgments and for prejudgment interest in contract and tort cases only when the precise amount owed could be determined. Prejudgment interest could be applied to property damages, medical expenses and loss of earnings. It could not be applied to general damages like compensation for pain and suffering and emotional distress. During the 1981-82 session the legislature considered proposals to raise judgment interest and also, for the first time, to impose prejudgment interest on personal injury awards. Raising judgment interest was relatively noncontroversial. However, there was heated debate about the desirability, specific application, and impact of prejudgment interest.

The main proponent of legislation to raise judgment interest and mandate prejudgment interest was the CTLA, representing the plaintiffs bar. The primary opposition came from the Association of California Insurance Companies (ACIC) and the California Medical Association (CMA), representing tort defense interests.[1]

We discuss below the issues considered during the legislative debate on SB 203, how the bill proceeded through the legislature, and then summarize its main provisions.

THE ISSUES

Judgment Interest

The California Law Revision Commission in 1980 recommended raising the judgment interest rate from 7 to 10 percent.[2] A Constitutional amendment previously approved by the voters in 1978 permitted the legislature to raise the rate to 10 percent or set a variable rate.[3] A

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[1]Opponents were led by a lobbying firm representing the Association of California Insurance Companies, the Hotel and Motel Association, the California Manufacturers Association, and the Community Hospitals Task Force. In addition to CMA, lobbyists for the Association for California Tort Reform and Industrial Indemnity Company also spearheaded the opposition.

[2]California Law Revision Commission: *Recommendations Relating to Interest Rate on Judgments*, January 1980.

[3]California Constitution, Art. 15, Sec. 1. The Commission studies

number of previous CTLA-sponsored bills were introduced to increase the rate during the 1979-80 biennial session but failed to pass. The Commission contended that the differential between the 7 percent statutory rate and market interest rates of 12 percent or higher created too great an incentive to delay payment.

While insurance interests opposed a judgment interest increase in 1981, saying it would raise costs and therefore premiums, they recognized that legislation implementing the Constitutional amendment would pass during the 1981-82 session. The only contested issue was whether there should be a flat or variable interest rate. The California Law Revision Commission favored a flat rate of 10 percent, making explicit legislative authority to lower it. According to the Commission, the flat rate was simple to compute and would be easily understood.

The ACIC favored a variable rate tied to the rediscount rate that could fluctuate between 7 and 10 percent rather than one that would have to be adjusted by the Legislature--a step that might not come easily if opposed by CTLA. The Commission, supported by Court Clerks, contended that a variable rate was too complex and confusing to administer. At one point a variable rate was amended into SB 203 as a result of a compromise between insurance interests and the CTLA, but this was later eliminated, and as enacted, the bill required a 10 percent flat rate.

Prejudgment Interest[4]

"Simple Justice". The CTLA argued that prejudgment interest was needed to correct a legal imbalance weighted toward the defense. In their view, it was inequitable for a defendant to receive what they called "an interest-free loan" of money rightfully owed to a victim from the date of injury. They maintained the victim should receive at least part of the benefits resulting from the use of money owed to him.

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topics referred to it by the legislature on complex and sometimes controversial issues and drafts recommended legislation.

[4]This discussion has drawn from the memorandum on SB 203 prepared by Governor Brown's Legal Affairs Office, dated April 5, 1982, and from documents in various Member and Committee files stating the position of interest groups on the legislation.

Proponents also argued that the defendant, able to retain use of the victim's money and invest it at high prevailing interest rates, faced an irresistible incentive to delay settlement of valid claims. At the time the bill was considered, these rates varied from 12 to 20 percent. In cases taking several years to come to trial, the defendant could earn interest equalling the amount of the award. Charging prejudgment interest would reduce this incentive to delay and encourage defendants to accept reasonable settlement offers in a timely manner. They said insurers regularly estimate the value of claims, set up a reserve for each of them, and know how to calculate the interest.

In general, tort defense interests believed prejudgment interest was a major step in the wrong direction. According to the ACIC, "Rather than seeking to inflate the already oppressively expensive tort liability system, the Legislature would be better served by finding ways to reduce these costs."[5]

Opponents argued that awarding prejudgment interest was inappropriate in personal injury cases because the uncertainty and fluctuation of damage awards made it impossible to reasonably determine in advance any specific amount of interest that might be owed and that this could lead to "double recovery." They argued that this was the prevailing view held in most jurisdictions and a position upheld by the California courts.[6]

According to opponents, a jury determines any amount owed, taking into account all of the circumstances and uncertainties of the case. No money is owed until the time of judgment and allowing "so-called" prejudgment interest on inherently unpredictable awards was nothing more than a "penalty" or "a tax on losing." The potential imposition of this tax would act as a "settlement hammer" encouraging the acceptance of

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[5]Letter of Opposition to SB 1176, April 24, 1981.

[6]Opponents cited the California Supreme Court, which held that "retroactive interest on such damages adds uncertain conjecture to speculation" and that allowing interest in light of the jury's ability to consider the duration of the alleged suffering in awarding compensation "may in a given case create a double recovery" (*Greater Westchester Homeowners Association v. City of Los Angeles*, 1979 26 Cal. 3d 86, 103).

settlement awards that were either too high or even nonmeritorious. It also might have a chilling effect on the willingness of a defendant to litigate a bona fide disagreement about damages or liability. Moreover, some litigants might be unfairly penalized for trying a case in a congested court where delay was in no way the defendant's fault.

Insurers also maintained that they did not profit from delaying settlements because defense costs were more significant to them than investment income on cautiously invested reserves. They quoted figures from A. M. Best Company which indicated that insurers' return on investments averages only 6 or 7 percent a year because a large portion of insurance investments were tied up for years in low-yield, long-term government and corporate bonds. The CTLA pointed out that the figures cited included old investments and tax-free returns, and that new investments would bring a return normally far greater than the 10 percent prejudgment interest provided by SB 203.

Too "One-Sided". There were several specific provisions of the proposed law that opponents contended would unfairly tilt the scale of justice toward the plaintiff. First was its imposition of a prejudgment interest sanction on the defendant only and not the plaintiff for failure to accept a reasonable settlement offer. Opponents unsuccessfully fought for a "reciprocity amendment" imposing a like interest penalty on plaintiffs. Under previous law the court could impose a sanction (i.e., costs excluding attorney's fees) on either *plaintiff or defendant* for failure to accept a reasonable settlement offer (CCP 998); defense interests argued "what's sauce for the goose should be sauce for the gander."

A second feature objectionable to opponents was giving the defendant only 30 days to accept a plaintiff's compromise offer, which conceivably could be rendered any time after a complaint was served. It was argued that 30 days would not allow the defendant enough time to properly complete discovery and evaluate a case, especially when the plaintiff did not have to itemize a settlement demand or disclose expert witness testimony. They said potential imposition of interest for failure to accept an offer within this short time would give unfair advantage to plaintiffs, particularly in complex malpractice, product liability, and multiparty cases or in cases where the defendant had no

prior notice of a claim. One insurer said so-called "blind" actions were 25 percent of their cases and this number was increasing.

Opponents also objected to triggering interest "too early" in the litigation process. Amendments to SB 203 moved the interest trigger back from when the complaint was filed to the date of the plaintiff's offer, if exceeded by the judgment. Their attempts to insert a later trigger were rejected, as were efforts to stop interest from accumulating during continuances requested by the plaintiff and to permit the court to waive interest when the defendant made reasonable efforts to settle.

The proponents successfully countered that the bill was designed to redress the injustice of inappropriate use of money owed the plaintiff and to remove the defendant's incentive to delay. They argued that reciprocity was not appropriate and the proposed amendments would unnecessarily "string out" the settlement process.

Impact on the Courts

A major contention of proponents was that the bill would reduce court congestion by stimulating earlier settlement of personal injury suits. Opponents argued that it would promote more litigation and more congestion because plaintiffs, to gain prejudgment interest, would be encouraged to file cases that probably would have been settled without attorneys. They said this would in fact be stimulated because a plaintiff's attorney might be subject to a malpractice charge for failure to maximize return to his client.

Proponents did not produce any evidence of favorable impact on court congestion in states where prejudgment interest had been in effect nor did they produce any documentation estimating court process effects. One insurance representative alleged that attorneys were quick to file lawsuits in Colorado, a state with prejudgment interest and no-fault insurance. Another auto insurer estimated that its litigation caseload would increase from 100,000 to 275,000.[7] However, no detailed analysis of effects on insurance company litigation workload was submitted to the various committees considering this legislation.

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[7]They estimate that between 85 and 90 percent of auto personal injury cases were settled without litigation.

Opponents also argued that applying prejudgment interest to future damages would result in overpayment because compensation for future loss is paid at the time of judgment. In addition, they contended that because prejudgment interest was a form of compensation to an injured victim, it was philosophically inconsistent to apply it to punitive damages--a jury's determination of a penalty to the defendant.

The proposed amendment to prevent plaintiff attorneys from receiving prejudgment interest was the opponents' way of highlighting their view that the proposal was "special interest legislation in its purest form," designed to unjustly enrich contingent-fee plaintiff attorneys, who would receive 30 to 50 percent of awards.

In opposition to these amendments, proponents successfully argued that the victim was just as entitled to interest on general damages as for other injuries, and that future damages were owed from the point of injury and therefore should appropriately be subject to interest prior to judgment. Proponents also defended interest on punitive damages as added leverage to encourage early settlements and contended that fees were agreed to by a client and his attorney, and should not be excluded from interest.

Opponents argued that SB 203 could not conceivably have a major impact on overall court congestion because personal injury cases comprise only 11 percent of court workload, according to State Judicial Council statistics. They argued congestion was primarily due to increased filings; that 93.5 percent of personal injury cases were settled and that cases came to trial primarily because of excessive plaintiff demands or unclear liability. They suggested that the bill detracted from consideration of other more promising programs which, they contended, would probably have a more significant effect on court backlog and delay.[8]

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[8]The ACIC referred favorably to a proposed mandatory settlement conference program under consideration by the State Bar, under which a party obtaining a less favorable judgment than the final offer made at the settlement conference would be assessed both court costs, including expert witness fees, and attorneys' fees. They also suggested that the following approaches to relieving court congestion were also being overlooked: mandatory arbitration of large cases; early identification and management of complex cases; improvement in work habits of judges;

Assertions made by both sides about effects of prejudgment interest on the court process were, for the most part, speculation. In the face of uncertainty, facts were marshalled to support preconceived positions.

Impact on Insurance Costs

According to opponents, SB 203 would increase insurance costs and premiums, primarily because of added legal defense requirements but also because prejudgment interest would hike the settlement value of personal injury cases as well as the cost of judgments. As a result, they said it would inflate consumer prices for health care and manufactured goods. The Association for California Tort Reform called the bill an "economic disaster" because it would require California business to pay more to insurers or to inactive reserve accounts and discourage industrial innovation.

One auto carrier estimated legal defense costs resulting from added lawsuits would rise $27.5 million, requiring an $18 per policy premium increase. The cost impact on auto insurance costs was estimated at $300 million, with the average annual cost of insuring two family cars going up $45. Manufacturers' spokesmen said prejudgment interest would hike product liability judgments by $40,000 and insurance premiums 20 percent. Medical and hospital interests conservatively estimated a $30 million first-year impact and an ongoing medical malpractice premium increase of 17.5 percent. These estimates were based on various undocumented assumptions.

Proponents contended that incentives to early settlement provided by the bill would save, not increase, defense costs and that interest costs would be minimal and charged only at trial if a settlement offer is rejected and the defendant loses the case. Any added return to the plaintiff was equitable compensation for the use of his money.

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more use of telephone conferences; state court use of power exercised by federal judges to move cases.

LEGISLATIVE ACTION[9]

Several judgment and prejudgment interest bills were introduced during the 1981-82 biennial session of the California Legislature. The key measures were SB 203 and SB 1176. Both were sponsored by the CTLA with support from other organizations. We describe below the key steps in the legislative process that led to enactment of SB 203.

As initially introduced by Senator Omer Rains in 1981, SB 203 was a judgment interest bill. Rains, a Democrat from Ventura County and newly appointed Chairman of the Senate Judiciary Committee, had authored bills on behalf of the CTLA to increase the interest on judgments in 1978 (SB 101) and again in 1980 (SB 1542). Both unsuccessful attempts were opposed by the insurance industry and the California Medical Association.[10]

SB 203 was sponsored by the CTLA and the California Law Revision Commission.[11] A similar post-judgment interest bill was introduced in the Assembly.[12] Both measures passed their house of origin by a large margin early in the session. As passed by the Senate, SB 203 was supported by the California Judges Association, the California Bankers

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[9]See the Appendix for a chronology of key events in the legislative history of prejudgment interest.

[10]In 1980 a judgment interest bill (SB 1394) authored by Senator Alan Robbins (D-Los Angeles) passed the legislature, but was vetoed by Governor Brown. This bill was sponsored by the California Association of Collectors and supported by the California Chamber of Commerce and the Alliance of American Insurers. The legislation was opposed by the CTLA and the State Bar because it would have created a 10 percent rate applied to final judgment and a 7 percent rate to appealed judgments. The opponents argued that the differential rate would encourage frivolous appeals and would most likely apply to small and uninsured or undefended actions and not affect large insurance related cases. The Governor in his veto message called upon the legislature to increase the interest rate on judgments "without the restrictions imposed by this bill."

[11]*California Law Revision Commission: Recommendation Relating to Interest Rate on Judgment*, January 1980.

[12]AB 188 by Assemblyman Stan Statham provided for 3 percent annual interest plus the prevailing federal rediscount rate set during the preceding month. It would not apply to sister state judgments as did SB 203.

Association, the CTLA, the Association of Municipal Court Clerks, and the State Bar. It was opposed by insurance interests. Raising the interest rate from 7 to 10 percent had by 1981 gained broad legislative support. However, permitting 10 percent prejudgment interest in personal injury actions was another matter.

Legislation requiring prejudgment interest in personal injury actions (SB 1176) was introduced in 1981 by Senator Nicholas Petris (D-Oakland), also on behalf of the CTLA. The Petris legislation required the calculation of interest from the date the lawsuit was filed.[13] Veteran Senator Petris was able to garner the votes for Senate Judiciary Commmittee approval after amending SB 1176 to start interest running one year after filing. The amendment was in response to objections that the defendant should have enough time to evaluate and perhaps settle the case before any interest accrued.

Our interviewees and press reports suggested that tort defense lobbyists did not take the Petris bill (SB 1176) seriously early enough to develop and effectively convey their opposition arguments before its Senate Judiciary Committee hearing. They were caught "flatfooted" when it cleared the Senate Judiciary Committee (6 to 1) with votes to spare.[14] As opposition to the bill from tort defense interests mounted, it was amended on the floor of the Senate to specifically exempt public entities from application of prejudgment interest. The proponents feared that opposition from state agencies and local governments added to that of powerful private interests would kill the measure. A tactical reason for this exemption was to avoid referral to the Senate Finance Committee, which typically reviews bills which mandate added government costs. Consideration by such a potentially unfavorable committee would also risk defeat.

If the bill (SB 1176) was to be enacted during 1981, legislative deadlines required that it pass the Senate by June 19, 1981. The proponents faced the choice of bringing the bill up for a Senate floor

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[13]A previous attempt by Assemblyman Willie Brown (D-San Francisco) to enact prejudgment interest at the rate of 7 percent (AB 770 in 1979) failed to pass the Assembly Judiciary Committee.

[14]*Los Angeles Daily Journal*, June 8, 1981; *Sacramento Bee*, June 4, 1981.

vote by that date, making some additional amendments designed to secure the necessary 21 votes required for passage, or to delay action, hoping to garner the necessary support during 1982, the second year of the biennial session.

As the bill (SB 1176) awaited floor action it received the endorsement of the California Judges Association and favorable editorials from a major Los Angeles television station (KNBC) and the *Oakland Tribune*. But after what then CTLA president John Gardenal referred to as a "ferocious attack" by industry opponents, it became clear there was insufficient Senate support for the measure and it was not even taken up for a vote.[15] An additional reason suggested by a CTLA leader was that some proponents believed that starting interest a year after filing was too long to wait.[16] SB 1176 became a two-year bill and compromise negotiations between opposition interests took place during the succeeding summer months.

Lobbyists for tort defense interests were chagrined when prejudgment interest provisions were amended into Senator Rains' judgment interest bill (SB 203) only three days before its scheduled Assembly Judiciary Committee hearing. The amendments required 10

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[15]Following is the list of organizations listed by the Senate Democratic Caucus on June 10, 1981 as opposed to SB 1176: Alliance of American Insurers; Association of California Insurance Companies; American Insurance Assn.; Association for California Tort Reform; Bethlehem Steel Corporation; California Ambulance Assn.; California Association of Sheet Metal and Air Conditioning Contractors; California Farm Bureau Federation; California Hotel and Motel Assn.; California Independent Telephone Assn.; California Manufacturers Assn.; California Medical Assn.; California Railroad Assn.; California Restaurant Assn.; California State Automobile Assn.; Community Hospitals Task Force; Continental Telephone Company of California; Cooperative of American Physicians; Doctors Company; Farmers Group, Inc.; Industrial Indemnity; League of California Cities; Mechanical Contractors Legislative Council; Mutual Protection Trust; Northwestern National Insurance Company of Milwaukee; Orange County; Pacific Telephone and Telegraph Company; State Farm Insurance Companies; Los Angeles County Superintendent of Schools. The caucus memorandum noted that the California Supervisors Assn. had removed their opposition as a result of amendments designed to make it clear that public entities would not be subject to prejudgment interest even when a public entity and a private party were joint tort-feasors. It also noted that other local agencies might no longer oppose the bill as amended (e.g., The League of Cities).

[16]See Robert Steinberg, *Checkmate*, CTLA, June 1982.

percent prejudgment interest to be calculated from the date the defendant was served, permitted the Legislature to adjust the rate between 7 and 10 percent, and exempted public entities. Opponents criticized CTLA for breaking a "commitment" since they had previously negotiated a compromise to withdraw their opposition to postjudgment interest in return for an amendment providing for a variable interest rate. The new amendments were made so close to the hearing that the opponents said they had little time to organize their opposition to the bill.

During the next few days there were intensive negotiations between CTLA and tort defense interests, pressed by Assembly Speaker Willie Brown and by key members of the Judiciary Committee, which resulted in adoption of several significant amendments that substantially changed the terms and conditions under which prejudgment interest would be applied. The most important change required prejudgment interest only if the plaintiff made an offer to compromise prior to trial that was not accepted by the defendant within 30 days, and the plaintiff later obtained a more favorable judgment. A subsequent amendment required interest to be calculated from the date of the first offer to compromise rather than the date of service of process. Although they were significant, these amendments did not satisfy opponents and they remained strongly opposed to the bill.

A number of other amendments were considered but when negotiations broke down, the legislation was reported out of the Assembly Judiciary Committee with Assembly Speaker Brown's help, in the face of opposition by insurance, medical, and industry groups. This set the stage for a major two-day battle on the floor of the Assembly. The ACIC, supported by other tort defense interests, proposed major amendments, all of which were defeated by close margins. The amendments would have prohibited plaintiffs' attorneys from gaining an increased fee due to the additional interest, and banned payment of prejudgment interest for punitive damages, general damages, future medical payments, or future wage loss. Assembly Speaker Brown was active in lobbying members against the amendments and for final passage of the bill.

The floor debate was heated. Press reports referred to "hours of haggling" and "arm-twisting and cajoling" by Speaker Brown and his lieutenants to gain the votes for passage, and an "attempted small filibuster" by opponents, gaveled down by the Speaker. The Speaker, in what the press referred to as as rare appearance to speak on the Assembly floor, argued that "there is a clear, economic advantage to holding on to the money" and withholding payments in often drawn-out cases was an "outrageous, terrible injustice." Opposing legislators claimed SB 203 would result in increased insurance premiums. Assemblyman John Thurman labeled it "the lawyers' retirement bill."[17] Three Republicans, all members of the Assembly Judiciary Committee, joined 38 Democrats to provide the bare 41-vote majority necessary for passage in the 80-member Assembly (there were 36 "no" votes). However, the bill was not a partisan issue; a number of Democrats joined Republicans in opposition.[18]

After SB 203 passed the Assembly it was returned to the Senate for concurrence in Assembly amendments. Because SB 203 was substantially amended in the Assembly, the Senate Rules Committee initially referred the bill to the Senate Judiciary Committee. However, on motion of Senate President Pro Tem David Roberti (D-Hollywood) it was sent directly to the Senate floor because a similar bill (SB 1174 by Senator Petris) previously passed out of the Judiciary Committee and it was determined there were enough committee votes to move SB 203 to the Senate floor. According to interviewees, upon referring the bill to the floor Senator Roberti made a commitment to opponents that the bill would not be taken up for the remainder of 1981. The Legislature recessed in October with uncertainty about whether SB 203 would pass the Senate when the Legislature reconvened in January. During the recess there were

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[17]See *Los Angeles Times*, *Sacramento Union*, and *Santa Monica Outlook*, September 11, 1981.

[18]According to one lobbyist, the opponents did not actually seek adoption of these amendments because such action might have helped its final passage. He cited "a major canon of political activity (which is), don't improve a bad bill". Rather, he said their purpose was to "educate" members on the issues since *at this time* they believed they had sufficient strength in the Senate to "kill" the bill.

negotiations between the CTLA and opposing tort defense interests. It was also during this period that the CTLA mounted a major campaign to mobilize support for SB 203. The contesting parties failed to reach a negotiated settlement, presaging a major Senate floor fight during the 1982 session.

When Senator Rains set the bill for a floor vote on March 25, 1982, it was supported by the CTLA, the California Judges Association, and the Consumer Federation of California. Arrayed in opposition were insurance, medical, hospital, and business interests. Last-minute negotiations failed when tort defense interests said they would not remove their opposition even if the author accepted further compromise amendments.

Before the final vote on SB 203, opposition lobbyists were supremely confident the bill would not pass. Some went so far as to publicly predict it would get no more than 15 favorable votes (21 were required for passage).[19]

Opponents were shocked when SB 203 received 18 favorable votes on the first roll-call vote. After several hours of debate and maneuvering, the bill was approved by the 40-member Senate 21 to 12. The vote constituted a major victory for the CTLA over more than 30 industry groups opposed to the bill. Senate President Pro Tem David Roberti "worked the floor" to help persuade several wavering moderate Senate Democrats to vote for it. He was joined by Republican Minority Leader William Campbell, who in the past had supported insurance interests on similar matters and had been counted as a sure "no" vote by opponents. Campbell said he was convinced that delay was unfair to plaintiffs and that the bill would help spur earlier settlements. The

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[19]Opponents did not believe the bill would pass without some amendments, if only because it contained a number of technical deficiencies. A major one was an effective date which preceded the time of its passage. Another was its conflict with provisions of the Medical Malpractice Reform Act permitting periodic payments. It gave no guidance to the court on its application to pending cases and employed vague undefined terms. While the proponents recognized there were technical deficiencies, they believed the risks of sending the bill to a conference committee from the floor of the Senate to make amendments were unacceptable. They held that any technical problems would be appropriately resolved later in the courts or by subsequent "cleanup" legislation.

final Senate vote cut across party lines, with 16 of 19 Democrats and 5 of 14 Republicans casting favorable votes.

Even though Governor Brown was expected to sign the bill, there was a major last-minute mail and telegram campaign by opponents urging a veto. Some implored the Governor to support a "cleanup" bill to correct some of the alleged deficiencies in the legislation. In fact, the Governor's Legal Affairs Secretary recommended that he sign the bill after exacting a promise from proponents to exempt punitive damages from prejudgment interest and to make other changes. His Business and Transportation Agency Secretary recommended a veto because the legislation contained some deficiencies and would be viewed as antibusiness and anticonsumer. The Governor, now campaigning for the Democratic nomination for the U.S. Senate, signed the bill on April 6 without requesting any changes from proponents. Defense interests would have to wait until the next legislative session to press their case for amendments.

Summary of SB 203[20]

As enacted, SB 203 adds Section 3291 to the California Code of Civil Procedure. The law specifically permits a plaintiff in a personal injury action to claim prejudgment interest. Interest is awarded if the plaintiff's offer to compromise under Section 998 of the Code of Civil Procedure is not accepted within 30 days and the plaintiff ultimately receives a more favorable judgment at trial. The interest is calculated at the rate of 10 percent per year on the entire judgment from the date of the plaintiff's first compromise offer, if exceeded by the final judgment, until the judgment is satisfied.

The legislation specifically exempts public entities and their employees from any prejudgment interest. It establishes a 10 percent per year interest rate on unsatisfied judgments and specifically permits the legislature to adjust the rate downward to 7 percent. It also eliminates the previous 7 percent limitation on interest accrued under the law of a sister state. Finally, it contains language making it effective in January 1982, even though it was not signed by the Governor until April 6, 1982.

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[20]Chapter 150, *Statutes of 1982*.

III. THE ROLE OF POLITICS AND ANALYSIS

POLITICAL DYNAMICS

If "political insiders" had been surveyed early in 1981 on whether a prejudgment interest bill like that enacted in 1982 would pass the California legislature, the majority response probably would have been a resounding "no," mirroring the view of those whom we interviewed. Why then did it pass against the odds?

Key Supporters

When the 1981-82 legislature convened, new legislative leaders took office. Willie Brown (D-San Francisco) was elected Speaker after a bitter internecine struggle among Assembly Democrats. David Roberti (D-Hollywood) was newly elected Senate President Pro Tem, committed to more activist and partisan Senate leadership than his predecessor. The installation of this new legislative leadership had an important bearing on the successful outcome of SB 203. Speaker Brown himself had sponsored prejudgment interest legislation on behalf of CTLA during the preceding 1979-80 biennial session. He personally supported SB 203. When negotiations between the CTLA and the opposition failed to produce a compromise in the Assembly, he threw his considerable weight behind the CTLA to both defeat opposition amendments and gain passage of the bill.[1] The result was repeated in the Senate when Senator Roberti lobbied for the bill on the Senate floor after negotiations between opposing groups again failed to achieve negotiated compromise. Support for the bill by Senate Republican minority leader William Campbell came as a surprise to opponents, who had counted him as a "no" vote until he announced his support the night before the Senate floor vote.

SB 203 passed the Senate probably because the coalition of opposing tort defense interests could not surmount both the leadership pressure on conservative and moderate Democrats and the shift of the Republican

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[1]The Speaker of the California Assembly is considered the most powerful legislator because he appoints members of all committees and controls the flow of Assembly business. His power is strengthened by his substantial ability to raise and distribute campaign funds.

Senate leader. Although Governor Brown did not play a major personal role in the negotiations on SB 203, his support probably did have a valuable effect on the final Senate outcome. The Governor's aides lobbied for Senate passage. They were convinced the bill would promote settlements and reduce court congestion--a long-term goal of the Brown Administration.

While the support of key legislative leaders probably does account in large measure for the final act of passage, it does not explain what prompted them to support the CTLA-sponsored measure and, more important, how the CTLA was able to mobilize the support necessary to achieve success in the face of formidable opposition. We argue here that a significant factor in determining the successful outcome was the "political skill"[2] of the CTLA and the failure of the opposition to accurately gauge the proponents' strength and mount a timely counterattack.

The "Political Skill" of the CTLA

The CTLA is an important interest group, to be reckoned with in California politics. At the time SB 203 was being considered, about 5100 of California's approximately 75,000 lawyers were CTLA members. As trial attorneys, CTLA members are probably more politically sophisticated, active, and effective spokespersons than members of other interest groups. CTLA utilizes a well-developed grass-roots "contact system" in its effort to communicate and generate support for its position among legislators. It has a Political Action Committee (PAC) which raises sizable campaign funds. It also employs a full-time staff and professional lobbyists. Of course, CTLA is not the only group to employ such techniques to influence legislation. However, most interviewees credited CTLA with effective use of these techniques in

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[2]Eugene Bardach has defined political skill as a "quality of political action. The action is political problem-solving, and the qualities of skill are efficiency, inventiveness, and creativity." The political entrepreneur, according to Bardach, seeks to marshal the resources necessary to win adoption of his proposal by authoritative public officials. He does this by gathering support, fending off the opposition, and effectively sustaining his entrepreneurial activity throughout the contest. See *The Skill Factor in Politics: Repealing the Mental Health Laws in California*, University of California Press, 1972.

support of SB 203. A key element in CTLA's success was that its members were motivated to enthusiastically support prejudgment interest because they believed it would directly benefit them and their clients.

CTLA not only gained the support of the legislative leadership but also activated them and the Governor's staff to put pressure on legislators who were neutral or inclined to oppose the bill. In addition, CTLA enlisted the support of judges, the media, and consumers in an effort to add credibility to their position that prejudgment interest was just, would accelerate the pace of litigation, and was not simply special interest legislation benefitting the plaintiffs bar. They also made several adroit maneuvers in moving the bill through the legislature which caught the opposition by surprise. They adopted amendments and made some bargaining concessions which reduced opposition and gained support for the measure. Interviewees suggested that their campaign during the legislative recess was crucial to success. As SB 203 moved through each successive step in the legislative process, CTLA mobilized sufficient favorable support until final passage on the Senate floor.

According to several interviewees, CTLA spokespersons presented the merits of their case simply and effectively before committees and with individual legislators. High prevailing interest rates helped them to sell it. They portrayed themselves as champions of innocent, sometimes desperate, injury victims struggling against powerful special interests that were unjustly gaining from the use of funds owed to plaintiffs as a result of negligence or dangerous products. However, as one proponent commented, "Having the merits on your side is only the first minor step toward victory." CTLA leaders personally acquainted with key legislators sympathetic to the measure, including Speaker Brown and Senate leader Roberti, contacted them individually and enlisted their support in lobbying other members.[3] Individual presiding judges from key geographic areas lobbied neutral or undecided members to support the measure because they believed it would spur settlements. Opponents also presented arguments effectively but were criticized by legislative leaders for not "negotiating in good faith."

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[3]In one case a legislator known to oppose prejudgment interest was asked only not to speak against it on the floor. This suggests the degree of sophistication of the CTLA lobbying effort.

Campaign Contributions

How important were campaign contributions in determining the outcome of SB 203? If the outcome had been determined solely by the size of campaign donations, then it would have been defeated because the coalition of interests opposing SB 203 gave much more heavily to legislative campaigns than did the CTLA. For example, the political action committees of the CMA and the ACIC alone contributed substantially more than twice as much as did CTLA to state legislative campaigns for the June 1982 primary election.[4] However, merely totaling campaign contributions of organized groups does not tell the whole story.

CTLA's donations to legislative races in the 1982 June primary increased substantially over the previous two years, to the point where they ranked second behind the CMA Political Action Committee.[5] The CTLA was also the largest single contributor to Speaker Brown's campaign and the second largest to that of Senator Roberti.[6] CTLA also contributed heavily to the unsuccessful primary race for Attorney General of Senator Omer Rains, the author of SB 203. CTLA was also the only one of the above-noted committees to contribute to Governor Brown's unsuccessful U.S. Senate campaign. Even though CTLA campaign contributions may not have been as large as those of opposing interests combined, they were significant, strategically placed, and timely.[7]

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[4]See *California Common Cause*, April 18, 1983, report on contributions from top 20 interest groups, 926 J Street, Sacramento.

[5]The CTLA political action committee contributed $280,000 to state legislative campaigns in the June 1982 primary compared to $108,000 in June 1980. In June 1982 the CMA political action committee (PAC) contributed $402,000, and the Fund for Insurance Education $246,500.

[6]It is important to note that the largest single contributor to Senator Roberti's campaign was the Mission Insurance Company, which gave $400 more than CTLA. One interviewee noted that this insurance company contribution was probably unrelated to SB 203. The senator also received $11,000 given by the Fund for Insurance Education. See *State of California Fair Political Practices Commission, Contributions Received by Statewide and State Officeholders and Candidates From Major Contributors, January 1, 1981 through June 30, 1981.*

[7]Some interviewees pointed out that attorneys, insurance companies, and others contribute funds directly to individual campaigns and that Political Action Committee giving alone does not accurately reflect all contributions by members of an interest group. SB 203 opponents suggested there were many contributions made by individual members of the plaintiffs bar.

Problems of the Opposition

There were over 30 industry groups opposed to SB 203, led by the ACIC and the CMA. However, the opposition was split. They failed to coalesce in a unified strategy and for some, defeat of SB 203 was not as important as other pressing issues. In retrospect, opponents also made some important tactical errors. They failed to marshal their resources to prevent Senator Petris' prejudgment interest bill (SB 1176) from clearing the Senate Judiciary Committee. They failed to accurately assess the growing strength of the proponents or to take steps to counteract it, particularly during the recess period. They also failed to accurately assess their own strength.

CTLA's success in moving Senator Petris' legislation (SB 1176) out of the Senate Judiciary Committee provided the impetus to amend prejudgment interest into SB 203, a bill which had already passed the Senate. Their opponents, having prevented Senate passage of SB 1176 during 1981, had the false notion that SB 203 could be defeated on the Senate Floor in 1982 after the recess. This, along with the growing confidence of CTLA after they mobilized support during the recess, probably were the primary reasons that final compromise negotiations broke down. If each side believes it can win, why compromise? Opponents expected SB 203 to be sent to a Senate/Assembly Conference Committee where negotiations would begin anew. However, because they misjudged the strength of CTLA and its supporters, SB 203 passed the Senate in a form more distasteful to opponents than might otherwise have been enacted had they been willing to negotiate earlier. Also unfortunate from the point of view of opponents was their failure to shore up their position with some legislators, such as Senate Republican leader William Campbell, who were anticipated to oppose prejudgment interest but ended up voting for it.

Opponents faced the problem of coordinating their efforts in opposition to this bill. Some, like the ACIC, considered defeat of this measure a top priority, while most other opposition group members were as much or more interested in the fate of some other measures.[8] Having

[8]For example, the CMA was probably more interested in legislation reforming the State's Medi-Cal Program and permitting insurers to

to rely on many different lobbyists with varying degrees of opposition to contact legislators reduced the ability of opponents to press their case and to accurately assess the voting strength of proponents, much less their own.

There were also divergent views about strategy. Some key opponents were against any negotiations with CTLA, believing this would undercut their ability to kill the measure. Others favored efforts to negotiate a more acceptable bill. Negotiations were pressed by Assembly and Senate leaders. However, based on the assessment of opposition lobbyists that SB 203 probably could be killed in the Senate, negotiations with CTLA were broken off. After negotiations failed, legislative leaders used their influence to help pass the measure in a form favorable to CTLA.

Another problem of opponents was that CTLA was able to focus its attention on this single measure. A legislator voting against it was clearly opposing and taking the risk of alienating CTLA. It was safer to vote "against" the more diffuse array of opponent coalition members on this bill, and vote "with them" on another.

Importance of Bargaining Strategy

This case study dramatizes the importance of bargaining strategy in the legislative process. A key element in bargaining strategy is the ability to accurately assess the strength of the opposition and your own strength. If victory is likely, why compromise? If loss is likely, make your best deal. If the outcome is highly uncertain, the probability of success and risks of failure must be carefully balanced. Assessments of strength and determination of a negotiating position are made at each stage in the legislative process. Assessments become refined as the market is tested. In this case study we observed how important to final outcome is assessment of strength and the determination of negotiating strategy.

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contract for the provision of medical services than they were in prejudgment interest.

THE ROLE OF ANALYSIS

Much of the debate on prejudgment interest took place in an analytical vacuum. There was no analysis of the pattern of jury awards in personal injury matters to determine whether and to what extent juries may already account for inflation in making personal injury awards. There was no analysis of the nature and extent of the problem of "court congestion" that would provide a sound conceptual or empirical basis for determining how prejudgment interest would affect the pace of litigation. There was no analysis of how lawyers or insurance companies presently manage their cases or the incentives they face which now significantly determine negotiating strategies, time for disposition, and case outcomes. There was no analysis of how prejudgment interest was applied in other states or its impact in these jurisdictions. Simply put, the state of knowledge about the litigation process at the time this bill was considered made it impossible to rationally evaluate the advocacy arguments made by either proponents or opponents regarding some of the most important effects of prejudgment interest.

Recent research by Rand's Institute for Civil Justice found that juries in at least one jurisdiction already implicitly award prejudgment interest. Juries in Cook County, Illinois, increased real awards (i.e., adjusted for inflation as measured by the consumer price index) by 3.7 percent a year between the time injuries occurred and trial.[9] This finding suggests that prejudgment interest legislation take account of jury behavior and that the rate be designed to eliminate incentives for delay by both defendants and plaintiffs.

Claims that prejudgment interest would speed the pace of litigation apparently assumed that courts in all areas of California suffer from backlog and delay and, more important, that the nature and extent of the court congestion problem is well enough understood to support some particular remedy for this malady.[10] However, the problem is markedly

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[9]Carroll, op. cit.

[10]For a discussion of some of these issues, see Jane W. Adler, William F. Felstiner, Deborah Hensler, and Mark A. Peterson, *The Pace of Litigation: Conference Proceedings*, The Rand Corporation, R-2922-ICJ, 1982.

different in different parts of the state[11] and is subject to great variations from year to year. What is more, we know little about what accounts for differences in time to disposition in "fast" versus "slow" courts and not very much about the types of cases that are delay-prone. Given these circumstances, it will be difficult to determine with any reasonable certainty how prejudgment interest will affect case dispositions.

Would the quality of legislative decision-making markedly improve if members had access to better information and objective analysis? Some will argue that objective analysis has little or no value or impact in the field of civil liability, where major competing social interests with typically fixed positions do battle in the legislative arena. We argue that without such analysis the legislature depends on the contesting interests to define the nature of the problem and the solution, and thereby abandons its independence and capability to fashion creative solutions to public problems. While competent analysis will not supplant political compromise, it can help clarify the nature of public problems and identify alternative solutions to them--functions sorely needed in the civil liability field today for the benefit of the Legislature and contesting parties.

Conclusion

The legislative arena is the place where contesting societal interests seek to gain political or economic advantage. The legislature typically mediates between these contesting forces to promote "compromise"--a state where neither side gains or loses too much or where they both gain or lose reasonably equally. However, in the case of this bill, there was no compromise satisfactory to opponents. They chose to fight and lost.

The CTLA achieved a major political victory over tort defense interests by gaining passage of legislation requiring prejudgment interest in personal injury actions. The victory was a testament not

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[11]For example, in Los Angeles there typically is a long wait for a civil trial (3 to 4 years), while in Monterey and San Mateo it only takes from 4 to 6 months.

only to their political skill but also to the value of support from favorably disposed legislative leaders in both Houses who exerted enough pressure on individual legislators to neutralize the opposition and secure passage of the bill. The support of Governor Brown, judges, a consumer group, selected newspapers, and television stations helped CTLA to gain additional legislative support and to make the case that the bill had a valid social purpose and was not just a measure to enrich the plaintiffs bar.

The CTLA victory was aided by errors of the opposition and their difficulty in successfully managing a coalition of opponents with varied interests and sometimes inconsistent positions. The failure of the opponents to assess the strength of the proponents, and the decision of key opponents not to agree to a negotiated settlement of the issue, probably accounted for passage of the bill in a form most distasteful to the opponents.

But how will the passage of this bill affect the outcome and pace of litigation? The primary social purpose of the legislation was to provide just compensation, including an interest adjustment for injured victims, and to improve the court process by reducing court congestion and delay. Whether these objectives will be achieved is a matter of great uncertainty. As the bill moved through the legislature, there was much rhetoric but little careful analysis of the nature of the problems the legislation was designed to cure and little systematic review of its potential effects. Opposing forces marshalled arguments in the arena of legislative advocacy, most of which generated heat but not much light. Analysis was used to buttress a preconceived position. The legislative outcome on SB 203 was dominated by power politics. There was little objective analysis presented during the debate that could provide a rational basis for determining what effects the bill might have on the litigation process.

APPENDIX: CHRONOLOGY OF EVENTS

1977 The legislature passed SCA 18, the proposed Constitutional Amendment which permitted it to raise interest rates on judgments from 7 to 10 percent. This action authorized the measure to be placed on the June 1978 ballot as Proposition 9.

1978 In June the voters enacted Proposition 9.

1978 Senator Rains introduced SB 101, a judgment interest bill which failed passage. It provided for 3 percent annual interest plus the prevailing rate charged member banks by the Federal Reserve of San Francisco.

1979 AB 770 introduced by Assemblyman Willie Brown providing for prejudgment interest failed by one vote in the Assembly Judiciary Committee.

1980 California Law Revision Commission recommended a 10 percent rate on judgments, reserving to the legislature the right to lower the rate.

SB 1542, introduced by Senator Rains, increased rate on judgments to 10 percent per year. It failed passage.

AB 2026, introduced by Assemblyman Statham, was the same as SB 1542 by Rains. It also failed passage.

SB 1394, introduced by Senator Robbins, was a judgment interest bill which passed but was vetoed by Governor Brown.

1981

Feb 2 SB 203 was introduced by Rains as a judgment interest bill.

Feb 18 AB 188, a judgment interest bill introduced by Assemblyman Statham, was passed by the Assembly Judiciary Committee.

Feb 26 AB 188 passed the Assembly.

Mar 10 SB 203 passed the Senate Judiciary Committee 6-0.

Mar 19 SB 203 passed the Senate 31-2.

Apr 18 SB 1176 was introduced by Senator Petris. It provided for 10 percent prejudgment interest in personal injury actions from the date of filing the lawsuit.

May 19 SB 1176 passed Senate Judiciary 6-1.

May 22 SB 1176 was amended to provide prejudgment interest from one year after filing to the date of satisfaction of judgment.

May 29 SB 1176 amended to exempt public entities from its provisions.

June 4 Technical amendments were made to SB 1176 clarifying the public entity exemption.

June 18 SB 1176 was sent to Senate inactive file by the author after heavy lobbying by insurance and business. The author did not have the votes for passage.

June 25 SB 203 was amended in the Assembly to provide for 3 percent interest plus the prevailing federal rediscount rate not to exceed 10 percent.

Aug 10 Prejudgment interest was amended into SB 203 in the Assembly two days before its scheduled committee hearing on August 12.

Aug 12 — SB 203 received a hearing but the vote was postponed until August 18. AB 188 was passed by the Senate Judiciary Committee.

Aug 18 — SB 203 passed the Assembly Judiciary Committee 8-4 after amendments to provide interest only if the plaintiff makes a CCP 998 settlement offer and subsequently obtains a more favorable judgment. Another amendment required interest to run from the date of service of process to the date of satisfaction of the judgment.

Aug 24 — SB 203 was amended in the Assembly, requiring interest to be calculated from the date of the first CCP 998 settlement offer to the date of the satisfaction of judgment.

Sept 4 — SB 203 was amended in the Assembly, requiring interest to be calculated from the date of the first offer to compromise which is exceeded by judgment, to the date of the satisfaction of the judgment.

Sept 9 and Sept 10 — Assembly floor fight on SB 203. Numerous amendments were defeated. SB 203 passed the Assembly Sept 10 by a vote of 41 to 36.

1982

Jan 15 — Los Angeles County Bar Association voted to approve judgment but not prejudgment interest.

Mar 25 — Senate passed SB 203 21-12.

Apr 16 — Governor signed SB 203 into law.

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