California Receives $5M for Quake Early Warning System

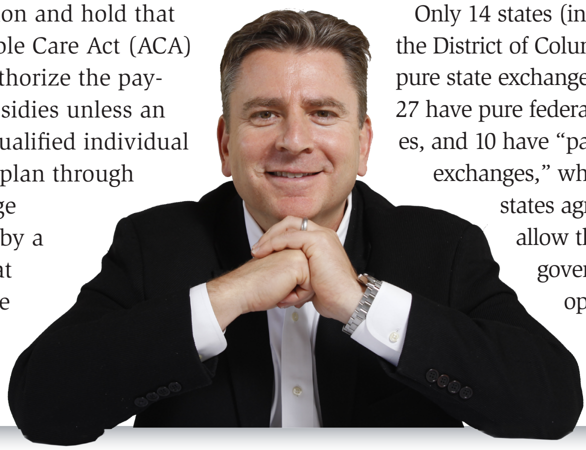
The U.S. Congress approved a $5 million infusion of funds to help California deploy a public alert system to give statewide warning on earthquakes. The alerts would give sufficient warning so trains could brake, utilities could shut off gas flow and people could take cover. A limited public alert system was developed by the U.S. Geological Survey in conjunction with some universities, but the statewide network would cost an estimated $80 million in its first five years of deployment. The model demonstrated successful application during 2014, providing eight seconds of warning before strong shaking occurred in a 6.0-magnitude quake near Napa in August. Though the system doesn't predict earthquakes, the warnings it provides assist in damage and injury prevention.

A SICK DEBATE › SCOTT SINDER AND DAVID FIALKOV

Down Payment

If subsidies disappear, Obamacare could turn your clients against each other.

In a move that surprised many pundits, the Supreme Court has decided to review the state/federal exchange subsidy issue. The debate among the academics and the bloggers about what the grant means and how the case will be decided is now at full throttle. I believe the Court will rule against the Obama administration and hold that the Affordable Care Act (ACA) does not authorize the payment of subsidies unless an otherwise qualified individual enrolls in a plan through an "exchange established by a state." If that happens, the outcome could be significant, but it might not be what you expect.



The question at issue in this case, *King v. Burwell*, is whether the ACA authorizes the IRS to subsidize coverage purchased by lower-income individuals and families on all ACA exchanges or only on ACA exchanges "established by a state."

Only 14 states (including the District of Columbia) have pure state exchanges. Another 27 have pure federal exchanges, and 10 have "partnership exchanges," where states agreed to allow the federal government to operate the exchanges for them.

If the Court rules against federal exchange subsidies, not only will there be no access to subsidies in the federal exchange states, but employers who have employees in one or more of the federal exchange states only also will be insulated from any mandate liability (because, to be subject to an employer mandate penalty, at least one of your employees must receive a subsidy for enrolling in exchange-provided coverage).

COURT WILL RULE AGAINST OBAMA

Section 1311 authorizes states to establish exchanges. Section 1321 directs the federal government to establish an exchange in any state that fails to do so under Section 1311. Section 1401 then authorizes the payment of subsidies to any qualified individual who enrolls in a plan through "an exchange established by the state under Section 1311."

Strict constructionists argue this language itself is clear and that no agency can expand the clear meaning of Section 1401 to allow payment of subsidies on federal exchanges that were not "established by a

>>

MARKET NEWS TICKER

NEW YORK LIFE Promotes Kathleen Navarro to chief diversity officer. Succeeds Joanne Rodgers who will take on newly created senior HR role. **www.newyorklife.com**

MUTUAL OF OMAHA Chairman and CEO Dan Neary will retire next year as CEO. Will remain chairman. EVP James Blackledge appointed president and will succeed Neary as CEO. **www.mutualofomaha.com**

PATRIOT UNDERWRITERS Hires Renee Iaia as SVP and Western regional VP. Will open company's eighth underwriting office early next year in Orange County, Calif. She was president of Phoenix Risk Management Insurance Services. **www.patriotunderwriters.com**

PIONEER UNDERWRITERS Pioneer Special Risk approved as coverholder at Lloyd's. Now underwriting surplus lines through New York division led by president Gary Dubois. Initial focus on management liability and professional liability for small to mid-market clients. Will expand past surplus lines. **www.pioneeruw.com**

PLATINUM UNDERWRITERS CEO Michael Price will step down after the company's acquisition by RenaissanceRe during the first half of 2015. RenaissanceRe will pay $1.9 billion for Platinum Underwriters. **www.platinumre.com**

SPENCER RE Names vice chairman of Spencer Capital Holdings Tina Youngblood Mallie as CEO of Spencer Re. Joins from Cunningham Lindsey, where she was U.S. CEO. **www.spencerre.com**

THIRD POINT REINSURANCE Plans new subsidiary with U.S. office. Hires Thomas Wafer and Jonathan Norton to lead effort. Norton will hold a leadership position at the new office and be chief reserving actuary for Third Point Re Group. He joins from Alterra Re USA, where he was chief actuary. Wafer also joins from Alterra, where he was CEO of reinsurance and president of Alterra Re USA. **www.thirdpointre.com**

TRAVELERS Enters into a joint venture with Brazil's J. Malucelli Participacoes em Seguros e Resseguros and will acquire a majority stake in Cardinal Compania de Seguros. **www.travelers.com**

UNITEDHEALTH GROUP Promotes CFO David Wichmann to president. Reports to Stephen Hemsley, CEO and former president. Gail Boudreaux, CEO of UnitedHealthcare unit, is leaving the company. Additionally, Optum CEO, Larry Renfro, will be taking on

Send company news to **NewsEditor@LeadersEdgeMagazine.com**.

A SICK DEBATE

state." But others (we'll call them contexualists) contend it's clear Congress intended subsidies to be paid on all exchanges.

There are 308 references to "exchanges" in the ACA statutes, and 12 of those cite "exchanges established by a state." This should give both sides plenty of fodder to support their views. Embedded in the textual debate is a separate but related debate over government power. Strict constructionists tend to interpret grants of power to the executive branch as narrowly as possible. The contextualists, however, tend to take a much broader view.

As in the last ACA Supreme Court case, I expect Chief Justice John Roberts to cast the deciding vote. The four other conservative justices—Samuel Alito, Anthony Kennedy, Antonin Scalia and Clarence Thomas—generally are strict constructionists who all lean toward limiting government power and who all voted to find the entire ACA unconstitutional two years ago. Many believe Roberts again will depart from the views of his conservative brethren as he did two years ago in upholding the ACA. I think this time will be different for four reasons:

- The chief justice generally shares the views of his fellow conservatives on both strict construction and interpreting grants of government power narrowly.
- There is no statutory interpretation doctrine that allows an agency to fix a "mistake" (if that's what the subsidy language is). Only Congress can fix a "mistake."
- The stakes are lower in this case. Last time, a decision against the individual mandate would have gutted the statute and been unfixable by Congress. This time, if the intent really is to have the subsidies available on all exchanges, Congress can simply fix the statutory language to make that clear. (The Court does not take into account political impediments that Congress might have to deal with.)
- The chief justice tends to support a states'-rights view of government power.

If the Court rules against federal exchange subsidies, any state can still get access to the subsidies by establishing a state exchange.

If the Court rules against the administration, the fallout could be minimal or considerable.

The 14 states with pure state exchanges won't need to do anything, as the case will not affect them. I think it is relatively clear "partnership exchange" states also will need to do nothing. These exchanges can and should be treated as exchanges "established by a state" since a state must expressly authorize their creation. Section 1311(f)(3)(A) expressly gives states the power "to enter into an agreement with an eligible entity" (i.e., the federal government) "to carry out 1 or more responsibilities of the exchange."

Many believe Roberts again will depart from the views of his conservative brethren as he did two years ago in upholding the ACA. I think this time will be different.

The action should thus be focused on the 27 pure federal exchange states. Each should be able to overcome the decision and maintain access to subsidies for their residents by becoming a "partnership exchange" with the stroke of a pen (or they could go ahead and establish their own exchanges). But will they?

There will be enormous political pressure in both directions. In seven states, legislation would be required to reverse laws prohibiting those states from establishing an exchange. Citizens groups are likely to be very vocal in support of ensuring subsidies access, and they could be joined by large business allies, as many large businesses will not be able to avoid the mandate (because they will have at least some employees in state exchange states) and they will not want to be put at a competitive disadvantage. Businesses without employees in subsidy states undoubtedly will vocally oppose those efforts.

President Obama will have two basic choices:
(1) Take the Shakespearean path and let the non-state exchange states be blown up by their own petards. This

MARKET NEWS TICKER

more UnitedHealth responsibilities, and Dirk McMahon, COO of Optum and CEO of pharmacy benefits division OptumRx, named VP of operations for UnitedHealth Group. **www.unitedhealthgroup.com**

UNUM Hires Lisa Iglesias as EVP and general counsel. Succeeds Liston Bishop III, who plans to retire in March. Iglesias joins from WellCare Health Plans, where she was SVP, general counsel and corporate secretary. Based in Chattanooga. **www.unum.com**

VICTOR O. SCHINNERER Agrees to acquire SeaFire Insurance Services, Kansas-based MGU in p-c auto dealership and auto repair niche. SeaFire leadership and employees will join Schinnerer and remain in their current location with President Dennis Kane continuing to lead the business. **www.schinnerer.com**

XL GROUP Agrees to acquire Catlin for $4.1 billion. New company will trade under XL Catlin brand and will be one of 10 largest reinsurers worldwide. Mike McGavick, CEO of XL Group, will head new company. Stephen Catlin will join as executive deputy chairman of combined company. Peter Porrino will continue as CFO. Greg Hendrick, currently XL's CEO of insurance operations, will be CEO of reinsurance. Paul Brand, Catlin's chief underwriting officer, will move to chairman of insurance leadership team and chief underwriting officer for insurance. Kelly Lyles, currently XL's head of professional insurance, will become deputy chair of the insurance leadership team and chief regional officer of insurance. Expected to close deal in mid-2015. » Professional liability unit releases new executive and corporate securities liability policy form. Offers expanded coverage from formal and informal investigations by law enforcement or regulators, extended coverage to include investigations when insured individuals are under investigation, a broadened definition of loss, and coverage of additional defense expenses. » Launches stand-alone terrorism insurance policy to deal with possible gaps in future coverage. Limits available up to $100 million. Includes coverage for political, religious and ideologically related incidents. Extends coverage to acts of sabotage, provides coverage that is often limited or excluded by other products. » XL Group launches global crime operation based in New York consolidating embezzlement, fraud and bribery coverage efforts from U.S., Europe and Asia. Gregory Bangs joins to lead unit as chief underwriting officer of crime underwriting. Was VP and worldwide product manager for crime, K&R and workplace violence expense insurance at Chubb. » Agrees to sell its 40% stake in home insurer ARX to Progressive. **http://xlgroup.com**

Send company news to **NewsEditor@LeadersEdgeMagazine.com**.