

## Hospital Merger Faces Class Action Lawsuit for Price Inflation

Since NorthShore University Health System (NorthShore) was formed from the merger of Evanston Northwestern and Highland Park Hospitals in January 2000,<sup>1</sup> the system has suffered various legal challenges. Most recently, on December 10, 2013, the U.S. District Court for the Northern District of Illinois certified a class action lawsuit against NorthShore for inflated healthcare prices due to market monopoly.<sup>2</sup> The lawsuit, originally filed in 2007, was brought “*on behalf of all end-payors who purchased inpatient and outpatient healthcare services directly from NorthShore...*”<sup>3</sup> Specifically, plaintiffs alleged that NorthShore charged prices at least 9% higher than normal inflation would allow over the years since the merger for both inpatient and outpatient healthcare services.<sup>4</sup> Additionally, the plaintiffs’ expert assessed the overpayment by Blue Cross & Blue Shield of Illinois alone to total approximately \$110 million.<sup>5</sup>

The NorthShore merger has a long litigious history, which spans 13 years. The Federal Trade Commission (FTC) challenged the acquisition in 2004, asserting that the merger lessened “*competition for general acute care inpatient hospital services*” in the northern Chicago suburbs, in violation of Section 7 of the Clayton Act.<sup>6</sup> An FTC administrative law judge ruled in favor of the government and ordered a full divestiture of the merger.<sup>7</sup> NorthShore appealed, and the Seventh Circuit again found the merger to be anticompetitive, but, instead of ordering the system to divest in accordance with the lower court’s order, the court instructed Highland Park to negotiate its contracts with health insurers independently from other NorthShore system hospitals, namely the Glenbrook and Evanston hospitals.<sup>8</sup>

The plaintiffs’ class certificate was initially rejected by the court, but was overturned on appeal.<sup>9</sup> Plaintiffs allege that NorthShore violated Section 2 of the Sherman Antitrust Act and Section 7 of the Clayton Antitrust Act, which allows for treble damages – three times the difference between the system’s alleged inflated prices and what the prices would have been if the merger had not occurred.<sup>10</sup>

This most recent NorthShore lawsuit is the first private antitrust class action lawsuit regarding a hospital merger. The case is different from the typical antitrust lawsuit because most hospital mergers are challenged before the merger occurs, allowing plaintiffs to only

request injunctive relief, which would stop the prospective transaction.<sup>11</sup> In this case, however, if the court finds that NorthShore’s prices were inflated, and the plaintiffs were harmed as a result, monetary damages in the amount of hundreds of millions of dollars could be imposed on the Chicago hospital system. These damages may be further increased by the fact that the merger is now 13 years old, allowing a substantial period of time during which plaintiffs could have been harmed. The plaintiffs have yet to quantify the amount of damages they are seeking.

- 1 “Northern District of Illinois Court Certifies Class in Hospital Merger Antitrust Lawsuit” By James Buchanan Camden, The National Law Review, December 19, 2013, <http://www.natlawreview.com/article/northern-district-illinois-court-certifies-class-hospital-merger-antitrust-lawsuit> (Accessed 12/22/13).
- 2 “In re: Evanston Northwestern Corporation Antitrust Litigation,” No. 07-cv-04446, United States District Court for the Northern District of Illinois Eastern Division (December 10, 2013), p. 1.
- 3 *Ibid.*
- 4 “12-year-old Illinois Merger Faces Revived Lawsuit” By Joe Carlson, Modern Healthcare, January 28, 2012, <http://www.modernhealthcare.com/article/20120128/MAGAZIN/E/301289965/regional-news-midwest-back-in-action> (Accessed 12/22/13).
- 5 “Steven Messner et al. v. Northshore University HealthSystem,” No. 10-2514, United States Court of Appeals for the Seventh Circuit (January 13, 2012) p. 39.
- 6 *Ibid.*, p. 4.
- 7 *Ibid.*, p. 4-5.
- 8 “Commission Rules that Evanston Northwestern Healthcare Corp’s Acquisition of Highland Park Hospital was Anticompetitive: Unanimous Order Require ENH to Establish Two Separate and Independent Managed Care Organization Contract Negotiating Teams” Federal Trade Commission, Press Release, August 6, 2007, <http://www.ftc.gov/news-events/press-releases/2007/08/commission-rules-evanston-northwestern-healthcare-corps> (Accessed 1/8/14).
- 9 “Antitrust suit against NorthShore wins class-action status” By Andrew L. Wang, Crain’s Chicago Business, December 12, 2013, <http://www.chicagobusiness.com/article/20131212/NEWS03/131219917/antitrust-suit-against-northshore-wins-class-action-status> (Accessed 1/8/14).
- 10 *Ibid.*; “In re: Evanston Northwestern Corporation Antitrust Litigation,” No. 07-cv-04446, United States District Court for the Northern District of Illinois Eastern Division (December 10, 2013), p. 1.
- 11 *Ibid.*, Buchanan, December 19, 2013.



(800) FYI - VALU

*Providing Solutions  
in the Era of  
Healthcare Reform*

Founded in 1993, HCC is a  
nationally recognized healthcare  
economic financial consulting firm

- [HCC Home](#)
- [Firm Profile](#)
- [HCC Services](#)
- [HCC Experts](#)
- [Clients Projects](#)
- [HCC News](#)
- [Upcoming Events](#)
- [Contact Us](#)
- [Email Us](#)

#### HEALTH CAPITAL

**CONSULTANTS (HCC)** is an established, nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, Missouri, with regional personnel nationwide. Founded in 1993, HCC has served clients in over 45 states, in providing services including: valuation in all healthcare sectors; financial analysis, including the development of forecasts, budgets and income distribution plans; healthcare provider related intermediary services, including integration, affiliation, acquisition and divestiture; Certificate of Need (CON) and regulatory consulting; litigation support and expert witness services; and, industry research services for healthcare providers and their advisors. HCC's accredited professionals are supported by an experienced research and library support staff to maintain a thorough and extensive knowledge of the healthcare reimbursement, regulatory, technological and competitive environment.



**Robert James Cimasi**, MHA, ASA, FRICS, MCBA, AVA, CM&AA, serves as Chief Executive Officer of **HEALTH CAPITAL CONSULTANTS (HCC)**, a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

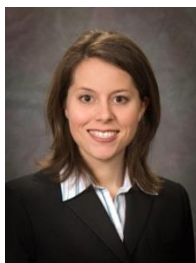
Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: *“Accountable Care Organizations: Value Metrics and Capital Formation”* [2013 - Taylor & Francis, a division of CRC Press], *“The Adviser’s Guide to Healthcare”* – Vols. I, II & III [2010 – AICPA], and *“The U.S. Healthcare Certificate of Need Sourcebook”* [2005 - Beard Books]. His most recent book, entitled *“Healthcare Valuation: The Financial Appraisal of Enterprises, Assets, and Services”* will be published by John Wiley & Sons in the Fall of 2013.

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious *“Shannon Pratt Award in Business Valuation”* conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows. In 2011, he was named a Fellow of the Royal Institution of Chartered Surveyors (RICS).



**Todd A. Zigrang**, MBA, MHA, ASA, FACHE, is the President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas valuation and financial analysis for hospitals and other healthcare enterprises. Mr. Zigrang has significant physician integration and financial analysis experience, and has participated in the development of a physician-owned multi-specialty MSO and networks involving a wide range of specialties; physician-owned hospitals, as well as several limited liability companies for the purpose of acquiring acute care and specialty hospitals, ASCs and other ancillary facilities; participated in the evaluation and negotiation of managed care contracts, performed and assisted in the valuation of various healthcare entities and related litigation support engagements; created pro-forma financials; written business plans; conducted a range of industry research; completed due diligence practice analysis; overseen the selection process for vendors, contractors, and architects; and, worked on the arrangement of financing.

Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives, and serves as President of the St. Louis Chapter of the American Society of Appraisers (ASA). He has co-authored *“Research and Financial Benchmarking in the Healthcare Industry”* (STP Financial Management) and *“Healthcare Industry Research and its Application in Financial Consulting”* (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser’s Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.



**Anne P. Sharamitaro**, Esq., is the Executive Vice President & General Counsel of **HEALTH CAPITAL CONSULTANTS (HCC)**, where she focuses on the areas of Certificate of Need (CON); regulatory compliance, managed care, and antitrust consulting. Ms. Sharamitaro is a member of the Missouri Bar and holds a J.D. and Health Law Certificate from Saint Louis University School of Law, where she served as an editor for the Journal of Health Law, published by the American Health Lawyers Association. Ms. Sharamitaro has presented healthcare industry related research papers before Physician Hospitals of America and the National Association of Certified Valuation Analysts and co-authored chapters in *“Healthcare Organizations: Financial Management Strategies,”* published in 2008.