

## NEWS ALERT - DOJ Agrees that Entire ACA Should Be Struck Down

In response to a Texas Federal District Court ruling that deemed the *Patient Protection and Affordable Care Act* (ACA) unconstitutional in its entirety, the U.S. Department of Justice (DOJ), which had previously asserted that most of the ACA should stand (despite the nullification of the *Individual Mandate* tax penalty),<sup>1</sup> has reversed their position, agreeing with the District Court that the entire ACA should be struck down.<sup>2</sup> This change in direction occurred approximately six weeks after William Barr was sworn in as 85<sup>th</sup> Attorney General of the U.S.,<sup>3</sup> following through on Barr's mention during his confirmation hearing that he would reconsider the original DOJ position on this matter.<sup>4</sup> In addition, this reversal was announced right after the California-led coalition released their brief that Congress's zeroing out of the *Individual Mandate* penalty did not make the

provision unconstitutional, and that the *Individual Mandate* can still be read as part of Congress's taxing authority.<sup>5</sup> Additionally, the coalition argues that even if the *Individual Mandate* is found unconstitutional, it is severable from the rest of the ACA.<sup>6</sup>

The case is anticipated to be ultimately appealed to the U.S. Supreme Court. If the lower court's is upheld, the millions of individuals that gained insurance through the enactment of the ACA (including through Medicaid Expansion) will effectively lose their coverage, among other detrimental implications.<sup>7</sup> Currently, the Fifth Circuit, on which the DOJ called to affirm the lower court's ruling, has not scheduled oral arguments, but the federal government has proposed a hearing date of July 8, 2019.<sup>8</sup>

1 For more information, see "Judge Rules Entire ACA Unconstitutional" Health Capital Topics, Vol. 11, Issue 12 (December 2018), [https://www.healthcapital.com/hcc/newsletter/12\\_18/HTML/TEXAS/convert\\_hc\\_topics\\_tx\\_v\\_us\\_cite\\_checked\\_cataloged\\_12.20.18\\_hba.php](https://www.healthcapital.com/hcc/newsletter/12_18/HTML/TEXAS/convert_hc_topics_tx_v_us_cite_checked_cataloged_12.20.18_hba.php) (Accessed 3/28/19).

2 "RE: Texas v. United States, No. 19-1001 (5th Cir.);" By Joseph H. Hunt, Brett A. Shumate, Martin V. Totaro, Letter to Lyle W. Cayce, March 25, 2019, p. 1, available at: <https://www.healthleadersmedia.com/sites/hlmp/files/190235-DOJ-ACA-lawsuit-letter.pdf> (Accessed 3/26/19); "DOJ Drops Its Partial ACA Defense, Argues Entire Law Should Fall" By Steven Porter, Health Leaders, March 25, 2019,

<https://www.healthleadersmedia.com/strategy/doj-drops-its-partial-aca-defense-argues-entire-law-should-fall> (Accessed 3/26/19).

3 "William P. Barr Confirmed As 85th Attorney General of the United States" Department of Justice, February 14, 2019, <https://www.justice.gov/opa/pr/william-p-barr-confirmed-85th-attorney-general-united-states> (Accessed 3/26/19).

4 Porter, March 25, 2019.

5 *Ibid.*

6 *Ibid.*

7 *Ibid.*

8 *Ibid.*



(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](#)

## HCC Services

- [Valuation Consulting](#)
- [Commercial Reasonableness Opinions](#)
- [Commercial Payer Reimbursement Benchmarking](#)
- [Litigation Support & Expert Witness](#)
- [Financial Feasibility Analysis & Modeling](#)
- [Intermediary Services](#)
- [Certificate of Need](#)
- [ACO Value Metrics & Capital Formation](#)
- [Strategic Consulting](#)
- [Industry Research Services](#)



**Todd A. Zigrang**, MBA, MHA, CVA, ASA, FACHE, is the President of HEALTH CAPITAL CONSULTANTS (HCC), where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 20 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 1,000 transactions and joint ventures. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.

Mr. Zigrang is the co-author of "[The Adviser's Guide to Healthcare – 2nd Edition](#)" [2015 – AICPA], numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Accountant's Business Manual* (AICPA); *Valuing Professional Practices and Licenses* (Aspen Publishers); *Valuation Strategies*; *Business Appraisal Practice*; and, *NACVA QuickRead*. In addition to his contributions as an author, Mr. Zigrang has served as faculty before professional and trade associations such as the American Society of Appraisers (ASA); American Health Lawyers Associate (AHLA); the American Bar Association (ABA); the National Association of Certified Valuators and Analysts (NACVA); Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

Mr. Zigrang holds a Master of Science in Health Administration (MHA) and a Master of Business Administration (MBA) from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives (FACHE) and holds the Accredited Senior Appraiser (ASA) designation from the American Society of Appraisers, where he has served as President of the St. Louis Chapter, and is current Chair of the ASA Healthcare Special Interest Group (HSIG).



**John R. Chwarzinski**, MSF, MAE, is Senior Vice President of HEALTH CAPITAL CONSULTANTS (HCC). Mr. Chwarzinski's areas of expertise include advanced statistical analysis, econometric modeling, as well as, economic and financial analysis. Mr. Chwarzinski is the co-author of peer-reviewed and industry articles published in *Business Valuation Review* and *NACVA QuickRead*, and he has spoken before the Virginia Medical Group Management Association (VMGMA) and the Midwest Accountable Care Organization Expo. Mr. Chwarzinski holds a Master's Degree in Economics from the University of Missouri – St. Louis, as well as, a Master's Degree in Finance from the John M. Olin School of Business at Washington University in St. Louis. He is a member of the St. Louis Chapter of the American Society of Appraisers, as well as a candidate for the Accredited Senior Appraiser designation from the American Society of Appraisers.



**Jessica L. Bailey-Wheaton**, Esq., is Vice President and General Counsel of HEALTH CAPITAL CONSULTANTS (HCC), where she conducts project management and consulting services related to the impact of both federal and state regulations on healthcare exempt organization transactions and provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services. Ms. Bailey-Wheaton is a member of the Missouri and Illinois Bars and holds a J.D., with a concentration in Health Law, from Saint Louis University School of Law, where she served as Fall Managing Editor for the *Journal of Health Law & Policy*.



**Daniel J. Chen**, MSF, CVA, is a Senior Financial Analyst at HEALTH CAPITAL CONSULTANTS (HCC), where he develops fair market value and commercial reasonableness opinions related to healthcare enterprises, assets, and services. In addition, Mr. Chen prepares, reviews and analyzes forecasted and pro forma financial statements to determine the most probable future net economic benefit related to healthcare enterprises, assets, and services, and applies utilization demand and reimbursement trends to project professional medical revenue streams, as well as ancillary services and technical component (ASTC) revenue streams. Mr. Chen has a Master of Science in Finance from Washington University St. Louis.