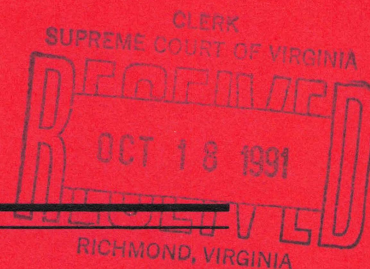


243 Va 296



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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

---

RECORD NO. 911173

---

**BOARD OF SUPERVISORS OF FAIRFAX COUNTY, et al.,**

*Appellants,*

v.

**GROUP HEALTH ASSOCIATION, INC.,**

*Appellee.*

---

**JOINT APPENDIX  
VOLUME I**

---

David T. Stitt  
A. Robert Cherin  
Jill L. Rowe  
OFFICE OF THE  
COUNTY ATTORNEY  
4100 Chain Bridge Road  
Fairfax, Virginia 22030  
(703) 246-2421

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(703) 352-1655

*Counsel for Appellants*

*Counsel for Appellee*



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V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY: 11-2-81

GROUP HEALTH ASSOCIATION, INC.)  
a Non-Profit District of )  
Columbia Corporation )  
4301 Connecticut Avenue, N.W. )  
Washington, D.C. 20008 )

Petitioner, )

v. )

AT LAW NO. 97213

THE BOARD OF SUPERVISORS )  
OF FAIRFAX COUNTY, a )  
Body Corporate and Politic )  
4100 Chain Bridge Road )  
Fairfax, Virginia 22030 )  
SERVE: David T. Stitt, )  
County Attorney )  
County of Fairfax )  
4100 Chain Bridge Road )  
Fairfax, Virginia 22030 )

AND )

Paul E. Smith, Supervisor )  
of Assessments )  
Office of Assessments )  
County of Fairfax )  
4100 Chain Bridge Road )  
Fairfax, Virginia 22030 )

Defendants. )

PETITION FOR DECLARATORY JUDGMENT AND APPLICATION  
TO COURT TO CORRECT ERRONEOUS ASSESSMENT OF LOCAL LEVY

COMES NOW the Petitioner, Group Health Association, Inc. (hereinafter "GHA"), pursuant to Va. Code §8.01-184 et. seq. and Va. Code §58.1-3984, and for its Petition for Declaratory Judgement and Application to Correct Erroneous Assessment of Local Levy alleges and avers as follows:



1. Petitioner, Group Health Association, is a non-profit corporation organized and existing under the laws of the District of Columbia, and is authorized to transact business in the Commonwealth of Virginia.

2. Defendant, The Board of Supervisors of Fairfax County, a body corporate and politic, is the governing body of the County of Fairfax and, as such, is authorized to assess, among other things, certain business, professional and occupational license taxes ("BPOL" taxes), a gross receipts tax.

3. Defendant, Paul E. Smith, is the Supervisor of Assessments of the County of Fairfax and, as such, is the Agent of the County of Fairfax for purposes of assessing certain business, professional and occupational license taxes, upon businesses operating in the County of Fairfax. Defendant, Paul E. Smith, is sued in his official capacity only.

4. GHA is a staff model health maintenance organization, which first began business in Washington, D.C. in 1937. As a staff model HMO, GHA provides a broad range of medical services to patients in exchange for a pre-paid fee, none of which (with the exception of de minimus prescription drug charges and co-payment fee) is collected in Fairfax County or specifically attributable to Fairfax County operations only. Medical services for a given patient may be performed at numerous locations in the

District of Columbia, Maryland or Virginia. Further, GHA, as a non-profit organization, operates its facilities for the welfare of the residents of the area.

5. In or about 1965, GHA opened its first medical center in the County of Fairfax, located at Annandale. Since that time, GHA has opened and continues to operate three additional medical centers in Fairfax County, located at 12011 Lee Jackson Highway, Fairfax, Virginia, 1577 Spring Hill Road, Vienna, Virginia and 5109 Leesburg Pike, Falls Church, Virginia.

6. In 1983, GHA requested exemption from the assessment of real estate taxes, personal property taxes and business, professional and occupational license taxes. Defendant, County of Fairfax, acting through the Office of Assessments, denied GHA's request for exemption from real estate and personal property taxes, but granted GHA's request for exemption from the gross receipts tax/business, professional, and occupational license taxes, finding that GHA qualified for the exemption under the provisions of Fairfax County Code Section 4-7-1(3).

7. Thereafter, GHA operated its medical centers as aforesaid and continued to be exempt from the assessment from business, professional and occupational license taxes until the action challenged herein, revoking the exemption on October 30, 1989.



8. On October 30, 1989, the Defendants caused the exemption granted in 1983 to be revoked. Said revocation was set forth in a letter dated October 30, 1989, which is attached hereto as Exhibit A.

9. Thereafter, on or about January 22, 1990, Petitioner's representatives met with representatives of the County and Office of Assessments to challenge the revocation of the exemption.

10. On or about February 8, 1990, the County and, specifically, the Office of Assessments, rendered its decision relating to the issues raised during the aforesaid meeting, holding that GHA was not liable for the BPOL tax prior to the date of the official revocation, but, however, continuing to maintain that the assessment prospectively of the tax is valid, thereby continuing the revocation of the previously granted exemption. A copy of the Defendants' action on February 8, 1990 is attached hereto as Exhibit B.

11. Petitioner's exemption from the BPOL tax was proper when granted in 1983. Moreover, no facts have changed since the grant of the 1983 exemption which would warrant revocation of the exemption. For example, Petitioner's status and method of operation is unchanged since 1983. Likewise, the ordinance and statutes under which the exemption was granted by Defendants in 1983 is wholly unchanged.

12. The assessment of the business, professional and occupational license tax is invalid and improper as applied to GHA.

13. This action is brought within five (5) years of the last day of the tax year for which any such assessment was made.

WHEREFORE, the foregoing premises considered, Petitioner Group Health Association moves this Court to:

A. Declare that the revocation of GHA's exemption from the gross receipts tax/business, professional and occupational license taxes was improper and invalid, and/or

B. Declare that GHA is entitled to an exemption from the business, professional and occupational license taxes under Fairfax County Code Section 4-7-1(3), and/or

C. Declare that no BPOL taxable event occurs by virtue of GHA's operations in Fairfax County; and

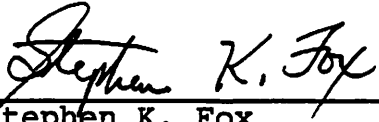
D. Correct the erroneous assessment of the business, professional and occupational license by ordering restoration of GHA's exemption under Fairfax County Code Section 4-7-1(3) or other applicable law; and

E. Declare that GHA is not liable for taxes, penalty or interest assessed after October 30, 1989.

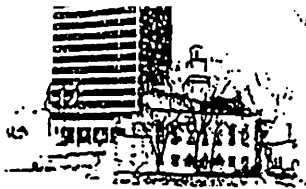


F. Award further ancillary relief as the Court may deem appropriate in this case.

GROUP HEALTH ASSOCIATION, INC.  
By Counsel

  
\_\_\_\_\_  
Stephen K. Fox  
Bernadette A. Fritschie  
FOX & PROFFITT, P.C.  
11320 Random Hills Road  
Suite 630  
Fairfax, Virginia 22030

C2-1182.201



COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

4100 CHAIN BRIDGE ROAD  
FAIRFAX, VIRGINIA 22030



October 30, 1989

Mr. Ted Weinberg  
Director of Financial Operations  
Group Health Association  
4301 Connecticut Ave.  
Washington, DC 20008

Dear Mr. Weinberg:

Recently my staff reviewed businesses' accounts that were granted exemptions from the Fairfax County Business, Professional and Occupational License tax. Group Health Association (G.H.A.) was granted this exemption in 1983. The exemption was granted under Fairfax County Ordinance 4-7-1(3) ["...Such terms shall not include a volunteer fire department, a volunteer rescue squad or a non-profit organization operating a community center swimming pool, tennis court, or other educational, cultural, recreational, and athletic facilities and facilities for the welfare of the residents of the area...."]

Although G.H.A. is a non-profit organization, it clearly does not meet the criteria set forth in the County Ordinance. G.H.A. is a membership organization and services are provided to members only. Therefore, I regret to inform you that G.H.A. Business, Professional and Occupational License tax exemption is revoked.

The Virginia Code §58.1-3903 provides that the tax assessing officer assess the tax on the three prior years if it is found that for any reason a correct assessment has not been made. The three prior years, 1986 through 1988, the County failed to correctly assess G.H.A.'s Business, Professional and Occupational License tax. Unfortunately there is no statutory authority to waive the taxes even if the error was through no fault of the taxpayer. However, §58.1-3903 does provide penalties and interest not to occur until (30) thirty days from the date of the corrected assessment until payment is received.

Additionally, G.H.A. needs to obtain a 1989 Business, Professional and Occupational License. These licenses are based on the previous years gross receipts.

Enclosed you will find Business, Professional and Occupational License tax applications for license years 1986 through 1989. Please complete the applications and return them to me as soon as possible.

The County regrets any inconvenience this action creates. Your prompt review of this matter is appreciated.

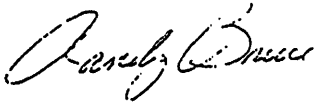
EXHIBIT A



Mr. Ted Weinberg  
Group Health Associatic  
October 30, 1989

Please contact Ms. Foley, of my staff, at (703) 246-3765 if you have any questions or wish to discuss this matter in more detail.

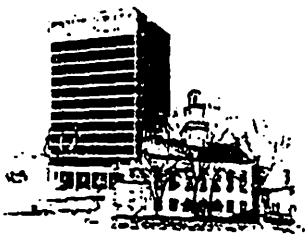
Very truly yours,



Randy Bruce, Assistant Director  
Discovery and Enforcement Section  
Personal Property, State Income and  
License Division, Office of Assessments

MF/bb

Enclosures



COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

4100 CHAIN BRIDGE ROAD  
FAIRFAX, VIRGINIA 22030



RECEIVED  
FEB - 9 1990

February 8, 1990

Mr. Stephen K. Fox, Attorney at Law  
Fox & Proffitt, P.C.  
11320 Random Hills Rd., Suite 630  
Fairfax, Virginia 22030

Re: Revocation of Group Health  
Association's BPOL Exemption

Dear Mr. Fox:

This letter addresses the issues raised during our meeting of January 23, 1990. Those issues and our responses are defined below:

Issue 1. If Group Health Association (GHA) was previously granted an exemption from the Business, Professional and Occupation License tax, what occurred that would no longer support this exemption?

Response: GHA's BPOL exemption was issued in error. An opinion issued by the County Attorney's Office on July 22, 1983, supports our action as follows: "...Although GHA performs services related to the welfare of individuals, only those individuals who are members of GHA are entitled to such services. Therefore, GHA would not be entitled to a tax exemption...as its services are not performed for the public good or welfare,...."

Issue 2. GHA appropriates income similarly to businesses specifically exempted in the County Ordinance 4-7-18, non-profit nursing homes and hospitals. By using this comparison, GHA believes an exemption from the BPOL tax is supported.

Response: As discussed, GHA need not provide services to earn receipts. Receipts are derived from a pre-payment arrangement between GHA and their clients. Whereas, non-profit nursing homes and hospitals derive receipts from services rendered.

Issue 3. GHA contends that the license liability should commence on the date the BPOL exception was revoked, October 30, 1989.

Response: We agree not to hold GHA liable for the BPOL tax until October 30, 1989, the date of the official revocation. GHA will be held liable for the license tax for 1989 prorata and subsequent license years, as well as for penalties and interest incurred prospectively from that date.

EXHIBIT B

Page 2  
Mr. Stephen K. Fox  
February 8, 1990

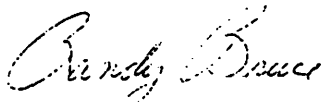
Issue 4. What is GHA's license basis?

Response: In accordance with the County Ordinance 4-7-1(2) the license basis is the total gross receipts derived from services rendered at facilities located in Fairfax County. These receipts should include premiums paid by members using these facilities, co-payments, pharmacy charges, and other receipts earned by the facility, either directly or indirectly. Should GHA require assistance in determining their license basis, the County would assign an auditor to review the appropriate financial documents and determine the correct basis.

Enclosed are the 1989 and 1990 Business, Professional and Occupational License applications which should be completed and returned to my attention at your earliest convenience.

Should you have any questions, please contact Ms. Marilyn Foley or myself at the above address or telephone 246-3765.

Very truly yours,



Randy Bruce, Assistant Director  
Discovery and Enforcement Section  
Personal Property, State Income and  
License Division, Office of Assessments

MF/bb

cc: Mr. Ken Thau, Group Health Association  
Paul E. Smith, Supervisor of Assessments

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

GROUP HEALTH ASSOCIATION, INC.)

Petitioner,

v.

AT LAW NO. 97213

THE BOARD OF SUPERVISORS  
OF FAIRFAX COUNTY, VIRGINIA

AND

PAUL E. SMITH, Supervisor  
of Assessments

Defendants.

BILL OF PARTICULARS

COMES NOW the Petitioner, by Counsel, in response to Defendants' Motion for Bill of Particulars and to the extent deemed necessary amplifies its pleading as follows:

1. The Petition filed herein clearly alleges that "...GHA, as a non-profit organization, operates its facilities for the welfare of the residents of the area" (Petition for Declaratory Judgment, Paragraph 4). GHA is, indeed, a qualified, non-profit organization under both federal and state tax laws, a designation over which Defendants have no jurisdiction or control.

In addition, GHA operates its facilities for the welfare of the residents of the area, providing medical services to residents of the area. §4-7-1(3) of the Fairfax County Code does not state that services must be performed "for the public good or welfare..." as asserted by the

Defendants in the letter of February 8, 1990 (Petition for Declaratory Judgment, Exhibit B).

2. Inasmuch as Petitioner meets the two (2) criteria set forth in §4-7-1(3) of the Fairfax County Code, Petitioner is, by definition, not a "person" subject to BPOL taxation within the contemplation of the ordinance and is exempt therefrom.

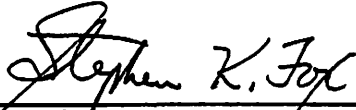
3. For the foregoing reasons, Defendants properly interpreted the ordinance, granting the request for exemption in 1983. Further, since no facts regarding GHA method of operation have changed and the ordinance remains unchanged, GHA remains exempt.

4. Since Defendants have previously acknowledged and must continue to acknowledge GHA's non-profit status, the factual issue is whether GHA operated and continues to operate its "...facilities for the welfare of the residents of the area" as set forth in §4-7-1(3) of the Fairfax County Code.

Respectfully submitted,

GROUP HEALTH ASSOCIATION, INC.  
By Counsel





Stephen K. Fox  
Bernadette A. Fritschie  
FOX & PROFFITT, P.C.  
11320 Random Hills Road, Suite 630  
Fairfax, Virginia 22030  
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petitioner's Response to Motion for Bill of Particulars was mailed, first-class postage prepaid, to David T. Stitt, County Attorney, County of Fairfax, 4100 Chain Bridge Road, Fairfax, Virginia, 22030, this 13<sup>th</sup> day of July, 1990.



Stephen K. Fox

F-1182.303

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

GROUP HEALTH ASSOCIATION, INC.)

Petitioner,

v.

AT LAW NO. 97213

THE BOARD OF SUPERVISORS  
OF FAIRFAX COUNTY, VIRGINIA

AND

PAUL E. SMITH, Supervisor  
of Assessments

Defendants.

ORDER

THIS CAUSE came on to be heard on this 22nd day of June, 1990, on the Demurrer filed by the Defendants; and

IT APPEARING from the pleadings and the arguments of counsel that the Demurrer should be overruled; and

IT FURTHER APPEARING that no assessment of local levy has yet been made and to the extent that Petitioner's pleading requests correction thereof, Petitioner has agreed to non-suit, without prejudice, any request to correct an erroneous assessment; it is hereby

ADJUDGED, ORDERED AND DECREED that the Demurrer of the Defendants is overruled; and it is


FURTHER ADJUDGED, ORDERED AND DECREED that inasmuch as no assessment of local levy has been made, Petitioner has non-suited any claim therefor in this cause, and that all reference thereto in the Petition for Declaratory Judgment shall be deemed exercised by this Order; and it is

FURTHER ADJUDGED, ORDERED AND DECREED that Defendants shall file their Motion for Bill of Particulars within ten (10) days of this hearing and Plaintiff shall file its response thereto within ten (10) days of receipt; and it is

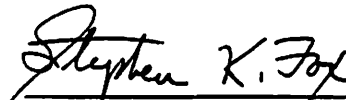
FURTHER ADJUDGED, ORDERED AND DECREED that Defendants shall file their responsive pleading to the Petition for Declaratory Judgment as amplified by Petitioner's Bill of Particulars within twenty-one (21) days after receipt of Petitioner's Bill of Particulars.

AND THIS CAUSE IS CONTINUED.

ENTERED this 10<sup>th</sup> day of July, 1990.

  
Judge Johanna L. Fitzpatrick,  
Circuit Court Judge

SEEN; OBJECTIONS NOTED TO ALL ADVERSE RULINGS:


  
Stephen K. Fox  
Bernadette A. Fritschie  
FOX & PROFFITT, P.C.  
11320 Random Hills Road, Suite 630  
Fairfax, Virginia 22030  
Counsel for Petitioner

SEEN AND OBJECTED TO WITH REGARD TO  
COURT'S RULING ON THE DEMURRER:

DAVID T. STITT  
COUNTY ATTORNEY

By: 

A. Robert Cherin  
Deputy County Attorney

  
Jill L. Rowe  
Assistant County Attorney

4100 Chain Bridge Road  
Fairfax, Virginia 22030  
(703) 246-2421  
Counsel for Defendants

F-1182.202

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

GROUP HEALTH ASSOCIATION, INC., :

Petitioner, :

v. :

AT LAW NO. 97213

THE BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY, VIRGINIA,  
et al., :

Defendants. :

ANSWER AND GROUNDS OF DEFENSE

COMES NOW Defendants the Board of Supervisors of Fairfax County, Virginia and Paul E. Smith, Supervisor of Assessments ("Defendants"), by counsel, and files this Answer and Grounds of Defense to Petitioner's Petition for Declaratory Judgment and Bill of Particulars as follows:

ANSWER AND GROUNDS OF DEFENSE

Petition for Declaratory Judgment

1. Defendants admit the allegations of ¶ 1.
2. Defendants admit the allegations of ¶ 2.
3. Defendants deny the allegations of ¶ 3 only insofar as they characterize Defendant Paul E. Smith as the "Agent" of the County of Fairfax ("County"). Paul E. Smith is an employee of the County authorized to assess the County's business, professional and occupational license tax ("BPOL tax") in his capacity as the County's Supervisor of Assessments.



4. Defendants do not have sufficient information to admit or deny the allegations in the first three sentences of ¶ 4 and, therefore, deny the allegations. Defendants deny that Petitioner "operates its facilities for the welfare of the residents of the area."

5. Defendants admit the allegations of ¶ 5 insofar as the allegations identify the locations of Petitioner's medical centers. Defendants do not have sufficient information to admit or deny when Petitioner opened its first medical center in the County and, therefore, deny as to that allegation.

6. Defendants admit the allegations of ¶ 6, but state for clarification that Petitioner's request for an exemption from certain County taxes was made in 1982 and Petitioner received an exemption from the County's BPOL tax in 1983.

7. Defendants deny the allegations of ¶ 7 only insofar as Petitioner states it "operated its medical centers as aforesaid" and Defendants have denied or stated they have insufficient information as to some of the "aforesaid" paragraphs.

8. Defendants admit the allegations of ¶ 8.

9. Defendants admit the allegations of ¶ 9, but state for clarification that the meeting took place on January 23, 1990.

10. Defendants admit the allegations of ¶ 10, but state that pursuant to Va. Code § 58.1-3903 Defendants have no authority to waive local taxes owed for any tax year of the three years last past.

11. Defendants deny the allegations of ¶ 11.

12. The allegations of ¶¶ 12 and 13 have been removed by an Order of this Court entered July 18, 1990, acknowledging Petitioner's nonsuit of any claim concerning an assessment of the BPOL tax against Petitioner.

13. All allegations not specifically admitted are herein denied.

Bill of Particulars

1. The first paragraph of ¶ 1 accurately reproduces what was originally alleged in Petitioner's Petition for Declaratory Judgment, but Defendants deny the truth of the statement that Petitioner "operates its facilities for the welfare of the residents of the area" asserted therein.

Defendants deny the allegations in the second paragraph of ¶ 1.

2. Defendants deny the allegations of ¶ 2.

3. Defendants deny the allegations of ¶ 3.

4. Defendants deny the allegations of ¶ 4.

5. All allegations not specifically admitted are herein denied.

BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY


PAUL E. SMITH, Supervisor  
of Assessments

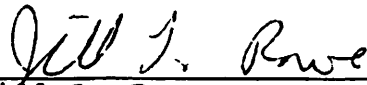
By

Jill L. Rowe  
Counsel

DAVID T. STITT  
COUNTY ATTORNEY

By


  
A. Robert Cherin  
Deputy County Attorney  
Virginia Bar No. 13228

  
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Assistant County Attorney  
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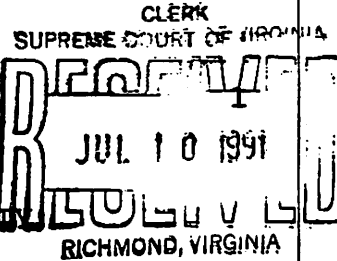
4100 Chain Bridge Road  
Fairfax, Virginia 22030  
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, to Stephen K. Fox, Esquire, and Bernadette A. Fritschie, Esquire, FOX & PROFFITT, 11320 Random Hills Road, Suite 630, Fairfax, Virginia 22030, this 17th day of August 1990.

  
Jill L. Rowe

ORIGINAL



1 VIRGINIA:

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

3 -----X  
4 GROUP HEALTH ASSOCIATION, INC. :

5 Petitioner, :

6 versus, :

AT LAW NO. 97213

7 THE BOARD OF SUPERVISORS OF :  
8 FAIRFAX COUNTY, VIRGINIA, et al.:

9 Respondents. :  
10 -----X

11 Fairfax, Virginia

12 Tuesday, March 19, 1991

13 The above-entitled action came on for trial  
14 before the Honorable William G. Plummer, a Judge in and for  
15 the Circuit Court of Fairfax County, in Courtroom 5H, 4110  
16 Chain Bridge Road, Fairfax County Judicial Center, Fairfax,  
17 Virginia 22030, beginning at approximately 10:05 a.m.  
18 -----  
19  
20  
21  
22  
23

LC-50A-91

21



Anita B. Glover & Associates, Ltd.  
10521 West Drive  
Fairfax, Virginia 22030

(703) 591-3004  
Prince William Metro 690-2070

1 **APPEARANCES:**

2 For the Petitioner:

3 STEPHEN K. FOX, ESQUIRE  
4 Fox and Proffitt, P.C.  
5 11320 Random Hills Road, Suite 630  
6 Fairfax, Virginia 22030

7 KENNETH THAU, ESQUIRE  
8 Assistant General Counsel to  
9 Group Health Association

10 For the Respondent:

11 A. ROBERT CHERIN, ESQUIRE  
12 JILL L. ROWE, ESQUIRE  
13 Assistant County Attorneys  
14 4100 Chain Bridge Road  
15 Fairfax, Virginia 22030





## C O N T E N T S:

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Robert P. Photenhauer	46	103	169	--
Dr. Turner Bledsoe	175	242	--	--
Andria Lomrantz-Rosen	217	233	241	--
Bernice Bennett	250	284	--	--





1 THE COURT: The operative language, as I  
2 understand, that is at hand here if we cut out the  
3 intervening wording is, Such terms shall not include a non-  
4 profit organization operating facilities for the welfare of  
5 the residents of the area?

6 MR. FOX: That is correct.

7 MR. CHERIN: That is right, Your Honor.  
8 That is what they are claiming the exemption under.

9 THE COURT: Yes. Go ahead, sir.

10 MR. CHERIN: Thank you, Your Honor.

11 In order to claim that exemption,  
12 Your Honor, the petitioners basically we believe will show  
13 really two things. One is that they are a non-profit  
14 corporation, and, two, that they are operating a function of  
15 delivering health care services in the area.

16 THE COURT: Well, is there any argument  
17 about them being a non-profit organization?

18 MR. CHERIN: No, Your Honor, there is not.

19 THE COURT: All right. That is agreed then?

20 MR. CHERIN: Yes.

21 THE COURT: How about them providing medical  
22 services to people in the area? I am not saying the public  
23 at large, but to people in the area.



1 MR. CHERIN: There is no argument, Your  
2 Honor, that they provide health care services on a prepaid  
3 basis and the services are delivered to those who pay --

4 THE COURT: Who wish to join.

5 MR. CHERIN: -- who wish to join and pay the  
6 fee and are qualified to join, for certain reasons -- Well,  
7 I am sure it will come out during the course of this case as  
8 well.

9 But that is all they are showing,  
10 that they are delivering, we believe, these services on a  
11 prepaid basis to their members exclusively.

12 Now, Your Honor will notice that  
13 the other exemptions in that portion of the Code are all in  
14 the nature of -- are all community based in the nature of  
15 recreational facilities, community based, run by volunteers  
16 to a large extent.

17 The plaintiff in this case is a  
18 big, competitive regional business. And when I say big, I  
19 am talking about a hundred and fifty-five thousand members,  
20 over seventy million dollars in assets, and revenues of over  
21 two hundred million dollars a year.

22 Now, there is nothing wrong with  
23 that and I don't want the Court to misunderstand or think



1 that we are suggesting there is something, wrong, or evil,  
2 or sinister, or anything like that about this kind of an  
3 operation. Not at all.

4 But on the other hand it is, we  
5 would suggest, not an operation which is in the interest of  
6 the community in the sense that what they are doing is they  
7 are in the business of selling health care services to their  
8 customers.

9 I would submit, Your Honor, that  
10 there is nothing in the articles of incorporation or the by-  
11 laws or the mission statements of this company that says  
12 anything other than that they will provide medical care to  
13 their members and their dependents. That is it.

14 There is nothing about supplying  
15 medical services to the poor, the medically under served,  
16 the indigents of the community, the elderly, or anyone else.

17 THE COURT: I read within this same section  
18 some things, and I agree with Mr. Fox, it is a rather  
19 unusual paragraph the way it is written.

20 MR. CHERIN: Yes, Your Honor.

21 THE COURT: It says, Such terms shall not  
22 include swimming pools, tennis courts. Now, I take it none  
23 of this applies to government owned recreational areas and



1 swimming pools and tennis courts because they don't get  
2 taxed anyway.

3 MR. CHERIN: That is right, Your Honor.

4 THE COURT: These are privately owned  
5 facilities. Whatever they are in this paragraph, they are  
6 privately owned facilities?

7 MR. CHERIN: But they are all non-profit.

8 THE COURT: Yes.

9 MR. CHERIN: Yes.

10 THE COURT: What about the community  
11 swimming pool? That falls within this, would it not?

12 MR. CHERIN: Yes, Your Honor.

13 THE COURT: And aren't they restricted to  
14 their members? You can't just walk in off the street and  
15 say, I want to swim.

16 MR. CHERIN: But there are some other  
17 distinctions I would submit, Your Honor, that those things,  
18 first of all, are specifically put in here for the purpose  
19 of relieving a governmental burden.

20 THE COURT: Well, you have a governmental  
21 burden for health care. Obviously Fairfax Hospital is  
22 heavily subsidized by the County for people who cannot pay  
23 for or need some help in paying.



1 MR. CHERIN: I'm not so sure that is true,  
2 Your Honor.

3 THE COURT: The County doesn't pay millions  
4 and millions to help support Fairfax Hospital?

5 MR. CHERIN: I don't believe so, Your Honor.

6 THE COURT: Oh, I would be very surprised if  
7 they don't.

8 MR. CHERIN: We have issued industrial  
9 development bonds for the purpose of buying land and  
10 constructing buildings.

11 THE COURT: Well, I think we are digressing  
12 here.

13 MR. CHERIN: Yeah.

14 THE COURT: But your point that has been  
15 made in the pleadings is that you feel that this doesn't  
16 qualify because this is not open to the public at large?

17 MR. CHERIN: Excuse me, Your Honor.

18 THE COURT: That is what I thought was going  
19 to be your point.

20 MR. CHERIN: It is offered to the public at  
21 large, GHA services are offered. The vast majority of their  
22 membership comes through groups. They do take individuals  
23 though, those individuals who can pay and who can pass a





1 medical pre-screening.

2 So they offer their services to  
3 the whole community. I don't mean to mislead the Court.

4 THE COURT: Well, then isn't that even  
5 better than what a local subdivision swimming pool club or  
6 tennis club offers, because they usually restrict it to the  
7 people in the immediate area, have a limited number of  
8 members, and very limited guest privileges and things like  
9 that, and you have to pay for it. You pay for it and you  
10 pay for it up front, and you pay dues, you pay membership  
11 fees and dues.

12 I am wondering where does it come  
13 that you must be open to the public to come within this  
14 section?

15 MR. CHERIN: I don't say -- We are not  
16 claiming that it is, Your Honor.

17 THE COURT: But I thought in your pleadings  
18 you had said that it talks about the public welfare of the  
19 residents of the area?

20 MR. CHERIN: Well, --

21 THE COURT: If that is not your position,  
22 fine.

23 MR. CHERIN: No. Well, the concept here is



1 that they are coming in and seeking an exemption based on  
2 the theory that they are serving the welfare of the  
3 residents of the area.

4 Now, it is our position that for  
5 them to serve the welfare of the residents of the area takes  
6 more than just being in business.

7 See, they have a concept that just  
8 being in business and operating here tends to foster  
9 competition for health care services and, therefore, it  
10 tends to depress the costs of health care services for  
11 everybody and that is a benefit.

12 Now, I would argue that the same  
13 is true in that situation of Exxon, for example. They are  
14 providing an essential service that we all need, you know,  
15 oil products and they are --

16 THE COURT: How come you never call them  
17 non-profit or at least they try to make a profit?

18 MR. CHERIN: Well, that is right, Your  
19 Honor. That is absolutely right. But the principal is the  
20 same, that is that to say just because we are operating and  
21 just because we are providing a service in the community and  
22 are competing in the community tends to depress the prices  
23 of that to the public is a public service to the extent that



1 they should be entitled to a tax exemption. If that were  
2 true, then any business in the County that was competing I  
3 think could claim the same thing.

4 But that is not what this is  
5 about. What these are about -- These exemptions, as you can  
6 see, as a general proposition are about community based  
7 volunteer things. The volunteer fire departments. They are  
8 small. They are volunteer --

9 THE COURT: It doesn't say anything here  
10 about being small, sir.

11 MR. CHERIN: I understand that, Your Honor.  
12 But I am trying to talk about the concept of what kinds of  
13 organizations, the nature of the organizations that are  
14 there I think is valid to look at.

15 I don't think that there is any  
16 intention or there is no apparent intention to have an  
17 organization with a two hundred million dollar a year  
18 revenue, with thousands of employees, as the kind of thing  
19 that is deserving of a tax exemption because they are  
20 operating in the nature of these kinds of companies.

21 THE COURT: What about -- We have discussed  
22 some the weight to be given to an interpretation of an  
23 administrator.



1 MR. CHERIN: Yes.

2 THE COURT: That interpretation was given  
3 first regarding this property owner back in 1983. The Board  
4 of Supervisors obviously are bound to know that,  
5 fictitiously if no other way.

6 And they have done nothing to  
7 change the ordinance. The ordinance remains as it is and  
8 today is the same as it was when this exemption was given.

9 MR. CHERIN: That is right, Your Honor.

10 THE COURT: Now, we have all commented that  
11 this particular paragraph is a little unusual in its  
12 wording. I mean it starts out sounding like what you are  
13 saying, you know, little community pools and recreation  
14 centers and softball referees and things like that.

15 But then it throws in this big  
16 phrase, Facilities for the welfare of the residents.  
17 Probably some very bright lawyer thought that was a good  
18 thing to put in there.

19 MR. CHERIN: It wasn't me, Your Honor.

20 (Laughter.)

21 THE COURT: What weight is to be given the  
22 fact that the legislative body knowing about the  
23 administrator's interpretation given did not change it --



1 MR. CHERIN: No, I understand --

2 THE COURT: -- so as to exclude GHA?

3 MR. CHERIN: I understand the principal that  
4 Your Honor is talking about, that normally the  
5 interpretation afforded an ordinance by the governing body -

6 THE COURT: Similar to the weight to be  
7 given because a Court has ruled on a certain matter, and the  
8 General Assembly did not change the interpretation given to  
9 a statute by a Court, but gives it a certain weight.

10 MR. CHERIN: It does, Your Honor. I agree.  
11 But I think the answer to that is that it is some weight.  
12 And I believe that the evidence will show in this case that  
13 the operations, we will attempt to show, are for the purpose  
14 of serving its members and its members only, and that is it.

15 This interpretation that we gave,  
16 if we come to believe through our examination of the issues  
17 that we were wrong, I don't think there is any authority for  
18 the proposition that once we are wrong we have to stay wrong  
19 forever.

20 We believe that the interpretation  
21 that we now have on it is correct. We believe it is  
22 supported by the law. And we believe, you know, that the  
23 law on exemptions is that they are to be strictly construed.



1 THE COURT: Did I read correctly in some of  
2 this volume of paper that back in '83 the County Attorney's  
3 office gave an opinion that this organization was not  
4 qualified?

5 MR. CHERIN: The opinion was that they did  
6 not get the exemption.

7 THE COURT: Back in '83?

8 MR. CHERIN: Yes.

9 MR. FOX: Your Honor, for real estate taxes.

10 MR. CHERIN: Yes, for real estate.

11 THE COURT: Oh, that is right. That is not  
12 an issue.

13 MR. FOX: A different statute.

14 MR. CHERIN: A different tax, yes. And they  
15 are in fact paying real estate taxes today.

16 THE COURT: And personal property.

17 MR. CHERIN: And personal property, that is  
18 right.

19 But the point is that we were --  
20 that the exemptions now are to be considered under Virginia  
21 law on a case by case basis and the law is that exemptions  
22 are to be strictly construed. And the plaintiff has the  
23 burden of demonstrating that they clearly under that law are



1 entitled to it.

2 And the law says that even if  
3 there is a reasonable interpretation either way that it must  
4 be construed against the exemption under the law.

5 Now, we believe that the -- They  
6 are going to say, and they already have to some degree, that  
7 they don't have to be a charity. And that is true. There  
8 is nothing that requires them to be a charity or to offer  
9 charity care. There is no law as far as I am aware that  
10 requires them to do that.

11 But by the same token, if they  
12 don't do something along those lines I think their claim to  
13 be serving the residents -- the welfare of the residents of  
14 the area has no basis at all because --

15 THE COURT: Well, get back down to the  
16 little swimming pool. They are not a charity.

17 MR. CHERIN: They don't have --

18 THE COURT: Unless they run a fund drive or  
19 something on the premises.

20 MR. CHERIN: Your Honor, all of the Courts  
21 that have considered this issue have said that there is no  
22 one factor that governs. It is a whole series of factors.  
23 Among those factors are, you know, the nature of the



1 organization, the kinds of services they provide, whether  
2 they provide any -- especially in the medical field whether  
3 they provide any care to those who are poor, uninsured,  
4 elderly, whether they have any sliding scale fees for those  
5 kinds of people, whether there are any affirmative programs  
6 to serve the poor, and things of that nature.

7                   The five oh one C three standard  
8 in the cases that are cited in our memo are talking about a  
9 community benefit standard. This was the same standard or  
10 very close to the same standard that we are talking about  
11 here. Under the IRS regulation it is a community benefit  
12 kind of standard.

13                   The swimming pools, I would  
14 submit, are operated by volunteers to serve a small  
15 community. And, yes, if you live in another subdivision you  
16 probably couldn't get in. But nobody cares. Nobody wants  
17 to. That is not the point.

18                   THE COURT: You are pretty much restricted  
19 to fairly affluent land owners when you get down to it.

20                   MR. CHERIN: Not necessarily, Your Honor. I  
21 mean there --

22                   THE COURT: Well, I will agree there is one  
23 over here at the YMCA where you don't have to own anything





1 to swim. You pay your fee and you are a member.

2 MR. CHERIN: I think YMCAs are exempted for  
3 other -- specifically by designation.

4 THE COURT: Yes.

5 MR. CHERIN: And there are some  
6 organizations like that.

7 They are dependent, you know, for  
8 their existence on volunteers, on fund raising efforts.  
9 Yes, they charge for it, but lots of times it doesn't make  
10 enough. They all have fund raising kind of things.

11 We are talking about a beast that  
12 is in my opinion totally different here. Over two hundred  
13 million dollars in revenue. That is the kind of business.

14 THE COURT: While we are talking money, how  
15 much is this taxed just out of curiosity?

16 MR. CHERIN: We don't know, Your Honor.  
17 They haven't been assessed. At this point we don't know.  
18 Assessment is not part of this case.

19 And one of the issues, and it has  
20 come out in discovery or during the depositions prior to  
21 today's trial, has been the cost accounting difficulties of  
22 being able to allocate any of this to Fairfax County.

23 So the answer is, you know, we



1 don't know what the tax would be. Nobody knows because it  
2 hasn't been assessed yet. And depending on the outcome of  
3 this case, you know, if the County should prevail, then we  
4 will talk about the assessment. If the County does not  
5 prevail, of course it is moot. But we don't know at this  
6 point what the assessment would be.

7                               The point we think is important,  
8 Your Honor, is the benefit, any benefit, that the public  
9 might get out of this operation that they are asking us for  
10 a tax exemption for is at most a tiny portion of what they  
11 are about.

12                           They are -- The record will show  
13 or the evidence will show we believe that they furnish next  
14 to nothing in medical services to anybody other than their  
15 members, and if their members don't pay they get dropped.  
16 Anybody can join if you have the money and if you pass the  
17 medical screening that says there is nothing wrong with you,  
18 and I mean nothing wrong with you. If you have anything  
19 wrong that requires medical treatment at the time they won't  
20 take you.

21                           THE COURT: Well, all of the rest of this  
22 you are talking about is charity. Why would they take  
23 people who have got pre-existing cancer? Why would they



1 take somebody who can't pay the fees?

2 MR. CHERIN: Oh, they shouldn't, Your Honor.

3 I am not saying there is anything wrong with that, not at  
4 all. If I was running a business I would try to do it the  
5 same way, because the business is more solid if they don't  
6 take people like that. But --

7 THE COURT: Blue Cross doesn't do it either.

8 MR. CHERIN: But you can't have both. That  
9 is right. They are not exempt either. You can't have it  
10 both ways is what we are saying. It is fine if you don't  
11 take those kinds of people. That is okay.

12 THE COURT: Is Blue Cross for profit?

13 MR. CHERIN: I don't know the answer to  
14 that. These gentlemen who are in the medical field could  
15 probably tell you that better than I can, Your Honor. I do  
16 know that they are not exempt any more.

17 THE COURT: They are for profit?

18 MR. FOX: I believe so, yes.

19 MR. CHERIN: But the point is, Your Honor,  
20 that that is very true, they don't have to take those and  
21 they shouldn't have to take them. We aren't saying they  
22 have to take them.

23 What we are saying though is if



1 you don't take them you can't have it both ways. You can't  
2 come in and claim that you are serving the public and doing  
3 the public a favor and so the taxpayers of the County should  
4 subsidize your operation because, you know, just because you  
5 are providing health care services to those who pay.

6 There is no requirement at all to  
7 take charity cases. They don't have to. And if I was  
8 running a business that was trying to be, you know, cost  
9 effective I wouldn't do it either. They don't have to do  
10 it. And we are not saying they have to do it.

11 But if they don't do it, I think  
12 it is very unfair to ask the taxpayers of the County to  
13 subsidize that operation when they don't serve any charity  
14 cases and they don't serve the poor, the medically under  
15 served.

16 That is the point of the case,  
17 Your Honor. You can't have it both ways and that is what  
18 they are trying to do. We think the evidence will show  
19 that.

20 THE COURT: Thank you, sir.

21 MR. CHERIN: Thank you, Your Honor.

22 THE COURT: Your first witness.

23 MR. FOX: Your Honor, if the Court please, I



1 did want to call your attention to just a couple of minor  
2 other issues.

3 And not to belabor it, but in your  
4 review of the statute or the ordinance at issue as we go  
5 along, part of our position will be that the work area or  
6 residents of the area is not defined by the ordinance in any  
7 sense; that the word exclusively as seemingly argued by the  
8 County is nowhere in the ordinance.

9 And if the Court sees the  
10 attachment to the pleading, Exhibit B, which is a letter  
11 from the County to me as counsel in response to issue number  
12 one, at the end of the response the sentence reads,  
13 Therefore, GHA would not be entitled to a tax exemption as  
14 its services are not performed for the public, and they have  
15 inserted the word public into the ordinance, public good or  
16 welfare.

17 And, again, I would note and ask  
18 the Court to note that the word public, which could have  
19 been put into the statute, is not there. I called Mr.  
20 Cherin -- not Mr. Cherin --

21 (Laughter.)

22 MR. CHERIN: Excuse me, Your Honor. Before  
23 we get to that I would just like to address that one point.



1 Maybe we should argue it now. It might save time later on  
2 if the Court wishes to hear it at this point, that is the  
3 thing Mr. Fox mentioned first, that is the welfare of the  
4 residents of the area, what area means.

5 I know that counsel has a  
6 disagreement on what that is going to mean and it might save  
7 -- If the Court wishes to hear it, we can argue that now or  
8 wait until objections come up during the testimony.

9 MR. FOX: Your Honor, I would suggest and I  
10 was just trying to preface what some of the testimony will  
11 be. Certainly my focus is going to be on Fairfax County.  
12 But with an organization that operates in the metropolitan  
13 area, certainly there is some spill over effect into, for  
14 example, Prince William, some spill over effect into  
15 Arlington, Alexandria, and other areas.

16 And the character of that  
17 organization does not change because certain of its  
18 activities would have an impact in other jurisdictions.

19 And all I was noting for the Court  
20 is that when they say residents of the area, that is a  
21 fairly -- with all due respect to the legislative fiat --  
22 that is pretty loosey goosey terminology. It could have  
23 said residents of Fairfax very easily or residents of the



1 county. It says residents of the area.

2 And, you know, frankly I don't  
3 think that in the testimony we necessarily should be  
4 confined to only what GHA does in Fairfax County.

5 THE COURT: Where is area defined?

6 MR. CHERIN: It is not defined, Your Honor.  
7 But if I may be heard on that point, we are talking about  
8 the Fairfax County Code. We are talking about the Fairfax  
9 County tax and the Fairfax County ordinance.

10 I think for them to show welfare  
11 of the residents of the area, I think it is implicit in that  
12 language since it is a County Code, a County ordinance, a  
13 County tax, that it has to be for the welfare of the  
14 residents of the area, of the Fairfax County area.

15 THE COURT: Well, it appears to me that it  
16 has to be for the welfare, as it says, of the residents of  
17 the area. But primarily, obviously, they have got to show  
18 that that includes people in Fairfax County. It must. I  
19 mean if they can't show they are serving any purpose in  
20 Fairfax County, of course you would have a hard time  
21 collecting the tax, wouldn't you?

22 MR. CHERIN: Well, that is right, but that  
23 is not the issue here.



1 But I think for them to -- I think  
2 it is ludicrous for them to come in here and suggest that  
3 because they might do things for the community in Prince  
4 George's County or the District of Columbia or even  
5 Arlington or Alexandria that the taxpayers of Fairfax County  
6 should give them a tax break.

7 THE COURT: I think it is just additional  
8 evidence that I would consider. They would have to show  
9 substantial impact of these services regarding Fairfax  
10 County citizens obviously. I would not exclude them from  
11 putting in the evidence that they do the same thing in  
12 Prince William, Alexandria, Arlington, Loudoun, other places  
13 in the general area.

14 Again, I mean if the County wanted  
15 to say residents of the County it would have said it.

16 MR. CHERIN: I don't see how it could  
17 possibly mean anything else but that because --

18 THE COURT: Well, I hope they are not so  
19 provincial that they wouldn't like to see an organization  
20 help people in neighboring parts of the State too.

21 MR. CHERIN: Oh, no problem, Your Honor.  
22 Again, we are not trying to -- I would like to think that we  
23 do our role in regional governmental efforts. But I think





1 to say that we should -- that Fairfax County should give  
2 them a tax exemption because --

3 THE COURT: I think we are arguing weight to  
4 be given to it. They are going to establish they are doing  
5 these things in Fairfax County. I am not going to preclude  
6 them from putting in the evidence of what they do in the  
7 peripheral areas of Fairfax County. What they do in D.C.  
8 and Maryland might be a little too far. I would probably  
9 say the Northern Virginia area would be my interpretation of  
10 it, otherwise you could say the whole east coast. I mean  
11 where do you cut it off?

12 MR. FOX: Your Honor, certainly I want to  
13 assure the Court that our primary focus is on Fairfax,  
14 Northern Virginia, but there is some evidence of what they  
15 are doing in other jurisdictions which has some spill over  
16 effect in Fairfax.

17 THE COURT: Okay.

18 MR. FOX: So I don't mean to --

19 THE COURT: Let me get back to a point.  
20 This is a question I raised and now it has been pointed out  
21 to me. The opinion of the County Attorney's office of July  
22 22 of '83 is relied upon by the administrator, saying that  
23 although GHA performed services related to the welfare of





1 in that package to show that they extrapolated from a real  
2 estate tax issue and applied that same standard to the BPOL  
3 tax which is under a different ordinance.

4 (Brief pause.)

5 THE COURT: Go ahead.

6 MR. FOX: Your Honor, I would call Mr.  
7 Photenhauer.

8 Whereupon,

9 ROBERT P. PHOTENHAUER,  
10 a witness, was called for examination by counsel for the  
11 petitioner, and, having been first duly sworn by the Court,  
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FOX:

15 Q. Mr. Photenhauer, would you state your full  
16 name and your occupation for the Court's record?

17 A. Robert P. Photenhauer, president and CEO of  
18 Group Health Association.

19 Q. Mr. Photenhauer, for how long have you been  
20 the president and CEO of Group Health Association, Inc.?

21 A. A little over three and a half years.

22 Q. And prior to coming to Group Health  
23 Association here in the Washington, D.C. Metropolitan Area



1 would you tell Judge Plummer what you did and for how long?

2 A. I was a regional vice president with a  
3 sister organization in Seattle Washington called Group  
4 Health Cooperative of Puget Sound, which is also a consumer  
5 owned cooperative health care organization. I was with them  
6 for about thirteen years.

7 Q. When you use the term sister you don't mean  
8 any corporate affiliation?

9 A. No, simply a similarly organized  
10 organization, consumer cooperative organization.

11 Q. Okay. Now, what is Group Health  
12 Association?

13 A. We are a prepaid consumer owned health care  
14 system. We are what is known as a staff model health  
15 maintenance organization. We basically provide prepaid  
16 health care services to people who enroll in our system.

17 Q. Now, what is a staff model health  
18 maintenance organization?

19 A. A staff model organization is one in which  
20 the physicians and medical staff are primarily employed  
21 directly as staff similar to an institutional health care  
22 delivery system. It is in contrast to what is referred to  
23 as an IPA or an independent practice association HMO, which



1 is really a mix of private physicians who are brought  
2 together in a contractual arrangement usually with an  
3 insurance vehicle.

4 Q. So in substance you employ your doctors and  
5 nurses?

6 A. For the most part we provide our providers  
7 directly, yes, or have contractual relationships with them.

8 Q. What percentage of your medical staff,  
9 including doctors and nurses, are staff people as opposed to  
10 contract vendors?

11 A. Well, we have on staff close to two hundred  
12 physicians who probably provide seventy to eighty percent of  
13 all of the medical care provided to our members.

14 Q. In terms of the vendor relationships that  
15 you have with medical care providers, what circumstances  
16 dictate your having to engage outside doctors?

17 A. Typically there are two situations. Either  
18 -- In some cases they are providing a service which is not  
19 cost effective for us to provide directly ourselves.

20 An example might be open heart  
21 surgery. We end up contracting with the surgical teams at  
22 various hospitals who specialize in that service.

23 Q. Is that sometimes referred to as tertiary



1 care?

2 A. Tertiary care would be another name for it.

3 In some cases we don't have the  
4 current demand for that particular service. And as we grow  
5 and develop often times we will buy that on a contractual  
6 basis from an outside provider, but in many cases we will  
7 ultimately end up hiring our own staff.

8 A recent example is that during  
9 this past year we have just added a retinal sub-specialist  
10 who does nothing but retinal surgery and heretofore we  
11 didn't have enough patients who required that. So it was  
12 more cost effective to purchase that on a contractual basis  
13 from a private ophthalmologist.

14 Q. Now, going back to your explanation of staff  
15 model, what, if anything, does the term alternative to  
16 traditional indemnity plans mean in that context?

17 A. The Federal HMO Act under which we are  
18 regulated, among other statutes, was a major piece of health  
19 care reform legislation adopted during the Nixon  
20 Administration during the early 1970s.

21 One of the express purposes of  
22 that federal statute was to use the vehicle of health  
23 maintenance organizations, or HMOs, to basically bring about



1 a greater degree of competition within the health care arena  
2 and to bring about overall reform in the health care system.

3 The theory and practice really is  
4 that the presence of HMOs in a community will in fact make  
5 the rest of the private health care delivery system also  
6 more cost effective over time because of the competition  
7 from HMOs.

8 Q. Now, in terms of just definitions, in the  
9 industry what does fee for service mean?

10 A. Fee for service is basically an arrangement  
11 for payment of services rendered which involves the receipt  
12 of payment for a specific service. Whether it is a  
13 diagnostic visit or an operation or a surgery, basically the  
14 dollars exchange hands for that specific service.

15 Q. Now, how does the concept of the staff model  
16 health maintenance organization differ from the fee for  
17 services concept?

18 A. Basically one of the precepts of the HMO Act  
19 was the concept of prepayment. It was included in the act  
20 for the express purpose of trying to provide basically  
21 middle class Americans a more effective way of providing for  
22 health care services in which they could budget for those  
23 services and pay in usually a monthly amount of dues or



1 premiums so that they would be able to better budget their  
2 overall health care expenses.

3 Q. Going back specifically to Group Health  
4 Association, would you tell the Court for its record when  
5 GHA was formed?

6 A. Believe it or not, given the earlier  
7 comments today, we once were very small. The organization.  
8 was begun in 1937 by a very small group of federal  
9 government employees who basically felt that they had very,  
10 very few options for health coverage and decided to band  
11 together really in a health care cooperative and join hands  
12 with a medical group at the time to create Group Health  
13 Association.

14 We are really the second oldest  
15 HMO in the country even though the name was not officially  
16 coined until the early 1970s.

17 Q. Was the federal act in some sense modeled  
18 after the early model HMOs such as GHA?

19 A. Certainly Group Health Association has  
20 served as one of the national models along with Group Health  
21 Cooperative of Puget Sound and Group Health in Minneapolis  
22 as a model for the federal legislation, yes.

23 Q. Now, let's talk about some of the facilities



1 that Group Health has. In what jurisdictions does Group  
2 Health Association have facilities?

3 A. We basically operate facilities in the  
4 greater metropolitan area. As it has been pointed out, in  
5 Fairfax County in Northern Virginia, in Montgomery County  
6 and Prince George's County in Maryland, as well as the  
7 District of Columbia.

8 We are basically limited to this  
9 metropolitan area. We are a home grown organization, not an  
10 east coast or regional operation.

11 Q. Does GHA have any subsidiaries which are for  
12 profit subsidiaries?

13 A. No.

14 Q. Do you have any subsidiaries at all?

15 A. No.

16 Q. So by your testimony all of the facilities  
17 are operated under this one umbrella?

18 A. That is correct.

19 Q. Where are your administrative offices?

20 A. Our administrative offices are at 4301  
21 Connecticut Avenue, N.W., Washington, D.C.

22 Q. Now, with reference to Group Health  
23 Association's facilities in Fairfax, for the record where





1 are they located?

2 A. One is located on Route 7 in the Tysons  
3 Corner business area. A second is located in the Annandale  
4 area close to Four-ninety-five. A third is located right  
5 off of Three-ninety-five at Baileys Crossroads, and a fourth  
6 is located near Sixty-six and Fifty near the Fair Oaks  
7 shopping mall, regional mall.

8 Q. Now, is there any rhyme or reason to the  
9 methodology of locating the centers in Fairfax with  
10 reference to service area?

11 A. Certainly. We consider very carefully the  
12 location of the facilities with the thought in mind of  
13 convenience, for access to care being a prime consideration  
14 along with public access to the facilities as well.

15 Q. Now, in terms of the four centers in  
16 Fairfax, are they all equally staffed or do they have  
17 different facilities?

18 A. We have basically different sizes of  
19 operations in those four facilities. All have core level  
20 services that provide primary care services. Typically they  
21 would have internal medicine or family practice, pediatrics  
22 and obstetrics offered at each of those sites.

23 What would distinguish these



1 operations from, say, a private physician's office is that  
2 they are also well equipped with emergency equipment and  
3 supplies as well as ancillary services. Typically each has  
4 a laboratory and its own radiology service so that we can  
5 provide diagnostic tests right on location for people coming  
6 to that site.

7 THE COURT: Let me interrupt for a second.  
8 You said you have obstetric services available at all four.

9 Are you having any difficulty in  
10 maintaining sufficient physicians to perform that?

11 THE WITNESS: It is one of our major  
12 challenges, Your Honor. In some cases --

13 THE COURT: With the malpractice problem?

14 THE WITNESS: Yes. Well, malpractice is not  
15 as big an issue as quite frankly recruitment of  
16 obstetricians today as strange as it may sound. In part  
17 because of the malpractice crisis we fully cover the  
18 malpractice insurance for our staff, which is a major  
19 benefit to the staff. But a number of people are basically  
20 getting out of the OB business and only doing GYN. And it  
21 has been one of our major staffing challenges.

22 THE COURT: But you said that a doctor who  
23 is an OB comes to you would be covered under your group



1 malpractice policy?

2 THE WITNESS: That is correct.

3 THE COURT: Rather than him having to go out  
4 and get one of his own?

5 THE WITNESS: That is right. It is a very  
6 significant benefit to him.

7 THE COURT: All right. Go ahead.

8 BY MR. FOX:

9 Q. Mr. Photenhauer, in terms of the equipment,  
10 you have compared the equipment, the radiology and the lab  
11 equipment at your facilities to those of private physicians.  
12

13 How would your facilities compare,  
14 for example, to emergency rooms operated by hospitals and/or  
15 these urgent care centers that have cropped up over the last  
16 five to eight years?

17 A. On a continuum we would certainly be between  
18 a hospital emergency room and a private physician's office,  
19 better equipped than a private physician's office but  
20 certainly not equipped to handle the major trauma that  
21 Fairfax Hospital would or Arlington Hospital would.

22 Q. On occasions have your facilities had walk-  
23 in patients as a result of traumatic incidents?



1           A.           Certainly we have had people that we have  
2 had to handle and then appropriately triage to other  
3 locations as need be.

4           THE COURT:   Are these members or non-  
5 members?

6           THE WITNESS:   Typically they would be  
7 members.

8           BY MR. FOX:

9           Q.           Have you ever had any non-members?

10          A.           I cannot honestly say.   I am not aware of  
11 any specific instance.

12          Q.           Now, with reference to your equipment array,  
13 do you have any equipment in your system that requires or is  
14 of such a nature that it requires a certificate of need from  
15 health department regulatory agencies?

16          A.           Yes, at our specialty center in downtown  
17 Washington, D.C. we operate a CAT scanner.   We needed to go  
18 through an exemption process for a certificate of need  
19 within the District for that equipment as well as for the  
20 construction, the finishing, of that space in D.C.

21          Q.           And is that equipment, that CAT scan,  
22 available to persons who use your Fairfax County centers?

23          A.           Yes.



1 Q. How many of those do you have in your entire  
2 system, CAT scans?

3 A. Just the one CAT scan. It is a very  
4 significant capital item and we utilize just the one.

5 Q. Approximately how much did that piece of  
6 equipment cost, the capital expenditure?

7 A. I believe the overall capital expenditure is  
8 in the three to five hundred thousand dollar range.

9 Q. Now, Mr. Photenhauer, you have previously  
10 distinguished a staff model HMO from the IPA model.

11 What is a group model HMO?

12 A. A group model is very close to a staff  
13 model. A group model is basically an organization in which  
14 the physicians are typically incorporated as a group  
15 practice and then contract with the HMO for the provision of  
16 medical services.

17 Q. And the leading example of that in the area?

18 A. Would be the Kaiser-Permanente organization.

19 Q. Now, there has been some discussion over the  
20 years with reference to HMOs, that HMOs constitute  
21 insurance.

22 Do you adopt that?

23 A. Not at all. We are specifically regulated



1 as a health maintenance organization, as I mentioned, by the  
2 federal government as well as by the Commonwealth of  
3 Virginia as well as the State of Maryland.

4                   There is a clear distinction in  
5 state statutes, for example, that specifically excludes us  
6 from insurance regulation. The Insurance Commissioner's  
7 office within the Commonwealth regulates us as one of the  
8 regulatory agencies, but by the State HMO Act.

9           Q.       And functionally is there a distinguishing  
10 feature between the staff model HMO and the typical third-  
11 party indemnity carriers?

12           A.       There are some major differences that exist.  
13 And it goes back to the origins of the federal and state  
14 statutes and the intent of trying to bring about overall  
15 reform in the health care system.

16                   HMOs do provide prepaid services  
17 to individuals. The rules and regulation for insurance  
18 companies are quite different than what faces HMOs.

19                   Insurance companies by regulation  
20 and law are allowed to experience right, namely, they are  
21 allowed to look at the experience of a specific group of  
22 individuals and basically provide the insurance at the  
23 actual use, reflecting the actual use of that group. They



1 are able to basically terminate coverage if they find that  
2 the group has excessive utilization, and, quote, they are  
3 losing money on that group. They are able to exclude  
4 individuals for pre-existing conditions.

5 The HMO statutes are distinctly  
6 different. First, the federal statute does not allow for  
7 HMOs to exclude individuals -- any pre-existing conditions  
8 of individuals. That is in clear contrast to commercial  
9 insurance law and regulation.

10 Q. Now, let's make it clear.

11 THE COURT: This is regarding groups, people  
12 who join through groups?

13 THE WITNESS: Groups and individuals.

14 THE COURT: And you have to take people with  
15 pre-existing --

16 THE WITNESS: Well, I was going to get to  
17 that.

18 THE COURT: I was wondering.

19 THE WITNESS: We are allowed to screen  
20 groups and individuals. And based on that screening process  
21 we are not obligated, for example, to take any specific  
22 groups or individual.

23 But once that individual is



1 accepted we are not able to exclude a specific pre-existing  
2 condition that he or she may have.

3 BY MR. FOX:

4 Q. Are you referring to the sort of silent pre-  
5 existing condition?

6 A. To any.

7 THE COURT: You are not talking about fraud?

8 THE WITNESS: No.

9 THE COURT: Lie about never having had  
10 cancer and then six months later I have cancer, and you know  
11 it had to have been treated before.

12 THE WITNESS: We are able to terminate  
13 people who have willfully withheld information, correct.

14 THE COURT: Certainly. Certainly.

15 THE WITNESS: But in the case of people --  
16 Well over probably ninety percent of our individuals come  
17 through their place of employment or through group  
18 contracts. For the groups greater than twenty-five in size  
19 there is no screening basically. And if we accept that  
20 group, we accept all of the individuals who subsequently  
21 enroll with us within that group.

22 THE COURT: No matter what their prior  
23 health record is?





1 THE WITNESS: Correct. Correct.

2 And clearly we have people -- it  
3 is called adverse selection -- who specifically enroll in  
4 HMOs because we have much broader, typically broader, more  
5 comprehensive coverage than what indemnity insurance  
6 companies would provide.

7 THE COURT: You have the same two year non-  
8 contestability they would have in life insurance  
9 applications?

10 THE WITNESS: Not to my knowledge, no.

11 THE COURT: No, I mean if I do lie to you,  
12 two years later you couldn't raise it?

13 THE WITNESS: I am unclear, Your Honor.

14 THE COURT: Okay.

15 BY MR. FOX:

16 Q. Now, you broached the subject, Mr.  
17 Photenhauer, that I was about to get into.

18 How do people become members of  
19 GHA?

20 A. They can come through basically two doors,  
21 actually three doors. The most prevalent door is through  
22 the group employment route, typically through the place of  
23 employment. An individual's employer would offer us as one



1 of the health care options. Like the County of Fairfax  
2 offers us along with the Blue Cross/Blue Shield plan, and I  
3 believe a couple of other HMOs.

4 Individuals also can fill out a  
5 membership application on an individual basis and be  
6 enrolled on an individual basis.

7 We also provide people who are  
8 leaving their employment the right to convert to individual  
9 coverage once they have left that group.

10 Q. And if you stated the percentage I am not  
11 sure that I heard it.

12 What percentage comes from  
13 employer groups and what percentage comes from personal  
14 coverage?

15 A. Over ninety percent comes from employer  
16 groups and less than ten percent, probably about seven or  
17 eight percent, comes through the doors as individual  
18 subscribers.

19 Q. Now, does that same ratio pertain also to  
20 your operations in Fairfax County?

21 A. I have no way of knowing that detail, Mr.  
22 Fox.

23 Q. Okay. Now, how many members do you have



1 total?

2 A. Just under a hundred and fifty-seven  
3 thousand individuals at this time.

4 Q. And approximately, by order of magnitude,  
5 how many of those members are involved in the State of  
6 Virginia either in the use of your centers or residents of  
7 the State of Virginia?

8 A. We have over thirty thousand members in the  
9 Northern Virginia area. I don't have the specific number of  
10 residents of Fairfax County as opposed to Alexandria or  
11 Prince William or Loudoun. But it is over thirty thousand  
12 in the Northern Virginia area.

13 Q. Now, was there a time when the State of  
14 Virginia Department of Personnel designated GHA as its  
15 preferred alternative health care provider?

16 A. That preceded my arrival here, but I believe  
17 it was in 1986 or 1985 that that occurred, yes.

18 Q. And what was that, for state employees?

19 A. That was for state employees. And it is my  
20 understanding that the state had made that designation in  
21 order to try to encourage people to join Group Health  
22 Association as an overall effort at managing the cost that  
23 the state was facing, the Commonwealth was facing, as well



1 as insuring the quality of care for their state employees.

2 Q. Mr. Photenhauer, would you explain for the  
3 Court this concept of community rating versus experiential  
4 rating?

5 A. The contrast is between community and  
6 experience rating, not experiential.

7 Q. Experience rating.

8 A. Community rating is a principal that dates  
9 back to the beginning of group health certainly. And it is  
10 based on really cooperative principals of equally sharing in  
11 the expense. And basically it involves charging all  
12 individuals the same common rate no matter what their  
13 specific utilization might be in a previous utilization  
14 period.

15 Experience rating on the other  
16 hand looks specifically at the actual utilization and cost  
17 experience of that group of people, and then takes that into  
18 account in building a rate. It leads to wider variations in  
19 premiums for various employee as well as individual groups.

20 Q. Now, does that experience rating -- rather  
21 does that community rating also apply to persons who come  
22 through your personal coverage plan door?

23 A. Basically we treat those people as a



1 community unto themselves and they are provided the same  
2 rate. So we do not differentiate on an individual basis one  
3 individual subscriber versus another. They would all have  
4 that same rate.

5 THE COURT: How big is your community?

6 THE WITNESS: In that case it would be  
7 roughly pools of like -- I think one is three thousand and  
8 the other one is about six or seven thousand people.

9 THE COURT: I mean by community you mean  
10 your entire service area?

11 THE WITNESS: No.

12 THE COURT: Or you have like Fairfax is a  
13 community, Arlington is a community?

14 THE WITNESS: What we refer to for our  
15 community rate basis would be the pool of a hundred and  
16 fifty-six, a hundred and fifty-seven thousand.

17 THE COURT: So you have one standard rate  
18 for everybody that you serve?

19 THE WITNESS: Well, if I could --

20 THE COURT: Other than your individual?

21 THE WITNESS: Right. The HMO Act was  
22 amended -- If I could go on?

23 BY MR. FOX:



1 Q. Go ahead.

2 A. In recognizing that the Federal HMO Act  
3 basically had a very dramatic impact on reform in the health  
4 care system, HMOs now covers some thirty-two million  
5 Americans. Back in the early '70s when the federal act  
6 started it was probably on the order of two to three  
7 million. So it has been a very significant increase.

8 What was recognized by Congress I  
9 believe in 1988 was a need to have some modification  
10 amendments to the original community rating regulations of  
11 the act.

12 And what had happened was that it  
13 was discovered that with a commercial indemnity insurance  
14 company operating almost exclusively on an experience rated  
15 basis, competing for subscribers, for members, in the same  
16 arena with HMOs who were bound by a community rating, it led  
17 to some very non-competitive situations in which HMOs were  
18 basically faced with significant adverse selection, under  
19 pricing compared to what the overall pool of people  
20 reflected.

21 They allowed the act to be amended  
22 to move toward what is called adjusted community rating,  
23 which is basically on a continuum, still community rating



1 but allowing an HMO to take into account the experience of a  
2 group that blended with the overall community rating.

3 We currently use that methodology  
4 for our larger groups, largest groups really, in which we  
5 have more than two hundred and fifty contracts.

6 And typically over a period of  
7 five years, starting in year one with, say, fifty percent of  
8 their rate would be involved with their actual experience  
9 blended with fifty percent of the community rating. And  
10 over a period of time we would increase that to take into  
11 account more of their experience.

12 For smaller rated groups it still  
13 is basically an age/sex adjusted community rate.

14 Q. Now, let me direct your attention to -- What  
15 is the impact of using community rating on the cost to an  
16 individual of high utilization, using an example of a person  
17 who is older and requires greater medical care?

18 A. Well, a member such as that enrolled in an  
19 HMO basically ends up having a very significant benefit  
20 because in no way if they have had significant, say, workups  
21 during the previous year would their premium even begin to  
22 cover what their actual expenses would have been in that  
23 prior period.



1 If they were covered by a  
2 commercial indemnity carrier, that carrier literally could  
3 either raise their rates very significantly to the point  
4 where it would no longer be affordable or even potentially  
5 terminate them, which is part of the reason there is such an  
6 outcry today about reform of the insurance industry in  
7 general.

8 Q. And compare the rate of the high utilization  
9 person, perhaps an older person or a more ill person, to a  
10 younger, low utilization member of the system?

11 A. Well, basically the younger member -- Again,  
12 going back to the cooperative principal underlying the  
13 community rating, for that period of time at least there  
14 would be cross-subsidization of the younger person to the  
15 older person.

16 We also have women of child  
17 bearing age who certainly over a short period of time during  
18 a pregnancy and delivery would end up costing a great deal  
19 as well. And so people without children are perhaps  
20 subsidizing people with children over a short period of  
21 time.

22 Q. Now, let me go back to entry into the  
23 membership system. Does Group Health Association do any





1 advertising?

2 A. Yes, we do.

3 Q. And do you advertise your personal coverage  
4 plan?

5 A. Yes, we do.

6 Q. What, if any, consideration in accepting  
7 members into your system is given to race, age, ethnicity,  
8 or residence, where you are resident?

9 A. Well, basically we do not use those  
10 criteria. The age criteria, we have a cutoff I believe of  
11 age sixty-two, if I am not mistaken, for the personal plan  
12 at which point the person would be Medicare eligible.

13 But certainly race, ethnicity,  
14 location of residence in no way plays a part in the  
15 application process.

16 Q. Okay. Now, again with reference to the  
17 personal coverage plan, you talked about pre-screening.

18 Are you familiar with in general  
19 some guidelines that exist regarding that?

20 A. Yes.

21 Q. And what is the goal of those guidelines?

22 A. The goal is basically to insure that we do  
23 not suffer significant adverse selection given that we,



1 again, compete in this larger arena for members. And it is  
2 scientifically based. It is based on the predictability of  
3 incurring future health care expenses based on certain  
4 conditions. And so it is medically grounded in actual  
5 findings.

6 MR. FOX: Your Honor, Petitioner's 11, 12,  
7 and 13, I believe are in the stipulated set.

8 THE COURT: Any objections?

9 MR. CHERIN: No objections, Your Honor.

10 THE COURT: All right. Plaintiff's 11, 12,  
11 and 13 are received.

12 (The documents referred to above were marked  
13 as Plaintiff's Exhibit Nos. 11, 12, and 13  
for identification and received into evidence.)

14 BY MR. FOX:

15 Q. Mr. Photenhauer, how is Group Health  
16 Association governed?

17 A. I am accountable to an eleven person board  
18 of trustees that is elected by the membership. The  
19 individuals -- There is a nominating committee process and  
20 we have contested elections as required by our by-laws, and  
21 the individuals are selected for three year terms.

22 It is really quite distinct from a  
23 typical business board in which the senior executives would



1 hand pick an outside board of directors to serve for their  
2 business. In this case it really has a community  
3 organization flavor given that the electoral process is  
4 really outside of the purview of the chief executive  
5 officer.

6 THE COURT: By members you mean all of those  
7 peoples who have the ability to receive services?

8 THE WITNESS: Correct.

9 THE COURT: All right. Go ahead, sir.

10 BY MR. FOX:

11 Q. Do you have persons on your board, members,  
12 from the Commonwealth of Virginia?

13 A. Yes, we do.

14 Q. And do you know who those are off the top of  
15 your head?

16 A. Sherry -- Ms. Sherry Angstrom is from the  
17 Commonwealth. Mrs. Virginia Brockington is from the  
18 Commonwealth.

19 THE COURT: Now, when you are saying from  
20 the Commonwealth, you mean they live here, you don't mean  
21 they are --

22 THE WITNESS: Correct.

23 THE COURT: -- representatives of the State



1 government?

2 THE WITNESS: Correct. They live -- They  
3 are residents of the Commonwealth.

4 THE COURT: Okay. All right.

5 THE WITNESS: I was just trying to go down  
6 my memory.

7 BY MR. FOX:

8 Q. Let me show you -- Do you need to have your  
9 memory refreshed as to their addresses?

10 THE COURT: If he says that is the list, I  
11 am sure Mr. Cherin would agree.

12 MR. CHERIN: That is correct, Your Honor.

13 THE WITNESS: Currently two of the eleven  
14 are from the Commonwealth.

15 BY MR. FOX:

16 Q. One from Vienna?

17 A. Yes. In the past it probably has been four.

18 THE COURT: Just read the addresses. I  
19 don't mean the whole address. One of them is from Vienna.

20 MR. FOX: And one is from Alexandria.

21 THE COURT: Okay.

22 MR. FOX: Do you need the list, Your Honor?

23 THE COURT: No, sir, unless somebody shows



1 me why.

2 BY MR. FOX:

3 Q. Mr. Photenhauer, I was -- Again, in terms of  
4 your budget, what is the annual budget currently of Group  
5 Health Association?

6 A. The current budget is roughly a revenue  
7 budget of two hundred and thirty-eight million dollars.

8 Q. And in broad brush how are those -- How is  
9 that budget funded?

10 A. The funding comes largely from revenues from  
11 the subscribers. There are also revenues received, a small  
12 amount, from the pharmacy or drug benefit which an add on to  
13 some contracts. We also receive some fees from our pharmacy  
14 and optical and dental operations. We would have some  
15 revenue from co-payments, which are office visits and other  
16 procedures.

17 Q. Let's explain the concept of co-payments for  
18 the record. What does that mean, sir?

19 A. A co-payment is basically a nominal sum that  
20 is paid. It is not a percent of the total fee but rather a  
21 flat dollar sum. Some of our contracts, for example, might  
22 have a ten dollar office fee attached to them.

23 Q. Associated with which, the low or the high



1 option?

2 A. That would be with our standard option or  
3 comprehensive coverage. It basically provides another way  
4 of budgeting. It would have the lower monthly premium  
5 attached to it if there is an office co-payment.

6 Q. Any other sources?

7 A. Medicare program for our Medicare  
8 subscribers also would provide us with revenue.

9 Q. Now, Mr. Photenhauer, I was -- Directing  
10 your attention to 11, 12, and 13 of the Petitioner which  
11 have been identified and admitted. Let me show those to you  
12 if I might. (Handing documents to the witness.) Do you  
13 know what these are? Can you identify them?

14 A. (Looking at documents as requested by  
15 counsel.) Yes, these would appear to be --

16 THE COURT: Do them one at a time.

17 THE WITNESS: Okay. No. 11 is the Analysis  
18 of the Laboratory Screening Stage of the personal coverage  
19 plan, and would basically describe the history and the  
20 description of the tests that are involved in our personal  
21 coverage screening process.

22 Exhibit 12 is an Appendix which  
23 provides a detailed description of each of the laboratory



1 tests that is involved with that screening process.

2 And Exhibit 13 are the guidelines  
3 for a healthy evaluation which would identify under what  
4 conditions membership would be declined or accepted.

5 BY MR. FOX:

6 Q. For the personal coverage plan?

7 A. For the personal coverage plan, yes.

8 Q. And do you know the overall philosophy of  
9 11, 12, and 13 regarding the personal coverage plan?

10 A. It is basically to insure that we are not  
11 adversely affected in an undue fashion by individuals who  
12 would have very significant previous health conditions that  
13 would lead to excessive utilization.

14 Q. What, if any, experience regarding persons  
15 under an individual or personal coverage application do you  
16 have as far as their having been turned down by other plans  
17 or traditional programs?

18 A. Certainly we have a fair number of  
19 applicants under the personal plan who have been denied  
20 coverage by indemnity carriers. I don't have the specific  
21 number or percent, but that is a fairly common occurrence  
22 with people coming to us.

23 THE COURT: How do they do?



1 THE WITNESS: The application -- The  
2 acceptance rate over the last year or two has been roughly  
3 around half are accepted.

4 MR. FOX: Your Honor, I would ask the Court  
5 to -- I have marked for identification Petitioner's 1  
6 through 5.

7 (The documents referred to above were marked  
8 as Plaintiff's Exhibit Nos. 1, 2, 3, 4, and 5  
for identification.)

9 BY MR. FOX:

10 Q. I show you Exhibits 1 and 2 first, Mr.  
11 Photenhauer. Can you identify those and whether or not they  
12 are part of the corporate history on this issue of the  
13 exemption? (Handing documents to the witness.)

14 A. (Looking at exhibits as requested by  
15 counsel.) Yes, Exhibit 1 is a letter from Mr. Paul E.  
16 Smith, dated August 17, 1983, to Geraldine Straub then  
17 general counsel for Group Health.

18 Q. And she was general counsel when you came  
19 there, is that correct?

20 A. Yes, that is correct. And it appears that  
21 this letter is the summary stating that our application for  
22 exemption from the Fairfax County Business, Professional,  
23 and Occupational Tax had been granted, however, stating that





1 we would not be exempt from personal property taxes and real  
2 estate taxes.

3 Q. And Exhibit No. 2?

4 A. Exhibit No. 2 appears to be the application  
5 from Group Health for exemption from the real estate tax  
6 submitted by Ms. Straub, the general counsel for Group  
7 Health in 1982.

8 Q. In terms of the application itself where Ms.  
9 Straub, your general counsel, gives justification for  
10 requesting the exemption, would you refer to those sections?

11 A. Yes. The applicant's purpose of  
12 organization, item two, states, GHA is a non-profit,  
13 charitable service organization which provides comprehensive  
14 medical and dental services to its members on a pre-paid  
15 basis.

16 Q. Has that purpose changed significantly since  
17 1982?

18 A. No, it has not.

19 Q. All right. Item No. 5-A?

20 A. The activity that we are -- It says to  
21 describe the activity we are engaged in. GHA provides  
22 comprehensive medical and dental services to its members on  
23 a pre-paid basis at its facility located at 7601 Little



1 River Turnpike, Annandale, Virginia.

2 Q. Now, what has changed since that time?

3 A. Basically we have added to our Fairfax  
4 County facilities with the addition of the Fair Oaks  
5 facility, the Tysons Corner facility, and the Baileys  
6 Crossroads facility.

7 Q. But in terms of the type of services  
8 performed, what, if anything, has changed?

9 A. It has not changed since then.

10 Q. And let's do the final category, 5-B.

11 A. For what purpose are gross receipts used?  
12 Gross receipts are used for the purpose of providing  
13 comprehensive medical and dental services to GHA  
14 subscribers.

15 Q. And was this the application submitted when  
16 you were granted the exemption?

17 A. That is my understanding, yes.

18 MR. FOX: Your Honor, I would move 1 and 2.

19 THE COURT: Any objection?

20 MR. CHERIN: No objection, Your Honor.

21 THE COURT: Received. Let me read them.

22 (The documents identified above as Exhibit  
23 Nos. 1 and 2 for identification were received  
into evidence.)



1 (Brief pause.)

2 BY MR. FOX:

3 Q. Mr. Photenhauer, let me show you what have  
4 been marked as Exhibits 4 and 5. Are you familiar with  
5 those just for purposes of identification? (Handing  
6 documents to the witness.)

7 A. (Looking at documents as requested by  
8 counsel.) Yes.

9 Q. What is No. 4?

10 A. No. 4 is a letter to Mr. Ted Weinberg, our  
11 director of finance, dated October 30th, 1989, from Mr.  
12 Bruce stating basically that they were removing the  
13 exemption of the BPOL tax.

14 Q. And No. 5 is?

15 A. No. 5 is a letter dated February 8th, 1990,  
16 to you which identifies a number of responses that were  
17 raised in a meeting with you on January 23rd regarding this  
18 issue.

19 Q. Signed by whom, sir, or authored by?

20 A. Authored by Mr. Bruce.

21 MR. FOX: Your Honor, I move 4 and 5.

22 MR. CHERIN: No objection, Your Honor.

23 THE COURT: Received.



1 (The documents identified above as Exhibit  
2 Nos. 4 and 5 for identification were  
received into evidence.)

3 BY MR. FOX:

4 Q. Now, Mr. Photenhauer, I show you what have  
5 also been marked as Plaintiff's Exhibits 3 and 14. Can you  
6 tell what those are, sir? (Handing documents to the  
7 witness.)

8 A. (Looking at documents as requested by  
9 counsel.) No. 3 is our application, basically a letter from  
10 -- Yes, it is a letter from the IRS dated September 1982,  
11 stating that they have granted our application for exemption  
12 under section five oh one C three of the Internal Revenue  
13 Code.

14 Q. And let me show you the next exhibit.  
15 (Handing document to the witness.)

16 THE COURT: What number was the one he just  
17 identified?

18 MR. FOX: That was No. 3.

19 THE COURT: Any objection to No. 3?

20 MR. CHERIN: No, Your Honor.

21 THE COURT: It is received.

22 (The document identified above as Exhibit  
23 No. 3 for identification was received  
into evidence.)



1 THE WITNESS: And this is a letter received  
2 in -- I believe in May of 1985, also from the District  
3 Director of the Internal Revenue Service stating that we  
4 continue to qualify for an exemption under section five oh  
5 one C three.

6 MR. FOX: Your Honor, I move No. 3 and No.  
7 14.

8 THE COURT: Any objection to No. 14?

9 MR. CHERIN: Well, Your Honor, I might have  
10 one for that. The last page of that has a block checked  
11 that says, See attachment, and there is no attachment, and I  
12 don't know what that is. I would say that it is incomplete.

13 For all I know there might be  
14 something in there that says, You are okay this year, but  
15 for -- you know, you have got problems or whatever.

16 MR. FOX: I have never seen an attachment,  
17 Your Honor.

18 THE COURT: Well, that is what he is worried  
19 about too. So let's hold it for a while and maybe you can  
20 locate the attachment.

21 MR. FOX: So three is moved?

22 THE COURT: Three is in. Fourteen for the  
23 time being is not.



1 BY MR. FOX:

2 Q. Mr. Photenhauer, does GHA continue its five  
3 oh one C three exemption at the federal level?

4 A. Yes, it does.

5 Q. And does the Commonwealth of Virginia for  
6 income tax purposes recognize that exemption?

7 A. Yes, it does.

8 Q. What about the State of Maryland?

9 A. Yes, it does.

10 Q. And the District of Columbia?

11 A. Yes, it does.

12 Q. Now, let's move on, Mr. Photenhauer, to the  
13 issue of services to non-members.

14 And my question to you is this,  
15 does GHA have a philosophy regarding service to non-members  
16 in the community at large?

17 A. Even though overall our main focus is on  
18 providing services to members, certainly we feel a strong  
19 obligation to the community at large. We do provide  
20 services, specific services to non-members in a number of  
21 different arenas.

22 Q. Now, do you have a specific department  
23 within GHA which has as its mission community out reach? I



1 am referring to your Department of Health Promotion and  
2 Wellness.

3 A. The Department of Health Promotion and  
4 Wellness does have certainly a broad mission that goes  
5 beyond the immediate membership of Group Health.

6 They are a group of health  
7 educators and people who are trained in preventive health  
8 care services who are very active in the general community  
9 in health fairs, in the creation of classes that are open to  
10 non-members as well as members, and also involved with  
11 external research projects involving outside investigations.

12 Q. Now, what -- In terms of that Department of  
13 Health Promotion and Wellness, would you explain to Judge  
14 Plummer what the Primary Prevention Program is?

15 A. Certainly. The Primary Prevention Program  
16 was begun by us about two and a half years ago.

17 Q. You call it PPP for short?

18 A. PPP for short. We have an operation that is  
19 located at the Baileys Crossroad facility as well as one at  
20 Silver Spring.

21 Shortly after I arrived here in  
22 1987 from Seattle, in reviewing the position that Group  
23 Health played in this community I felt that it was important



1 that we strengthen our overall preventive care activities.

2 We literally looked nationwide and  
3 actually internationally to locate the Primary Prevention  
4 Program which was begun by the famed Pasteur Institute in  
5 France. The program we felt provided the best opportunity  
6 at developing really a fairly innovative approach at  
7 changing individuals's health behavior.

8 And we purchased the rights to  
9 operate that program exclusively and began it really about  
10 two and a half years ago.

11 It is open to non-members on a fee  
12 basis. It involves a very extensive four hour exam which is  
13 preceded with the individual filling out a medical health  
14 questionnaire as well as information regarding a family  
15 history which they bring to the exam and which is input into  
16 some sophisticated computer software.

17 The individual then undergoes a  
18 battery of diagnostic tests far, far greater than what you  
19 would typically get in an average doctor's physical. For  
20 women it includes mammography, mammography screening, for  
21 example.

22 At the end of the four hour  
23 session the individual sits down with the provider, either a





1 physician or a nurse practitioner, and the information from  
2 the health questionnaire is integrated with the diagnostic  
3 information actually achieved during that morning visit.

4 And the individual receives their  
5 actuarial risks for incurring heart disease, cancer, stroke,  
6 or incurring a motor vehicle accident compared to their  
7 cohorts. So if you are forty year old black male -- a  
8 forty-two year old black male, they would be able to tell  
9 you, Mr. Fox, what are your chances of incurring heart  
10 disease vis-a-vis other forty-two year old black males.

11 THE COURT: What is the fee?

12 THE WITNESS: The fees for members is  
13 included basically in the benefit package. For those who  
14 have the standard option it would be a ten dollar co-pay.  
15 For those with the high option there would be no co-pay.  
16 For non-members it would be in the three to three hundred  
17 and fifty dollars range. If we sell a company, sometimes we  
18 provide a slight discount.

19 ~~the so called medical community. And for we typically --~~  
20 the so called medical community. And for we typically --

21 MR. CHERIN: Objection, Your Honor, that is  
22 hearsay.

23



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PHOTENHAUER R DIRECT

Go ahead.

BY MR. FOX:

Q. Mr. Photenhauer, are you familiar with the cost of those services in the outside market?

A. Yes.

Q. And would you state the comparable cost of the PPP program if you were in fact having to purchase those services on the outside?

A. Two responses. One, I think the fees for a number of the services that are provided in the Primary Prevention Program, that it would be reasonable to assume that they would run between five hundred and eight hundred dollars for a four hour comprehensive exam.

The reality is that no other private physician would also then be able to add the value to that patient, however, of the power of what is inherent in the computer software which we have the exclusive rights to that would provide them with medically based actuarial information regarding their risks.

Physicians could certainly say, You have a high risk of incurring heart disease with your cholesterol level. They would not be able to take it to the level of specificity inherent in the software.



1 And what we have found is that  
2 that specificity and a combination of those services is a  
3 very powerful factor that the Pasteur Institute had found  
4 actually did have some probability of changing health  
5 behaviors, which is we feel a public health issue.

6 Q. Now, Mr. Photenhauer, in order to obtain  
7 comparable services on the outside under an indemnity plan  
8 would you have to have a specific complaint?

9 A. Typically individuals -- Perhaps some  
10 executives go for their annual executive physical, but  
11 typically middle America does not have an annual physical.  
12 They go to a physician related to symptomatic care. There  
13 is something wrong. And often times it would be the  
14 physician who would then recommend that they get a full  
15 diagnostic workup.

16 Q. Now, do you have to have a complaint to  
17 avail yourself of the PPP program?

18 A. No, you do not.

19 Q. Either as a member or a non-member?

20 A. No.

21 Q. Now, Mr. Photenhauer, you talked about the  
22 computer availability or the computer network for this  
23 information. Is this information available to the medical



1 community for research compilations?

2 A. We have specifically signed a contract with  
3 outside researchers at the Uniform Health Services  
4 University. We are very interested in having a long term,  
5 thorough evaluation of the actual impact of the program.

6 We have an initial assessment over  
7 the first year of operation and are continuing that  
8 relationship with the outside researchers. We would  
9 anticipate that their findings would end up getting wide  
10 circulation in the medical community.

11 Q. Now, Mr. Photenhauer, are you engaged in  
12 some other community programs?

13 A. Yes, we are.

14 Q. Or does GHA?

15 A. Yes, we do. Specifically in Fairfax County  
16 I am aware over the three years since I have been here that  
17 our staff has been engaged in numerous health fairs that are  
18 sponsored often time with public sponsorship, often times we  
19 are co-sponsors which are meeting the general public and  
20 residents of the area.

21 We hold a variety of classes,  
22 whether it is weight control, smoking cessation, nutrition,  
23 which are available to non-members as well as members. In



1 some cases there may be a nominal fee. I believe the  
2 smoking cessation has a twenty-five dollar fee.

3 Q. What is the purpose of that fee?

4 A. The fee in part is based on the theory that  
5 smoking cessation can best take place when someone has put  
6 some money up and is basically more committed, more  
7 motivated to making that change.

8 Q. Now, this Health Promotion and Wellness  
9 Department, is it organizationally attached to marketing?

10 A. No, it is not. It is part of Patient Care  
11 Operations and reports to our Director of Patient Care  
12 Services.

13 THE COURT: But when you go or somebody goes  
14 to one of these health fares you don't have any application  
15 forms?

16 THE WITNESS: At times there can be  
17 brochures regarding Group Health.

18 THE COURT: I mean you would be rather  
19 foolish to not, wouldn't you?

20 THE WITNESS: We have general information,  
21 but often times there wouldn't be applications.

22 THE COURT: You don't have a sign saying,  
23 Sign up here, or something like that?



1 THE WITNESS: No.

2 THE COURT: Go ahead.

3 BY MR. FOX:

4 Q. Mr. Photenhauer, I want you to in the next  
5 couple of minutes describe for his honor the Medical Care  
6 for Children Project in which you are engaged in in Fairfax  
7 County along with other participants.

8 A. We over the last two plus years have been  
9 involved in this project which was established I believe  
10 with the Community Development Agency of Fairfax County to  
11 provide basically a public/private partnership to begin to  
12 address the issue of the uninsured in Fairfax County.

13 The program involves us accepting  
14 into membership a certain number of families who are  
15 residents of Fairfax County who are not eligible for  
16 Medicaid and might be defined as part of the working poor of  
17 this community.

18 We have accepted these people on a  
19 significantly discounted basis compared to what our normal  
20 premium schedule might be.

21 The program initially involved  
22 only children. It is my understanding that we also have  
23 parents involved with those children.



1                   The program was recently  
2 recognized by The Ford Foundation and Harvard University as  
3 one of the ten most innovative programs in the entire  
4 country from an initial application pool of some fifteen  
5 hundred applications of public/private partnerships solving  
6 a critical public policy issue.

7                   THE COURT: Have you got any idea of how  
8 many people have come in under this significantly discounted  
9 fee schedule?

10                  THE WITNESS: We currently I think have  
11 something like sixty-five people involved.

12                  BY MR. FOX:

13                  Q.       And those are children, aren't they?

14                  A.       Yes.

15                  Q.       What, if any, special mammography screening  
16 programs is GHA involved in?

17                  A.       We have a couple of efforts. First of all,  
18 as I mentioned, mammography screening is part of the Primary  
19 Prevention Program. Many women who go through that program  
20 have that as part of their medical record which is  
21 integrated into their overall chart.

22                               For non-members certainly the  
23 results of that screening would be sent to a private



1 physician of their choice.

2 In addition we currently have an  
3 arrangement with the D.C. Public Health Department and are  
4 providing mammography screening for indigent women on a  
5 significantly discounted fee basis.

6 In addition we are beginning this  
7 year a very comprehensive breast cancer screening program in  
8 conjunction with the Fox-Chase Cancer Center, which is  
9 located in Philadelphia, Pennsylvania.

10 The purpose of this, once again,  
11 as an innovative consumer health care organization is to  
12 basically through medical health questionnaires determine  
13 which women are at most the most high risk of experiencing  
14 breast cancer.

15 Q. Is that ongoing in Fairfax as well?

16 A. All Fairfax female members would certainly  
17 be part of that program. In fact we would encourage and  
18 follow-up with those individuals who we felt were the  
19 highest risk to begin getting a baseline screen and then  
20 would communicate back with them on regular periodic levels  
21 to have a repeat test.

22 Q. Now, Mr. Photenhauer, with the permission of  
23 your patient/members is the information from this





1 mammography screening program available for publication in  
2 the general medical community?

3 A. Certainly. And I think the intent of the  
4 Fox-Chase demonstration is that this will be widely  
5 published in medical journals. I think the issue of cost  
6 benefit of preventive care services like mammography is  
7 clearly one of the pressing health issues facing this  
8 country with the limited resources that we have and to make  
9 some determination of which women can be most favorably  
10 impacted at what frequency of screening.

11 Q. Now, organizationally you have a medical  
12 director?

13 A. Yes, we do.

14 Q. And who is that?

15 A. It is Dr. Turner Bledsoe.

16 Q. And is Dr. Bledsoe able to speak more  
17 precisely to some of these programs as to the medical  
18 programs?

19 A. He certainly would be able to.

20 MR. FOX: Your Honor, the Court's indulgence  
21 for a moment.

22 (Brief pause.)

23 BY MR. FOX:



1 Q. Mr. Photenhauer, I will ask you one final  
2 question and I think it is a fairly important one. In terms  
3 of GHA's relationship to Medicare, what, if any,  
4 opportunities does GHA offer to Medicare qualified persons?

5 A. We have approximately seventy-eight hundred  
6 Medicare enrollees. A large number of these have been  
7 members with us in some cases thirty and forty some years.  
8 A number of them are retirees out of one of the governmental  
9 jurisdictions.

10 Q. For the record, Medicaid is what as compared  
11 to Medicare?

12 A. Medicare is the Social Security program that  
13 provides health insurance to the aged. And Medicaid is the  
14 federal program that is providing care to the lower income  
15 recipients.

16 Q. Again, you can continue with your --  
17 THE COURT: Just a minute. Out of the  
18 seventy-eight hundred, that is throughout the Washington  
19 area?

20 THE WITNESS: That is correct.

21 THE COURT: Do have any idea of how many are  
22 here?

23 THE WITNESS: I wouldn't venture a guess.



1 The Annandale center in fact, Your Honor, has a significant  
2 number of Medicare eligible enrollees.

3 BY MR. FOX:

4 Q. Now, what does GHA offer to the Medicare  
5 qualified?

6 A. Basically we provide a supplemental policy  
7 that they buy for a fixed fee amount per month. I believe  
8 currently it is between forty and fifty dollars a month.  
9 And that is added to their part the coverage through the  
10 Medicare program.

11 And under that program they then  
12 basically have a very comprehensive benefit package  
13 comparable to what non-Medicare people would receive, in  
14 some cases maybe even a little bit richer.

15 Q. Now, a Medicare qualified person without an  
16 option such as Group Health Association would have to do  
17 what to cover the difference between medical costs and  
18 Medicare?

19 A. Well, typically they would attempt to buy  
20 some coverage in the market place. There are a wide range  
21 of indemnity offerings available. Many of them have  
22 substantial cost sharing inherent in them. They certainly  
23 would not provide the level of comprehensive benefits that



1 you would find in an HMO.

2 Q. Does GHA -- Given the Medicare share of the  
3 cost and the supplemental coverage provided by GHA, does GHA  
4 charge any more to a Medicare qualified person than it does  
5 to a forty-two year old male?

6 A. Basically the cost equation is higher to the  
7 forty-two year old male and is fixed by regulation. We  
8 submit cost reports to them.

9 Q. Can GHA dis-enroll persons such as Medicare  
10 qualified persons based on their experience in the system?

11 A. No. No, we cannot. Once basically someone  
12 is with us, they have been truthful in their application  
13 process, or they have come through the door as a group  
14 subscriber, and they are satisfied with our services,  
15 typically many will spend their entire lifetime with us.

16 Q. Can an indemnity program dis-enroll them?

17 A. It is my understanding that the restrictions  
18 are far less than HMOs live under.

19 THE COURT: The same with Blue Cross?

20 THE WITNESS: Blue Cross is -- I am  
21 uncertain, Your Honor.

22 THE COURT: But I mean that is an indemnity  
23 type plan?



1 THE WITNESS: Blue Cross has a different --  
2 It is on a continuum. Travelers, Prudential, Aetna are  
3 typically what is referred to as commercial carriers.

4 MR. FOX: Your Honor, I don't have any  
5 further questions of the witness at this time.

6 Thank you, Mr. Photenhauer.

7 CROSS-EXAMINATION

8 BY MR. CHERIN:

9 Q. Mr. Photenhauer, you referred to your  
10 organization as a consumer cooperative.

11 Could you elaborate on what that  
12 means exactly?

13 A. Basically the founding fathers who created  
14 Group Health came together under cooperative principals of  
15 trying to share the overall medical expenses that they were  
16 facing.

17 That has continued over the years.  
18 And the governing structure, and by-laws, and how we  
19 operate, and it is certainly exemplified by the fact that we  
20 have an annual assembly. It is called an assembly, not an  
21 annual meeting and which is open to all of the members. We  
22 have a contested election process in which people can run  
23 for the board of trustees to be involved in the overall



1  
2 There is a heavy emphasis on  
3 communication with our members, involvement of our members  
4 with their own health care services.

5 We set up advisory councils  
6 throughout the system. Appandale, for instance, has their  
7 own medical advisory committee which consists of members  
8 meeting with the management and medical staff of that  
9 facility to plan services, programs, for example that might

10  
11 Q. Was there anything in that original plan to  
12 provide any medical services to anyone who was not a member?

13 A. I believe certainly the main thrust was for  
14 services to members.

15 Q. The main thrust was. Was there any plan for  
16 services, medical services, to non-members?

17 A. I think that there is in fact a history that  
18 has been written by two members, two historians at G.W.  
19 University, that provides detailed information regarding the  
20 contribution that this organization has made to the  
21 Metropolitan Area for the past fifty some years.

22 And it certainly goes outside the  
23 strict boundaries of the organization. It has had a larger



1 impact on the overall community.

2 Q. Does that include supplying medical services  
3 to someone who is not a member?

4 A. Certainly through the years there I am sure  
5 have been services that have been provided to non-members.

6 Q. Can you tell us what those are?

7 A. I don't have any specific detail in terms of  
8 what those are, but certainly non-members have been treated  
9 over the last fifty-four years.

10 Q. But you don't know how, in what fashion, or  
11 how many?

12 A. I can't give you the specifics in terms of  
13 whether it was in the hundreds or thousands, but it has  
14 happened.

15 Q. But it is also not in your articles of  
16 incorporation, or by-laws, or your mission statement to  
17 treat anyone -- to offer or supply medical services to  
18 anyone who is not a member either, is it?

19 A. The by-laws certainly have a focus on the  
20 members.

21 Q. Again, the question is did they have  
22 anything about providing medical services to anyone who is  
23 not a member?



1 A. Which document, the by-laws?

2 Q. Or the articles of incorporation or your  
3 mission statement.

4 A. The mission statement talks in terms of a  
5 health care system providing a quality of affordable  
6 services in a professional caring manner. It does not talk  
7 specifically about members. It could certainly be  
8 interpreted as a broader mission as a health care system.

9 Q. But it is not interpreted that way by GHA,  
10 is it?

11 A. I guess I -- Given that I have been  
12 testifying for the last hour and a half I think I have given  
13 several specific examples of where we have provided services  
14 to the community at large and to non-members of Group  
15 Health.

16 Q. I'm not talking about educational programs.  
17 I am talking about medical services.

18 A. I believe I have given specific examples of  
19 medical services that are provided to non-members.

20 Q. I must have missed that. What medical  
21 services?

22 A. Our Primary Prevention Program is a four  
23 hour intensive medical care service.





1 Q. That is a diagnostic service, is it not?

2 A. It is a diagnostic service. It is a medical  
3 service as defined by medical professionals. It involves an  
4 extensive visit by a physician or a nurse practitioner as  
5 well as a whole battery of diagnostic tests.

6 Q. Is that the only one?

7 A. By any definition it would be considered a  
8 medical service.

9 Q. Is that the only one?

10 A. We have talked about the children's project  
11 that has gained national acclaim, that the County in  
12 partnership with Group Health and other organizations, other  
13 health care providers, has provided.

14 Q. Are those two the only instances where you  
15 have provided medical services to non-members?

16 A. No.

17 Q. What are the others?

18 A. We are involved, as I mentioned, in  
19 mammography screening currently to indigent women in the  
20 District of Columbia.

21 Q. But that is not in Fairfax County, is it?

22 A. Not in Fairfax County, no.

23 Q. All right. Are there any others in Fairfax



1 County that you have done?

2 A. Certainly there would be --

3 MR. FOX: Your Honor, for the record I would  
4 like to, you know, have my objection on the record that  
5 Fairfax County although perhaps the focus, as the Court has  
6 already ruled, it is not specified or required under the  
7 order under which we proceed.

8 THE COURT: I haven't ruled on that yet.  
9 Whether the confined area is confined to Fairfax County, I  
10 haven't ruled on that yet.

11 I think I agree with you that the  
12 primary focus as far as this county government is concerned  
13 is Fairfax County, and this ordinance applies only in  
14 Fairfax County. I mean obviously the primary view must be  
15 within Fairfax County but I said I would hear the evidence  
16 regarding the balance of the Washington Metropolitan Area  
17 which is serviced by GHA.

18 BY MR. CHERIN:

19 Q. Okay. The PPP and the children's program  
20 are two instances you cite where you have given medical  
21 services to the community in Fairfax.

22 Are there any others to non-  
23 members?



1 A. Those two would be the two major programs.

2 Q. Are there any minor ones?

3 A. I am sure there have been non-members who  
4 have utilized services and were residents of Fairfax County.

5 Q. In what fashion?

6 A. They may end up seeking services at one of  
7 centers and are treated. I am sure that that has happened.

8 Q. If somebody might happen to have an accident  
9 or a heart attack on the front door step of your  
10 organization they might be treated?

11 A. Yes.

12 Q. But they would be triaged, wouldn't they,  
13 and moved on to somebody else?

14 A. They would be handled in the appropriate  
15 medical fashion and triaged if that was appropriate.

16 Q. Do you know how many times that has  
17 happened?

18 A. I do not.

19 Q. Okay. So then the only non-member medical  
20 services are the PPP and the children's program except for  
21 the occasional maybe accidental somebody walks in the door,  
22 is that right?

23 A. Specifically to Fairfax County residents



1 that I am aware of, yes.

2 Q. All right.

3 A. You certainly need to understand that I am  
4 the president of an organization that is taking care of  
5 people. However, it has patients involved in multi  
6 jurisdictions. I don't segment members and patients of  
7 Group Health by what their address is.

8 And in fact I think the service  
9 that we provide to the broader community is one that is  
10 inescapable to me. Our physicians are involved in extensive  
11 medical education at leading universities in this community,  
12 being involved in grand rounds at hospitals in which they  
13 are treating and diagnosing non-members of Group Health  
14 Association.

15 We are actively involved in a  
16 number of medical research efforts that involve patients and  
17 non-members of Group Health in other locations.

18 This is not an organization that  
19 it is so inclusive that it has no relationship with the  
20 larger medical community.

21 Q. But you are in the Fairfax County Court  
22 seeking an exemption from a Fairfax County tax?

23 A. That is correct.



1 Q. And we are trying to determine what kind of  
2 service you give in Fairfax County.

3 Let's talk about the children's  
4 program for an minute. You said there were sixty-five you  
5 believed that were in that program at the present time.

6 A. Sixty-five individuals. I am not certain if  
7 they are all children or if there are some adults.

8 Q. All right. And the company gets paid by  
9 Fairfax County for that service, do they not?

10 A. They do.

11 Q. And it is discounted?

12 A. Significantly discounted.

13 Q. And what does Fairfax County pay for that  
14 service to your company?

15 A. It is my understanding that the fee on a per  
16 person basis was roughly about three hundred and twenty  
17 dollars per year, which would be substantially lower than  
18 what the regular fee would be.

19 Q. Okay. Three hundred dollars a year per each  
20 of those individuals?

21 A. Right.

22 Q. Now, what would you say the cost to the  
23 company is for each of those individuals? Would it be the



1 normal fee? Would that be the proper comparison?

2 A. Well, for the personal coverage plan right  
3 now the fee is roughly about a hundred and thirteen dollars  
4 a month. So you are talking roughly twelve hundred dollars  
5 a year per person.

6 Q. Okay, twelve hundred dollars a year. Okay.  
7 That is what -- So the difference in the value is between  
8 the three hundred dollars that the County is paying you and  
9 twelve hundred dollars which is the value of the services,  
10 is that right?

11 A. Approximately.

12 Q. So that is nine hundred dollars for each  
13 child or for each member, is that right?

14 A. (Nodding head.)

15 Q. Times sixty-five --

16 A. It is roughly fifty thousand.

17 Q. Okay. Thank you. I'm not a mathematician.  
18 Roughly fifty thousand dollars. Would it be fair to say  
19 that that is what it cost the company to participate in that  
20 program?

21 A. I honestly cannot answer that. Given the  
22 community rating principals there is a possibility that the  
23 costs for those actual individuals might be less. There is



1 also a possibility that we could have had a very sick child  
2 or children in that group who could have incurred  
3 significantly more expense in one hospitalization at  
4 Georgetown University than fifty thousand, or rather the  
5 eighteen or twenty thousand that we receive.

6 THE COURT: But talking about the reduction  
7 in premium, if we can call it a premium, the fifty thousand.  
8 At that you might make money on what is left or you might  
9 not depending on how sick the children are?

10 THE WITNESS: And I honestly -- That is  
11 correct.

12 And I guess I should add that I think it  
13 should be asked of the additional witnesses from the County  
14 government on this. My understanding was that the  
15 individuals involved in this program were working poor.

16 Certainly there is evidence that  
17 often such individuals who have not had health insurance for  
18 a period of time are apt to be people which have a number of  
19 conditions that have been built up, or in the case of  
20 children which have gone untreated or undiagnosed for some  
21 period of time which may in the initial period of insurance  
22 or coverage actually cost significantly more than if they  
23 had had good comprehensive care since they were babies.



1 BY MR. CHERIN:

2 Q. But you don't know whether that has  
3 happened?

4 A. I do not know. We have not looked at the  
5 specific statistics at this point in time.

6 Q. You have not -- The company has not examined  
7 whether the experience in those two years has cost more than  
8 --

9 A. We have not.

10 Q. You are comfortable with this fee  
11 arrangement as being a fair deal for the company although  
12 you are subsidizing it to the degree of fifty thousand  
13 dollars?

14 A. I would say that we are committed to working  
15 the project through. We are committed to exploring programs  
16 like this. This is not the only way in which we are  
17 attempting to respond to what is basically a crisis in this  
18 country of some thirty-seven million people without health  
19 care insurance.

20 I am involved with some specific  
21 industry-wide study groups which are trying to come up with  
22 recommendations for reform of the so called small group  
23 market.





So this effort in Fairfax has been one effort that the overall organization is taking.

Q. And you are not alone in this effort in Fairfax, is that right?

A. We are not.

Q. Who else is in it with you?

A. There are basically other health care provider organizations.

Q. Aren't some of those for profit organizations?

A. I honestly don't know. Hospitals are involved, some private physicians.

Q. There are some two hundred private physicians involved, aren't there?

**A. Pardon?**

Q. There are some two hundred private physicians involved, aren't there?

A. I do not know, sir. There are not insurance companies to my knowledge who are involved. They are basically from the health care provider field.

Q. And do you know whether any of those companies pay license tax in Fairfax County?

A. I have no idea.

1 Q. All right. Let's talk about the PPP  
2 program, which is the other one that you said was the  
3 community benefit to non-members in the county.

4 And you said that cost  
5 approximately three hundred to three hundred and fifty  
6 dollars for a non-member to participate in that program.

7 Do you know what it cost the  
8 company to provide that service?

9 MR. FOX: Your Honor, I am going to state an  
10 objection to this extent. I don't think we are engaged  
11 necessarily in an accounting exercise as to this company's  
12 cost versus what it charges under this ordinance. And I  
13 think to convert it to that, to a keg of nails, is not  
14 really the focus of the matter.

15 The focus of the matter is whether  
16 or not they do something for someone that is at  
17 substantially, under the MCCP Program, substantially less  
18 than they would charge other members, therefore a subsidy,  
19 or whether they in fact offer their services to non-members.

20 I don't think the question is  
21 whether or not the dollars equate to the cost of providing  
22 that service because whether or not they do the service is  
23 still available to non-members.



1 THE COURT: We are getting close to whether  
2 or not they are making a bottom line profit on something.  
3 And by their organization that money has to go back into the  
4 organization. It is not a profit no matter how they turn  
5 out.

6 MR. CHERIN: Well, Your Honor, I am not  
7 trying to suggest that at all. All I am trying to do and I  
8 think it is entirely relevant, is to show -- This is a two  
9 hundred plus million dollar a year organization. I think it  
10 is entirely relevant to show if they are coming in and  
11 saying they are operating for the benefit of the community.

12 He has cited two programs and two  
13 programs only that are operating for the benefit of the  
14 community.

15 I'm trying to find out what their  
16 financial commitment is to that community service. If that  
17 financial commitment, I would submit, is small, then I think  
18 that that is a definite factor that has to be weighed in the  
19 commitment to the community service.

20 THE COURT: Well, all we know now so far  
21 regarding the medical care for children thing is that the  
22 estimate is about fifty thousand dollars reduction or  
23 subsidy from what they would normally get if those people



1 were paying the normal fee.

2 MR. CHERIN: That is right.

3 THE COURT: Now, what difference does it  
4 make if they have more expense than fifty thousand or less  
5 than fifty thousand?

6 MR. CHERIN: It doesn't, Your Honor. All I  
7 am trying to show is that is what the company is putting  
8 into this program. That is what it cost the company.

9 THE COURT: Um-hum. Maybe. That is what it  
10 cost in the reduction of premium.

11 MR. CHERIN: Well, as best we know that is  
12 what the cost is to the company.

13 THE COURT: You don't know what the real  
14 cost is unless you went and took each child and added up all  
15 of the bills you paid.

16 MR. CHERIN: Yeah, that is what -- Yeah, I'm  
17 trying to -- If they could have said exactly -- All I am  
18 trying to say, Your Honor, or the point of all of this is  
19 that they are coming in seeking an exemption saying they are  
20 operating for the welfare of the residents of the community.

21 The County, as Your Honor knows,  
22 is taking the position that they are operating for their own  
23 members.



1 Now, as examples of what they say  
2 they are doing for the community is the children's program.

3 THE COURT: An example.

4 MR. CHERIN: Yeah, it is one of two.

5 THE COURT: Well, they have the health fairs  
6 and things like that.

7 MR. CHERIN: Well, we are going to get to  
8 that in a minute. I'm going to do the same thing with -- I  
9 intend to do the same thing with those, Your Honor, that is  
10 to show what in fact these things cost the company.

11 If they are putting in these  
12 programs -- I do not --

13 THE COURT: You keep talking about being a  
14 two hundred million dollar organization.

15 MR. CHERIN: Yes.

16 THE COURT: I don't know yet what it cost  
17 them to run. But being a charitable -- not charitable, but  
18 a nonprofit organization I assume that the two hundred  
19 million has to go back into running the organization and  
20 providing services.

21 MR. CHERIN: Sure.

22 THE COURT: So I mean what difference does  
23 it make whether it is two hundred million or five million or



1 a billion? You know, what difference does it make?

2 MR. CHERIN: What difference it makes, Your  
3 Honor, is what they put in the community. If they are  
4 claiming a benefit -- They are asking to be relieved of a  
5 tax on the basis that they are doing something good for the  
6 community. And I think the only way they can show they are  
7 doing something good for the community as distinguished from  
8 something for their members who are just buying the service  
9 is how much the company spends on these community works.

10 THE COURT: You are getting beyond then to  
11 the charitable works in effect, that they must prove that  
12 they do charitable work for the public at large in order to  
13 qualify.

14 MR. CHERIN: I didn't say charitable, Your  
15 Honor.

16 THE COURT: But that is what it is. If they  
17 lose money on it it is charitable. If it gives a benefit to  
18 a non-member and they lose money on it that is a charitable  
19 act.

20 MR. CHERIN: All right. Fine if you want to  
21 call it charitable. I think I would call it a community  
22 benefit, what they are trying to claim.

23 All the case law on the subject,



1 and as cited in our memorandum, talks about a number of  
2 factors that demonstrate that an organization is performing  
3 a community service as distinguished from a service to its  
4 members.

5 One of the factors that is  
6 normally considered is what they do for the community in  
7 terms of other kinds of programs.

8 Now, I would submit that if they  
9 are spending a fraction of a percent of their income on  
10 these community programs that it is going to be very hard to  
11 demonstrate that that is enough to show an operation for the  
12 community benefit as distinguished from simply the operation  
13 of being in the business of selling health care services.  
14 And that is what this is all designed to pursue.

15 MR. FOX: Your Honor, if I may respond to  
16 Mr. Cherin.

17 Your Honor, the difficulty I have  
18 with it and certainly one of the issues in this case is  
19 whether or not they operate a facility for the welfare of  
20 the residents of the area. I mean I think that is one of  
21 the seminal questions here.

22 But nowhere in this ordinance do  
23 we have benevolent, charitable, give away, or any of those



1 concepts. We don't have -- For example, one of the cases  
2 cited by the County is Share versus Commissioner of Revenue,  
3 which is a Minnesota case involving an HMO that sought  
4 exemption from sales and use tax.

5 And significantly in that case we  
6 don't have the kind of ordinance that we are dealing with  
7 here, which I would call our ordinance being kind of a  
8 smorgasbord of entities that do something in the community.

9 In the Minnesota case they had a  
10 situation where Share, an HMO, goes in and they try to show  
11 that they are using their facilities purely, and I mean  
12 these words come from this case, purely for charitable  
13 purposes.

14 Now, I think the law in Virginia  
15 is that although you do interpret a clear statute or  
16 ordinance in the tax sense that you interpret it strictly.  
17 But it doesn't mean that the opposite of that is true, that  
18 if it has room for interpretation or leaves itself open for  
19 interpretation that you can extend its meaning by  
20 implication.

21 And that case in the Commonwealth  
22 of Virginia is Williams versus The City of Richmond. And it  
23 recognizes -- and, again, I am just headnoting for purposes





1 of this argument -- construction of tax laws strictly  
2 construed. If there is a substantial doubt it must be  
3 resolved in favor of the taxpayer because they are not to be  
4 extended by implication.

5 And I am happy to pass this case  
6 up to the Court if the Court so wants it.

7 THE COURT: Not right now.

8 MR. FOX: But the point is that I don't  
9 think that we have to get down to whether or not my clients  
10 in fact make a profit or whether they take a loss on this  
11 because that is evidence of charity which is a word not  
12 contained within the ordinance. And that is the basis of my  
13 objection from a cost accounting standpoint.

14 MR. CHERIN: Well, Your Honor, I would  
15 submit that they are citing these examples as examples of  
16 how they benefit the community.

17 THE COURT: But does the benefit have to be  
18 one without a cost? Where in the ordinance does it say that  
19 it has to be a free benefit to the community? That is  
20 charity.

21 MR. CHERIN: The ordinance doesn't say that,  
22 Your Honor.

23 THE COURT: It doesn't require it at all.



1 MR. CHERIN: It doesn't require it to be a  
2 charity. I agree.

3 THE COURT: Well, what difference does it  
4 make whether they lose money on it or make a little money on  
5 it one way or the other?

6 MR. CHERIN: Because -- I'm not saying they  
7 make money or lose money. All I'm saying is that if they  
8 spend money on a community project it tends to demonstrate  
9 that they are doing something for the community.

10 They are under a five oh one C  
11 three which is a charitable organization. In their own  
12 application that Mr. Fox talked about they quote themselves  
13 as being a charitable organization. It says so on their  
14 application to the county, the 1982 one that Mr. Photenhauer  
15 read.

16 THE COURT: I would have to see five oh one  
17 C three before I could understand, this and I am not sure I  
18 would understand five oh one C three.

19 MR. CHERIN: Well, five oh one C three now  
20 has a community benefit standard. They have to show a  
21 community benefit.

22 THE COURT: Well, apparently they have  
23 convinced the federal government that they have a community



1 benefit.

2 MR. CHERIN: They did at one time, that is  
3 right.

4 THE COURT: Well, they say every year they  
5 have gotten the same exemption.

6 MR. CHERIN: That is right. That is right.

7 But that is not binding on a  
8 locality. That is entirely different.

9 THE COURT: Only voluntarily.

10 MR. CHERIN: That is right.

11 THE COURT: Like the state does.

12 MR. CHERIN: For state income tax.

13 THE COURT: Yes.

14 MR. CHERIN: But nothing else.

15 The application that they put in  
16 said, GHA is a nonprofit, charitable service organization  
17 which provides comprehensive medical and dental services to  
18 its members on a prepaid basis.

19 I would point Your Honor to the  
20 similarity in the case that this very company, GHA --

21 THE COURT: You know, we would do this a lot  
22 quicker if I let you ask the question and he can answer it  
23 and we can move on. I don't think it has any bearing on the



1 overall question before me as to whether or not when they  
2 give up fifty thousand in what I call premiums, do they  
3 actually lose the fifty? Do they lose more than that or do  
4 they make money on it? It doesn't matter.

5 MR. CHERIN: That is not the point of it,  
6 Your Honor.

7 THE COURT: The point, as I understand it,  
8 is these are services being offered to people who normally  
9 would not be authorized for membership. They come in and  
10 they turn them down flat or they charge them the full fee.  
11 They happen to take some in at a much reduced fee because  
12 the county government and other organizations have gotten  
13 together with them and decided this is something we want to  
14 do for the poor people of the county.

15 MR. CHERIN: That is right. And it is a  
16 wonderful program. I'm not saying it is not a good program.

17 But the point is that if a company  
18 that has huge amounts of revenues is spending pennies on  
19 community service and comes in and seeks a tax exemption  
20 saying, Gee, we are good guys, we do community service.

21 THE COURT: You are making it sound like the  
22 two hundred million they get in which they spend is not  
23 spent for the welfare of the public.



1 MR. CHERIN: That is exactly what I am  
2 saying, Your Honor. It is spent for the welfare of their  
3 members.

4 THE COURT: Well, aren't they some of the  
5 public?

6 MR. CHERIN: Yes, they are, Your Honor. But  
7 I would submit that that is the very theory, the precise  
8 theory, that GHA argued over in Maryland. The same company  
9 argued that --

10 THE COURT: I doubt they have an ordinance  
11 anything like this one.

12 MR. CHERIN: No, they don't, Your Honor. It  
13 is not exactly the same. But the point is they --

14 THE COURT: I keep getting back -- I realize  
15 that the county's view is that this should be for the  
16 public, not just those that are members, but for the public  
17 to qualify.

18 MR. CHERIN: There should be some public  
19 benefit, not just for the members. That is right, Your  
20 Honor.

21 THE COURT: All right. We could all get off  
22 into arguing public benefit. Obviously giving proper health  
23 care to members of the public is for the general public



1 benefit. I mean if you take one person and you cure them so  
2 they are not on the dole to the government and they are able  
3 to support their family, then you have done a public  
4 benefit.

5 MR. CHERIN: Well, Your Honor, that is -- If  
6 they could show they were relieving some governmental  
7 burden, that is another factor.

8 THE COURT: Keeping people healthy is  
9 potentially relieving the government of having to take care  
10 of people who don't have money.

11 MR. CHERIN: No, Your Honor. The only  
12 people who are being kept healthy are the members who are  
13 already the ones who can afford to pay and they are paying.

14 If GHA disappeared tomorrow those  
15 people would all go some place else and pay. They wouldn't  
16 go to the government.

17 THE COURT: But it is still for the benefit  
18 of the overall public to have a healthy public. I mean that  
19 alone is a benefit to the public, to make sure a certain  
20 segment of the public is healthy or try to get them healthy.

21 I am getting back to the same  
22 thing I mentioned before. This same ordinance, this  
23 paragraph, talks about swimming pool clubs, tennis court



1 clubs; that is a heck of a benefit, isn't it, to go swimming  
2 or go play tennis. They are both nice things to have. You  
3 could do without both and still be very healthy.

4 Yet they qualify under this as  
5 specifically being exempt. If you have a private, nonprofit  
6 swimming pool where people can go out and get suntans, they  
7 can get cancer, they can do all kinds of things, they can go  
8 swimming, that is a healthful part of the club, the swimming  
9 part.

10 But that is considered qualified  
11 under here, a swimming pool, a local swimming pool club  
12 which has paid members. And I think we can assume the  
13 average Joe can't go in and say, I want to swim in your  
14 pool. It is exclusive to members and guests.

15 Now, how is that of a benefit to  
16 the public at large to have a swimming pool?

17 MR. CHERIN: Well, Your Honor --

18 THE COURT: It relieves the county of  
19 perhaps having to have a bigger recreational facility  
20 nearby. But I just don't understand this, that it has to be  
21 to the benefit of everybody to qualify.

22 MR. CHERIN: I didn't say everybody, Your  
23 Honor. I have never said everybody.



1 But I would submit that the  
2 argument that just because they are in the community and  
3 providing health care services, which is good, I would argue  
4 is the same principal as Exxon being in the community  
5 providing gasoline which everybody has to have too. There  
6 it tends to make the gasoline cost cheaper. Everybody needs  
7 gasoline. There is no difference there.

8 THE COURT: I think there is a world of  
9 difference between giving health care and selling gasoline,  
10 sir. I don't think that is a very good example.

11 I mean health care is something  
12 that is a governmental purpose.

13 MR. CHERIN: There are other medical  
14 facilities, Your Honor, that also provide health care  
15 services that pay these license taxes just like everybody  
16 else.

17 THE COURT: And they are profit  
18 organizations, are they not?

19 MR. CHERIN: Some of them, not all of them.

20 THE COURT: Well, most of them.

21 I just have difficulty in  
22 understanding the position regarding this when you do have  
23 in that same paragraph swimming pools and tennis courts and





1 other nonprofit organizations.

2 MR. CHERIN: They are not commercial outfits  
3 out there competing in a world that is -- They are not  
4 competing to try and get dollars in the door like this  
5 company is.

6 THE COURT: I have never quite understood a  
7 nonprofit organization being a profit motive type person.

8 MR. CHERIN: Well, they certainly --

9 THE COURT: But I have the worst job in the  
10 world for profit motives. I can't get any more money if I  
11 try.

12 MR. CHERIN: That is right. But why are  
13 they competing so hard then?

14 THE COURT: I don't know. I used to  
15 represent insurance companies and many of them were mutuals.  
16 And I could never understand why anybody ever wanted to form  
17 a mutual insurance company except maybe you could get a big  
18 salary. But, you know, what is the purpose if there is no  
19 profit. But there are plenty of them, State Farm,  
20 Travelers.

21 MR. CHERIN: Well, Your Honor, I would  
22 submit -- I would ask the Court to keep an open mind on that  
23 part of the issue.



1 THE COURT: I am just telling you and maybe  
2 I am over telling you, I find it difficult to follow the  
3 logic in that.

4 MR. CHERIN: I understand, Your Honor.

5 THE COURT: If you can convince me, I will  
6 be glad to rule in your favor. I am just having some  
7 difficulty with the concept.

8 MR. CHERIN: I understand what you are  
9 saying, Your Honor, and I did too when I first started into  
10 this case.

11 But the cases that are cited in  
12 our brief -- and we would be happy to supply copies to the  
13 Court -- and the Share case that Mr. Fox just cited, those  
14 cases all -- There have been any number of cases where HMOs  
15 have come in seeking exemptions from taxes arguing that they  
16 have operated in this manner.

17 I will quote from the Share case,  
18 for example. It says, Share's central contention is that a  
19 provider of nonprofit health care, which is federally  
20 qualified and consequently required to provide health care  
21 services to a cross section of the community, is entitled to  
22 a charitable exemption.

23 Then they go on to say that there



1 are six factors to make this kind of determination.

2 And what I am trying to -- or what  
3 I intend to try and do in this case is to demonstrate to the  
4 Court that GHA doesn't meet these kinds of factors.

5 THE COURT: But that says a charitable  
6 exemption. This is not a charitable exemption.

7 MR. CHERIN: I understand it is not strictly  
8 charity, Your Honor. But it certainly -- To show a  
9 community benefit, I would submit, that they have to show  
10 more than simply that they are there selling health care  
11 services to those who can afford it, and that is all they  
12 are doing.

13 Now, if the Court rules that is a  
14 community benefit under this ordinance, then we can fold up  
15 and go home right now because that is the case.

16 THE COURT: Is it not fair to assume that a  
17 profit motivated organization probably would have to charge  
18 more than a nonprofit organization and therefore the public  
19 would end up having to pay more for the services?

20 If you have that profit percent  
21 built into your fee structure --

22 MR. CHERIN: Not necessarily, Your Honor.  
23 In this company --



1 THE COURT: No, and there are plenty of  
2 profit motivated ones that don't make any money.

3 MR. CHERIN: That is right. And not  
4 necessarily -- These companies are -- As a matter of fact I  
5 think the financial statement here shows that they have a  
6 net capital of something in the order of eleven million  
7 dollars.

8 And I don't think there is  
9 evidence -- I mean first of all I know there is no evidence  
10 in this case before the Court now that that is true. It  
11 might be. But if there was one of each, then maybe I could  
12 understand that kind of an argument. But there are not.  
13 There are many nonprofits and there are some for profit HMOs  
14 operating in the county and they are all operating and  
15 people belong to all of the different ones.

16 And the fact that they are just  
17 there selling this health care service to those who can  
18 afford it --

19 THE COURT: I don't mean to cut you off  
20 except I am hungry and I assume everybody else is.

21 MR. CHERIN: All right.

22 THE COURT: I think we have gotten off into  
23 really a final argument phase and I think we ought to get



1 back onto the trial phase.

2 This all started out because you  
3 were going to ask him whether or not they made a plus or  
4 whether they lost on any of these children's --

5 MR. CHERIN: I'm sorry --

6 THE COURT: I've forgotten the question now.

7 MR. CHERIN: Your Honor, I was trying to get  
8 -- I don't care whether it is a profit or loss. And maybe I  
9 am not -- I guess I am not making myself understood the way  
10 I had intended. I just want to see what it cost them to  
11 provide these services to the county.

12 Now, whether it is a profit or  
13 loss and however much of that is subsidy, that is not what I  
14 am trying to say.

15 THE COURT: All we know at this point is it  
16 cost them about fifty thousand.

17 MR. CHERIN: That is all I wanted to say.  
18 And I was going to do the same thing to the primary --

19 THE COURT: Well, I thought you were going  
20 past that.

21 MR. CHERIN: No, Your Honor, I started  
22 asking him --

23 THE COURT: Well, if you want to, I will let



1 you go past it. Go ahead.

2 MR. CHERIN: I don't want to. Believe me, I  
3 don't want to.

4 THE COURT: All right. Let's break for  
5 lunch. Be back at two o'clock.

6 (Whereupon, at approximately 12:54 p.m. the  
7 hearing in the above matter was recessed for lunch.)  
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1                   A F T E R N O O N           S E S S I O N :  
2

3                   (Whereupon, at approximately 2:07 p.m. the  
4 hearing in the above matter was reconvened for the afternoon  
5 session.)

6                   MR. CHERIN: Shall I proceed, Your Honor?

7                   THE COURT: Go ahead.

## 8                   CROSS-EXAMINATION CONTINUED

9                   BY MR. CHERIN:

10                  Q.       Mr. Photenhauer, before the lunch break we  
11 had finished talking about the children's program and  
12 started talking about the PPP program, the Primary  
13 Prevention Program.

14                               Do you know how many individuals  
15 participated in that program as individual pay in the last  
16 year?

17                  A.       We had approximately eight to nine thousand  
18 individuals that were participates in the program, went  
19 through the program.

20                  Q.       And do you know how many of those were non-  
21 members who just paid for the service?

22                  A.       It would be no more than probably in the low  
23 hundreds.

                  Q.       In the low hundreds?



1 A. Yes.

2 Q. Less than five hundred?

3 A. Probably, yes.

4 Q. And we were talking about the cost of that  
5 program and you said that individuals or non-members would  
6 pay three hundred or three hundred and fifty dollars to GHA.  
7 I think we started to ask you what the cost to the company -  
8 - what it cost the company to provide that three hundred  
9 dollar service or three hundred and fifty dollar service.

10 Do you know what that is?

11 A. Let me comment first that I think the range  
12 of three to three-fifty, more likely the three hundred  
13 dollar or less price, would be charged where there was no  
14 discount. The cost report that I saw recently from the last  
15 year of operation had the cost of encounter between two  
16 hundred and two hundred and seventy-five dollars. There  
17 were two different, as I said, sites. If my memory serves  
18 it was in that range.

19 THE COURT: Per what?

20 THE WITNESS: Per encounter.

21 THE COURT: What does that mean, per visit?

22 THE WITNESS: Per visit, yes, the four hour  
23 interchange.





1 BY MR. CHERIN:

2 Q. That is what it cost the company to provide  
3 that, is that what you are saying?

4 A. Yes.

5 Q. So two hundred and fifty dollars. So does  
6 that mean that for each provision of such a service that the  
7 company would make a profit between two hundred and fifty  
8 and whatever the -- whether it was three hundred and three  
9 hundred and fifty?

10 MR. FOX: You Honor, objection. It is a  
11 misnomer, Your Honor.

12 THE COURT: Pardon?

13 MR. FOX: My objection is that ascribing the  
14 term profit to it is outside the ambit of what this  
15 corporation does under its income status. I mean if you  
16 want to call it a gain or something like that, but I don't  
17 think --

18 THE COURT: Well, I don't understand this  
19 anyway. The three hundred and something dollars that was  
20 paid, this is with regard to the children?

21 MR. CHERIN: No, Your Honor.

22 THE WITNESS: No, this is the Primary  
23 Prevention Program, Your Honor.



1 THE COURT: That is the one where they get  
2 the four hours?

3 THE WITNESS: Right.

4 THE COURT: And the cost of that to your  
5 company --

6 THE WITNESS: Ranges between two hundred and  
7 fifty and two hundred and seventy-five dollars.

8 If someone paid three hundred  
9 dollars, and the visit averaged two seventy-five, there  
10 would have been an operating margin for that encounter of  
11 twenty-five dollars.

12 However, we do not provide  
13 services on that basis. We are not a fee for service type  
14 of organization that accounts for services on a piecemeal  
15 basis. We did a review on an annual basis and that was the  
16 average.

17 BY MR. CHERIN:

18 Q. I understand that. So would it be a fair  
19 statement then that on the Primary Prevention Program to  
20 non-members that the company either breaks even or might  
21 have a slight gain on that service that is provided?

22 A. A very slight gain.

23 Q. Okay.



1 MR. CHERIN: Your Honor, may I approach the  
2 bench to get an exhibit, eleven, twelve, and thirteen?

3 THE COURT: Right here, sir.

4 MR. CHERIN: Thank you.

5 BY MR. CHERIN:

6 Q. Mr. Photenhauer, I am showing you what has  
7 been marked and accepted into evidence as Plaintiff's  
8 Exhibit No. 11. (Handing document to the witness.)

9 Do you recognize that analysis?

10 A. (Looking at document as requested by  
11 counsel.) Yes.

12 Q. Can I ask you to read please starting with  
13 Group Health to the personal coverage market?

14 A. Group Health's utilization data indicates  
15 that personal coverage members are a healthier population in  
16 Group Health's total membership. The medical screening  
17 procedures have been successful in enrolling a healthy  
18 population. Thus Group Health's senior management staff  
19 decided to aggressively pursue the personal coverage market.

20 Q. Now, are you presently aggressively pursuing  
21 the personal coverage market?

22 A. We are in the process of doing that, yes.

23 Q. And you are doing that because it is a



1 healthier population, isn't that right?

2 A. We are doing that to fulfill one of the  
3 major strategies of our current strategic plan.

4 Q. And what strategy is that?

5 A. The strategy is basically to help change the  
6 mix of our overall enrollment to take into account the fact  
7 that we have been a successful health care organization, as  
8 I mentioned, for now fifty-four years, that we have a  
9 significant aging of our population with a large number of  
10 members who have been with us for thirty and forty years,  
11 and with their cost and utilization having risen  
12 dramatically in the recent past..

13 Given the competitive marketplace  
14 from which we compete for patients --

15 Q. Excuse me one second. I didn't mean to  
16 interrupt you.

17 But who do you compete with or who  
18 do you see yourself competing with?

19 A. We compete with a wide range of other  
20 organizations.

21 Q. Such as?

22 A. We compete with commercial insurance  
23 companies, as I mentioned, organizations like Prudential,



1 Travellers, Aetna. We compete with the Blue Cross/Blue  
2 Shield organizations. We compete with other health  
3 maintenance organizations, Kaiser-Permanente, Health Plus,  
4 Capital Care.

5 Q. Do you compete with any profit making HMOs?

6 A. Yes.

7 Q. Do you see yourself competing with the NOVA  
8 health systems?

9 A. As I mentioned I believe in my deposition,  
10 there are individual physicians who are affiliated with that  
11 health care system who are members of various IPAs, HMOs,  
12 and with whom we compete, yes.

13 Q. Okay. I interrupted you when you were  
14 describing your mission.

15 A. It goes back to our fundamental operation of  
16 being in the health care business. There are people coming  
17 through our door through a pre-payment mechanism, of paying  
18 for it on a prepaid basis.

19 What has happened to us in the  
20 last ten years is as a basically aging fifty-three year old  
21 organization that has been here serving this community for a  
22 number of years, a number of new organizations have popped  
23 up in the last five to ten years who are enrolling people



1 primarily through the employment group market.

2 Our cost and our utilization  
3 experience of serving that aging population as such, in  
4 order to compete we need as an organization to attract  
5 younger members as well as retain our existing members as  
6 satisfied customers.

7 That is the reason why we are  
8 pursuing the personal coverage side of the operation in the  
9 hopes of being able to attract younger members who can  
10 basically, again within our rated system, help offset some  
11 of the costs of the older person.

12 Q. So you are trying to recruit younger,  
13 healthier people who can afford to pay for the service?

14 A. We are attempting to recruit younger,  
15 healthier people who can in a sense help subsidize the  
16 expenses that are now being incurred with an aging  
17 population which is significantly older than many of the  
18 other competing organizations with which we compete in the  
19 marketplace.

20 Q. But you have some significant pre-screening  
21 standards for your individual members that you are  
22 recruiting on this program, don't you?

23 A. We have a medical underwriting and screening



1 process that I identified this morning, which is allowed by  
2 all of the acts under which we are regulated, the federal  
3 HMO Act and the state acts.

4 Q. I'm sure it is allowed.

5 I show you Plaintiff's Exhibit No.  
6 13, which is identified as guidelines for that health  
7 evaluation. (Handing document to the witness.)

8 Do you recognize that?

9 A. (Looking at document as requested by  
10 counsel.) Yes.

11 Q. Now, all of these diseases that are listed  
12 along here I presume are ones that you would deny anybody's  
13 admission into the program as an individual, is that right?

14 A. That is correct.

15 Q. And would you read the three star marker  
16 behind that list?

17 A. Reject any applicant who has a condition  
18 which may require medical care at the time of application.

19 THE COURT: Does that mean any medical care?

20 THE WITNESS: Currently seeking medical care  
21 I think.

22 THE COURT: Take it to its ridiculous. I  
23 have got a cold. Of course I wouldn't need medical care for



1 that.

2 THE WITNESS: No, that wouldn't.

3 THE COURT: At least I hope not. Go ahead.

4 MR. CHERIN: Any means any I guess. I don't  
5 know what it means either, Your Honor.

6 BY MR. CHERIN:

7 Q. But there is a list -- I'm sorry, Mr.  
8 Photenhauer, I forgot a couple of other things.

9 There is another general -- There  
10 are more general rules down here and these are in addition  
11 to any of these things that were discovered up here.

12 Somebody would be rejected if they  
13 violate any of these general rules too, is that right?

14 A. That is right.

15 MR. FOX: Your Honor, I don't think the  
16 record can tell with what we are referring to.

17 THE COURT: I don't know.

18 MR. CHERIN: Referring to? I'm sorry. It  
19 is Exhibit 13 that we just talked about.

20 THE COURT: Well, why don't you just point  
21 them out to me so I can see them and then discuss them?

22 MR. CHERIN: I will, Your Honor.

23 THE COURT: But I can't see what you are





1 referring to. You took my copy.

2 MR. CHERIN: I'm sorry, Your Honor. I was  
3 just referring the witness to --

4 THE COURT: If you have a copy, you could  
5 use that with him and then I could follow you and see what  
6 you are pointing to.

7 MR. CHERIN: I'm sorry, Your Honor.

8 (Handing exhibit back to the Court.)

9 THE COURT: Thank you.

10 (Brief pause.)

11 BY MR. CHERIN:

12 Q. These general rules -- Are these still the  
13 general rules that are in effect as far as you know?

14 A. To my knowledge these are the rules that are  
15 in effect.

16 Q. And the general rule number one, that a  
17 record of more than six physician visits in any twelve month  
18 period during the three year period prior to application.

19 Now, does that mean for any  
20 particular purpose or just any visit at all?

21 A. You forgot some important language at the  
22 end.

23 Q. Oh, may be grounds.



1 A. May be grounds.

2 Q. Okay. Right.

3 A. So it is permissible.

4 Q. So it is permissible. So what kinds of  
5 conditions would it take?

6 A. Sir, I am the chief executive officer. I am  
7 not the medical underwriter. I am not a physician by  
8 training. I am not involved in personally reviewing the  
9 applications for this plan.

10 I think we have some people who  
11 are clinically trained who are reviewing and using these as  
12 guidelines for review, and perhaps it would be more  
13 appropriate to ask them those detailed questions.

14 Q. So you don't know the details of these  
15 guidelines?

16 A. I can read the general rules. I am not  
17 personally involved in carrying this out on a daily basis.

18 Q. Were you involved in establishing the rules?

19 A. Not specifically.

20 Q. Now, the screening rules are to prevent what  
21 you call adverse selection, correct?

22 A. That is correct.

23 Q. Now, tell us what adverse selection means.



1           A.           Adverse selection is basically a term that  
2 applies to the tendency of individuals who have significant  
3 health needs to gravitate toward one option in basically a  
4 multiple choice arrangement.

5                               There are numerous articles and  
6 literature that would support the notion that there is  
7 adverse selection that occurs in many settings.

8                               One of the settings in which it  
9 occurs is where there is an HMO or several HMOs offered  
10 which have a very comprehensive set of benefits compared to  
11 what the commercial indemnity carrier provides to that same  
12 group of people.

13                              Perhaps the clearest illustration  
14 is the differential which might exist for a young couple  
15 that is planning a family. The cost of having a baby, going  
16 through a pregnancy and a delivery with an HMO such as Group  
17 Health Association is a mere fraction of the personal  
18 expense that a young couple would incur with many commercial  
19 indemnity policies where they would have to assume a twenty  
20 to twenty-five percent co-payment for all of the services  
21 rendered as well as perhaps a significant annual deductible  
22 of maybe five hundred dollars or a thousand dollars per  
23 family per year.



1                   So what occurs is that many  
2 couples, for example, join us because of the attractiveness  
3 of the obstetrical benefit.

4                   The adverse selection that takes  
5 place is basically due to the way people shop for health  
6 care coverage.

7                   And in the case of the personal  
8 market, the individual, as I mentioned, the ground rules for  
9 commercial insurance companies with whom we compete in this  
10 marketplace have substantially different ground rules than  
11 we face as an HMO.

12                   Namely one major difference is  
13 even though these medical guidelines and screening may  
14 appear to be significant in terms of the listing, the  
15 reality is once an individual is screened and enters into  
16 the program, as I mentioned earlier, then the way we deal  
17 with that individual through a community rated process is  
18 fundamentally different than what a commercial insurance  
19 carrier could do and does do.

20                   We would not be raising the rate  
21 of someone who incurred cancer two years into enrollment  
22 with us because of that experience. Many commercial  
23 carriers would not only raise that rate, they would raise it



1 to an exorbitant level to the point that that individual  
2 would be without insurance. Fundamentally different.

3 Q. So to shorten that a little bit, then what  
4 you mean is that once you are in it is okay to get sick, but  
5 you can't be sick and get in, isn't that right?

6 A. I think we are focusing on the personal  
7 plan?

8 Q. Yes.

9 A. As I mentioned at the beginning of my  
10 testimony --

11 Q. That is yes or no answer, isn't that right?

12 A. Pardon?

13 Q. Isn't that a yes or no answer? Isn't that  
14 right?

15 A. I'm trying to give you my response and  
16 remind you that in fact about ninety-two percent of the  
17 members of this organization come through a door which has  
18 no screening involved. They come through the employee group  
19 market where they are not filling out medical  
20 questionnaires, where they are not being screened on this  
21 basis.

22 This only relates to individuals  
23 filling out applications under the Group Health Association



1 system. You are talking about literally a few thousand  
2 people out of a hundred and fifty-seven thousand people.

3 Q. But it is true that for those people they  
4 can't be sick when they come in? In fact you don't want  
5 them to be pregnant either when they come in? That is an  
6 exclusion too, isn't it?

7 A. I would have to look at the list. I believe  
8 current pregnancy is on the list.

9 Q. Now, the board of trustees that you talked  
10 about, you said it had a community flavor and those trustees  
11 are all selected from your membership only, isn't that  
12 right?

13 A. That is correct.

14 Q. And there are no outside community or civic  
15 leaders of any kind other than members, correct?

16 A. Yes.

17 Q. And from what I understood you to say, you  
18 have one person, one resident, from Fairfax County on that  
19 board, is that correct?

20 A. There are two from Northern Virginia. I  
21 believe one is from Fairfax.

22 Q. And one is Alexandria, which is not Fairfax  
23 County?



1 MR. FOX: Your Honor, it is hard to tell,  
2 two two three one oh in Alexandria. It may be Fairfax  
3 County.

4 THE COURT: What is the address?

5 MR. FOX: Hum?

6 THE COURT: What is the address?

7 MR. FOX: Sharon Chapel Road, Alexandria  
8 22310.

9 THE COURT: Probably the county.

10 MR. CHERIN: Thank you, Your Honor. Okay.

11 BY MR. CHERIN:

12 Q. With regard to the budget that you talked  
13 about of two hundred and thirty-eight million dollars, does  
14 GHA solicit any charitable donations to itself?

15 MR. FOX: Objection, Your Honor. It is not  
16 required under four dash seven one paren three.

17 THE COURT: I'm sorry. I was looking at a  
18 map. Repeat it.

19 MR. CHERIN: I asked the question of whether  
20 the company solicited any charitable donations to itself.

21 MR. FOX: And my objection is one that is  
22 grounded in relevancy.

23 THE COURT: I would rather hear the



1 evidence. It may not be relevant. Go ahead. I don't want  
2 to go off onto another closing argument.

3 MR. FOX: No, I just wanted to state it for  
4 the record.

5 THE WITNESS: We don't have an active  
6 program soliciting donations. There are donations that  
7 occur. We have a special assistance fund that is set up and  
8 members do contribute to that. It is for the assistance of  
9 members who are facing financial hardship.

10 The commitment to that fund is in  
11 the form of a board commitment. Basically it is funded at a  
12 level of one-tenth of one percent of revenue to be  
13 established as basically a fund to assist members. And  
14 often times other members as a memorial to someone who is  
15 deceased will make a contribution to that fund. We don't  
16 have an active endowment.

17 THE COURT: Let's back up a little bit. I  
18 made an assumption that may be correct.

19 Sharon Chapel Road?

20 MR. FOX: Yes.

21 THE COURT: Apparently it is found in Sharon  
22 and Wilton Woods subdivision in Fairfax County.

23 BY MR. CHERIN:





1 Q. Are you familiar enough with the financial  
2 statements to know whether you show any contributions or  
3 gifts as a source of revenue?

4 A. As I mentioned, it would be an  
5 inconsequential amount.

6 Q. Less than one percent if you had it?

7 A. That is correct.

8 Q. Or it could be zero?

9 A. There would be some contributions during  
10 each fiscal year, but not a substantial sum.

11 Q. Now, the program that you mentioned is  
12 designed to keep existing members enrolled, isn't that  
13 right?

14 A. Basically to assist them with whatever their  
15 financial hardship might be. And one could suggest that if  
16 this system were not available, potentially they would have  
17 to turn to public sources for some assistance.

18 Q. Well, assistance means if they can't pay for  
19 their service they are dropped, isn't that right?

20 A. In some cases there are specific services  
21 that are not part of the covered benefit package that are  
22 picked up for the individual who is in need. It is not  
23 simply paying someone's monthly premiums.



1 Q. Well, suppose they don't pay the monthly  
2 premiums, are they dropped?

3 A. We certainly do not keep people forever on  
4 the roles if they are not paying their membership.

5 Q. How long do you keep them on?

6 A. In the past perhaps longer than we should  
7 have in terms of operating in a fiscally prudent manner.

8 Q. Well, how long is that?

9 A. Again, the details of that would perhaps be  
10 better asked of our chief financial officer. But certainly  
11 we give people ample notice in order to pick up payments  
12 that are in arrears. We are not disqualifying and  
13 terminating members who have missed one or two months. It  
14 would have to be far more serious than that.

15 Q. If they miss six months would they be  
16 dropped?

17 THE COURT: What difference does it make?

18 MR. CHERIN: I think it makes a difference,  
19 Your Honor, in that, again, only those who can afford to pay  
20 for this service are the only ones that get anything.

21 THE COURT: That is a given.

22 MR. CHERIN: All right.

23 THE COURT: This is a perform for money



1 organization. It is not a charitable organization. They  
2 admit they don't operate free.

3 MR. CHERIN: That is right.

4 THE COURT: If somebody doesn't pay the  
5 premium, they run the risk of getting dropped. And it  
6 doesn't really matter whether it is a month or six months  
7 other than their benevolent attitude. I guess if they want  
8 to make it more than a month they are being benevolent.

9 MR. CHERIN: All right.

10 BY MR. CHERIN:

11 Q. Does your fund that you talked about, does  
12 that operate ever to pay premiums for somebody who seeks to  
13 join the organization as distinguished from keeping them on,  
14 an existing member on?

15 A. I am unaware of any specific case. It may  
16 have happened in the past. I am not personally aware of  
17 any.

18 Q. Do you have any -- Well, with regard to the  
19 health promotion and wellness area that you talked about at  
20 some length, you talked about classes for one thing, do you  
21 know how many of those were carried out in Fairfax County in  
22 the last year or so?

23 A. I could only venture a guess. I know it is



1 more than a couple. Is less than fifty? Probably. It  
2 would probably be somewhere between ten and twenty different  
3 classes at least. I believe we have another witness who  
4 would certainly be much closer to that operating detail than  
5 I am.

6 Q. Okay. And do you know whether you charge  
7 any different fees for members and non-members in those  
8 classes?

9 A. It is my understanding that we do not make a  
10 differential fee. For example, the smoking cessation would  
11 be a twenty-five dollar fee I believe for both members and  
12 non-members. And it is tied again to the psychology that  
13 people are perhaps more motivated to kick the habit if they  
14 make a financial contribution.

15 Q. Do you know whether they -- You don't know  
16 whether they charge differentials for other classes, is that  
17 right? Is that what you are saying?

18 A. It is my understanding that we do not.

19 Q. And when they are -- Are these promoted some  
20 how, these classes, beyond the membership?

21 A. Certainly. There are posters. There are  
22 publications that are sent out.

23 Q. Where are the posters put out?



1           A.           The posters could be in a wide range of  
2 places. Employers who offer us as an option certainly would  
3 have it on the employee bulletin boards for example.

4           Q.           Are they promoted to non-members?

5           A.           Again, I don't personally make up the  
6 posters. But I think it does clearly indicate that they are  
7 open to members and non-members.

8           Q.           Well, my question was are they promoted some  
9 how to the non-members? For example, are they published in  
10 the Washington Post health section?

11          A.           Yes, I believe we always have listed many of  
12 our classes in the health section.

13          Q.           And do you know whether those fees that the  
14 people who are charged, whether it is members or non-  
15 members, whether that covers the company's expenses?

16          A.           It basically would be on a cost  
17 reimbursement basis.

18          Q.           So is the idea again similar to the other  
19 one, the idea would be that the company would attempt to  
20 approximately break even on these classes? Is that a fair  
21 statement?

22          A.           The motivation of all of the classes is not  
23 to make money or to lose money. It is to promote a healthy



1 lifestyle, change health behavior which we feel very  
2 fervently about and have for fifty-four years. We are not  
3 in the business of trying to earn a bottom line.

4 Q. Well, but the question was do you --

5 A. The philosophy is one of making that service  
6 available to the community and to our members. And  
7 certainly we would like to cover our costs. If there are  
8 instructors, for example, that we pay for, it is only  
9 fiscally prudent to cover our cost.

10 We are not in it as a money making  
11 enterprise as there are for profit companies now, for  
12 example, carrying on smoking cessation classes or weight  
13 reduction classes. There are lots of TV advertising if you  
14 are around those arenas.

15 Q. Well, at the risk of going on again about  
16 whether it is profit making or not, I guess the bottom line  
17 is it doesn't really cost the company significant amounts of  
18 money to put these programs on?

19 A. I would not call it an insignificant amount  
20 of money. I believe the health promotion and wellness  
21 budget is a multi-million dollar budget. It is a  
22 substantial commitment to health promotion and prevention.

23 Q. But do you know how much of that is



1 recovered in fees?

2 A. I don't have that detail, no.

3 I think I should point out that  
4 given your concern about the overall financial arrangements  
5 of all of these programs, that since I came here, as I  
6 mentioned earlier, that Group Health Association has  
7 undergone, to be very candid with the Court, a number of  
8 difficulties.

9 MR. CHERIN: Excuse me just a moment. Your  
10 Honor, I didn't ask a question and I would object to the  
11 witness making a speech at this particular time without a  
12 question pending.

13 THE COURT: Okay.

14 MR. CHERIN: The Court's indulgence for just  
15 one second.

16 THE COURT: My courtroom seems to have that  
17 effect on CEOs.

18 MR. CHERIN: And lots of other people.

19 THE COURT: Don't feel bad. Ross Perot sat  
20 there and did the same thing.

21 MR. CHERIN: Lots of lawyers do it too I  
22 know, Your Honor.

23 THE COURT: You bet. Judges too.



1 MR. CHERIN: Excuse me one second, Your  
2 Honor.

3 (Brief pause.)

4 BY MR. CHERIN:

5 Q. In your educational programs or health fairs  
6 that you participate in, do you do any marketing at those  
7 things? Do you at all?

8 A. I would say that is a very low key marketing  
9 effort if one even does take place. I believe the question  
10 was posed this morning of whether we had application forms.

11 My understanding is that if the  
12 health fair was part of an actual open enrollment period  
13 such as Fairfax County has where all of the alternative  
14 plans have tables set up in the cafeteria, then in fact  
15 there would be very specific information regarding pricing  
16 and benefits, et cetera.

17 The health fairs, a number of them  
18 that we are involved in, may be in malls and other public  
19 places where there is free blood pressure screening,  
20 cholesterol checks, et cetera, there may be brochures about  
21 Group Health Association at such events. There would not be  
22 marketing brochures per se of here is how you apply. It is  
23 more low key than that.





1 Q. You say it is low key. What is it then?

2 A. Well, as I pointed out earlier, the health  
3 educators, the nurses who would be involved in these  
4 efforts, are not part of the sales staff. They don't even  
5 report up through the same chain of command. The marketing  
6 staff is separate and apart from the sales force. It is  
7 separate and apart from the Health Promotion and Wellness  
8 Division which is part of Patient Care Operations.

9 Our health educators are not  
10 licensed to sell HMO coverage in the Commonwealth of  
11 Virginia. Our sales force is. Fundamentally two different  
12 functions in the organization.

13 Q. So it is low key in the sense of just being  
14 there, just the presence of the company as perceived in the  
15 community I guess.

16 A. Certainly the presence.

17 Q. All right. With regard to the fees for  
18 membership, it is my understanding that everybody who is in  
19 pays the same amount for the coverage they get.

20 That is there are no sliding  
21 scales based on income, is that correct?

22 A. There are no sliding scales based on income  
23 per se. Not every member has exactly the same premium. It



1 basically varies depending upon the group and, again, the  
2 individual coverage.

3 THE COURT: You said earlier that once  
4 somebody is a member that as long as they keep paying the  
5 premium they can't be dropped after acquiring an illness.

6 THE WITNESS: That is right.

7 THE COURT: Can you drop a group providing  
8 they are still willing to pay?

9 THE WITNESS: There are some groups that  
10 perhaps would be dropped. To my knowledge of the immediate  
11 past I don't really think that has happened. We have been  
12 dropped by employers who are attempting to consolidate their  
13 offerings, but we have not made a widespread practice of  
14 dropping groups.

15 BY MR. CHERIN:

16 Q. Are there any other company programs other  
17 than what you have described so far that are affirmative  
18 programs to serve either the poor or the uninsured or the  
19 medically under served in any way other than what you have  
20 described so far?

21 A. I attempted to relate at some time this  
22 morning and never was able to get the full story out  
23 relative to the role that our medical staff plays in



1 teaching institutions.

2 Certainly there are a number of  
3 indigent patients who are patients in hospitals where our  
4 medical staff has privileges. They may have teaching  
5 appointments where they are involved in doing rounds and  
6 medical education generally.

7 And to that extent there certainly  
8 is an added value to the overall community as well as  
9 specific service to indigent patients which takes place in  
10 the inpatient setting.

11 Q. Do they do that on their own time?

12 A. They are doing that as part of the company  
13 time.

14 Q. As part of the company time?

15 THE COURT: Are they allowed to moonlight?

16 THE WITNESS: We have -- By contract we  
17 allow physicians to go through a process that they can have  
18 outside practices if they don't conflict with their Group  
19 Health Association schedule. That is very carefully  
20 organized.

21 BY MR. CHERIN:

22 Q. Do they have to pay their own malpractice  
23 insurance if they do that?



1 A. For their private practice, correct.

2 Q. Do they get company time to do pro bono or  
3 free type services, or is that what you just described?

4 A. No, they have a specific contractual  
5 commitment to Group Health and we pay for the malpractice  
6 coverage for that time.

7 Q. And in these teaching assignments and these  
8 hospital rounds that you are talking about, that is part of  
9 their schedule?

10 A. That is part of their schedule and to that  
11 extent I would term pro bono time, but certainly that is  
12 part of their work at Group Health.

13 Q. And the hospitals require that to maintain  
14 their privileges, don't they?

15 A. I believe some have had that teaching  
16 requirement, yes.

17 Q. And it's true you don't take any Medicaid  
18 patients, isn't that correct?

19 A. We currently don't have any Medicaid  
20 patients. The organization has treated Medicaid patients  
21 and has had contracts in the past.

22 Q. But you don't have any now?

23 A. Not that I am aware of.



1 Q. Why did you drop them?

2 A. That decision was made prior to my arrival.

3 And I think it partly may have been related to the overall  
4 financial issues facing the organization. Within the last  
5 five years we have operated with a net operating loss. It  
6 has been significant at times to the point that it raised  
7 the question in some people's minds about long term  
8 financial liability.

9 I was basically brought in in an  
10 effort to turn around the organization and I think we have  
11 come a long way, but certainly in terms of significant  
12 operating costs. If you look over the last five years that  
13 has not been the case.

14 The Medicaid contract, I am  
15 unclear in terms of the details of what dates, but it did  
16 exist for some period of time in the past that preceded me.

17 Q. And you haven't taken Medicare patients  
18 since you have been chief executive officer?

19 A. We have a significant number of Medicare  
20 patients.

21 Q. Medicaid. I'm sorry.

22 A. No.

23 Q. And it is correct that you don't have any



1 programs to subsidize the membership fees for somebody who  
2 wants to join but can't afford it?

3 MR. FOX: Objection. Asked and answered I  
4 think.

5 THE COURT: Sustained.

6 BY MR. CHERIN:

7 Q. Does GHSA, not just anywhere, but especially  
8 in Fairfax County maintain an emergency room that is  
9 available for anybody who shows up?

10 A. We provide for urgent care services at the  
11 Annandale center. It is primarily focused on our members  
12 who seek that service.

13 Q. So it is restricted for members unless I  
14 guess there is a life threatening situation on the doorstep?

15 A. If someone presented on the doorstep we  
16 obviously would be involved in the appropriate medical  
17 triage and treatment.

18 THE COURT: Your specific answer to the  
19 question was you do not maintain any emergency rooms?

20 THE WITNESS: Correct.

21 MR. CHERIN: I have no further questions,  
22 Your Honor.

23 (Brief pause.)

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PHOTENHAUER R CROSS

1 MR. CHERIN: I'm sorry. I walked off with  
2 some of your original exhibits.

3 THE COURT: You better give those back.

4 MR. CHERIN: I don't want to take those.  
5 Thank you.

6 THE COURT: Any redirect?

7 MR. FOX: Very briefly.

8 REDIRECT EXAMINATION

9 BY MR. FOX:

10 Q. Mr. Photenhauer, your long day is about to  
11 come to an end. Let me ask you a couple of additional  
12 questions.

13 Notwithstanding that you are a  
14 nonprofit corporation, it is part of your goal as CEO of GHA  
15 to operate in a fiscally responsible manner?

16 MR. CHERIN: Objection, Your Honor. I have  
17 not objected on leading grounds for a long time, but that is  
18 a leading question.

19 MR. FOX: I will withdraw it.

20 THE COURT: There is no question about it.

21 BY MR. FOX:

22 Q. What, if any, goal do you have for operating  
23 fiscally?



1           A.           Currently our goal for 1991 is to achieve an  
2 operating margin that is slightly over two percent of  
3 revenues.

4           Q.           Does Group Health have stockholders?

5           A.           It does not.

6           Q.           What happens to any surplus, sir?

7           A.           Surplus is basically used as the down  
8 payment for new equipment and facilities. And it ends up  
9 basically replenishing the asset base of the organization to  
10 increase overall reserves, which have been, I might add,  
11 depleted over the recent past with operating losses.

12                               And it is important that we build  
13 those back up not only to insure that we significantly can  
14 exceed the insurance commission requirements for solvency  
15 but for our own protection and our members protection.

16           Q.           Mr. Photenhauer, are you familiar with the  
17 HMO Act of the State of Virginia?

18           A.           Not in probably the detail I should be.

19                               MR. FOX: Your Honor, let me direct your  
20 attention to thirty-eight point two forty-three twelve.

21                               MR. CHERIN: What was that number?

22                               MR. FOX: Thirty-eight point two dash four  
23 three one two.





1 BY MR. FOX:

2 Q. Mr. Photenhauer, let me direct your  
3 attention to again that section of the Virginia Code,  
4 thirty-eight point two dash four three one two and  
5 subsection three C. (Showing section to witness.)

6 A. (Looking at section as requested by  
7 counsel.) It states, This is a prohibitive practice. It  
8 says, No health maintenance organization may cancel or  
9 refuse to renew the coverage of an enrollee on the basis of  
10 the status of an enrollee's health.

11 Q. Now, what, if any, regard does GHA give to  
12 that mandate of the Virginia Code?

13 A. It is controlling. It is consistent with  
14 the federal act and it basically is the policy and  
15 regulation by which we are governed.

16 Q. Let me ask you about the special assistance  
17 fund which you testified to earlier.

18 What, if any, attempt is made by  
19 Group Health Association assuming a disbursement is made  
20 from the special assistance fund, whether it be for purposes  
21 of covering premium payments or non covered benefits, what,  
22 if any, effort is made to recover any of those monies after  
23 a person or member's circumstances improve?



1           A.           Again, it is an operating detail that  
2 perhaps would be better asked of someone else. But it is my  
3 overall understanding that we do not press individuals for  
4 repayment of those sums, that in many cases they do, but it  
5 is not intended to be made as a loan per se.

6           Q.           Okay. Now, with regard to the issue of the  
7 emergency room, do you have knowledge as to whether or not  
8 Fairfax County has any shortage of emergency room facilities  
9 such that GHA in its areas of operation would be required to  
10 maintain an emergency room?

11          A.           To my knowledge there is not a shortage.

12          Q.           Is that -- What, if any, consideration is  
13 given to that in terms of whether or not GHA has operated an  
14 emergency room facility?

15          A.           It has not been a major concern to the  
16 extent that I think the emergency room services provided in  
17 hospital centers as well as some of the twenty-four hour  
18 centers are well known and recognized as serving the  
19 Northern Virginia area.

20                       THE COURT: I may be expanding upon this a  
21 little.

22                               Do you know of any Fairfax County,  
23 Northern Virginia, or regional disaster plan --



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PHOTENHAUER R REDIRECT



1 Q. Sir, would you state your full name for the  
2 judge and the court's record?

3 A. Dr. Turner Bledsoe.

4 Q. Dr. Bledsoe, are you a physician?

5 A. I am a physician.

6 Q. And in terms of your employment, by whom are  
7 you employed and in what capacity?

8 A. I am the Medical Director at Group Health  
9 Association.

10 Q. And how long have you been there, sir?

11 A. I have been there since January of 1988.

12 Q. Prior to your commencement of employment by  
13 GHA by whom were you employed?

14 A. Group Health Cooperative of the Puget Sound  
15 in Seattle, Washington.

16 Q. And did you follow Mr. Photenhauer to  
17 Washington, D.C.?

18 A. Yes, I did.

19 Q. Did you have a similar capacity?

20 A. Yes, I was the medical director in Seattle  
21 for five years.

22 Q. And prior to that, sir, by whom were you  
23 employed?



1           A.       The Maine Medical Center in Portland, Maine.  
2 I was the vice president for health affairs.

3           Q.       And just prior to that?

4           A.       Johns Hopkins Hospital and University School  
5 of Medicine.

6           THE COURT:   What was your position there?

7           THE WITNESS:   I was the Director of the  
8 Outpatient Department, Associate Dean for Clinical Affairs,  
9 and Director of the Office of Health Care Programs, which  
10 was the office -- the predecessor of my predecessor there  
11 had created the Columbia Medical Plan of the East Baltimore  
12 Medical Plan.

13           BY MR. FOX:

14           Q.       Dr. Bledsoe, as a physician, given your  
15 history of employment, have you chosen a specific -- I use  
16 the word bent -- let me say focus of your medical practice?

17           A.       Yes, I chose academic medicine early on in  
18 my career and became interested in ambulatory care and  
19 working with an organization.

20                       The role that I had as Director of  
21 the Outpatient Department and Director of the Office of  
22 Health Care Programs gave me my first introduction to  
23 managed care.



1 Q. That is the first time that term has been  
2 used in the Court.

3 Would you give Judge Plummer a  
4 definition, a working definition, of working care?

5 A. All right. Managed care is a recent term  
6 that is -- a recent parlance that focuses on prepaid medical  
7 care. So that most of the forms of the HMOs, the health  
8 maintenance organizations, fall under a category that is  
9 called managed care.

10 It includes quite a spectrum, all  
11 the way from what we call a preferred provider organizations  
12 that are physicians who are basically in private practice  
13 that agree to see the patients of a given carrier, all the  
14 way through a pure staff model, which is what Group Health  
15 Association is.

16 Q. Now, Doctor, what are your duties as the  
17 Medical Director at GHA?

18 A. As Medical Director I oversee the quality of  
19 care within the organization and provide input into the  
20 policy making of the senior management team. I review and  
21 oversee the educational programs that go on within the  
22 organization, the quality management as it relates to the  
23 medical practices are under my surveillance as are the



1 activities for utilization management.

2 Q. Structurally and organizationally how and  
3 who reports to you?

4 A. Reporting to me are four regional medical  
5 directors. There is a medical director for the Northern  
6 Virginia region.

7 Q. And who is that, sir?

8 A. That is Robert Younes.

9 Q. Y-O-U-N-E-S?

10 A. Y-O-U-N-E-S.

11 Q. Okay.

12 A. Dr. Charles Crutchman is the regional  
13 medical director for the D.C. region, Dr. Harvey Gold for  
14 Prince George's County, and Evelyn Hall for Montgomery  
15 County.

16 Q. All physicians?

17 A. All physicians.

18 Q. And how often do you meet with these people?

19 A. Weekly at least and usually one of them  
20 individually each week.

21 Q. Now, with respect to the delivery of care by  
22 physicians, how many physicians are either directly or  
23 indirectly under your supervision or the supervision of your



1 department at GHA?

2 A. Totally, approximately a hundred and eighty  
3 physicians spanning a variety of specialties from family  
4 practice all the way through the surgical specialties.

5 Q. Now, what, if any, role does your office  
6 play or perform in acquiring services from outside health  
7 care providers, doctors?

8 A. We do contract with a variety of specialist  
9 in the outside medical community, more so in Northern  
10 Virginia than we do in the other regions.

11 And my office -- reporting to my  
12 office is the Contract Department if they are going to  
13 develop a contract to the outside providers.

14 Q. What types of services would you typically  
15 contract for in Northern Virginia?

16 A. In Northern Virginia we deal with outside  
17 cardiology groups. There is an outside oncology group, some  
18 orthopaedic surgery is done outside Northern Virginia. A  
19 certain number of referrals go downtown to our specialist in  
20 D.C., but in general the Virginia community prefers not to  
21 cross the Potomac.

22 Q. Okay. What is the --

23 (Laughter.)



1 MR. FOX: I have to get my composure back.

2 (Laughter.)

3 BY MR. FOX:

4 Q. What is the philosophy or the theory of  
5 engaging those providers by contract rather than as in-house  
6 staff?

7 A. Well, our preference is to contract with in-  
8 house staff mainly because the incentives in general are  
9 quite different.

10 In a staff model the physicians  
11 are on salary. The incentives for the salaried physician  
12 are quite different. When you are on a salary providing  
13 additional services is not remunerative, which is very  
14 different from the piece work incentives of the people  
15 service community.

16 So the physician who is practicing  
17 within the staff model gets no extra reward for doing more  
18 laboratory procedures, which is common practice in people  
19 service medicine.

20 And in general we attract a lot of  
21 physicians because it is a place where one can practice,  
22 quote, pure medicine since they don't have to pay a lot of  
23 attention to the reimbursement issues that relate to the





1 care in private practice.

2 Q. Now, in terms of this hundred and eighty  
3 physicians, do you have in order of magnitude percentage  
4 wise the amount of your staff located in your Fairfax County  
5 centers?

6 A. There are about forty physicians on our full  
7 time staff in our Northern Virginia centers.

8 Q. And they range in terms of specialties from  
9 what to what?

10 A. We have the primary care specialties. We  
11 have our gastroenterologist, urologist, and neurologist that  
12 come out to Northern Virginia from the D.C. region so that  
13 we do provide some of the specialty services.

14 We have our own surgeon in  
15 Northern Virginia. We have our own dermatologist.  
16 Ophthalmology is referred out.

17 THE COURT: You have one surgeon?

18 THE WITNESS: Well, we have one and a  
19 vacancy and we are about to hire another one.

20 THE COURT: I take it you must farm out a  
21 fair amount of surgery?

22 THE WITNESS: We do, not as much as you  
23 would expect. Our surgeon likes to work hard. And he has



1 had a partner, but he prefers to work alone.

2 BY MR. FOX:

3 Q. Doctor, with regard to your role in the  
4 delivery of health care, what, if any, involvement do the  
5 experienced GHA physicians -- and let's first talk about  
6 Fairfax County -- have with the broader medical community,  
7 that is the hospitals and the world outside GHA?

8 A. We certainly use the Northern Virginia  
9 hospitals so that we have our pediatrics in Fairfax  
10 Hospital; internal medicine and obstetrics is in Arlington  
11 Hospital. The physicians are on the staff of those hospital  
12 and participate in the residency training program.

13 One of our pediatricians is very  
14 active in Fairfax Hospital in the quality assurance arena of  
15 the hospital. He has in the past been chair of the quality  
16 assurance arena.

17 Q. Now, for purposes of the Court's  
18 understanding, when your experienced Group Health  
19 Association physicians are -- I'm going to use the term  
20 working, or you use rounding?

21 A. Um-hum.

22 Q. -- in Fairfax Hospital, would you tell Judge  
23 Plummer typically what one does when they are in that



1 capacity, what a physician is doing?

2 A. Right. We use Fairfax predominately for  
3 pediatrics. And in the specialty of pediatrics there is not  
4 a high volume of inpatient work. But our physicians do a  
5 rotation as the attending physician at Fairfax.

6 There are a hundred or so  
7 pediatricians who have privileges at Fairfax and they are  
8 very actively involved during their rounding period in  
9 teaching both the students from Georgetown and the residents  
10 from Georgetown.

11 THE COURT: Clarify something for me in  
12 terminology. I had always thought the attending physician  
13 was the guy that put you in the hospital.

14 Is this a different meaning?

15 THE WITNESS: It is in a sense. It is  
16 possible -- When you are the attending physician you accept  
17 patients who are admitted. Some of them will be admitted  
18 from some of our centers if it is one of our patients. They  
19 may be admitted from the emergency room. They may be  
20 admitted -- In the case of indigent patients they may be  
21 admitted from the offices of pediatricians who don't have  
22 hospital privileges at Fairfax.

23 So they come by a variety of ways



1 THE COURT: They are the ones who have the  
2 privileges naturally?

3 THE WITNESS: Right. Correct. So they may  
4 accept patients that they have not admitted, and they have  
5 admitted them in that they are on the service doing the  
6 attending work and they have accepted them on their service.

7 But their work day begins at eight  
8 with a review of the recent admissions with the house  
9 officers and students. They then go on nursing unit rounds,  
10 see the patients at the bed side, and finish off with  
11 conferences with the attendings and with specialist again  
12 discussing cases that have been in-house. So it is a full  
13 mornings' work for the period of time, each of the days that  
14 they are on that working shift.

15 THE COURT: Now, when they are doing that as  
16 -- you have used the word attending in the second meaning I  
17 think, maybe.

18 THE WITNESS: Um-hum.

19 THE COURT: Does your attending physician, a  
20 man who is on salary to your company, does he do anything in  
21 the way of providing part of the health care to those who  
22 are non-members?

23 THE WITNESS: Yes.



1 THE COURT: And what is that?

2 THE WITNESS: For any of the patients who  
3 are on that service who do not have an attending, and the  
4 patients generally who are indigent are admitted to the  
5 pediatric wards, and become the patients of the attendings,  
6 we do not charge for that service.

7 And predominately when you are an  
8 attending there are likely to be more patients in that  
9 period who are not Group Health. So the attending has a  
10 broader scope. Some of them are being cared for jointly  
11 with attending physicians who have admitted them.

12 BY MR. FOX:

13 Q. How many physicians do you have, for  
14 example, rotating in and out of the Fairfax Hospital system?

15 A. There are five pediatricians that have  
16 privileges and that rotate in pediatrics. There are another  
17 eight to twelve internist and family practitioners who have  
18 similar privileges at Arlington Hospital.

19 Q. Can you give Judge Plummer some idea of  
20 what, if any, burden your rounding physicians, that is your  
21 pediatricians operating at Fairfax Hospital, relieve the  
22 hospital system of having to provide?

23 A. Yeah. I guess I learned more about that



1 when I was in hospital administration at the Maine Medical  
2 Center. But if you have house officers they need to be  
3 supervised by an attending. Either you are able to get this  
4 supervisory work from --

5 THE COURT: You have got me again. Is a  
6 house officer a resident and/or intern?

7 THE WITNESS: Right.

8 THE COURT: Okay.

9 THE WITNESS: So that the house officers,  
10 interns, are generally supervising students. So a typical  
11 nursing unit arrangement with Georgetown and Fairfax, for  
12 example, would be that there will probably be four or five  
13 medical students, three or four residents at various levels,  
14 interns and residents, and an attending physician. And the  
15 attending physician plays a heavy teaching role in that  
16 environment.

17 If some of those patients, having  
18 been admitted by an outside pediatrician, then they will  
19 usually visit the patient. But the teaching role would be  
20 carried out by the attending.

21 But if you don't have an attending  
22 from the community, you need to have an attending who is a  
23 salaried physician.



1 Similarly, if you didn't have a  
2 house staff, you would have to supply an on-site physician.  
3 So in a hospital if you don't have a house staff residency  
4 program to provide truly continuity of care for patients who  
5 are as sick as they often are in the hospital, you are well  
6 advised to have physicians on site staying in the hospital  
7 at all times.

8 THE COURT: Let me back up a little bit and  
9 see if this is your hypothetical attending physician.

10 One of your staff, a pediatrician,  
11 he goes to the hospital. He makes the rounds obviously  
12 covering his own patients and any others that are there  
13 through GHA?

14 THE WITNESS: Correct.

15 THE COURT: And in addition some who are  
16 there as freebies?

17 THE WITNESS: Um-hum.

18 THE COURT: And some who may be there being  
19 covered by insurance from someone else?

20 THE WITNESS: Yes.

21 THE COURT: But he provides some service to  
22 each on the service at that time?

23 THE WITNESS: Right. So in his teaching



1 role he may be at the bed side of another pediatrician's  
2 patient and be discussing the case.

3 THE COURT: I'm trying to get to the bottom  
4 line now.

5 Through the course of doing this,  
6 during rounds, et cetera, he is doing teaching, clinical  
7 teaching?

8 THE WITNESS: Right.

9 THE COURT: Is he paid by GHA for that time?

10 THE WITNESS: He is paid by GHA.

11 BY MR. FOX:

12 Q. And co-commitently does he receive any  
13 remuneration from, for example, Fairfax Hospital during that  
14 time?

15 A. No, he does not.

16 Q. Does GHA receive any remuneration from  
17 Fairfax Hospital for that time?

18 A. No, we do not.

19 Q. Now, to be clear about it, the connection is  
20 in part the right to practice or to have privileges at that  
21 hospital?

22 A. That is correct. That it is correct. It is  
23 a requirement for being able to be on site and caring for







1 just as well. He may know his own patients a little better,  
2 but generally one can catch up and probe the given clinical  
3 case.

4 Q. What, if any, role do your physicians have  
5 in -- I'm going to use the term grading, maybe I should use  
6 evaluating -- evaluating the young physicians that are under  
7 their wing during that time?

8 A. Yeah, in general they are formerly requested  
9 to submit an evaluation.

10 THE COURT: What is the phrase used -- I  
11 hear a lot of medical experts talk about being professors at  
12 Georgetown and G.W. And they always use another modifying  
13 word before that.

14 THE WITNESS: Clinical professor.

15 THE COURT: Clinical, that sounds right. So  
16 this is what they mean, they are on the job teachers instead  
17 of in a classroom teacher?

18 THE WITNESS: Right. Right. And they are  
19 not required to write articles or books to maintain their  
20 scholastic title.

21 THE COURT: But they carry that nice title?

22 THE WITNESS: Right.

23 BY MR. FOX:



1 Q. Now, Dr. Bledsoe, with regard to your GHA  
2 physicians, do they also serve another in-house role in the  
3 educational context?

4 A. In terms of?

5 Q. Educating medical students.

6 A. Yes, there are students on those nursing  
7 units. It is not quite as prevalent in Northern Virginia.  
8 But I would say that both students and residents do function  
9 in our ambulatory sector.

10 And the training that we do and  
11 the education we do goes beyond the physicians actually.  
12 Georgetown has a midwifery program. And we, uniquely, for  
13 many years have had a midwifery program in our obstetrics  
14 department.

15 And the nurses from Georgetown do  
16 serve both in our centers and in the labor/delivery suites  
17 under the supervision of our midwives.

18 But at Georgetown, again, the  
19 family physicians have a very formal rotation through our  
20 urgent care unit and our pediatric after hours unit.

21 Q. Are those the clinical clerkships?

22 A. These are clinical clerkships.

23 The medical students from



1 Georgetown serve in our ambulatory sector where they are  
2 both getting their physical diagnosis training where they  
3 examine patients in our system, and their examinations are  
4 supervised by --

5 THE COURT: Does any of this take place in  
6 Fairfax County?

7 THE WITNESS: Yes.

8 THE COURT: Some of them rotate through your  
9 centers and Fairfax Hospital?

10 THE WITNESS: That is correct. Annandale is  
11 a site for the students.

12 BY MR. FOX:

13 Q. Tell me how many students at any one time  
14 you have in that clinical clerkship program?

15 A. System wide about ten medical students at  
16 any given time.

17 Q. And precisely what do they do?

18 A. They come into the centers, are given a  
19 patient on assignment to evaluate. They will go in and take  
20 a history and do a physical examination. The physicians  
21 will come in behind them and review what they have learned,  
22 do an examination on the patient, and review how it has  
23 gone.



1 At a subsequent stage -- That  
2 would be the early clinical years where they are getting  
3 physical diagnosis.

4 Subsequently they will do  
5 evaluations as their medical knowledge improves and actually  
6 make recommendations as to what diagnostic tests might be in  
7 order. And the attendings then will review that with them.

8 Q. Now, what, if any, remuneration does Group  
9 Health Association receive for that clinical clerkship role  
10 that you have just testified to?

11 A. We do not get remunerated for it, neither  
12 the physicians nor the organization. Basically it is  
13 something that they like to contribute.

14 Q. Doctor, with regard to GHA's role in the  
15 promotion of health and wellness, what, if any, role does  
16 your department play?

17 A. Well, we play a very supportive role.  
18 Actually the Department of Health Promotion and Wellness is  
19 under the operation side, but I get very involved in their  
20 work.

21 And actually if you look at the  
22 amount of services provided by the delivery system, the  
23 physicians in our delivery system, twenty-five percent of



1 the ambulatory visits are actually preventive care visits of  
2 one kind of another.

3 And basically this is one of the  
4 basic tenants of the health maintenance organizations. When  
5 one looks at the differences between fee for service and  
6 prepaid care systems, the difference in incentives that I  
7 spoke about earlier gives a savings of about twenty-five  
8 percent. Research has been done that shows that the amount  
9 of discretionary work that is really unnecessary in terms of  
10 surgery, tests, or visits brings you a savings of that  
11 amount.

12 And basically the HMOs turn those  
13 savings into preventive care services which are fully  
14 covered, or turn them into reduced financial areas so they  
15 are getting the premiums down and making sure there are  
16 fewer deductibles or smaller deductibles.

17 And this basically then is one of  
18 the basic tenants of the HMO.

19 We have been involved with  
20 developing a very unique system, our health risk assessment,  
21 which is the Primary Prevention Program, is one such example  
22 of that. I think you will be hearing testimony about that  
23 later on.



1 We have begun introducing and  
2 using the Primary Prevention Program for many of the basic  
3 health assessments that heretofore had been routinely done  
4 in the delivery system. So now I think fifty percent of the  
5 health assessments in the ambulatory sector are being done  
6 by the Primary Prevention Program. It has become a very  
7 important part of our system.

8 Q. Doctor, directing your attention to your  
9 role in coordinating research programs, can you tell Judge  
10 Plummer what, if any, involvement you have in research  
11 projects at Group Health?

12 A. Well, the organization sponsors a number of  
13 research projects that are generally brought in by outside  
14 investigators. So we have a research committee on which  
15 five physicians sit, staffed by additional support staff.  
16 And we process on any given month four or five proposals for  
17 research studies. A lot of work goes into that. There are  
18 several that are currently active.

19 Q. Let me direct your attention to the County  
20 of Fairfax. Is there a study on-going under the sponsorship  
21 of the National Heart Lung Blood Institute?

22 A. Yes, there is a study where we are  
23 evaluating and surveying the development of obesity in



1 children between the ages of nine and sixteen. This study  
2 is a multi-centric study. There are places in the midwest  
3 and in California that are also sites. I think ours is the  
4 largest site.

5 And basically we are assessing the  
6 eating habits and activity patterns of children before  
7 obesity and after obesity has developed to see if there are  
8 ways that we can ultimately intervene to change eating  
9 behavior problems.

10 Q. Are the subjects of that study both members  
11 and non-members or just members?

12 A. These are members. We were selected  
13 primarily because we have a cohort of patients that is well  
14 defined. We have a centralized record system so that one  
15 can go back and look at the chart and follow the weights.

16 Q. What would happen if someone were a member  
17 today and in that study and then became a non-subscriber?  
18 Would they still be included?

19 A. They are still included so that the follow-  
20 up continues beyond their tenure with us. The Weststat  
21 Research Company is the one doing the work on that study and  
22 they follow them beyond their membership with us.

23 Q. Now, what is the -- I know you focused on





1 that plan as obesity. But what is the perception which that  
2 study attempts to focus upon?

3 A. Well, it is focusing on the fact that during  
4 ones' lifespan you have a significant change in the number  
5 of fat cells in the body.

6 And the first year of life and  
7 adolescence are the time when the most significant changes  
8 occur. And so it is looking at that very critical period of  
9 the adolescent and seeing whether there are facets of their  
10 nutritional habits or their activity patterns that would be  
11 of great significance in the development of obesity.

12 Q. Now, after the study is completed what is  
13 the anticipation, if any, of what use will be made of the  
14 results?

15 A. Well, it clearly is oriented toward trying  
16 to find ways to intervene with children so that one can  
17 identify, and we expect to be able to see some  
18 identification, identify the types of food, the types of  
19 behavior, the types of activity behavior, these teenagers  
20 are exhibiting which will give us a vehicle to intervene and  
21 hopefully be able to prevent obesity.

22 THE COURT: Does GHA have some type of grant  
23 to cover the cost of this?



1 THE WITNESS: Yes, there is a grant to cover  
2 the cost.

3 THE COURT: And that comes from The Heart  
4 Lung Blood Institute?

5 THE WITNESS: Yes. In general the studies  
6 that are approved do have external funding. But what is not  
7 funded and is contributed by the organization is the  
8 preliminary work that goes into evaluating these projects  
9 and being certain of getting the grants written, defining  
10 the organization's role.

11 BY MR. FOX:

12 Q. What, if any, benefit is there in a study of  
13 this type to having a defined population of individuals as  
14 subjects of the study?

15 A. Oh, it is critical because what is most  
16 important is to have a complete view of what is happening to  
17 each individual as the span of their age changes so that it  
18 gives you a complete look and you have all of the medical  
19 records at your disposal to do that.

20 And importantly when it comes time  
21 to intervene with the population, this is one of the very  
22 unique things that the HMO does. It has a defined  
23 population most of whom stay within the organization for a



1 period of time.

2 THE COURT: This is just curiosity and has  
3 nothing to do with this case I am afraid.

4 MR. CHERIN: I object.

5 (Laughter.)

6 THE COURT: You have this group of children  
7 you are monitoring. Do you affect the outcome if you then  
8 treat them while they are going through the process?

9 THE WITNESS: You would. You would.

10 THE COURT: So you just not treat them?

11 THE WITNESS: We don't treat them.

12 MR. FOX: So they get fat.

13 THE COURT: I must have been in one of those  
14 groups.

15 (Laughter.)

16 THE COURT: Go ahead.

17 THE WITNESS: But the defined population is  
18 a very exciting reality and there is a lot of focus now in  
19 the academic world to look at defined populations and to  
20 evaluate outcomes.

21 One of the examples, one of the  
22 innovations that I actually brought from Seattle was a  
23 strategy to be sure all women are screened for breast cancer



1 or at least all women who are at a high risk.

2 And we have begun in collaboration  
3 with the Fox-Chase Cancer Center in Philadelphia to do an  
4 outreach program. For example, in Northern Virginia we did  
5 an audit of all women age forty and up to evaluate what  
6 percentage of them had been screened within two years for  
7 breast cancer by mammography.

8 And we found that ninety-two  
9 percent had been screened, but that ninety-two percent was  
10 only the women who had used our system. And about twenty  
11 percent of the enrollment does not use the system in any  
12 given year. And what we are doing is developing an outreach  
13 to be sure that the women who are at high risk and not using  
14 our system are actually getting the screening as well.

15 BY MR. FOX:

16 Q. You are inviting them in to use the system?

17 A. We are inviting them in, right. We are  
18 sending out to all women age thirty-five and older a survey  
19 that asks for risk factors. So if there is anyone in their  
20 immediate family who has had breast cancer, if they have had  
21 prior breast cancer, they would then fit into a high risk  
22 category.

23 The results of that survey then



1 are entered into a computer and routine schedules, routine  
2 letters go out to Virginia women to come in and schedule a  
3 mammography.

4 THE COURT: Some of these are non-members?

5 THE WITNESS: No, these are all members.

6 THE COURT: All members.

7 THE WITNESS: So they are just in our  
8 enrollment.

9 BY MR. FOX:

10 Q. What is your anticipation of what will be  
11 done with the results of that screening?

12 A. If they don't come in for mammography, that  
13 is reported. So we have a method to identify the women who  
14 don't come in and get their screening done. And after a  
15 year those who have not responded, we go after them and send  
16 another letter and go after them until they come in. Once  
17 they have been in for screening their computer tracking  
18 continues.

19 So all the women who come in for  
20 mammography get entered. The results get entered in the  
21 computer. And we actually pursue them until they are in the  
22 hands of the surgeon or are back for follow-up mammography  
23 if that is what it indicated by the findings.



1                   So it is beginning to truly manage  
2 this population as is appropriate for a management study.

3           Q.       What is the anticipated role under your  
4 grant with the Fox-Chase Institute in Philadelphia vis-a-vis  
5 publication of the results and dissemination to the medical  
6 community in general?

7           A.       Well, actually the Fox-Chase people are  
8 charging us for the work and we are not under a grant. We  
9 did give them permission to publish the results and they are  
10 very interested in doing additional studies beyond the  
11 system. So we anticipate that that will be part of  
12 something later on.

13                         We do anticipate that this will  
14 improve the early detection of cancer and expect to see the  
15 staging improve.

16           Q.       Moving on, Dr. Bledsoe, what, if any, other  
17 research projects does GHA have under consideration that may  
18 not have yet come to fruition?

19                         MR. CHERIN: Objection, Your Honor. I  
20 object to anything they are thinking about doing. I mean I  
21 can understand these surveys to show that they are doing  
22 good services. But ones they are thinking about doing I  
23 would submit are irrelevant.



1 MR. FOX: Your Honor, if I may. In the  
2 answers to interrogatories we identified several other  
3 studies that are proposed and have been approved by GHA that  
4 are merely awaiting funding.

5 THE COURT: That is more than thinking  
6 about.

7 MR. FOX: That is right.

8 THE COURT: You are already working on  
9 those.

10 MR. FOX: That is correct.

11 THE COURT: I would let those in, the ones  
12 that you are actively seeking.

13 MR. FOX: And awaiting funding.

14 MR. CHERIN: Well, funding may or may not  
15 ever happen.

16 THE COURT: Well, it may not, but at least  
17 it shows what they are driving at.

18 THE WITNESS: We have another that is  
19 funded. We are collaborating with the Census in validating  
20 Census questionnaires. There is an interest in knowing  
21 whether the questions that seem to be answered by the Census  
22 visitors are answered accurately or not in terms of the  
23 people being able to recollect when they were last seen,



1 what their health conditions were.

2 And so the Census is coming in and  
3 following-up on people they have talked to through the  
4 Census process by coming in and looking at their medical  
5 records and validating --

6 THE COURT: These again are all members?

7 THE WITNESS: These are all members.

8 We are launching a study of the  
9 management of back pain by formal clinical guidelines and  
10 that one is in collaboration with G.W. It will probably go  
11 forward even if we don't get the funding because it is an  
12 area of interest for us.

13 BY MR. FOX:

14 Q. If it is not funded who will bear the cost  
15 of that?

16 A. We would bear the cost of that.

17 Q. What about the child asthma study with  
18 N.I.H.?

19 A. Yes, this would be a study to look at the  
20 variations and patterns for management of asthma.

21 We have identified through our  
22 Quality Assurance Process -- We have begun to analyze all of  
23 the cases in the pediatric age group who have been admitted





1 to the hospital for asthma. We have gone back and done an  
2 analysis of the care being provided antecedent to those  
3 hospitalizations and found that a fairly significant number  
4 of those patients had not been seen by a pediatrician but  
5 rather come to our urgent care unit for episodes of asthma.

6 And so we are defining an  
7 intervention that would bring them better into our pediatric  
8 system and developing some parent education programs that  
9 would help manage the asthmatic patient and so forth.

10 So it is a quality improvement  
11 strategy that is also of interest to the government.

12 Q. What, if any, other mammography programs are  
13 you involved in other than the screening of your own  
14 members?

15 A. Yes, given that we have expanded our  
16 mammography capacity we were receptive to a request from the  
17 D.C. Health Department to participate in a low cost  
18 screening program for them. So we have put through a finite  
19 number of non-members in the D.C. region through our  
20 radiology screening procedures to help out the department.  
21 We would be willing to do that in other jurisdictions as  
22 well.

23 Q. Doctor, let me direct your attention to the



1 enrollment issue, and specifically directing your attention  
2 to the personal coverage plan.

3 MR. FOX: Your Honor, eleven, twelve, and  
4 thirteen I believe.

5 THE COURT: (Handing documents to Mr. Fox.)

6 BY MR. FOX:

7 Q. These documents have already been received  
8 into evidence. But for our purposes do you know what they  
9 are? (Handing documents to the witness.)

10 A. (Looking at documents as requested by  
11 counsel.) Yes, I see that this is the criteria for  
12 screening for our personal coverage plan, the laboratory  
13 testing, one of the documents, diagnosing, and another, two  
14 of them.

15 Q. Doctor, would you explain the interaction of  
16 those three documents to Judge Plummer?

17 A. Well, these are a part of a process to try  
18 and normalize the population that is our individual plan.  
19 The dominate population within that enrollment have been  
20 group conversions. These are people who were covered in our  
21 group plans who then lost their group coverage and are able  
22 by statute to continue their coverage with Group Health.

23 It has tended to be people who are



1 high utilizers with a very significant illness.

2 And one of our objectives  
3 organizationally is to be able to provide affordable care.  
4 So in an effort to normalize that enrollment population we  
5 do screening of the individuals before they come in as  
6 individual members.

7 So it is recognizing that our  
8 lower deductibles, the fact that we don't have deductibles,  
9 we have small co-pays, makes an organization such as ours  
10 very attractive to people who have an illness and need to  
11 use the system.

12 So when you start with a group  
13 that is already highly weighted in the illness area we have  
14 to be careful not to continue adverse selection in opening  
15 that program.

16 THE COURT: Now, the screening you talk  
17 about there is for individual contracts?

18 THE WITNESS: That is correct.

19 THE COURT: But are you saying that that  
20 also applies that if I am in a group and then retire and go  
21 to an individual policy that you would screen me then?

22 THE WITNESS: No. If you are in one of our  
23 groups and retire, you can come in.



1 THE COURT: You grandfather? You come in  
2 without screening?

3 THE WITNESS: That is correct. That is  
4 correct. So that population is very unbalanced to start  
5 with.

6 So as we open that population for  
7 other individuals at large, to keep it from being even more  
8 costly a plan we need to screen out pre-existing illnesses  
9 and that is the way we do it.

10 BY MR. FOX:

11 Q. Doctor, directing your attention to what has  
12 been identified as Exhibit No. 13, this is the Group Health  
13 evaluations for health evaluation.

14 Are you able to tell Judge Plummer  
15 what the theory and philosophy behind that is and how it  
16 relates to the laboratory analysis?

17 A. In terms of the relationship between the  
18 two?

19 Q. Yes, if any.

20 A. Yes. I guess if there were -- There are  
21 occasions where a laboratory procedure, a laboratory result  
22 when it is discovered may be a clue to some of the diagnoses  
23 that are in the list of illnesses that one would be



1 concerned about included in that population.

2 So we will occasionally go from  
3 there to this list and see if there is a relationship  
4 between the two.

5 MR. FOX: Your Honor, I note we have limited  
6 copies. If he could come to the bench and show you in terms  
7 of the laboratory screening phase --

8 THE COURT: How much do I need to learn?

9 MR. FOX: Well, you just need to know how it  
10 is read if you don't understand it already.

11 BY MR. FOX:

12 Q. Would you just sort of --

13 A. Sure. (Going to the judge's bench.)

14 For example, the cholesterol here  
15 in the middle, CHL is the abbreviation, gives the normal  
16 range for the cholesterol. So if the value was outside of  
17 that range we would have that individual applicant --

18 THE COURT: It looks a little high.

19 THE WITNESS: Two forty is -- It is a broad  
20 range. If it is above two-forty we would urge them to go on  
21 a diet and come back and reapply.

22 So we have a number of people who  
23 have come in in that fashion. So when they are on a



1 restricted diet they are able to bring it down within a  
2 normal range.

3 BY MR. FOX:

4 Q. Let's just take one other example and then  
5 we will move on.

6 A. So here is one, that if there is a  
7 urinalysis that shows white cells in the urine beyond a  
8 given range, one might then look for a urinary track  
9 infection. There may be a variety of things that would go  
10 along to predispose someone to a urinary track infection and  
11 we would explore for that.

12 Q. Okay, now, Doctor, with reference to Exhibit  
13 No. 13, there are some things on here that from a non-  
14 medical standpoint may appear to be fairly routine such as  
15 high blood pressure.

16 Would you explain what the basis  
17 for some of those items are in terms of declining enrollment  
18 on a personal coverage plan?

19 A. Well, for high blood pressure, for example,  
20 to make that diagnosis we would generally not make it  
21 casually. So the diagnosis would require several readings  
22 weeks apart to confirm that hypertension did exist. The  
23 basis for it, however, is that it is one of the illnesses



1 for which chronic long term therapy is required and for  
2 which the long term therapy can be quite expensive. And so  
3 they become a significant risk for us as an organization  
4 financially, or if they are non-compliant patients, then  
5 they are at risk to develop progressive renal disease,  
6 stroke and heart attack.

7 Q. Thank you, Dr. Bledsoe.

8 A. (Returning to witness stand.)

9 Q. What, if any, similar screening is done for  
10 those who enroll under employer groups?

11 A. We generally do not screen in that fashion.

12 Q. Dr. Bledsoe, in terms of your involvement in  
13 this industry called managed care, are you familiar with the  
14 concept of community rating?

15 A. Um-hum.

16 Q. Would you explain to Judge Plummer what that  
17 concept means and what impact it has on the provision of  
18 medical care?

19 A. Well, the concept is that one would set --

20 THE COURT: Is that community rating?

21 MR. FOX: Community rating.

22 THE WITNESS: Well, the issue has to do with  
23 what you anticipate your cost will be in setting the dues to



1 be paid by the membership. And the assumption is that if  
2 the group you are enrolling is large enough, the statistical  
3 likelihood is that they will be average in their costs and  
4 will be fairly predictable in their costs.

5 And so we use a method of rating  
6 that focuses on the aggregate experience, sets the rate to  
7 what you think that is going to be for the ensuing eighteen  
8 months actually because you have to set the dues fairly far  
9 in advance.

10 And then you work on the  
11 assumption that those costs are going to evolve directly.  
12 The implications for an organization such as ours are fairly  
13 significant and it has a lot to do with the age of the  
14 organization because in general if you look at the  
15 population you serve in an HMO there is a significant  
16 turnover each year.

17 About twenty-five to thirty  
18 percent of the people leave the organization predominately  
19 by their changing job market, job environment. So they will  
20 leave a company that carries our plan and join another that  
21 does not.

22 The people who are likely to stay  
23 within the plan are those who have bonded to a physician.





1 And those are predominately individuals who have illnesses  
2 that have led them to bond with their physician.

3 And so the older health  
4 maintenance organizations such as GHA have a population that  
5 are high utilizers in characteristic and it changes the cost  
6 mix very significantly.

7 So one of the reasons that it is  
8 competitive in the marketplace has to do with the fact that  
9 we have an older population that has been with us a long  
10 term and have a high proportion of patients with illness.

11 Q. Doctor, in terms of the community rating,  
12 what impact does it generally have on the cost of provision  
13 of the medical care?

14 A. Well, it levels it to a certain extent, but  
15 it also makes it a reality that the older population and the  
16 ill population are being subsidized by individuals who are  
17 not sick. So there is a lot of cross subsidy within a plan  
18 by individuals who are well and who are not using the plan  
19 and the payment of their dues is providing the funds to  
20 serve the others.

21 Q. Doctor, one question I really forgot to ask  
22 you. In terms of your medical facilities, we talked about  
23 staffing, but we didn't talk about medical equipment.



1                               Primarily focusing on Fairfax  
2 County, from a medical standpoint are you able to tell Judge  
3 Plummer what a normal array of medical equipment in the  
4 centers is?

5           A.           Well, in each of the centers we have the  
6 things you would expect to have in terms of examining room  
7 equipment. We also do have emergency carts for people who  
8 might be in extremis in cardiac arrest. We have x-ray  
9 facilities on the site. We have laboratory facilities on  
10 the site.

11 It doesn't happen often, but if  
12 someone were to get sick in the proximity of one of our  
13 centers we would provide emergency services for them.

14 MR. FOX: Your Honor, let me confer with my  
15 co-counsel.

16 THE COURT: Why don't we take a break now.  
17 It will be about ten or fifteen minutes.

18 MR. FOX: Your Honor, may I inquire -- I  
19 know this has moved along perhaps a little slower than even  
20 I anticipated. How late will the Court go?

21 THE COURT: Four-thirty to five.

22 MR. FOX: Five. I have some witnesses, I  
23 may just tell some of them to just come back tomorrow.

1 THE COURT: Whatever you want.

2 MR. FOX: If we reconvene in the morning,  
3 what time?

4 THE COURT: Tomorrow is Wednesday. We can  
5 start at nine.

6 MR. FOX: So should I tell them they can  
7 come back at nine, some of them?

8 THE COURT: If you want to start at nine.

9 MR. FOX: What about you, Mr. Cherin?

10 MR. CHERIN: Sure, it is all right with me.

11 (Brief recess.)

12 MR. FOX: Your Honor, I have a witness who  
13 is really short. And Mr. Cherin has agreed -- She is from  
14 the County. She has waited here, like all of the witnesses,  
15 all day. But I asked him and he has agreed that he would  
16 defer cross-examining Dr. Bledsoe.

17 THE COURT: Are you through with the doctor?

18 MR. FOX: Yes, I am.

19 MR. CHERIN: I have no objection, Your  
20 Honor.

21 MR. FOX: I call Andria Lomrantz.

22 (Whereupon, Dr. Bledsoe was excused and by  
23 agreement of counsel cross-examination would be conducted



1 later in the trial.)

2 Whereupon,

3 **ANDRIA LOMRANTZ-ROSEN**

4 a witness, was called for examination by counsel for the  
5 petitioner, and, having been first duly sworn by the Court,  
6 was examined and testified as follows:

7 **DIRECT EXAMINATION**

8 **BY MR. FOX:**

9 Q. Ms. Lomrantz, thank you for coming.

10 Would you state your full name for  
11 the court's record?

12 A. Andria Lomrantz-Rosen.

13 Q. How do you spell that?

14 A. L-O-M-R-A-N-T-Z, hyphen, R-O-S-E-N.

15 Q. How do you like to be referred to, Lomrantz-  
16 Rosen?

17 A. Lomrantz.

18 Q. Ms. Lomrantz, by whom are you employed?

19 A. Fairfax County Department of Community  
20 Action.

21 Q. And what does the Department of Community  
22 Action do?

23 A. We try to serve the needs of the County's



1 low income population.

2 Q. And what is your job title with the County  
3 D.C.A. Department?

4 A. I am a health coordinator.

5 Q. And in that connection how long have you  
6 been employed with the County?

7 A. Two years.

8 Q. And are you familiar with Group Health  
9 Association?

10 A. Yes.

11 Q. Would you tell Judge Plummer how you became  
12 familiar with GHA?

13 A. Every year the Department of Community  
14 Action conducts a needs assessment survey of the low income  
15 population and we found that there were approximately fifty  
16 thousand low income clients about nineteen thousand of whom  
17 were children and were uninsured and not eligible for  
18 Medicare.

19 So we approached Group Health  
20 Association to see if we could put them into our network of  
21 providing medical care for the uninsured.

22 Q. Are there other participants in that program  
23 too?



1 A. Yes.

2 Q. And who are some of the other participants?

3 A. We have about seventy-five private  
4 pediatricians and family practitioners, a hundred and  
5 twenty-five specialist, another HMO, Kaiser-Permanente, and  
6 fifty dentist.

7 Q. And in terms of GHA's participation, is  
8 there any way to gage or determine what that participation  
9 is?

10 A. In July of 1989 they agreed to take sixty of  
11 our clients and provide health care at their Skyline Center,  
12 children and the parents of these uninsured children.

13 Q. Now, for the Court's understanding, what  
14 makes these persons uninsured or uninsurable?

15 A. Most of them are working poor. They earn  
16 minimal wage, sometimes a little more. Their jobs do not  
17 provide health benefits. They are over income for Medicaid.

18 Q. And just for example, what classes of jobs  
19 might some of these people fall into?

20 A. Retail sales, the service industry,  
21 construction.

22 Q. School bus drivers?

23 A. Um-hum.



1 Q. And did GHA take those sixty children and  
2 their parents into the program?

3 A. Yes.

4 Q. Let me show you Exhibit No. 23.

5 MR. FOX: Do you have any objection to that  
6 contract?

7 MR. CHERIN: No.

8 BY MR. FOX:

9 Q. Do you recognize that document? (Handing  
10 document to the witness.)

11 A. (Looking at document as requested by  
12 counsel.)

13 Q. What is that document?

14 A. It is the contract between Group Health  
15 Association and Fairfax County through the Department of  
16 Community Action.

17 Q. And are you familiar with the contract?

18 A. Yes.

19 MR. FOX: Your Honor, I would move this  
20 Exhibit No. 23.

21 THE COURT: If there is no objection, it is  
22 received as Exhibit No. 23.

23 (The document referred to above was marked



1 as Plaintiff's Exhibit No. 23 for  
2 identification and received into evidence.)

3 BY MR. FOX:

4 Q. Since the time that that contract was  
5 entered into -- Well, let me back up.

6 Why did you approach GHA for  
7 participation in this program?

8 A. The private pediatricians would only see the  
9 children and Kaiser-Permanente would only see children.  
10 They were not interested in doing families.

11 So we approached Group Health  
12 Association. We didn't actually give them a choice when we  
13 discussed it with them. We said, We have these families  
14 that need health care, not just the children but the  
15 parents, and would they be willing to see both.

16 Q. Were they receptive to the idea?

17 A. Yes.

18 Q. In terms of parents, are we talking about  
19 two family parents, I mean two parent families?

20 A. Some are. I would have to go back to the  
21 statistics, but some aren't.

22 Q. So we are talking about working mothers?

23 A. Yes.





1 Q. And did GHA state any or require any  
2 specific conditions for taking these children and the  
3 families that differed from their normal procedures to your  
4 knowledge?

5 A. Not to my knowledge. We did provide them  
6 with what we call a cumulative health record. It is a  
7 health record that you provide prior to enrollment.

8 The one for the children was a  
9 little more comprehensive. We used the Group Health  
10 Association health form that they would do for anybody  
11 wanting to join.

12 Q. Now, where do these -- I know you talked  
13 about the category of classes of persons included within the  
14 program.

15 But how do people enter your  
16 system to subsequently be included in the GHA program?

17 A. We contract with community based agencies in  
18 the area. One is Northern Virginia Family Service and the  
19 other is United Community Ministries. And we pay these  
20 community based agencies to staff health counselors there.

21 They do out reach. They go to  
22 health fairs. Clients come from a variety of sources, the  
23 Health Department, Social Services.



1 Q. Are all of the children and the families in  
2 the program residents of Fairfax County or are they  
3 residents of other counties?

4 A. No, you have to be a Fairfax County resident  
5 and you have to be uninsured.

6 Q. Now, prior to their entry into the program  
7 do you have any knowledge of what kind of medical care or  
8 treatment these participants were receiving?

9 A. Generally very little. What we did find was  
10 that people waited until their kids -- that they as an  
11 adult, although they need care, they rarely will get to the  
12 doctor. When their child gets sick they will go to the  
13 emergency room. Not having access to health care that was  
14 their only source.

15 Q. Now, in terms of the chronology of GHA's  
16 involvement, how would you characterize their involvement in  
17 terms of numbers of participants as compared to the other  
18 participants in the program?

19 A. Initially Kaiser started with thirty-five  
20 children, and then they went up to seventy, and then one  
21 hundred, then one-fifty, and now we are up to two hundred.

22 The private physicians are seeing  
23 the bulk of the clients, the bulk of the children. That



1 comes to about -- last year a total of seven hundred and  
2 ninety-eight kids were served, the bulk of them being seen  
3 by the private pediatricians.

4 Q. Okay. And GHA's participation currently is  
5 what?

6 A. Ninety. As of April 1st it will be ninety.

7 THE COURT: That is ninety children?

8 THE WITNESS: And adults.

9 THE COURT: That includes the adults?

10 THE WITNESS: Yes.

11 BY MR. FOX:

12 Q. Can you tell the Court how you arrived at  
13 the progression from sixty to ninety?

14 A. After the contract ended, which was June  
15 30th, 1990, we went back and looked at the utilization rate.  
16 Were the clients using the system? Did they learn how to  
17 access health care?

18 And we found that it is a learning  
19 process for these clients and they didn't utilize the system  
20 as we had hoped. So we thought, Well, now that they are  
21 getting health care and they had never had it before that  
22 they would use it quite a bit. And that just wasn't the  
23 case.



1                                    So the cost utilization was low.  
2 We asked Group Health Association if they would be willing  
3 to take more clients.

4                    Q.            And what was their response?

5                    A.            They said yes.

6                    Q.            And in terms of their accepting more  
7 participants into the program, was the contract amended to  
8 pay GHA more, less, or what was the compensation arrangement  
9 or what is to be the compensation arrangement?

10                  A.            I don't believe the contract was amended to  
11 show the number differential. The cost of the contract did  
12 not change. So they agreed to take thirty additional  
13 clients at no additional cost to the County.

14                  Q.            Do you know what the County pays GHA per  
15 client?

16                  A.            Yes.

17                  Q.            And what is the amount?

18                  A.            I know the entire contract was twenty-seven  
19 thousand.

20                                  THE COURT: I have seen that already. It  
21 was twenty-seven thousand.

22                                  MR. FOX: All right.

23                                  THE COURT: That was for the original sixty,



1 and now that applies to the total of the ninety adults and  
2 children?

3 THE WITNESS: Yes.

4 BY MR. FOX:

5 Q. Ms. Lomrantz, let me show you, if I might,  
6 exhibits which have been marked for identification as  
7 Exhibits 24, 25, 26, and 27. (Handing documents to the  
8 witness.) And I ask whether or not you can identify those?

9 A. (Looking at documents as requested by  
10 counsel.) Yes.

11 Q. Okay. With regard to No. 24, what is that?

12 A. It is a project summary about the medical --  
13 This Group Health Association project is part of a whole  
14 network that we are calling The Medical Care for Children  
15 Project and Medical Care for Families, which is the Group  
16 Health Association piece of that is a part of that.

17 And this is a basic overview about  
18 the entire Medical Care for Children Project.

19 Q. And who is that written by, what agency?

20 A. The Department of Community Action.

21 Q. Part of the County of Fairfax?

22 A. Yes.

23 Q. And similarly, No. 25?



1           A.           Yes. These were three articles that were  
2 written by an outside writer that the Department of  
3 Community Action hired after winning an award for the  
4 Medical Care for Children Project.

5           Q.           And were these written and published with  
6 the approval of the County of Fairfax, Department of  
7 Community Action?

8           A.           Yes.

9           Q.           And edited by your department?

10          A.           Yes.

11                       MR. FOX: Your Honor, I would move  
12 introduction of No. 24, 25, 26, and 27.

13                       THE COURT: Any objection?

14                       MR. CHERIN: Yes, Your Honor. No. 24 I  
15 don't have any objection to.

16                               The three after that though, Your  
17 Honor, are undated, unsigned, were apparently in the nature  
18 of press releases and they are -- I don't think they are  
19 relevant to the case, and they are hearsay, and they are  
20 full of --

21                       THE COURT: They are not hearsay if they are  
22 approved and edited by your client. She said that they  
23 approved and edited these and authorized them for release.



1 MR. CHERIN: Well, all right. I would then  
2 object, Your Honor, on the grounds of relevance to this  
3 case.

4 THE COURT: I would have to read them to  
5 find out whether they are relevant or not. I assume it is  
6 telling the public that this is a program that Fairfax  
7 County has and it is going well.

8 I mean is that roughly what it is?

9 THE WITNESS: It is a perspective of the  
10 program from the business community that is participating,  
11 from a client's perspective -- and I would have to look at  
12 the title to remember the third part of it.

13 THE COURT: It says, Medical Care for  
14 Children Project or Charity Which Makes Good Business Sense;  
15 another one is Children of the Working Poor Leads the Way.  
16 And the other one is Fairfax Reaches out to Uninsured  
17 Children.

18 THE COURT: I find it is relevant.

19 (The documents referred to above were marked  
20 as Plaintiff's Exhibit Nos. 24 25, 26, and 27  
for identification and received into evidence.)

21 BY MR. FOX:

22 Q. Ms. Lomrantz, you have indicated that  
23 Fairfax County received an award for this program.



1 First I want to ask you when did  
2 you receive the award and from whom?

3 A. We have received several awards. The most  
4 recent is from The John F. Kennedy School of Government,  
5 Harvard School of Government, and the Ford Foundation,  
6 Innovations in State and Local Government Awards Programs.  
7 And with it came a hundred thousand dollar grant for the  
8 project.

9 Q. And in terms of this program, what is unique  
10 about it, if anything, that is different from anything that  
11 has preceded it?

12 A. I guess our perspective on the uniqueness is  
13 that we have involved not only county government but private  
14 industry and businesses. We have a group of business  
15 partners in a sense that will be raising money toward the  
16 project so that it won't only be a County funded project  
17 which, quote unquote, would be considered an entitlement  
18 program. The business community has an interest. Some of  
19 their workers are actually clients of ours that are in the  
20 program.

21 And I guess what is unique is how  
22 we have involved a lot of different people from the medical  
23 community, the business community, the County government.





1 Q. Whose brain child was the project?

2 A. Excuse me?

3 Q. Who conceived the project?

4 A. I would like to say I was a part of it and I  
5 was, but there was a woman from the Department of Community  
6 Action who was a health planner whose name was Sandra  
7 Chisum, who is no longer working there. It was her concept.

8 Q. Now, do the children of the families in the  
9 program that are with GHA, do they come from any particular  
10 area of Fairfax County or are you able to say where they  
11 come from in the County?

12 A. I have a breakdown if you would like me to  
13 read it to you.

14 Q. Would you please?

15 A. There are fifty people from Falls Church,  
16 nine from Springfield, six from Dunn Loring, four from  
17 Reston, eighteen from Fairfax, and three from Vienna.

18 Q. Okay. And do you have any indication from  
19 an in-house standpoint of the utilization of GHA by those  
20 participants?

21 A. Yes. Every year we do a -- At the end of  
22 the contract year we do a survey of their satisfaction with  
23 the process, the whole program, and we also meet quarterly



1 with GHA to go over utilization.

2 At the end of the contract year  
3 they provide us with utilization data.

4 THE COURT: Did you say there were fifty  
5 from Falls Church?

6 THE WITNESS: Yes.

7 BY MR. FOX:

8 Q. You don't mean the City of Falls Church?

9 THE COURT: Not any more. They deserted us.

10 THE WITNESS: It may not necessarily --

11 THE COURT: Why is it so heavy right around  
12 Falls Church?

13 THE WITNESS: The Skyline Center is the  
14 participating center. So we have clients that  
15 transportation is a big problem for them. So they live  
16 probably near the Skyline Center.

17 BY MR. FOX:

18 Q. Are there any particular ethnic or national  
19 populations that seem to enter into this program such as  
20 recent emigrants, indigenous population?

21 A. I don't know. I guess it is a melting pot  
22 like the Baileys Crossroads area is.

23 Q. Ms. Lomrantz, is it the D.C.A.'s, Department



1 of Community Action, perception that GHA as a participant  
2 significantly subsidizes this program?

3 A. I have no idea how to answer that.

4 Q. Does D.C.A. have a perception of whether or  
5 not it is paying what a normal subscriber to GHA services  
6 would pay?

7 A. No, our assumption is that we are paying a  
8 lot less than a subscriber.

9 THE COURT: Is it correct that GHA, from  
10 what you have said, is the only organization that accepts  
11 entire families instead of just the children?

12 THE WITNESS: Through our department, yes.  
13 The County recently in May opened up a health care center  
14 which did not exist when this project started which serves  
15 adults and children alike.

16 THE COURT: Who mans that?

17 THE WITNESS: The Health Department.

18 BY MR. FOX:

19 Q. It is publicly funded?

20 A. The Health Department operates it and a  
21 private corporation mans it, are the staff there, and run  
22 the center itself.

23 Q. Ms. Lomrantz, without GHA's participation in



1 this project do you have an assessment of whether or not the  
2 program would be as successful as it has been?

3 A. I would say no, and I would say the clients  
4 would have been going without services without the program.

5 MR. FOX: Your Honor, I don't have any  
6 further questions.

7 MR. CHERIN: Just a few, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. CHERIN:

10 Q. I believe Mr. Fox started to ask you about  
11 the statistics on the number of visits to GHA, the  
12 utilization.

13 Do you know how many visits were  
14 actually made to GHA facilities?

15 A. What I have done is xerox the utilization  
16 data that GHA provides to us and whited out the people's  
17 names.

18 There were seven walk-in visits  
19 last year, which is July 1 of '89 to June 30th of '90.  
20 Fourteen write-ins, fifty-six fifteen minute appointments,  
21 fourteen thirty minute appointments, eleven twenty minute  
22 eye appointments, twenty-one urgent care appointments, a  
23 hundred and twenty-two lab test, fifty-three phone calls,



1 fourteen x-rays, one sonogram, four EKGs, one dermatology  
2 appointment, one GYN appointment, and one ENT appointment.

3 Q. Okay. Do you know whether the participants  
4 get the same level of care as somebody who was a regular  
5 member of GHA?

6 A. There are some limitations that are excluded  
7 from the contract, one of them being hospitalization. The  
8 GHA physician would treat the client in the hospital, but we  
9 would not pay for hospital care and neither would GHA, and  
10 that is because there is another program, State and Local  
11 Hospitalization, which picks up the cost for these low  
12 income clients.

13 Q. For hospitalization if that becomes  
14 necessary?

15 A. Yes.

16 Q. What are the other exclusions?

17 A. Blood and blood products, cosmetic surgery,  
18 pharmacy benefits, any outside referral that GHA would make.  
19 If it is internal to GHA and the system it would be  
20 included, but if it were outside of the system per se it  
21 would not be included in this contract.

22 Q. Okay. And the question Mr. Fox asked you  
23 about the value of the GHA subsidy, is it that you don't



1 know the answer to that, or it has never been calculated, or  
2 can you say?

3 A. If I were a regular subscriber and as I work  
4 in the County and can buy into GHA it would cost me a  
5 hundred and twenty-one dollars a month, which is fourteen  
6 hundred and fifty-two dollars a year.

7 However, because the  
8 hospitalization is part of that I have a hard time breaking  
9 out what the value is. If I said it was fifty percent for  
10 one of our clients, so it would be seven hundred and fifty-  
11 two dollars a year times a hundred clients.

12 I am not sure how I can break that  
13 out without knowing what hospitalization cost and working  
14 actuarial tables.

15 THE COURT: When you say a hundred and  
16 twenty-one a month, that is the employees contribution to a  
17 county?

18 THE WITNESS: That is the entire cost of the  
19 policy.

20 THE COURT: If you went down as an  
21 individual to buy it off the street it is a hundred and  
22 twenty-one a month?

23 THE WITNESS: Yes.



1 THE COURT: Through GHA?

2 THE WITNESS: As far as I know, yes.

3 BY MR. CHERIN:

4 Q. And that is for the full coverage though?

5 A. Right.

6 Q. So since there are some limitations the  
7 value would be somewhat less?

8 A. Yes.

9 Q. And even with the ninety children now and  
10 twenty-seven thousand dollars, that is roughly what, three  
11 hundred dollars for each then? Would that be right?

12 THE COURT: I have trouble doing the math on  
13 this because it is ninety children and parents. And I think  
14 they have a policy that applies to a family. It doesn't  
15 apply to each individual separately, does it?

16 THE WITNESS: GHA offers both. The family  
17 policy would be about three hundred and thirty-seven dollars  
18 a month for a family.

19 THE COURT: So if you had a children and two  
20 parents or one parent it would cost thirty something dollars  
21 more?

22 THE WITNESS: The difference between a  
23 hundred and twenty-one and three hundred and thirty-six.



1 THE COURT: Well, how many children are in  
2 the ninety?

3 MR. CHERIN: That is what I am trying to  
4 ask.

5 THE WITNESS: Thirty-eight adults and fifty-  
6 two children.

7 THE COURT: So you have got fifty-two  
8 policies I take it, roughly?

9 THE WITNESS: Let me see what --

10 THE COURT: But you don't take indigent  
11 adults alone with this program?

12 THE WITNESS: We have under certain  
13 circumstances, yes.

14 THE COURT: Whenever I think I understand  
15 things I prove to be wrong.

16 MR. CHERIN: Me too.

17 THE COURT: I made the mistake of thinking a  
18 program for children would not be a program for adults.

19 MR. FOX: Your Honor, it shows the  
20 flexibility of our commitment to the community.

21 THE COURT: Oh, yes.

22 MR. CHERIN: And the County's too.

23 THE COURT: Yes, you are both right.

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1 Anything else, sir?

2 MR. CHERIN: Just a moment, Your Honor.

3 (Brief pause.)

4 BY MR. CHERIN:

5 Q. As I understand your testimony earlier you  
6 started off with children and families came later, is that  
7 right?

8 A. Correct.

9 Q. Is the Department pursuing or has it  
10 attempted to pursue the same kind of procedures with its  
11 other suppliers in this program, it is trying to do the same  
12 thing?

13 A. We have asked Kaiser several times over the  
14 past few years if they would be willing to take the parents  
15 of the children that are enrolled in their program, and they  
16 have said no basically up until this past July. And we are  
17 now negotiating with them on a separate health care issue  
18 which will include low income families.

19 Q. So that program would be a similar type of  
20 subsidy for the families as well?

21 A. Our understanding is that it would be  
22 totally free to the individual clients in this county for up  
23 to twenty-four months.



1 Q. Under the Kaiser plan?

2 A. Yes. And when the program starts it will be  
3 totally free for twenty-four months for a certain number of  
4 clients. So they have to plan what their health care needs  
5 are and they have two years to be doing that, to realize  
6 that health care is important and they need to be covered.

7 Q. Now, when you say free, does that mean the  
8 County is not paying for it either?

9 A. Correct. That is what we have been told to  
10 date. There is no written -- No contract has been signed.  
11 We have just been negotiating, going back and forth. It has  
12 not been finalized yet.

13 Q. All right. And that is different from GHSA  
14 which you do subsidize to the tune of twenty-seven thousand?

15 A. Yes.

16 MR. FOX: I would state an objection for the  
17 record as to something which is somewhat in its incipency.

18 THE COURT: Got you.

19 MR. CHERIN: I said the same thing before,  
20 although Your Honor let it in as I recall.

21 THE COURT: No, it was something that they  
22 had already planned and put forth. It is similar.

23 MR. CHERIN: It is similar.



1 THE COURT: But I don't understand this.  
2 Kaiser is going to take care of two hundred people free,  
3 nobody paying anything?

4 THE WITNESS: There is some kind of an  
5 allocation system. We have been told that Kaiser has a  
6 certain amount allocated per region. It will be a national  
7 program. It does exist in Kaiser on the west coast.

8 THE COURT: Strictly pro bono, free care?

9 THE WITNESS: Correct. Correct.

10 THE COURT: And you are just going to  
11 coordinate rather than provide it?

12 THE WITNESS: Correct, we will enroll the  
13 clients.

14 BY MR. CHERIN:

15 Q. Do the other pediatricians and other  
16 specialist that you mentioned, do they do any of the family  
17 work?

18 A. Not in a comprehensive way. We may be able  
19 to contact -- The pediatricians see these kids on an ongoing  
20 basis when they are sick. The other general practitioners  
21 and family practitioners will see a parent when they get  
22 sick, but usually it is once only for an acute condition.  
23 They will not take them on an ongoing basis.



1 Q. How about the dentist, the same for them?  
2 Because I know GHA doesn't provide the dental care as part  
3 of their program?

4 A. No, the dentist do it at a discount,  
5 whatever we can negotiate with them.

6 Q. For the parents as well?

7 A. Yes.

8 MR. CHERIN: I have no other questions, Your  
9 Honor.

10 THE COURT: Anything else?

11 MR. FOX: Just one question.

12 REDIRECT EXAMINATION

13 BY MR. FOX:

14 Q. What, if any, value does the Department of  
15 Community Action place in selecting an HMO like GHA on the  
16 full array of services available in one center for the  
17 participants? Is there some value to that?

18 A. A very high value from our perspective. If  
19 the client goes to the center and sees the physician and  
20 needs lab work or an x-ray or whatever, a lot of the clients  
21 will not follow through if they have to go somewhere else.  
22 At a one stop shop they can get almost all of their care at  
23 that center.



1 MR. FOX: Okay. Thank you.

2 THE COURT: You are free to go, ma'am.

3 (Witness excused.)

4 MR. FOX: Dr. Bledsoe I guess.

5 Whereupon,

6 DR. TURNER BLEDSOE,

7 a witness, was recalled for examination by counsel for the  
8 respondent, and, having been previously sworn by the Court,  
9 was examined and testified as follows:

10 CROSS-EXAMINATION

11 BY MR. CHERIN:

12 Q. Dr. Bledsoe, you testified earlier about the  
13 program, the pediatric program at Fairfax Hospital, that  
14 your physicians participate in.

15 Now, they are required to do that  
16 by the hospital, aren't they, as part of the program to  
17 maintain their privilege at the hospital?

18 A. Right. The physicians who have those  
19 privileges, and as I understand it there are a hundred to a  
20 hundred and five pediatricians at Group Health and in the  
21 community that have such privileges and they rotate  
22 sequentially.

23 Some of our physicians, as I said,



1 go more often than once in every hundred and five rotations.  
2 So basically it is a weeks duty and that week comes up every  
3 one hundred and five weeks. But a couple of our  
4 pediatricians are in demand for the job and do it more  
5 often.

6 Q. All right. And that is part of the program  
7 that Fairfax Hospital says, If you want to keep privileges  
8 here you have to participate in this program?

9 A. Correct.

10 Q. And is that only in pediatrics?

11 A. I think there is a need to do that same kind  
12 of rounding in internal medicine.

13 Q. And do your physicians do that at Fairfax  
14 Hospital?

15 A. No, the rounding is at Arlington.

16 Q. That is at Arlington?

17 A. Yes.

18 Q. Do any of your GHA physicians participate in  
19 similar kinds of duties at Fairfax Hospital or Fair Oaks or  
20 another Fairfax County hospital.

21 A. Not at Fair Oaks. Fair Oaks is not one of  
22 our contract hospitals.

23 Q. Oh, I'm sorry. Is Fairfax Hospital the only



1 contract hospital in Fairfax County?

2 A. No, actually Arlington is the one Arlington.  
3 Our pediatrics is at Fairfax. And we also have some  
4 cardiology admissions at Fairfax as well.

5 Q. But Fairfax Hospital is the only one in  
6 Fairfax County, is that correct?

7 A. I think Arlington Hospital is in Fairfax  
8 County.

9 Q. No, it is not.

10 A. So it would only be Fairfax.

11 Q. So your physicians attend the pediatric  
12 program but they don't do similar kinds of teaching and  
13 round programs at Fairfax Hospital like the pediatric  
14 physicians do?

15 A. Right, because the internal medicine  
16 admissions are at Arlington Hospital.

17 Q. Okay. Now, you said that they get to do  
18 that on company time.

19 Does their absence from the GHA  
20 facilities while they are doing that require you to hire  
21 other physicians to take their place while they are out?

22 A. We don't do it while they are out. It does  
23 increase the requirements for staffing with the system as a



1 whole. We have to provide a certain number of clinic hours  
2 to see the population and meet the demands of the population  
3 we serve. So that staffing level has to be higher because  
4 of these --

5 THE COURT: Let me interrupt again.

6 How many pediatricians do you have  
7 that participate in this rotation?

8 THE WITNESS: All of our pediatricians do  
9 and I believe there are five of them.

10 THE COURT: So literally speaking the  
11 donation of time to this by GHA is roughly three, four, five  
12 weeks a year?

13 THE WITNESS: Yes. Well, it is five weeks  
14 every -- Well, probably seven weeks every two years.

15 THE COURT: That is why I said three to five  
16 per year, somewhere in that area?

17 THE WITNESS: Yes.

18 BY MR. CHERIN:

19 Q. Seven weeks every two years?

20 A. Um-hum.

21 Q. That wouldn't require you to hire another  
22 physician to take the place for that amount of time, would  
23 it?





1           A.       The level of staffing is impacted by those  
2       absences. And so in the aggregate it contributes to what  
3       the requirements are for pediatricians relative to the  
4       population it is serving.

5           Q.       This medical training that they do with the  
6       students on the rounds everywhere, isn't that done in  
7       virtually all hospitals?

8           A.       There aren't students in all hospitals. For  
9       example, one of our contract hospitals for Montgomery County  
10      is Suburban Hospital and there is no house staff and there  
11      are no students. In that case the physicians are working up  
12      the patients all on their own and do not have the assistance  
13      of house staff nor do they have teaching functions.

14          Q.       How about in your other hospitals?

15          A.       In general the other hospitals have house  
16      staff and teaching.

17          Q.       All right. You talked about in the wellness  
18      program a -- You mentioned that it was your view that it  
19      resulted in a savings of twenty-five percent I believe is  
20      what you testified to.

21          A.       My testimony said that the system in the  
22      staff model HMO where the piece work incentives of clinical  
23      practice are absent that the net result of that gives you



1 about a twenty-five percent savings in overall costs.

2 Q. Twenty-five percent of what?

3 A. Compared to the fee for service system. So  
4 that if you look at a comparable fee for service system --

5 Q. So it is twenty-five percent over fee for  
6 service?

7 A. Correct.

8 Q. What about other HMOs?

9 A. That would be standard for most staff  
10 models. The savings are probably less in an IPA model  
11 because in most IPAs if you look at a physician who has  
12 signed on through an independent practice association, the  
13 amount of their practice that is actually, quote, managed  
14 care is generally small. It is generally less than ten  
15 percent.

16 That does not bring about a change  
17 in their practice style. So the practice style of a  
18 physician in a staff model is different than the practice  
19 style of a physician who is in a fee for service practice.

20 Q. How does the GHA rate then compare to other  
21 HMOs with which it competes in the area?

22 A. Again, it is a complicated issue as to what  
23 are the elements that contribute to the rate.



1 In general our rates are heavily  
2 influenced by the population that we serve because we use,  
3 again, the community rating across the aggregate of the  
4 population we serve.

5 Because the age of our population,  
6 the tenure of the population we serve has been with us for  
7 fifty years and we still have a number of individuals who  
8 were charter members, the level of illness in that  
9 population, the level of illness in our population is  
10 higher.

11 So if you look at the age  
12 distribution, for example, of the Kaiser-Permanente  
13 enrollment versus Group Health Association we have a  
14 significantly higher age, average age, and the illness  
15 burden of the population is higher.

16 Accordingly our prices are not as  
17 competitive as Kaiser, for example.

18 Q. Are they as competitive as any profit making  
19 HMOs?

20 A. No. Again, the profit making HMOs generally  
21 have very entrepreneurial underwriting practices. MDIPA is  
22 an example of that. They two years ago dropped a number of  
23 their high utilizer groups. Just threw them out entirely



1 and thereby lowered the cost mix of their population served  
2 and therefore have very competitive prices.

3 Q. Is it true then -- So what you are saying  
4 then is that GHA is higher than --

5 A. We are higher priced by virtue of the fact  
6 that we have an older population. We are dedicated to that  
7 population, have a commitment to them over a period of time.  
8 Part of the burden of that is that they are higher priced  
9 and elevate our cost.

10 If you actually compare -- For  
11 example, we have done some attempts to compare how  
12 successful we were at being efficient compared to Kaiser,  
13 and have taken our utilization rates relative to each age  
14 cohort and said, Well, if our population looked like  
15 Kaiser's what would our price be. And we would be very  
16 competitive.

17 So it reinforces the fact that the  
18 age mix of our population has a driving force on our price.

19 THE COURT: Is Kaiser a profit?

20 THE WITNESS: No, it is like us.

21 BY MR. CHERIN:

22 Q. Are they required to do a community rating  
23 as you are?



**A. Yes.**

MR. CHERIN: I have no further questions,  
Your Honor.

**THE COURT:** Any other questions?

MR. FOX: Your Honor, I have no further questions of Dr. Bledsoe. Thank you.

**THE COURT:** You are free to go, sir.

(Witness excused.)

MR. FOX: Your Honor, if I could call one other witness.

**THE COURT:** Sure.

MR. FOX: Ms. Bennett, Bernice Bennett.

Whereupon,

**BERNICE BENNETT,**

a witness, was called for examination by counsel for the petitioner, and, having been first duly sworn by the Court, was examined and testified as follows:

## DIRECT EXAMINATION

**BY MR. FOX:**

Q. Ms. Bennett, would you state your name for the record please?

**A. Bernice Bennett.**

Q. Okay. And by whom are you employed?



1           A.           Group Health Association.

2           Q.           Now, tell Judge Plummer what your job title  
3 is at Group Health Association and what is involved in that  
4 job?

5           A.           I am the Director of Health Promotion and  
6 Wellness, and I am primarily responsible for administering  
7 all of the programs and services that Health Promotion and  
8 Wellness provides to the community and to our members.

9           Q.           Ms. Bennett, prior to coming with GHA where  
10 did you work?

11          A.           Parkland Memorial Hospital in Dallas, Texas.

12          Q.           And how are you educated beyond highschool?

13          A.           I have a master's degree in public health  
14 from the University of Michigan and community health  
15 education.

16          Q.           Now, in terms of your job at GHA,  
17 structurally or organizationally where does your department  
18 fall in the organization? Is it under Dr. Bledsoe?  
19 Everybody is under Mr. Photenhauer. Tell us how.

20          A.           My department is under the Department of  
21 Patient Care Services and Mr. Oliver Crump, who is the chief  
22 operating officer, is my boss.

23                       THE COURT: Who?



1 THE WITNESS: Oliver Crump.

2 BY MR. FOX:

3 Q. Now, is your department at all attached to  
4 marketing or sales?

5 A. No, this is an independent department.

6 Q. Okay. So the term health promotion has a  
7 meaning that is not sales promotion?

8 A. Correct.

9 Q. What does it mean?

10 A. The department has an educational meaning to  
11 it in that we provide educational programs, classes, lecture  
12 series, and prevention services to our members.

13 Q. Do you provide -- Or what, if any, focus  
14 does your department have to providing those educational and  
15 preventive services to non-members?

16 A. All of our programs are available to members  
17 and non-members.

18 Q. Does the -- What is the size of your staff?

19 A. The total department consists of forty-five  
20 employees.

21 Q. Okay. And among those employees would you  
22 tell Judge Plummer by general category who are included?

23 A. We have two primary prevention centers and



1 we have approximately eighteen employees in those centers.

2 And then we have the Health Promotion and Wellness  
3 administrative unit which seven people are employed in.

4 THE COURT: What was the total once again?

5 THE WITNESS: Approximately forty-five.

6 BY MR. FOX:

7 Q. Does the Primary Prevention Program, the PPP  
8 program, fall under your purview?

9 A. Yes.

10 Q. Now, let me direct your attention to Fairfax  
11 County.

12 What, if any, participation has  
13 the Health Promotion and Wellness Department had with the  
14 community in Fairfax County in general?

15 A. We have participated in health fairs. We  
16 work with the Annandale Chamber of Commerce in health fairs  
17 every year. We have sent staff out to man booths and to  
18 provide educational materials.

19 The Fairfax County Park Authority  
20 in 1988 had a Feel Good Fairfax Day. They were having a  
21 grand opening for the Oak Marr Center.

22 Q. Is that right down here on Jermantown Road?

23 A. Um-hum. And I agreed to provide staff to





1 offer carbon monoxide testing, blood pressure screening, and  
2 a one hour stress management class.

3 Q. Now, directing your attention to the Feel  
4 Good Fairfax Program at Oak Marr, was that program repeated  
5 at any other recreational centers in the County?

6 A. No, we only provided it at the Oak Marr  
7 Center.

8 Q. And what, if any, remuneration did Group  
9 Health receive from either the Park Authority, or the County  
10 of Fairfax, or the participants for that program?

11 A. This was a free community service that we  
12 provided.

13 Q. And how long did the program continue?

14 A. It was a one day health fair grand opening  
15 event that we participated in. However, they had two days.

16 Q. Now, what, if any, marketing effort occurred  
17 there?

18 A. No, we were there to provide blood pressure  
19 screening and carbon monoxide testing.

20 Q. Tell Judge Plummer what array of people you  
21 had at the site, nurses, doctors, technicians.

22 A. I was there. To provide the carbon monoxide  
23 testing I had one R.N. and one nurse practitioner.



1 Q. And how did that program proceed? I mean  
2 how do you test for carbon monoxide?

3 A. We have a small testing device in which  
4 people have to blow into it and a level is registered, a  
5 carbon monoxide level is registered. And then people are  
6 told what that means, and then we talk to them more about  
7 smoking and what carbon monoxide does to the body.

8 THE COURT: Is that a sign of smoking?

9 THE WITNESS: Yes, it is. A carbon monoxide  
10 level in a person who is smoking is going to be much higher  
11 than in a person who does not smoke.

12 (A set of documents was marked as Exhibit  
Nos. 6-A through 6-U for identification.)

13 BY MR. FOX:

14 Q. Let me show you, if I may, and they have  
15 been previously marked for identification, some brochures.  
16 (Handing documents to the witness.)

17 Can you identify that one that has  
18 been identified as No. 6-A?

19 A. (Looking at documents as requested by  
20 counsel.) Yes, this is a brochure which announced the  
21 Primary Prevention Program.

22 Q. And is this program made available at the  
23



1 centers and places where the Primary Prevention Program is  
2 available?

3 A. We have a special brochure for members which  
4 is a different color. This is for non-members.

5 Q. And that is blue?

6 A. Yes.

7 Q. Now, where would those brochures be placed?

8 A. Those brochures would go to various  
9 companies who make a contract and who send their employees  
10 through the Primary Prevention Program.

11 Q. And what about -- And would they be members  
12 or non-members?

13 A. Non-members. These are for non-members.

14 Q. What, if any, public places are these  
15 brochures placed at?

16 A. Right now we don't place them in any public  
17 places.

18 Q. Is the Skyline Medical Center located near  
19 the Skyline Racquet Club?

20 A. It is right next door. Well, adjacent to  
21 it.

22 Q. Are any of these made available to the  
23 Skyline Racquet Club?



1 A. Yes.

2 Q. Let me show you what has been marked for  
3 identification as No. 6-B. What is that? (Handing document  
4 to the witness.)

5 A. (Looking at document as requested by  
6 counsel.) This is a flyer, actually a brochure, which  
7 announces the Health Promotion and Wellness health  
8 educational programs.

9 Q. And is that dated?

10 A. It is 1989, January 5th, 1989.

11 Q. And was that produced by your department? I  
12 don't mean the actual graphics.

13 A. The programs were actually -- They were all  
14 developed by Health Promotion and Wellness.

15 Q. Now, I noticed in this -- Mr. Photenhauer  
16 testified about fees for members and non-members. I think  
17 he erroneously testified that there is no distinction in the  
18 fees for members and non-members.

19 Is that true?

20 A. There is a distinction.

21 Q. Now, he wouldn't be in a position to know  
22 that as well as you I assume?

23 A. No.

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1 Q. The fees that you charge for these programs  
2 such as Discover Health, can you tell Judge Plummer whether  
3 or not those fees are calculated to recover the cost of  
4 putting on the program?

5 A. Generally the fees that we charge are simply  
6 designed to serve as an incentive. We did offer classes  
7 free at one time and had a large cancellation rate because  
8 we felt we didn't have the commitment.

9 Therefore, we put a fee to our  
10 participants.

11 Q. And what has your experience been with the  
12 level of participation with charging the fees?

13 A. The cancellation rate is lower. However,  
14 the fees simply do not cover the cost of the program.

15 Q. In terms of a program, a typical program --  
16 and we will talk about some specific ones -- would you tell  
17 His Honor how you are able or how you go about putting one  
18 of those programs together, what the mix is, who the people  
19 are, whether they are GHA people or outside people?

20 A. One of the programs -- I will give you an  
21 example -- is our smoking cessation program. This is an  
22 eight week, two hour a week program in which we have a  
23 contract instructor that we pay forty dollars an hour to



1 come in and run the session. So that would roughly run us  
2 about four hundred dollars for the instructor.

3 Then we have materials that we  
4 have to purchase for the program, and the materials cost  
5 twenty dollars per participate for the packet of materials.

6 Adding those two costs we come up  
7 to be about one thousand forty dollars to run the smoking  
8 cessation program.

9 And then we have a minimum of ten  
10 participates and which we charge about forty dollars per  
11 participant. So that is four hundred dollars right there.

12 THE COURT: How much is the total cost?

13 THE WITNESS: The total cost for the program  
14 is one thousand and forty. Now, this includes the  
15 instructor at forty dollars an hour and twenty dollars for  
16 the materials.

17 Then I have a full time staff  
18 person --

19 BY MR. FOX:

20 Q. Is that staff person's time calculated into  
21 that cost?

22 A. Yes, it is. It takes approximately eight  
23 hours to do the administrative leg work to get a smoking



1 cessation program started. And that person is -- Based on  
2 her salary of sixteen dollars per hour for eight hours it is  
3 roughly a hundred and twenty-eight dollars. That is added  
4 into the actual cost.

5 Q. Now, where do you hold a program such as the  
6 smoking cessation program?

7 A. Generally those programs are held in our  
8 medical centers.

9 Q. And what, if any, factors are in your costs  
10 for heat, light, and those kinds of things?

11 A. The center usually absorbs that cost, but  
12 there is a cost associated with it.

13 Q. But in your thousand forty dollars you made  
14 no effort to include that?

15 A. That is right.

16 Q. Now, are you able to tell Judge Plummer what  
17 the participation level is between members and non-members?

18 A. It varies.

19 Q. For example in that program.

20 A. It varies from program to program. For  
21 smoking cessation we may have six members and one non-member  
22 or two non-members.

23 Q. Let me show you what has been identified as



1 No. 6-C. (Handing document to the witness.)

2 THE COURT: How many of them last out the  
3 eight weeks?

4 BY MR. FOX:

5 Q. Without smoking.

6 A. We have a fifty percent drop-off after the  
7 quit smoking date because some of them can't do it.

8 Q. No. 6-C, Ms. Bennett, what is that?

9 A. (Looking at document as requested by  
10 counsel.) This is a lecture series that was provided by the  
11 National Council of Career Women and I was asked to serve as  
12 a panelist.

13 Q. And was your time free or was it remunerated  
14 by the National Council?

15 A. My time was free. It was my vacation time.

16 THE COURT: Now, there is a lady giving of  
17 herself and not GHA.

18 BY MR. FOX:

19 Q. No. 6-D, what does that show?

20 MR. CHERIN: Excuse me, Your Honor. I don't  
21 know if you intend to offer all of these at one time, but I  
22 have some objections and it might be more confusing to do  
23 them all at the end.





1 THE COURT: What is your objection to 6-A?

2 MR. CHERIN: Not 6-A, Your Honor. No. 6-B I  
3 have --

4 THE COURT: No. 6-A is received.

5 (The document referred to above as Plaintiff's  
6 Exhibit No. 6-A for identification was  
received into evidence.)

7 THE COURT: No. 6-B?

8 MR. CHERIN: No. 6-B I would object on the  
9 grounds, as I mentioned earlier, that there are a number of  
10 these that are not in Fairfax County and not serving the  
11 residents of Fairfax County.

12 THE COURT: I don't know where this is.

13 MR. CHERIN: Well, a lot of them --

14 THE COURT: Where was the wellness program  
15 that was devised in January of '89, where was that to be  
16 held or where was it held?

17 THE WITNESS: There are programs --

18 THE COURT: Were any of them in Fairfax  
19 County?

20 THE WITNESS: Yes.

21 THE COURT: All right. I will receive it.  
22 The objection is overruled.

23 (The document referred to above as Plaintiff's



1 Exhibit No. 6-B for identification was  
2 received into evidence.)

3 MR. CHERIN: We are only objecting to the  
4 ones that are outside Fairfax County. The ones that are in  
5 the County we don't object to.

6 THE COURT: Well, there are some that are in  
7 Fairfax County.

8 MR. CHERIN: I know there are. I am saying  
9 that --

10 THE COURT: No. 6-C, the panel was held some  
11 place else and it was actually her time donated during a  
12 vacation. So I don't know that it is relevant other than  
13 showing her dedication to her profession.

14 BY MR. FOX:

15 Q. Well, you were billed as a director at Group  
16 Health Association?

17 A. Yes, Group Health Association is the one  
18 that asked me to do it.

19 THE COURT: I sustain the objection. It was  
20 out of the goodness of her heart that she went. She wasn't  
21 paid for it by GHA.

22 MR. FOX: Note my exception, Your Honor.

23 BY MR. FOX:



1 Q. Let me show you No. 6-D. (Handing document  
2 to the witness.) No. 6-D is what?

3 A. (Looking at document as requested by  
4 counsel.) Every year Group Health Association participates  
5 in National High Blood Pressure Month screening activities.  
6 This is a listing of our where our screening points are  
7 located.

8 Q. Do they occur in Fairfax County?

9 A. Yes, they do.

10 THE COURT: Any objection to that one?

11 MR. CHERIN: Well, this doesn't have any  
12 date on it. I don't know when this is.

13 BY MR. FOX:

14 Q. Ms. Bennett, this is one page of an overall  
15 brochure. Do you have the whole brochure?

16 A. Yes, I do.

17 THE COURT: Just say what the date is.

18 BY MR. FOX:

19 Q. And what is the date?

20 A. March and April, 1990.

21 MR. CHERIN: And I object to what is outside  
22 Fairfax County.

23 THE COURT: No. 6-D is received.



1 (The document referred to above as Plaintiff's  
2 Exhibit No. 6-D for identification was  
received into evidence.)

3 BY MR. FOX:

4 Q. No. 6-E, Ms. Bennett? (Handing document to  
5 the witness.)

6 A. (Looking at document as requested by  
7 counsel.) This is an agreement with the Fairfax County Park  
8 Authority for Group Health Association's participation in  
9 Feel Good Fairfax.

10 THE COURT: Any objection?

11 MR. CHERIN: Your Honor, I wouldn't have any  
12 objection except for one thing, I don't know that it is --  
13 It was given to us as neither signed nor dated. If it  
14 happened, I don't have any objection. But if it didn't --

15 THE COURT: I think somebody has already  
16 testified to it.

17 BY MR. FOX:

18 Q. Was this ever signed?

19 A. Yes, it was signed.

20 Q. Did you receive a letter from the Park  
21 Authority regarding that?

22 A. Yes, I did.

23 Q. Would you read that letter into the record,



1 the date?

2 A. The letter is dated August 28th, 1988.

3 Dear Ms. Bennett: Attached is a  
4 list of the programs that your staff affiliates have agreed  
5 to offer as part of the Fairfax County Park Authority's Feel  
6 Good Fairfax project which runs from September 24th through  
7 October 31st. Please note the dates, times, locations,  
8 program names, and descriptions. Our editor has made some  
9 changes in the names and descriptions of the programs to  
10 make them more suitable for final production in the campaign  
11 brochure.

12 Final contract agreements will be  
13 forwarded to you soon. If you have any corrections, please  
14 let us know by August 30th. We will be unable to alter any  
15 information after that date.

16 Thank you again for your  
17 cooperation and support. Without help from organizations  
18 such as yours Feel Good Fairfax would not be possible.

19 If you have any questions or  
20 concerns, please do not hesitate to call me at 246-5564.

21 THE COURT: Is this the same as the stress  
22 testing, blood pressure, carbon monoxide that you already  
23 testified to?

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BENNETT B DIRECT

1 THE WITNESS: This is what occurred, right.

2 THE COURT: And that took place in the fall  
3 of '88?

4 THE WITNESS: Yes.

5 THE COURT: Any objection?

6 MR. CHERIN: No, Your Honor.

7 MR. FOX: Your Honor, that letter was not in  
8 my package and that is why I had her read it.

9 THE COURT: It doesn't matter. The reason  
10 you are doing this is to establish it happened in Fairfax  
11 and when.

12 MR. FOX: That is correct.

13 THE COURT: All right. No. 6-E is received.

14 (The document referred to above as Plaintiff's  
15 Exhibit No. 6-E for identification was  
received into evidence.)

16 MR. FOX: Your Honor, let me pass a group of  
17 these over to the Court --

18 THE COURT: Let the clerk start marking  
19 them.

20 No. 6-A, B, D, and E are in. No.  
21 6-C with the objection was sustained.

22 BY MR. FOX:

23 Q. No. 6-F, can you identify that, Ms. Bennett?



1 (Handing document to the witness.)

2 A. (Looking at document as requested by  
3 counsel.) Yes, this is a letter from the Annandale Chamber  
4 of Commerce thanking us for participating in the April 27th,  
5 1989 health fair.

6 Q. And let me show you the second page.

7 (Handing document to the witness.)

8 A. (Looking at document as requested by  
9 counsel.) It is a letter dated March 13th, 1989 thanking us  
10 for participating.

11 MR. FOX: I move the admission of No. 6-F.

12 MR. CHERIN: No objection.

13 THE COURT: It is received.

14 (The document referred to above as Plaintiff's  
15 Exhibit No. 6-F for identification was  
received into evidence.)

16 BY MR. FOX:

17 Q. I am showing you No. 6-G. (Handing document  
18 to the witness.)

19 A. (Looking at document as requested by  
20 counsel.) This is a flyer on how to recognize drug and  
21 alcohol abuse in your child. And the program was offered at  
22 three centers, one of which was at the Annandale Medical  
23 Center on April 18th, 1990.



1 MR. FOX: I move admission.

2 MR. CHERIN: No objection.

3 THE COURT: Received.

4 (The document referred to above as Plaintiff's  
5 Exhibit No. 6-G for identification was  
received into evidence.)

6 BY MR. FOX:

7 Q. No. 6-H. (Handing document to the witness.)

8 A. (Looking at document as requested by  
9 counsel.) This is a flyer announcing the Feel Good About  
10 Yourself program offered at the Skyline Center on February  
11 the 15th and 22nd, 1990.

12 Q. Available to members and non-members?

13 A. Right, members and non-members.

14 THE COURT: Regarding these last few, was  
15 there any charge made? Feel Good, was there any charge  
16 made?

17 THE WITNESS: Yes.

18 THE COURT: And what?

19 THE WITNESS: Members -- Yes, it was to be  
20 fifteen dollars for members and thirty dollars for non-  
21 members.

22 THE COURT: How about the flyer regarding  
23 Annandale?





1 BY MR. FOX:

2 Q. The health fair?

3 A. The health fair was no fee.

4 THE COURT: And the two letters from the  
5 Annandale Chamber of Commerce?

6 THE WITNESS: No fee.

7 THE COURT: And the Feel Good Fairfax?

8 THE WITNESS: No fee.

9 THE COURT: The National High Blood Pressure  
10 Screening?

11 THE WITNESS: Free.

12 BY MR. FOX:

13 Q. I show you No. 6-I. (Handing document to  
14 the witness.)

15 MR. CHERIN: I think we missed H didn't we?

16 THE COURT: I thought she said that was  
17 fifteen and thirty.

18 MR. CHERIN: Yeah, there wasn't a fee. One  
19 thing about this is I didn't know what the date is. If I  
20 could know that it would help.

21 THE COURT: On H?

22 MR. CHERIN: Yes.

23 THE COURT: I thought she said February of



1 '90.

2 MR. CHERIN: She said February. She didn't  
3 say what year.

4 THE COURT: I thought she said '90.

5 MR. CHERIN: Oh, I'm sorry.

6 THE WITNESS: October 19 and 20, '90.

7 MR. CHERIN: I don't believe that is right  
8 because this says February 15th and 22nd.

9 THE WITNESS: Wait a minute. Let me get the  
10 right one because I have the newsletter.

11 THE COURT: Show her H, the actual exhibit.

12 MR. FOX: I am showing her H, yes.

13 THE WITNESS: This was offered February 15th  
14 and 22nd, 1990.

15 MR. CHERIN: No objection, Your Honor.

16 (The document referred to above as Plaintiff's  
17 Exhibit No. 6-H for identification was  
received into evidence.)

18 MR. FOX: I will see if we can move a little  
19 faster.

20 BY MR. FOX:

21 Q. No. 6-I, J, and K. (Handing documents to the  
22 witness.)

23 A. (Looking at documents as requested by



1 counsel.) These are flyers announcing free high blood  
2 pressure screening for Skyline Medical Center, Annandale  
3 Medical Center, and Tysons Corner Medical Center.

4 MR. FOX: I move admission.

5 THE COURT: Any charges?

6 THE WITNESS: Free.

7 MR. CHERIN: No objection, Your Honor.

8 (The documents referred to above as Plaintiff's  
9 Exhibit Nos. 6-I, 6-J, and 6-K for  
identification were received into evidence.)

10 BY MR. FOX:

11 Q. Let me show you No. 6-L. Can you tell me  
12 what that is. (Handing document to the witness.)

13 A. (Looking at document as requested by  
14 counsel.) Gannett USA Today asked us to participate in  
15 their Third Annual health fair. And this is a letter  
16 thanking us for agreeing to participate in the fair.

17 Q. Did GHA in fact participate?

18 A. Yes, we did.

19 Q. That is in Arlington County?

20 A. Yes.

21 MR. FOX: I would move admission, Your  
22 Honor.

23 MR. CHERIN: I would object in that it is



1 outside of Fairfax County, Your Honor.

2 THE COURT: Overruled.

3 (The document referred to above as Plaintiff's  
4 Exhibit No. 6-L for identification was  
received into evidence.)

5 BY MR. FOX:

6 Q. No. 6-M is somewhat scrawled. Can you  
7 explain what that is? (Handing document to the witness.)

8 A. (Looking at document as requested by  
9 counsel.) These are notes for the Center for Naval Analysis  
10 in which we were asked to participate in their wellness day  
11 activities on October the 10th from eight-thirty to twelve  
12 noon.

13 And this is a note from me to  
14 Christine who set it up.

15 Q. And did you in fact participate in that?

16 A. Yes, we did.

17 THE COURT: When?

18 THE WITNESS: The date is October the 10th  
19 from eight-thirty to twelve noon.

20 THE COURT: What year?

21 THE WITNESS: 1990.

22 THE COURT: Any fee?

23 THE WITNESS: No fee.



1 THE COURT: Any objection?

2 MR. CHERIN: I object on the grounds that it  
3 is outside of Fairfax County, Your Honor.

4 If it would make it easier, if  
5 Your Honor's ruling is going to be consistent, I would just  
6 --

7 THE COURT: Well, I don't know how far out  
8 it was. I thought Arlington because it is nearby there is a  
9 probability that some Fairfax County citizens went there.

10 MR. CHERIN: This is Alexandria, Your Honor.

11 THE COURT: It is the same thing. I will  
12 receive it.

13 (The document referred to above as Plaintiff's  
14 Exhibit No. 6-M for identification was  
received into evidence.)

15 BY MR. FOX:

16 Q. I now show you No. 6-N, O, and P. Take N  
17 first. (Handing document to the witness.)

18 A. (Looking at document as requested by  
19 counsel.) This is a flyer announcing the breast health  
20 awareness classes offered --

21 THE COURT: I didn't hear you. I'm sorry.

22 THE WITNESS: The breast health education  
23 classes offered at the Tysons Corner Medical Center.



1 BY MR. FOX:

2 Q. And a fee or no fee?

3 A. No fee.

4 THE COURT: When was it?

5 THE WITNESS: September the 19th, 1988.

6 THE COURT: Any objection?

7 MR. CHERIN: No objection.

8 THE COURT: It is received.

9 (The document referred to above as Plaintiff's  
10 Exhibit No. 6-N for identification was  
received into evidence.)

11 BY MR. FOX:

12 Q. No. 6-O?

13 A. The same type of class offered at the Fair  
14 Oaks Center on September the 7th, 1988.

15 THE COURT: Any objection?

16 MR. CHERIN: No objection.

17 (The document referred to above as Plaintiff's  
18 Exhibit No. 6-O for identification was  
received into evidence.)

19 BY MR. FOX:

20 Q. No. 6-P?

21 A. An Infant stipulation class offered at the  
22 Annandale Center on November the 12th.

23 Q. 1988? .



1           A.           1988.

2           THE COURT: Those last three, was there any  
3 fee?

4           THE WITNESS: The last one GHA members ten,  
5 non-members fifteen.

6           MR. FOX: I move admission of N, O, and P.

7           MR. CHERIN: No objection.

8           THE COURT: Received.

9           (The document referred to above as Plaintiff's  
10 Exhibit No. 6-P for identification was  
received into evidence.)

11           THE COURT: How many more of these things  
12 have you got?

13           MR. FOX: Your Honor, I just have a couple.

14           THE COURT: Why don't you just show them to  
15 him and he can look at them.

16           MR. FOX: Your Honor, I have shown them to  
17 him.

18           THE COURT: Well, show them to him again and  
19 let's see if he objects to any of them.

20           MR. FOX: I have Q, R, S, and T and U.  
21 (Handing documents to Mr. Cherin.)

22           MR. CHERIN: I have no objection to any of  
23 those, Your Honor.



1 THE COURT: All right. Q, R, S, T, and U  
2 are all received.

3 MR. FOX: I move admission, Your Honor.

4 THE COURT: I beat you too it.

5 MR. FOX: I understand. I am such a  
6 creature of habit.

7 (The document referred to above as Plaintiff's  
8 Exhibit No. 6-Q, 6-R, 6-S, 6-T, and 6-U for  
identification were received into evidence.)

9 BY MR. FOX:

10 Q. Does your department publish this member  
11 guide?

12 A. No.

13 THE COURT: Objection sustained.

14 MR. CHERIN: Pardon me.

15 MR. FOX: I will ask someone else.

16 BY MR. FOX:

17 Q. Ms. Bennett, directing your attention to the  
18 Annandale Medical Center, what, if any, projects does GHA  
19 become involved in with the schools in the area?

20 A. We are currently involved with a school  
21 called Schrevewood Elementary School. And we have a --  
22 Well, it is a partnership with Group Health Association in  
23 that school to offer health tours and educational programs





1 for the children in the fourth and fifth grade.

2 Q. Now, where is Schrevewood located in  
3 general? Is it in Fairfax County?

4 A. It is in Fairfax County, yes.

5 Q. And what is the population like at  
6 Schrevewood Elementary?

7 A. It is a predominantly low income population.

8 Q. And would you tell Judge Plummer what the  
9 name of the program is and what your department does in  
10 interacting with Schrevewood School?

11 A. The program is called Partnership in Group  
12 Health Association, and Group Health Association actually  
13 closes down the PPP for a four hour session.

14 THE COURT: You close down what?

15 THE WITNESS: We actually stop providing  
16 medical services.

17 THE COURT: Where?

18 THE WITNESS: In the Primary Prevention  
19 Program at the Skyline Medical Center for a four hour period  
20 of time. And during that period we bring the children in  
21 and expose the children to testing. We educate them about  
22 their health, nutrition, eye care, fitness, and we have the  
23 children tell us what they have learned.



1 And so it is a very good -- It is  
2 a really good educational experience that we provide to the  
3 kids.

4 BY MR. FOX:

5 Q. How many children have you brought through  
6 that program and when?

7 A. On February the 6th, 1990 we had sixty fifth  
8 graders go through the program. And our next tour is May  
9 15th and we anticipate having fifty children go through the  
10 program.

11 Q. Who provided the funds for transportation  
12 for that program?

13 A. Group Health Association provided sixty-five  
14 dollars to the school to assist them in bringing the kids to  
15 that center.

16 Q. Now, would you give Judge Plummer some idea  
17 of what kind of testing occurs during that four hour period?

18 A. The children have an opportunity to test on  
19 the -- We have what we call the Canadian step test. And  
20 they have the chance to test on the Canadian step test. We  
21 check their hearing. We give them a vision test. And we  
22 talk to them about the vision.

23 Q. Can you give any practical examples, for



1 example, in the hearing test?

2 A. The hearing test is really designed to  
3 educate them about the things that they do that they don't  
4 think is a problem. For example, the kids walk around with  
5 the earphones with the Walkman or the music box turned  
6 really high up. And we talk to them about decibels and what  
7 kind of damage that can do to their ears.

8 And so they are educated about  
9 keeping the music at a level --

10 THE COURT: Do you have any success with  
11 that?

12 THE WITNESS: I wish.

13 (Laughter.)

14 THE COURT: It isn't so bad when they have  
15 the earphones on. It is when they have got the boom boxes  
16 going.

17 THE WITNESS: The boom boxes, right. But we  
18 are trying to get them to understand what that noise volume  
19 can really do to damage their ears.

20 BY MR. FOX:

21 Q. And in terms of the operation of that  
22 program, does GHA receive any money for that partnership  
23 program at Schrevewood School?



1 A. No, we don't.

2 Q. Based on your participation and in your  
3 department do you have a sense of whether or not it is a  
4 successful program and one likely to be continued?

5 A. We believe that it is a success and that it  
6 is a great community service and it will be continued.

7 Q. Now, finally, let me ask you, Ms. Bennett,  
8 what is your department's budget?

9 A. My budget is over three point five million  
10 dollars a year.

11 Q. And would you care to hazard an estimate or  
12 guesstimate of how much of that budget goes into community  
13 education and these outreach programs?

14 A. Approximately seventy-one thousand dollars.

15 Q. And is that money that goes for education of  
16 members or non-members?

17 A. Both.

18 MR. FOX: Your Honor, the Court's  
19 indulgence.

20 THE COURT: What does the seventy-one  
21 thousand cover? Now, I realize you have got a salary and  
22 the forty-four other people have salaries. Is that computed  
23 into the seventy-one thousand?



1 THE WITNESS: I have a full time staff  
2 person who is responsible for the Discover Health health  
3 education classes, and that is salary plus benefits. So we  
4 are talking approximately forty thousand dollars.

5 And then I have eighteen thousand  
6 four hundred and twenty-five thousand for instructors. And  
7 these are contract instructors.

8 And then the rest of that money  
9 includes operating cost.

10 THE COURT: But does any of it go for your  
11 time or the time of the other personnel of GHA that attend  
12 these things?

13 THE WITNESS: I did not calculate other  
14 costs, for example, staff from the Primary Prevention  
15 Program who go out. I am simply giving you the pure cost  
16 for the Discover Health Program only.

17 THE COURT: Okay.

18 MR. FOX: Your Honor, I do have one  
19 question.

20 BY MR. FOX:

21 Q. Let me show you what is marked as Exhibit  
22 No. 6-Y. Do you know what that is in general? (Handing  
23 document to the witness.)



1           A.       (Looking at document as requested by  
2 counsel.) Yes, I know what it is.

3           Q.       What is it?

4           A.       It is a membership application.

5           Q.       To GHA.

6           A.       To Group Health Association.

7           Q.       When you conduct the educational programs  
8 that you have just testified to, 6-A through infinitum,  
9 what, if any, effort do you make to pass out membership  
10 applications or brochures such as these 6-A, double A,  
11 through double F?

12          A.       No promotional materials regarding Group  
13 Health Association are passed out in any of our classes.

14          Q.       And is that a policy that you have instilled  
15 in your organization?

16          A.       It is not the mission of what the Health  
17 Promotion and Wellness Department is all about. People come  
18 to our programs to learn how to maintain good health, not to  
19 learn how to join Group Health Association.

20                   (Brief pause.)

21           THE COURT: Are you going to offer 6-Y and  
22 all of those other little things? Can't we just take her  
23 testimony that they don't hand out any promotional material



1 --

2 MR. FOX: Yes.

3 THE COURT: -- instead of showing me in the  
4 record those things she doesn't hand out.

5 (Comments off the record not reported by the  
6 court reporter.)

7 THE COURT: No. 6-Y is withdrawn.

8 BY MR. FOX:

9 Q. Does your commitment to community education  
10 extend equally in all of the jurisdictions in which you  
11 operate?

12 A. Yes.

13 Q. And with regard to the Schrevewood program,  
14 do you have a counterpart in other jurisdictions?

15 A. We do.

16 Q. Which was the first program?

17 A. The Schrevewood.

18 MR. FOX: Thank you, Ms. Bennett.

19 MR. CHERIN: I just have a couple, Your  
20 Honor.

21 CROSS-EXAMINATION

22 BY MR. CHERIN:

23 Q. Ms. Bennett, you said earlier that the fees



1 that you charge for some of these programs did not recover  
2 your costs.

3 Do you have any idea what the  
4 differential is in terms of actual dollars that you spend on  
5 it versus what you recover?

6 A. We spend approximately thirty-three to  
7 thirty-five thousand dollars for the total programs. And in  
8 1990 we recovered six thousand.

9 Q. Now, that thirty-three or thirty-five, is  
10 that part of the seventy-one thousand that you mentioned a  
11 moment ago?

12 A. Yes.

13 Q. And all of those little single pages that we  
14 went through, that series, that is that seventy-one thousand  
15 also, is that right?

16 A. Yes.

17 Q. And since the Primary Prevention Program is  
18 part of your domain, is that where the rest of the program  
19 goes because of the three and a half million?

20 A. Yes.

21 MR. CHERIN: I have no further questions,  
22 Your Honor.

23 THE COURT: Anything else?



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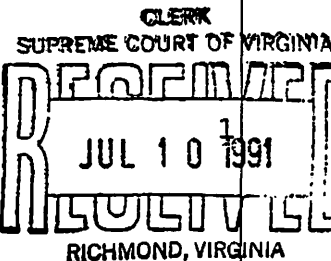
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BENNETT & CROSS



ORIGINAL



91-047

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

GROUP HEALTH ASSOCIATION, INC., :

Plaintiff, :

versus, : AT LAW NO. 97123

97213

THE BOARD OF SUPERVISORS OF :

FAIRFAX COUNTY, ET AL, :

Defendants. :

Fairfax, Virginia

Wednesday, March 20, 1991

The above-entitled action came on to be heard before the Honorable William G. Plummer, a Judge in and for the Circuit Court of Fairfax County, Virginia, in Courtroom 5H, of the Fairfax County Judicial Center, 4110 Chain Bridge Road, Fairfax, Virginia 22030, beginning at approximately 9:30 o'clock a.m.



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## 1 APPEARANCES:

## 2 ON BEHALF OF THE PLAINTIFF:

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5 9401 Lee Highway  
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6 KENNETH THAU, ESQUIRE  
7 Group Health Association, Inc.

## 8 ON BEHALF OF THE DEFENDANT:

9 A. ROBERT CHERIN, ESQUIRE  
Deputy County Attorney  
10 JILL L. ROWE, ESQUIRE  
Assistant County Attorney  
11 for the County of Fairfax  
4100 Chain Bridge Road  
12 Fairfax, Virginia 22030

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C O N T E N T S

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
THEODORE J. WEINBERG	5	29	--	--
MARILYN FOLEY	42	48	--	--
RICK J. CARLSON	52	82	--	--
DOUGLAS H. HASTINGS	127	151	--	--

- - - - -

E X H I B I T S

<u>EXHIBIT NO.</u>	<u>IDENTIFICATION - RECEIVED</u>	
PLAINTIFF'S EXHIBIT NO. 6-W -- List of physicians	15	15
PLAINTIFF'S EXHIBIT NO. 9 -- Quarterly report	25	25
PLAINTIFF'S EXHIBIT NO. 22 -- List of tax exempt organizations	43	46
PLAINTIFF'S EXHIBIT NO. 41 -- Resume of Rick J. Carlson	53	120
PLAINTIFF'S EXHIBIT NO. 42 -- Resume of Douglas Hastings	129	129



1 THEODORE J. WEINBERG,  
2 a witness, was called for examination by counsel for the  
3 petitioner, and having been first duly sworn by the Court,  
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FOX:

7 Q. Mr. Weinberg, state your full name for the  
8 court's records, please?

9 A. My name is Theodore J. Weinberg.

10 Q. Mr. Weinberg, where do you reside?

11 A. In Herndon, Virginia.

12 Q. Is that in Fairfax?

13 A. The County of Fairfax, yes.

14 Q. By whom are you employed, sir?

15 A. By Group Health Association.

16 Q. And at what location, sir?

17 A. At the Van Ness facility at 4201 Connecticut  
18 Avenue in Washington, D. C.

19 Q. What is your job title?

20 A. I am the chief financial officer of Group  
21 Health Association. I am also called the director of  
22 finance and financial planning.

23 Q. Mr. Weinberg, for how long have you had that



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WEINBERG T DIRECT

1 position?

2 A. Since September 1st, 1987, so it would be  
3 three and a half years.

4 Q. And just prior to your assuming your current  
5 position, will you tell Judge Plummer what you did just  
6 prior to that?

7 A. Yes.

8 I was the director of what was called the  
9 office of compliance for the United States Department of  
10 Health and Human Services. We were responsible for  
11 regulating all of the health maintenance organizations in  
12 the United States.

13 Q. In doing so what were you required to do?  
14 What were the duties of that job?

15 A. As the principal regulator for the  
16 government, we were responsible for monitoring financial  
17 conditions and quality and health, if you will, that were  
18 being provided by these HMOs, and when HMOs got into trouble  
19 financially, it was myself and the staff in my office who  
20 intervened with the State Insurance Commissioners to bring  
21 the organization into a rehabilitation mode and often times  
22 rehabilitation.

23 Q. Is that the expertise you brought with you



1 to Group Health Association?

2 A. Yes.

3 I held that job for ten years.

4 Q. How were you educated, Mr. Weinberg?

5 A. I have a master's degree in health  
6 administration from Tougaloo University. A master's in  
7 accounting from Bernard Baruch City College in New York, and  
8 an undergraduate degree from the University of  
9 Massachusetts.

10 Q. Now directing your attention specifically to  
11 Group Health Association, would you tell His Honor what the  
12 annual budget for Group Health is?

13 A. Currently for 1991 we are operating with an  
14 annual revenue base of \$240 million.

15 Q. How is -- how are those funds derived?

16 A. They basically -- they are derived from four  
17 or five sources. The principal source is subscription dues.  
18 That totals -- of the two forty it totals \$225 million for  
19 1991.

20 We also obtain approximately \$9 million of  
21 payment from the Health Care Financing Administration from  
22 services rendered to our members who are Medicare eligible.  
23 In addition to that we collect approximately \$3 million in



1 either co-payments by subscribers and members or fee for  
2 services charges.

3 Then there is about another \$2 million that  
4 we earn through investment income, and then about \$1  
5 million, the rest is miscellaneous.

6 Q. Okay, now are you able to tell Judge Plummer  
7 whether or not GHA enjoys any particular exempt status at  
8 the federal level from taxation?

9 A. Yes.

10 We are exempt from federal taxes.

11 Q. What is that?

12 A. It is a 501C3 corporation deemed by the IRS.

13 Q. Does that exemption carry over into  
14 Washington, D.C. and --

15 THE COURT: That has already been  
16 stipulated, sir. You don't have to go over it again.

17 BY MR. FOX:

18 Q. What time -- based on your knowledge of GHA,  
19 what distinguishes GHA's non-profit corporation from a for-  
20 profit corporation?

21 A. Well, the major distinction for us is that  
22 none of the earnings that we may accumulate at the end of  
23 any year, surplus earnings, are used for the benefit of any



1 one member of Group Health or owners or whatever. They are  
2 used, really, to reinvest in acquiring new capital items for  
3 the business.

4 Q. In the years 1987, let's say for example  
5 1987 through 1990, did GHA have an operating surplus?

6 A. The first year in which GHA had an operating  
7 surplus since 1985 was 1990. Every intervening year GHA had  
8 an operating deficit with the largest deficit being in the  
9 1989 year of \$13 and a half million. Prior to that it was  
10 approximately \$8 million and then seven million the year  
11 before.

12 THE COURT: How much was the deficit in  
13 1989?

14 THE WITNESS: In 1989 it was \$13 and a half  
15 million, and in 1990 for the very first time, as a result of  
16 a three year turn around effort, we managed to earn a  
17 surplus of a little over three and a half million. We are  
18 being audited right now, so I can't be precise.

19 BY MR. FOX:

20 Q. Did there come a time during that three or  
21 four year period when GHA had difficulty meeting its current  
22 expenses on balance sheet cash flow?

23 A. The reason I came to Group Health and also





1 my boss and other members of the executive team in 1987 was  
2 because Group Health was suffering from very serious  
3 financial deficiencies.

4 The State of Virginia had initiated  
5 regulatory action against Group Health with the fear that  
6 the company was heading for a dissolution. The board took  
7 action and literally changed the entire management team, and  
8 our basic objective has been over the last three years to  
9 turn the company around.

10 Q. How was GHA able to fund the cash short  
11 falls during those years?

12 A. Well, in 1987 and 1988 we -- we did two  
13 events. One was the sale of a facility, an 80,000 square  
14 foot facility that we owned at 2121 Pennsylvania Avenue in  
15 down town D.C., which was our flagship, our central clinical  
16 site in D.C.

17 We sold that building for -- and took in  
18 about \$10 million in cash that enabled us to become more  
19 current with our liabilities.

20 The second even was in 1988 when we reverted  
21 a significantly over funded pension plan, and also brought  
22 in about an additional -- a little over \$10 million to  
23 further allow us to catch up on our payables.



1 Q. During that period to what extent, if any,  
2 did GHA have to increase its subscription or its dues to  
3 enrollees to assist in defraying these costs?

4 A. Well, in all of those years with the  
5 exception of 1987, our predecessors deemed it more  
6 appropriate to hold the premium increases at zero, which  
7 contributed significantly to the loss that took place in  
8 1987.

9 But in 1988 we raised our premiums by eleven  
10 and a half percent. In 1989 we raised them by thirteen and  
11 a half, and in 1990 we raised them by twenty-one and a half  
12 percent.

13 Q. How do those rates compare with your peer  
14 group in the Metropolitan area?

15 A. GHA is generally the more expensive health  
16 maintenance organization in the Metropolitan area.

17 Q. Is there any particular reason for that, Mr.  
18 Weinberg?

19 A. Basically, my assessment would be its  
20 historical cost base. GHA is much more oriented to care for  
21 the needs of its members, and it has not historically made  
22 decisions that would be to its best financial interests, and  
23 therefore it has driven its costs up beyond competitors such



1 as MBIPA, Kaiser and others. We also have an older  
2 population which also drives our costs up.

3 Q. Let me take you, if I might, into the area  
4 of how GHA operates financially. Does it have any other  
5 subsidiaries or any other companies that it owns?

6 A. No, sir.

7 Q. In terms of your annual expenditures, are  
8 you able to tell Judge Plummer what annual expenditures for  
9 capital facilities are, capital improvements?

10 A. Yes.

11 For the last two to three years we have held  
12 them to maybe \$2 million to \$3 million a year, and  
13 specifically it is for necessary -- replacement of medical  
14 equipment that is outdated, and for also acquiring new  
15 medical equipment and bringing new technology into the  
16 company.

17 Q. From a balance sheet standpoint, if you were  
18 looking at assets, how much plant and equipment does GHA  
19 own?

20 A. Well as of twelve -- as of December 31st,  
21 1990, undepreciated value is -- of total fixed assets is \$60  
22 million. Of that total \$25 million of it is what we call  
23 furniture, fixtures and equipment, the bulk of that being



1 medical equipment and incidental equipment to support the  
2 clinical operation.

3 THE COURT: What was the total?

4 THE WITNESS: \$60 million. That is  
5 undepreciated.

6 THE COURT: \$60 million, okay.

7 THE WITNESS: We own buildings and land of  
8 about \$16 million in value on the books. Leasehold  
9 improvements to primarily facilities that we lease is a  
10 little over \$14 million, and we have outstanding capital  
11 leases for equipment, high tech medical equipment at about  
12 \$4 million.

13 BY MR. FOX:

14 Q. And were those facilities used exclusively  
15 for rendering care to your population?

16 A. Yes.

17 With the exception of the administrative  
18 headquarters.

19 Q. The administrative headquarters, is that an  
20 arm used to support the delivery of the care?

21 A. This is the office site at 4301 Connecticut  
22 Avenue at which all the administrative support operations  
23 work, our member services department, our accounting



1 department, billing department, the executive staff, our  
2 central MIS operation.

3 Q. What is MIS?

4 A. Management information system operation is  
5 all housed in that facility.

6 Q. Now are you able to tell Judge Plummer of  
7 that asset base how much of that, if you were to currently  
8 add it, is devoted to medical and associated equipment? How  
9 much of that asset base?

10 A. The bulk of it is. The only -- the building  
11 and the land are all of our centers. We lease 4301  
12 Connecticut Avenue, so that would not be included in there.  
13 The furniture and fixtures and equipment, probably about \$5  
14 million of that is what I would consider to be  
15 administrative.

16 That is equipment supporting the  
17 administrative function, which would be our hardware and our  
18 management information system, desks, file cabinets, things  
19 like that. The rest of it is all in our clinics.

20 Q. Let me show you what has been marked, since  
21 I inadvertently forgot it, six W. Do you recognize that  
22 document?

23 A. Yes.



1 That is a directory of all our physicians.

2 MR. FOX: Your Honor, let me move admission  
3 of six W.

4 THE COURT: Any objection?

5 MR. CHERIN: I object on relevance, Your  
6 Honor. It is a list of all doctors that are employed there.  
7 I don't see what relevance it has.

8 THE COURT: It shows how many of them they  
9 have got in Fairfax County, I guess.

10 MR. FOX: It shows where they are located,  
11 Your Honor. It shows -- I think I have given this to Mr.  
12 Cherin. It shows what their specialties are and where they  
13 are located.

14 THE COURT: I think it is relevant to the  
15 issue of welfare to the residents of the area. It shows  
16 what doctors they have in this area that work for them.  
17 Your objection is overruled.

18 (Whereupon, the above-captioned  
19 document was marked Plaintiff's  
20 Exhibit No. 6-W for purposes of  
evidence.)

21 BY MR. FOX:

22 Q. Mr. Weinberg, approximately how much of your  
23 annual budget is devoted to the salaries of physicians?



1 A. For 1991, approximately \$30 million.

2 Q. Including -- that would be both base salary  
3 and related benefits?

4 A. Um-hum.

5 Q. And is some portion of that paid to doctors  
6 included in the medical directory in Fairfax County?

7 THE COURT: Excuse me for just a second. I  
8 just noticed from the title of this thing, it says the  
9 physicians -- it says since 1937. That doesn't mean that  
10 you are listing all of the doctors since 1937 I hope?

11 MR. FOX: No.

12 THE COURT: You are talking about the  
13 business has been there?

14 THE WITNESS: That is talking about the  
15 business in the right hand corner.

16 THE COURT: It just kind of bothered me. I  
17 didn't want to look at a bunch of dead men.

18 BY MR. FOX:

19 Q. Some portion of that, that budget for  
20 physician's salaries paid to, are those located in Fairfax  
21 County?

22 A. I don't have --

23 Q. I said is some portion?



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WEINBERG T DIRECT

1 A. Yes.

2 Q. Now what does GHA pay for its physicians in  
3 way of -- I don't mean salary, but additional benefits,  
4 medical education, insurance, those kinds of things?

5 A. Group Health pays for all of the physician  
6 malpractice costs. We pay that directly. We also provide  
7 to our physicians as benefits a health education program  
8 where each physician is allowed to spend \$2,200 in 1991 for  
9 their own personal advancement, various medical educational  
10 programs throughout the country. We provide traditional  
11 disability coverage, full health benefits is provided to all  
12 employees.

13 Q. Now directing your attention to the health  
14 and wellness, health promotion wellness department, does  
15 that budget come under your department as well?

16 A. The entire billing for that budget does not.  
17 My department is responsible for collecting the data and  
18 putting the corporate budget together and evaluating it for  
19 executive decision making.

20 Q. Are you familiar with the amount of that  
21 budget for the years 1989, 1990, and 1991?

22 A. I am familiar with it for 1991.

23 Q. Okay, and what is it for 1991?





1           A.       For 1991 it is \$3.1 million for the  
2 department.

3           Q.       And what is that budget comprised of?

4           A.       It has got 700 -- a little over 700,000 of  
5 that is for the various programs that they carry out,  
6 educational courses, the smoking cessation, the losing  
7 weight, stress management, etcetera, and \$2.4 million of  
8 that is specifically to operate the primary prevention  
9 program which is located both in Skyline and in Silver  
10 Spring.

11          Q.       With regard to the fees that are derived  
12 from putting on these programs, the smoking cessation and  
13 community seminars, are you able to tell Judge Plummer  
14 whether or not those receipts in any way substantially fund  
15 that budget for the department?

16          A.       No, they do not.

17                    They are nominal charges that do not cover  
18 the cost of providing the service.

19          Q.       Are you familiar or knowledgeable of the  
20 management decision made to charge the nominal fees?

21          A.       Yes.

22                    They are basically -- as also with our co-  
23 payment, they are basically designed to influence the



1 behavior of the individual participating in those programs  
2 to assure the complete total commitment by having them put  
3 up a small dollar amount. The intention is to bind them  
4 closer to commitment to the program.

5 Q. Now, there has been some prior testimony on  
6 the special assistance fund. Are you familiar with that?

7 A. Yes, I am.

8 Q. And I don't know that we have to repeat what  
9 it is, but would you tell Judge Plummer how it is funded?

10 A. Yes.

11 One tenth of one percent of our revenue each  
12 month is directed into the special assistance fund. By the  
13 way in my deposition with Fairfax County I erred and I  
14 stated one percent, and that is not correct. It is one  
15 tenth of one percent.

16 Q. Is that a fund for a specific purpose?

17 A. Yes.

18 In fact it is a specially managed fund  
19 outside of the executive structure of Group Health. It is  
20 managed by a special group of trustees.

21 Q. The question then is once you have funded  
22 the special assistance fund, may executive management such  
23 as yourself or Mr. Pfotenhauer dip into that fund for



1 purposes of normal, every day expenses?

2 A. No.

3 Q. What, if any, --

4 A. I don't have signatory authority, nor does  
5 Bob Pfotenhauer have signatory authority on the checks.

6 Q. Explain to Judge Plummer how that works?

7 A. It is totally segregated from the operating  
8 funds of Group Health and placed into a separate bank  
9 account, and as I said there is a separate group of members  
10 who constitute a trustee board for that fund, and they have  
11 the signatory authority --

12 THE COURT: When you say members, do you  
13 mean employees?

14 THE WITNESS: No.

15 THE COURT: Or dues paying members?

16 THE WITNESS: Dues paying members.

17 BY MR. FOX:

18 Q. Are those members of that separate group  
19 also members of your standing board of trustees?

20 A. No, they are not. They are separate  
21 individuals.

22 Q. Now how are those persons designated,  
23 elected, appointed?

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1 A. Actually, I don't know.

2 Q. What is the purpose of that fund, and how is  
3 it used?

4 A. The purpose of that fund is to tell the  
5 individuals who find themselves in financial difficulties in  
6 terms of their inability periodically to pay premiums, it is  
7 used to support that and to pay their premiums for a period  
8 of time so that they can maintain their relationship with  
9 Group Health.

10 It is also -- recently a large portion of  
11 that fund has been used to support the payment for ADT  
12 therapy for Group Health members who are afflicted with  
13 AIDS.

14 These are individuals that ultimately lose  
15 their jobs, and the -- our drug benefit, although available,  
16 is limited in terms of what it would cover, and the cost of  
17 this drug is such that the cost exceeds our overall  
18 benefits. So this fund will contribute money to individuals  
19 to maintain their therapy program.

20 Q. Is that fund used in all of the  
21 jurisdictions in which you operate?

22 A. Yes.

23 Q. Including Fairfax County?



1 A. Yes.

2 There is no distinction made as to where the  
3 individual resides.

4 THE COURT: For my simple arithmetic, you  
5 say one tenth of one percent, that is 240,000 then?

6 THE WITNESS: Yes.

7 BY MR. FOX:

8 Q. Mr. Weinberg, what, if any, -- strike that.

9 What happens if the expenses in the special  
10 assistance fund in any given accounting period exceed the  
11 one tenth of one percent set aside?

12 A. We have and we will make additional  
13 contributions.

14 Q. What if any attempt is made after you  
15 disburse funds from the special assistance fund to help the  
16 persons in need of it to recover any of those moneys?

17 A. It is a grant. Once that money is given it  
18 is given. There is no -- there is no relationship to the  
19 individual to pay it back. There is no requirement. It is  
20 given as a grant, a grant and aid.

21 Q. Conceptually, if you didn't have that, that  
22 set aside fund, that special assistance fund, what would  
23 those funds be used for?



1 A. If we didn't put this money aside?

2 Q. Yes, sir?

3 A. It would be used to pay the normal operation  
4 cost of Group Health.

5 MR. FOX: The court's indulgence.

6 BY MR. FOX:

7 Q. Mr. Weinberg, you file certain reports with  
8 what regulatory agencies in the State of Virginia?

9 A. With the Department of Insurance in  
10 Richmond.

11 Q. Okay, and are you familiar with the  
12 frequency of those reports?

13 A. Yes.

14 These are required reports that are filed  
15 quarterly, and also one -- at the end of each fiscal year an  
16 annual report is filed after the audit is completed.

17 Q. Let me show you what I have pre-marked as  
18 exhibit number nine, and I would ask you whether or not you  
19 can identify that?

20 A. Yes.

21 This is the quarterly report that is filed-  
22 - that was filed for the period ending September 30th, 1990.

23 Q. Is that the typical type of report filed



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1 In fact in GHA the whole idea of experience  
2 rating is a very difficult political issue within our  
3 membership and our board of directors.

4 MR. FOX: If I might have the court's  
5 indulgence for just a moment. I have no further questions  
6 of Mr. Weinberg.

7 MR. CHERIN: Could I get defendant's exhibit  
8 number seven?

9 THE COURT: Defendant's?

10 MR. CHERIN: I am sorry, plaintiff's, Your  
11 Honor. It is stipulated. We had one, too. It is  
12 defendant's number five or plaintiff's number seven.

13 THE COURT: What is it?

14 MR. CHERIN: It is the form 990, the  
15 Internal Revenue form that he referred to.

16 MR. FOX: I have my number seven, but it is  
17 lacking page two. I have another copy.

18 THE COURT: Offer whatever complete copy  
19 exists, and it will be received as plaintiff's number seven  
20 by stipulation. Just give me a complete set, and it is  
21 received as number seven for the plaintiff by stipulation.

22 CROSS EXAMINATION

23 BY MR. CHERIN:



1 Q. Mr. Weinberg, you recognize that form, I  
2 presume, as the one that is filed on behalf of GHA?

3 A. Yes.

4 Q. That is for the 1989 year?

5 A. Yes.

6 The calendar year 1989.

7 Q. Now, could you tell the court what it shows  
8 that you received in revenue from item number one which is  
9 contributions, gifts, grants and similar amounts?

10 A. Zero.

11 Q. Is that the case every year?

12 A. No.

13 Not every year. There have been times when  
14 we have received up to \$1,000 from miscellaneous  
15 contributions in the past, but I don't have the specifics  
16 per year. It is a small amount.

17 Q. Do you know the most you have ever received?

18 A. I think the most was probably just under  
19 \$1,000 cumulative during the year. There is one member that  
20 I do know contributes every month somewhere in the range of  
21 \$50 to \$100, but it goes into the special assistance fund,  
22 so it wouldn't be appearing on this report.

23 All that contribution does not go into the





1 general funds. They go specifically into the special  
2 assistance fund, and this is not a report of that I don't  
3 believe. This is on the general operation of Group Health.

4 Q. Further down that same page, referring to  
5 the expenses listing, on line fifteen is an expense item for  
6 fund raising. I think there is a mistake there, and maybe  
7 you can clarify that for us?

8 A. That is definitely a mistake.

9 Q. It shows \$179 million fund raising. I don't  
10 believe that that is accurate?

11 A. No.

12 Q. What fund raising expenses do you have?

13 A. In terms of going out soliciting  
14 contributions?

15 Q. Is that what that line means?

16 A. Well, I assume that that is what that means.  
17 I can't -- I really don't know. We do not have an organized  
18 program if you will with a fund raiser and mailing,  
19 etcetera, to do that.

20 Q. So to the best of your knowledge the answer  
21 to that is zero?

22 A. Probably, yes.

23 Q. What does the \$179 million represent?



1           A.           That is the sum of line thirteen and line  
2 fourteen, but unfortunately it was placed on the wrong line.

3           Q.           Okay, now the total revenue shown on line  
4 twelve is \$166 million. You testified a moment ago that  
5 your annual budget for 1991 is going to be \$240 million.  
6 Now is the \$166 million the same equivalent number in terms  
7 of what it is for, that is the total revenue of the company?

8           A.           Yes.

9                       This is \$166 million for the year 1989.

10          Q.           So it has gone up from \$166 to \$240 million?

11          A.           Yes, it has.

12          Q.           Now on page three, Mr. Weinberg, where it  
13 talks about the balance sheet and shows the total assets of  
14 \$80 million on line fifty-nine, based on your testimony of a  
15 few moments ago, that also has gone up, has it not?

16          A.           Well, no.

17                       The testimony a few minutes ago was \$60  
18 million that I spoke of is the undepreciated value of our  
19 assets. What is reflected here, for example, in column B  
20 which is through the end of the year of 1989.

21                       It says land, buildings and equipment, you  
22 look at fifty-seven A, the equivalent numbers of the \$60  
23 million is the \$57 million number.



1 Q. Okay, so these are depreciated numbers?

2 A. Yes.

3 The net numbers in column B and A are the  
4 depreciated numbers, but if you look over in the column  
5 furthest to the left you will see the undepreciated value.  
6 So our assets have gone up \$3 million. Our fixed assets  
7 have gone up \$3 million net between the two years.

8 Q. So that is the \$2 or \$3 million a year that  
9 you were saying earlier was your program now to spend on  
10 capital expenses each year?

11 A. Yes.

12 Q. That is a fairly small percentage of your  
13 total revenue. Is that normal in the health care industry  
14 to spend that low a percentage?

15 A. Well actually I am not sure what is normal.  
16 I think given an organization like Group Health that has  
17 been around for a long time, we have equipment that is quite  
18 expensive, such as our X-ray equipment, the CAT scanning  
19 equipment which you don't replace, you know, very often.

20 I mean you have some of this equipment in-  
21 house for probably upwards to five or six years, so we have  
22 got an infrastructure that has been in place for a long  
23 time, although I will tell you that the demands for capital



1 expenditures are greater than what we have, in fact, been  
2 expending.

3 We have been largely keeping it at the \$2 to  
4 \$3 million level, because we just simply don't have the cash  
5 to go beyond that.

6 Q. I don't think that you need to look at this  
7 to answer the question, Mr. Weinberg, but the quarterly  
8 reports that you talked about a moment ago that were also  
9 introduced into evidence show in the revenues -- you  
10 mentioned \$10 million for Medicare. Medicaid still remains  
11 zero, is that correct?

12 A. That is correct.

13 Q. How long has that been at zero with the  
14 company?

15 A. It has been at zero for as long as I have  
16 been with the company.

17 Q. Do you know how much the company spends on  
18 marketing, or would you need your exhibit to look at that to  
19 know that number?

20 A. I would need --

21 MR. CHERIN: Okay, could I have plaintiff's  
22 number nine. Thank you.

23 BY MR. CHERIN:



1 Q. Number two, administrative costs?

2 A. Correct.

3 Through September 30, 1990, our marketing  
4 costs reported in the quarterly filing states it was  
5 \$995,000.

6 Q. What would that be on an annual basis then?

7 A. Approximately one million two.

8 Q. Is that normal marketing expenses for the  
9 company since you have been there?

10 A. For Group Health, we have been generally  
11 keeping it between one million and one million two, yes.

12 Q. And what does that go for?

13 A. Most of it goes for advertising, promoting  
14 the name of the company in the market. For example, the  
15 federal season takes place in the last half of the year, the  
16 last quarter of the year.

17 If you may remember, there are a number of  
18 ads often times that appear in the Post which alert the  
19 federal employees to the different kinds of health benefit  
20 programs that are available to them.

21 We are also required by looking at rules to  
22 share in the cost of the printing of the brochures that OPM  
23 distributes to all of its employees, making them aware of



1 what the various health benefit plans are available to them  
2 in the Washington community.

3 We also do some general, very little, but  
4 some general radio and print advertising throughout the  
5 other parts of the year to make our name known to the rest  
6 of the community.

7 Q. Do you know how much the advertising other  
8 than the federal, the federal one that you just described  
9 during that open period, do you know what the requirements  
10 are as distinguished from your other advertising in general?

11 A. Well, we do -- what is included in this  
12 number is also the costs in the -- our participatory costs  
13 of the printing and distribution of brochures that are used  
14 in some of the large accounts, like PEPCO for example.

15 It assesses all of the participating health  
16 plans, the costs of their brochures that are sent to their  
17 employees. These are generally the larger companies. There  
18 are about twenty-five of them that we participate in.

19 All tolled, the advertising promotion costs,  
20 probably about \$800,000. I don't have it broken up between  
21 how much is for non-feds versus the federal.

22 Q. And the required printing --

23 A. That would be the staff.



1 Q. Oh, staff.

2 A. That is also embodied in this, and we put  
3 out member news letters every two months. We publish what  
4 is called -- a document called GHA News which is in here,  
5 and we also publish a document called for members only,  
6 which is information about various aspects of our health  
7 plan, new programs that we are starting, changes in time and  
8 evening schedules for example in various centers that we  
9 distribute to our membership every two to three months, and  
10 that would also be in that number.

11 Q. Okay, and none of the marketing expenses are  
12 involved in the health and welfare programs?

13 A. No.

14 Q. That is totally different?

15 A. The health promotion program is the clinical  
16 department. It is not the administrative department. It is  
17 operated under the clinical structure of the organization.

18 Q. My notes from yesterday, Ms. Bennett, that  
19 is an employee of GHA, testified that it was her view that--  
20 - or based on her knowledge, she thought that there was  
21 approximately \$71,000 spent in these community education  
22 programs.

23 I believe you said \$700,000. Did she

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1 misplace the decimal point?

2 A. No.

3 We are talking about two different items.

4 Q. Two different items?

5 A. She is talking about -- I am not sure what  
6 she is talking about. When you say to me community  
7 education programs, we have outreach programs for example in  
8 the District and Northern Virginia school districts.

9 We have a number of outreach programs in  
10 which staff go into the schools and work with the kids. I  
11 know, for example, the primary prevention program at Skyline  
12 is closed off for an afternoon session where they bring  
13 school children in to teach them a little bit about health  
14 and health promotion, etcetera.

15 The health fairs, for example, are typical  
16 community outreach programs we will be in. Various  
17 community organizations will be having affairs in their  
18 communities, and we will set up a booth and do blood  
19 pressure readings and things like that.

20 For that amount of money I presume that that  
21 is what she is talking about. What I am talking about, the  
22 \$700,000 is inclusive of that, but also includes the cost of  
23 her immediate staff as well as the consulting staff that she



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1 draws on to carry out all of the health education program.

2 That is the stop smoking program, the weight  
3 loss programs, the stress management programs, those kinds  
4 of programs that are both offered to our members and to the  
5 general public.

6 Q. So the \$70,000 that she talked about would  
7 be included in the \$700,000 that you talked about?

8 A. Yes.

9 Q. And how much of that -- you said it didn't  
10 cover its cost, but do you know how much of that was  
11 recovered?

12 A. I am going to guess that it is in the tens  
13 of thousands, \$10,000 or \$20,000 worth of fees are collected  
14 from participants in the educational programs.

15 Q. Now the special assistance fund that Mr. Fox  
16 asked you about. Can anybody who is not a member benefit  
17 from that fund?

18 A. No.

19 Q. And it is to pay the premiums of the members  
20 who are having financial difficulties?

21 A. Well, that is one of the objectives.

22 Q. And the other one, you mentioned the ADT  
23 treatment?

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1           A.           That is true.    There are other -- for  
2 example, we have had a couple of cases where individuals  
3 have needed heart transplants.   Heart transplants currently  
4 is not a Group Health benefit.

5                       However, we have -- the decision was made to  
6 take money from this fund by the trustees and to support the  
7 costs for part of that service.   Our social services  
8 department also managed to tie in other social service  
9 support throughout the community to help the total package.  
10 But we participated, and so that is another use of those  
11 funds.

12           Q.           But only members would benefit from that?

13           A.           That is correct.

14           Q.           Is there any plan that the company has to  
15 use this fund to pay for somebody to join in the first  
16 place?

17           A.           No.

18           Q.           How long would this fund carry somebody on  
19 the premiums if they were having financial difficulties?

20           A.           It is my understanding that it is not  
21 uncommon to go for six months.

22           Q.           And then they get dropped?

23           A.           No.



1 It is done under an understanding, and there  
2 is support that is provided to the individual to work out  
3 financial arrangements so that at the end of the six months  
4 they are able to then pick up and start paying a hundred  
5 percent of their premiums again.

6 Q. Well, if they can't are they dropped?

7 A. We would try to work with that individual to  
8 maintain them, but if they are not able to keep paying them  
9 they would withdraw from the plan.

10 Q. Well, if a percent of the people don't pay  
11 their premiums they get dropped at some point?

12 A. Yes, they do.

13 MR. CHERIN: Excuse me one second, Judge.  
14 No further questions, Your Honor.

15 THE COURT: Any other questions?

16 MR. FOX: No, Your Honor.

17 THE COURT: You are free to go.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 THE COURT: Next witness.

21 MR. FOX: Your Honor, I would call Marilyn  
22 Foley, and I would note for the record that she is employed  
23 by the County of Fairfax, and I just have a couple of



1 questions to ask her.

2 THE COURT: That does not necessarily make  
3 her an adverse witness as you know.

4 MR. FOX: I understand.

5 THE COURT: I thought you were pointing that  
6 out with a purpose.

7 MR. FOX: I started to point it out.

8 THE COURT: Then you realized it wouldn't  
9 work.

10 Whereupon,

11 MARILYN FOLEY,  
12 a witness, was called for examination by counsel for the  
13 Plaintiff, and having been first duly sworn by the Court,  
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. FOX:

17 Q. Ms. Foley, will you state your name for the  
18 record, please?

19 A. Marilyn Foley.

20 Q. What is your employment?

21 A. Fairfax County Government, Office of  
22 Assessments.

23 Q. And in what capacity are you employed there?



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1 Your job title?

2 A. My job title, auditor two.

3 Q. And prior to your becoming an auditor two  
4 what were you?

5 A. Supervising business tax specialist.

6 Q. In that capacity, let me show you what has  
7 been marked for identification as exhibit number twenty-two.

8 Are you familiar with that document?

9 A. Yes.

10 (Whereupon, the above-captioned  
11 document was marked as Plaintiff's  
12 Exhibit No. 22 for purposes of  
identification.)

13 BY MR. FOX:

14 Q. Who prepared that?

15 A. I had staff prepare it.

16 Q. At your direction?

17 A. I had the full files to compile this list.

18 Q. And this list was compiled from the records  
19 of Fairfax County?

20 A. Yes.

21 Q. And what does it purport to be?

22 A. Excuse me?

23 Q. What is it?



1           A.       It is a listing of exempt organizations for  
2 business license purposes.

3           Q.       When was it prepared, approximately?

4           A.       I believe it was October.

5           Q.       Which year?

6           A.       1990.

7           Q.       October, 1990?

8           A.       Um-hum.

9           Q.       Do you recognize it as a true copy of the  
10 document that was prepared at your request?

11          A.       Without having the original here -- I mean  
12 it looks to be.

13                 MR. FOX: Your Honor, I would move admission  
14 of exhibit number twenty-two.

15                 MR. CHERIN: Your Honor, I object to that  
16 exhibit on the grounds of -- well, I guess there are two  
17 grounds. It is essentially relevance. That is a list of  
18 other organizations that are exempt from this tax.

19                 The petitioner's case has made no  
20 allegations anywhere in its pleadings that they are claiming  
21 this exemption because they are treated differently than  
22 anybody else.

23                 There has been no equal protection argument



1 here at all. The only issue before the court is whether it  
2 is operating -- the only claim that they have made is  
3 whether they are operating it for the welfare of the  
4 residents of the community under the ordinance provision we  
5 are talking about.

6 THE COURT: Well, have they alleged that the  
7 classification or reclassification of this company is  
8 arbitrary and not related to fact?

9 MR. CHERIN: I don't believe that that is  
10 true, Your Honor.

11 MR. FOX: We said -- we asked the court to  
12 declare that the revocation of GHA's exemption from the tax  
13 was improper and invalid, declare that they were entitled to  
14 an exemption, declare that they are not liable for taxes,  
15 and a smorgasbord of things.

16 Your Honor, I would submit to the court that  
17 the purpose for which this is offered, and in large part the  
18 interpretation of this ordinance at issue in this  
19 declaratory judgment action, and in large part it is  
20 necessary for the court to see how this ordinance has been  
21 administered in general, what types of organizations have  
22 been included.

23 The county itself has argued that, if the

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1 court recalls, that that exemption, if you call it an  
2 exemption under 471.3 that we are dealing with, was intended  
3 to cover small, voluntary type organizations, and I think  
4 that it is an aid to the court in interpreting how that  
5 ordinance has been administered.

6 THE COURT: Anything else, sir?

7 MR. CHERIN: Well, I would urge that if he  
8 hasn't alleged relief under a certain kind of area then he  
9 can't get relief.

10 THE COURT: I would think that this might be  
11 relevant to the issue of prior interpretations of the  
12 ordinance given by the person who has the duty to administer  
13 the ordinance. I would accept it under that ground, it is  
14 received, number twenty-two.

15 (Whereupon, the above-captioned  
16 document previously marked  
17 Plaintiff's Exhibit No. 22 was  
received into evidence.)

18 BY MR. FOX:

19 Q. Ms. Foley, is it fair to say --

20 THE COURT: I am looking at this, just a  
21 minute.

22 MR. FOX: My apologies.

23 THE COURT: I didn't know the National

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1 Center for State Courts had an office up here. I thought  
2 that was down in Williamsburg or that area. Okay, sir.

3 BY MR. FOX:

4 Q. Ms. Foley, is it fair to say that if this  
5 list had been run prior to October 30, 1989, that Group  
6 Health Association would have been on the list?

7 A. That is hard to speculate. Group Health  
8 Association, as I recall, its exemption was revoked in  
9 October of 1989.

10 Q. That is my question. My question is, is it  
11 fair to say that if it had been run prior to revocation of  
12 the exemption in October -- on October 30, 1989, would their  
13 name have appeared on such a list if one had been run?

14 MR. CHERIN: Your Honor, that question -- I  
15 will agree --

16 THE COURT: They were on the list up until  
17 October 30th, I mean that is the whole issue at hand here.

18 MR. FOX: I understand, Your Honor, I am  
19 just trying for the record to make it clear.

20 THE COURT: It is agreed, sir.

21 MR. FOX: Okay.

22 BY MR. FOX:

23 Q. Ms. Foley, when it says on this list in



1 column number two, not stated, would you tell His Honor what  
2 that means?

3 A. Reasons listed for the exemption on that  
4 listing were taken from a letter granting the exemption. In  
5 many instances there was no reason stated why the business  
6 was granted an exemption from business license. We included  
7 those on the list so that we would not, quote unquote, hide  
8 any of the exemptions from you.

9 MR. FOX: I don't have any further questions  
10 of the witness.

11 THE COURT: Do you have any questions?

12 CROSS EXAMINATION

13 BY MR. CHERIN:

14 Q. Ms. Foley, there are a number of HMOs  
15 operating in the county. How are they being treated now by  
16 the county?

17 MR. FOX: Your Honor, that goes beyond the  
18 scope of direct, objection.

19 THE COURT: Asking questions about what are  
20 not on the list? Technically it is correct. You can call  
21 her as your own witness if you want.

22 MR. FOX: Will I be entitled to cross  
23 examine?



1 THE COURT: That is right.

2 MR. FOX: That would be the county's case.

3 THE COURT: If he makes her his witness then  
4 you may cross examine on anything new he brings up, but you  
5 are right.

6 MR. CHERIN: Your Honor, you ruled a moment  
7 ago that this exhibit was admissible for the purpose of  
8 showing how the county interpreted the ordinance in the  
9 past.

10 Now I would say that the question I asked is  
11 certainly relevant as to how we treat -- how we have  
12 interpreted it with regard to the very kind of organization  
13 that is at issue here today.

14 THE COURT: Is she the one that does the  
15 interpretation?

16 MR. CHERIN: Yes.

17 That is why she is here.

18 THE COURT: She has over all of these years?  
19 I thought that she was just the keeper of the -- she had it  
20 prepared for her purposes, her staff prepared it, but was  
21 she the one who made the decision on exemptions?

22 MR. CHERIN: Well, she recommended to the--

23 THE COURT: Well, lay a foundation for that.



1 If it is to show -- you have been offering this and I accept  
2 it as evidence of past administrative decisions, and on  
3 those grounds he can put in other past administrative  
4 decisions.

5 MR. FOX: Your Honor, I think though that to  
6 do that, and I want to apprise the court, that I called her  
7 merely for authentication of that document, as the person  
8 who ordered its preparation.

9 THE COURT: You asked other questions other  
10 than authentication. Authentication was, is this a true  
11 copy of this list, and she said yes, and then you went on to  
12 ask her questions about what it meant, and why these things  
13 are there or not there, and that is not authentication.

14 MR. FOX: I understand, Your Honor, but if  
15 we are going to get involved in talking about specific  
16 exemption issues relating to other entities, then I am  
17 entitled to cross examine her, because I think --

18 THE COURT: I think if they raise new  
19 information that you may examine on that. You can either do  
20 it now or do it in your case, it doesn't matter which.

21 MR. CHERIN: I understand, Your Honor. I  
22 just want to ask her one question if I could.

23 THE COURT: Go ahead.



1 MR. CHERIN: Or two questions.

2 BY MR. CHERIN:

3 Q. That list is a list of exemptions, is it  
4 not?

5 A. Yes.

6 Q. Are there any HMOs on that list?

7 A. No.

8 MR. CHERIN: Thank you.

9 MR. FOX: No further questions.

10 THE COURT: You are free to go, ma'am.

11 MR. FOX: I would like her subject to  
12 recall, however.

13 THE COURT: All right, you are subject to  
14 recall by either side.

15 MR. FOX: But as far as right now --

16 THE COURT: She can go back to work.

17 (Witness excused.)

18 MR. FOX: Mr. Carlson.

19 THE COURT: Does somebody have plaintiff's  
20 seven? I don't mean another copy of it, I mean the one that  
21 was offered. I hope he didn't take it along with him. It  
22 probably went with all of his files, so let's get it back.  
23 We can get it back or substitute another copy, it doesn't



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FOLEY M CROSS

THE COURT: You said it, sir.

BY MR. CHERIN:

Q. Mr. Carlson, I notice one thing that to me is absent from these factors totally, and that is, do you believe that these HMOs, and GHA in particular, would have to have any affirmative programs to serve the poor, the elderly, or the medically underserved to be a community force, or to be community oriented?

A. I believe that they do and should, and I could very properly have included that as a fifth factor.

that staff model HMOs typically provide of this nature.

A. I can give you the types of services. I cannot, without the kind of familiarity with the budgeting process that Group Health undertakes give you the exact dollar allocations.

Q. I understand.

A. But I am aware that in general terms that Group Health does, in fact, provide care to those who cannot afford to pay the full premium.





1 ~~the federal government several months ago when they had the~~  
2 federal government several months ago when they had the  
3 brouhaha over the ability of educational institutions to  
4 award scholarships based on -- race based scholarships.

5 In fact the issue really came down to the  
6 fact that no regulations had changed. Nothing had changed  
7 in the law with respect to those scholarships, yet a fresh  
8 pair of eyes under a new administration looked at it and one  
9 day determined that those kinds of scholarships shouldn't be

10 ~~the federal government several months ago when they had the~~  
11 But getting back to this ordinance, the -- I  
12 think the critical ruling is that we are not put to the test  
13 of determining that it is charity, because no where in the  
14 ordinance is the word charity used.

15 There are several other things that  
16 significantly are not in the ordinance. The court knows in  
17 one of the exhibits, the February 8th, 1990 letter  
18 responding to GHA's challenge of denial of or revocation of  
19 the exemption, they use the word public welfare.

20 A little literary license is used there by  
21 insertion of the word public welfare. There is nothing in  
22 this ordinance that by its very terms would dictate a result  
23 that requires GHA to be a public welfare organization in the



1 sense that it throws its doors open to the public free of  
2 charge.

3 I think that that really sort of dovetails  
4 with the concept of the fact that charity is not in the  
5 ordinance.

6 Also missing, Your Honor, is the words that  
7 say solely or exclusively which is absent from the  
8 ordinance. It doesn't say -- or substantially. It really  
9 doesn't say to what degree a facility must be deemed to  
10 operate for the welfare of the residents of the area.

11 We would argue -- the county would argue  
12 that well, you exist primarily for purposes of your  
13 membership, and I think you couldn't have heard two days of  
14 evidence and not know that this is an organization whose  
15 access is fairly wide open, both to employer groups and to  
16 persons applying in the personal coverage plan with some  
17 screening criteria under the personal plan to say that it is  
18 -- it is not a closed shop.

19 Certainly there is no requirement under this  
20 ordinance that it be exclusively operated for the benefit or  
21 for the welfare of the residents of the area. Now where do  
22 you draw the line?

23 ~~I think that Your Honor, perhaps, has it~~



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1 ~~is going considerably more than that, and then it is~~

2 \$1,000 or \$1,500 a month to stay there.

3 That includes residence, meals, but also  
4 lately includes twenty-four hour a day nursing care with on-  
5 call doctors, and that is listed as a religious charitable  
6 organization.

7 I have seen the charter. I know too much  
8 maybe about the foundation. They were established  
9 originally by a religious organization, but they provide at  
10 a high expense excellent medical care and residential care,  
11 and I guarantee you nobody walks off the street and gets a  
12 bed in this place. If so I am going to ask for some money  
13 back.

14 MR. FOX: Your Honor, I think I have made my  
15 point on that, and with regard to the applicable law --

16 THE COURT: How they are qualified to be

17 ~~established under 501(c)(3)~~

18 MR. FOX: I would submit to the court that  
19 on the evidence that actually having met the C3 test we have  
20 gone through a more stringent examination than is required  
21 under the Fairfax County ordinance, but I think that the  
22 court can take that for what it is worth.

23 The evidence, though, is pretty clear that

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1 there is a direct and recognizable welfare or benefit to the  
2 public by the existence of an HMO driving down medical  
3 costs, affording greater accessibility to health care, and  
4 those things as testified to by both Mr. Bledsoe, Rick  
5 Carlson and others.

6 I think the community rating system also,  
7 Your Honor, is something that I was going to mention not in  
8 passing, but that concept is fairly significant in  
9 determining whether or not it is a benefit to the community.

10 Certainly, if you are shifting the burden  
11 for caring, let's say for example many of the elderly whose  
12 health care costs would be exorbitantly expensive, almost  
13 prohibitively expensive, if you have those people in a  
14 system that the state law says under title thirty-eight two  
15 that if they are in your system, you cannot refuse to re-  
16 enroll them or renew their coverage. That is of significant  
17 benefit to the community.

18 ~~\_\_\_\_\_~~  
19 of some statutory look-see and suggest to the court that the  
20 Williams versus City of Richmond case at 177 Virginia 477  
21 stands for the proposition under municipal law that tax laws  
22 are to be strictly construed.

23 ~~\_\_\_\_\_ I think that that means strictly construed~~





1 considered to be relevant factors to make these  
2 determinations.

3 As Mr. Fox pointed out, and his witness, Mr.  
4 Hastings pointed out, 501C3 corporations have had a  
5 community benefit standard. Other courts have had to  
6 construe for local taxes whether these kinds of companies  
7 are entitled to exemptions.

8 What I am proffering to the court is that  
9 the factors and descriptions of what those courts considered  
10 should be relevant or at least I should be allowed to  
11 describe those for the court for the purpose of showing  
12 factors that may be useful since there is no Virginia case  
13 that describes these same factors.

14 THE COURT: I think that you are doing the  
15 same thing at a different level than what he was doing with  
16 the federal law under 501C3, that the federal courts and  
17 regulations consider certain factors in determining  
18 eligibility.

19 I say that there is evidence that they got  
20 that qualification, but that doesn't mean that they qualify  
21 under this ordinance. You want to cite Maryland and some  
22 other place involving factors they considered under their  
23 law.



1 We are not here to determine whether or not  
2 they are a charitable organization. I have ruled that that  
3 is not part of the ordinance.

4 MR. CHERIN: We have never claimed that.

5 THE COURT: And 501C3 is to determine  
6 charitable status, whether you are eligible as a charity. I  
7 don't know what the issue was in Maryland. It was certainly  
8 not our ordinance, it was some other ordinance or statute.

9 The factors that they might use to determine  
10 whether you get a charitable deduction or exemption in  
11 Maryland under a different statutory scheme doesn't really  
12 help me.

13 MR. CHERIN: Well, Your Honor --

14 THE COURT: Any more than the C3 helped me.

15 MR. CHERIN: I am suggesting that maybe it  
16 might help you.

17 THE COURT: I will be glad to look at it. I  
18 looked at the C3 factors. I have heard those, and I will  
19 listen to these factors, too, but I am just saying that I  
20 don't put much weight on any of them, because they are  
21 factors under different statutes and ordinances. I will be  
22 glad to look at them, sir, and give them the same weight  
23 that I give the C3 matters.

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1 MR. CHERIN: Can I submit the case then,  
2 Your Honor?

3 THE COURT: Please.

4 Let me read this. Well, this was a  
5 charitable organization definition for the purpose of, I  
6 take it, real estate and personal property tax?

7 MR. CHERIN: Yes, Your Honor.

8 THE COURT: Which, of course, it is conceded  
9 here that this company is liable for taxes?

10 MR. CHERIN: That is right.

11 THE COURT: Oh, Bill Cave heard it, what do  
12 you know. He went to high school with my wife. When you  
13 have been around long enough you get to know just about  
14 everybody.

15 Which headnote do you point me to?

16 MR. CHERIN: Three, Your Honor, the  
17 discussion under three.

18 THE COURT: Well, that case seems to be in  
19 keeping with the county's ruling regarding real estate and  
20 personal property taxes regarding GHA and Fairfax County  
21 which has been acquiesced in by GHA in Fairfax County. It  
22 was a ruling in Maryland under the tax laws of Maryland  
23 concerning real property taxes.



1                   We obviously have a different set of  
2 criteria than we do for this particular type tax that we  
3 have here.

4                   MR. CHERIN: Okay.

5                   THE COURT: The parties have agreed long  
6 since, in 1982 they agreed, at least by acquiescence, that  
7 they had to pay real estate taxes and personal property  
8 taxes and were not to qualify as a charitable organization.

9                   MR. CHERIN: Just so we are clear, we have  
10 never claimed that they have to be a charitable  
11 organization.

12                  THE COURT: I know that.

13                  MR. CHERIN: However, let's look then at the  
14 kinds of things that somebody will have to demonstrate to  
15 this court under this ordinance to, we submit, to  
16 demonstrate that they have an operation that operates for  
17 the welfare of the residents of the area.

18                  They have shown basically that  
19 unquestionably their primary purpose is to provide medical  
20 care to its paying customers. I think in a large part --

21                  THE COURT: I think the findings of fact  
22 that you have in the Maryland case, many of them are the  
23 same as here. There are some that may not be. Certainly



1 the primary duty or function of GHA is to provide high  
2 quality medical care to their paying customers.

3 MR. CHERIN: That is right.

4 THE COURT: That is their primary purpose.

5 MR. CHERIN: That is right, now I guess it  
6 would be -- if that is enough, if their mere existence in  
7 the community, selling health care services is enough to say  
8 that they are operating for the welfare of the residents of  
9 the area, then we could stop right there.

10 I would submit, however, Your Honor, that  
11 what that would mean would be that any business operation  
12 that came into the county and was non-profit would thereby  
13 have to be exempt under that kind of a rationale.

14 I would submit that for the court to rule  
15 that their mere presence of their operation in the community  
16 is sufficient to constitute operating for welfare of the  
17 residents of the area would equal a ruling that all non-  
18 profits would have to be exempt under this ordinance.

19 Now, Mr. Fox and the authority that he has  
20 presented to the court has not presented any authority that  
21 stands for the proposition that I have just described, that  
22 is that somebody can get exempt just by operating in a  
23 community and being a non-profit. There has been no



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1 authority to establish that proposition.

2 What would it take beyond that to  
3 demonstrate that they are operating for the welfare of the  
4 residents of the community? Now they made several attempts  
5 to do so. For example the children's program.

6 Now that is undoubtedly an extraordinary  
7 worthwhile problem -- worthwhile program. Problem too, but  
8 it is a program. We are not saying that there is anything  
9 wrong with that program.

10 It is a wonderful program, but GHA's  
11 involvement in that is a contribution of, in monetary terms,  
12 of approximately \$50,000 is what the evidence showed. Now  
13 that is not pennies, that is some money.

14 The other program that they touted as  
15 demonstrating this was the primary prevention program. Mr.  
16 Pfothauer testified that while they weren't trying to make  
17 money on the program, they weren't losing any, either.

18 That was the case where he testified that it  
19 cost them approximately two hundred fifty, two hundred and  
20 seventy-five to carry out one of these tests, and they were  
21 charging somewhere around three hundred.

22 THE COURT: Three fifty I think it was.

23 MR. CHERIN: That is right.





1 Now, that might be worth a lot more if you  
2 had to go out and get it in a private market, however, that  
3 is not costing the company anything. Now I realize that I  
4 am talking in terms of money and dollars.

5 THE COURT: Relativity.

6 MR. CHERIN: That comes next.

7 THE COURT: No, I am saying relativity  
8 between -- it costs me \$700 outside, and I get it here for  
9 \$350, and it only costs you \$250, you have given me the  
10 benefit of \$350, but it hasn't really cost you anything out  
11 of pocket to give me that benefit.

12 MR. CHERIN: That is right, Your Honor.

13 THE COURT: But it is a benefit.

14 MR. CHERIN: That is right, sure, sure. I  
15 have a different relativity in mind. My relativity is to  
16 the company's revenues. Now all of these programs put  
17 together, the medical research, the children's program, the  
18 primary prevention program, everything that they have  
19 mentioned here today, including the \$700,000 on community  
20 education, all of that is less than they spend on marketing  
21 alone.

22 The exhibits will show that they spend  
23 hundreds of thousands of dollars a year on marketing.



1 THE COURT: That is quite necessary.

2 MR. CHERIN: Oh, it certainly is, Your  
3 Honor, but the point is, and I would submit that this  
4 company has spent, and is spending, less than one percent of  
5 its revenues on any programs that they have described as  
6 being of benefit to the community.

7 Now I realize that money isn't everything,  
8 but it is certainly a way that society seems to measure  
9 commitment to various causes in many ways. I would submit  
10 in this case that they have spent a fraction of one percent.

11 They do not take any Medicaid patients,  
12 which is the program for the poor, because obviously it  
13 doesn't meet their reimbursement. They don't provide for  
14 any --

15 THE COURT: Who pays for Medicaid patients?

16 MR. CHERIN: Well, there is a subsidiary --

17 THE COURT: The federal and the state  
18 governments chip in, don't they?

19 MR. CHERIN: I believe that is true, Your  
20 Honor.

21 THE COURT: So the health care provider does  
22 get compensated by that mixed fund.

23 MR. CHERIN: He gets somewhat compensated.



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1 THE COURT: Oh, I realize that they don't  
2 get as much as they charge you or me.

3 MR. CHERIN: That is right, and so what some  
4 health care providers do to avoid getting stuck with the  
5 difference is they just don't take those patients.

6 THE COURT: Or they charge you and me more.

7 MR. CHERIN: Well, sure, but we can afford  
8 it, because we are full time employed by the county.

9 THE COURT: You are.

10 (Laughter.)

11 MR. CHERIN: But the point is, Your Honor,  
12 that GHA elects not to take those at all. The revenue from  
13 these is zero. Now if they have Medicare, which is a  
14 separate program, because some of their enrollees have  
15 matured to the point past that age, so they do have some  
16 Medicare for which they do get reimbursed for, but they do  
17 not take any Medicaid patients, which is the low income.  
18 They don't provide any medical services to patients who  
19 cannot afford to pay for it.

20 Now they are under no legal requirement to  
21 do so. We don't have any problem with that, but in order to  
22 say that you are serving the residents of the community  
23 beyond just being there for your paying members, I would

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1 submit that some kind of care of this nature, some other  
2 contribution in the community is something that they would  
3 have to show.

4 They don't subsidize anybody's membership  
5 unless you are already a member, but that is taking it out  
6 of one pocket and putting it into another. They established  
7 this fund through the members that pay.

8 If members can't afford to pay, they take it  
9 out of their one pocket and put it into their other pocket,  
10 and that is for their own members. You cannot join on that  
11 basis.

12 Even there, if you go too long you will get  
13 dropped. There is nothing wrong with that, again, but that  
14 is hardly a community service.

15 They don't have any sliding scale of  
16 premiums for somebody, for example, for lower income. When  
17 you are in, whether you make \$10,000 or \$10 million in  
18 income you pay the same.

19 Now that is okay, too, as a business  
20 proposition, and I don't blame them. Mr. Pfotenhauer when  
21 talking about his rating systems for the individuals that  
22 come in, that has also been touted as a benefit. It is  
23 opened to anyone in the community.

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1 Sure, it is offered to anybody for two  
2 things. One is if you can pay for it, and two is if you can  
3 pass that screening test. Now that screening test is tough.  
4 There are about fifteen pages there with named diseases that  
5 you cannot have if you want to get in.

6 To top it off, you can't even have a  
7 hemorrhoid and get in this thing. Not only that, at the end  
8 of it a general rule says if you have any condition that  
9 requires medical treatment you may be declined.

10 As Mr. Pfotenhauer pointed out it says may,  
11 and when he talked about adverse selection, that is just a  
12 polite way of saying, we don't want any sick people coming  
13 into this program, because that costs us money, as  
14 individuals.

15 THE COURT: I think he said, also, that we  
16 have to enough sick people already from all of those old  
17 people that we have got.

18 MR. CHERIN: Sure.

19 The evidence also shows that they were going  
20 to go on an aggressive marketing program for the  
21 individuals, and they used the words aggressive marketing  
22 program.

23 Why? Because they are much healthier. What



1 is the effect of that? They don't need as many services.  
2 There is nothing wrong with that. In fact Mr. Pfotenhauer  
3 described that as nothing more, and I quote him, because I  
4 remember this very well, that that was nothing more than a  
5 prudent business decision, and he is absolutely right. It  
6 is.

7 THE COURT: It is just like for forty years  
8 I have been paying into Social Security. Some day I am  
9 going to get some back I hope.

10 MR. CHERIN: I hope you do, too.

11 THE COURT: Because I have been supporting  
12 all of those people who have been getting it.

13 MR. CHERIN: Sure, and there is -- it is a  
14 prudent business decision, but what that tells me, Your  
15 Honor, is that if you were to take away that 501C3  
16 designation, pretend for a moment that that wasn't there and  
17 look at this company making these prudent business  
18 decisions, I would submit that they are just like all of the  
19 other health care providers who are doing it on a profit  
20 making basis, who do have to pay these BPOL taxes. They  
21 operate their business the same way.

22 THE COURT: I can't say they do. There is a  
23 difference in dropping groups. There is a difference at

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1 dropping individuals. If the experience became too high  
2 they would increase their premiums.

3 MR. CHERIN: That was, as I understood it,  
4 Your Honor, an experience rating system, and that is not  
5 what these people do.

6 THE COURT: I know that these people don't  
7 do it.

8 MR. CHERIN: But other HMOs don't do it,  
9 either. The community rating ones don't.

10 THE COURT: I have some confusion in my mind  
11 yet as to what community rating means. I have one  
12 definition that is the same as group rating, and then I had  
13 somebody else say that there is a difference between  
14 community rating and group rating.

15 The community rating means the entire  
16 community, they charge the same to everybody. I am not sure  
17 which is the proper definition.

18 MR. CHERIN: I know why, Your Honor, because  
19 we had conflicting testimony on that point, but the point is  
20 that all of these programs that they have come in here with  
21 as attempting --

22 THE COURT: Excuse me a second.

23 MR. CHERIN: Other than the fact that they



1 are operating health care service, they have come in with  
2 these programs I have just described, the children's  
3 program, primary prevention, and everything else.

4 All of those in total cost the company less  
5 than they spend on marketing, and I would just submit, Your  
6 Honor, that those factors -- and they didn't bring in  
7 anything else other than those, that is it.

8 So this court has to find that those factors  
9 which cost this company, in order for them to prevail in the  
10 way that they are saying, that those items which cost less  
11 than one percent of their revenue, that is enough to  
12 demonstrate that they are operating for the benefit of the  
13 community.

14 I would submit, Your Honor, that that is  
15 just -- when you have to interpret this against the  
16 exemption, strictly against the exemption, to say that  
17 somebody has demonstrated a community involvement warranting  
18 a tax exemption as a matter of public policy would be an  
19 erroneous decision.

20 That cannot be the basis, I would submit, as  
21 a matter of public policy to reward that kind of community  
22 involvement with the tax exemption, and I think that there  
23 is no basis in law to do so.





1           So we would submit, Your Honor, that the  
2 exemption is entirely valid and should remain so -- I mean  
3 the revocation.

4           THE COURT: Yes, sir, I know what you mean.  
5 I didn't think you had reversed yourself. No further  
6 argument, sir.

7           I will give no weight to the opinions of the  
8 two experts. I find it very interesting but not needed.

9           The county back in 1982 made a decision  
10 through their staff pursuant to the delegated authority of  
11 that staff to determine if GHA was exempt from paying this  
12 tax.

13           That changed in a letter in 1989, further  
14 amplified by a letter of February 8, 1990 which is  
15 Petitioner's exhibit number five. In there there were  
16 reasons given, and that is the only evidence I have as to  
17 why the county changed, because the county has not offered  
18 any verbal testimony or other evidence concerning this.  
19 This is a stipulated exhibit, and I do consider it as  
20 evidence that I may consider for the county.

21           First was the response to issue number one  
22 stated in that letter, and the reason given is that the  
23 exemption previously had been issued in error, and they say

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1 that we didn't follow the county attorney's letter of  
2 opinion of July 22, 1983.

3 Unfortunately, the quotation from that  
4 letter appears to perhaps apply to this, but it doesn't. It  
5 applied to real estate and personal property taxes and said  
6 a standard were not performed for the public good or  
7 welfare, using the word public underlined.

8 It did not -- the opinion did not relate  
9 specifically to the BPOL. In fact at the same time that  
10 that letter was received the county administration granted  
11 the exemption. So I think that that was an erroneous  
12 statement that it was issued in error because of that  
13 opinion.

14 Next, and I really don't understand this  
15 one, is on issue two it says GHA need not provide services  
16 to earn receipts. Well, maybe they don't for the first  
17 month, but if they don't provide the receipts when people  
18 call -- provide services when called for, they would be out  
19 of business in a month or two.

20 I cannot follow that reasoning at all.  
21 Merely because they are prepaid does not mean that they are  
22 not providing services to earn receipts.

23 The court has to consider the evidence

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1 offered by the petitioner, and of course the stipulated  
2 evidence partially is the evidence of the defense. They are  
3 not voiceless on their evidence, including part of what I  
4 have just read.

5 I find that GHA is a non-profit organization  
6 operating facilities for the welfare of the residents of the  
7 area, and I want to explain that.

8 Its primary service is to provide medical  
9 services to those who pay that are members of groups or  
10 individuals, but I find that they additionally do, and I  
11 would not say incidental by any means, because it is not  
12 incidental.

13 It is an active program on the part of GHA  
14 to provide help to the public on health without compensation  
15 or very minimal compensation. So it is not incidental to  
16 their operation.

17 I think it is an integral part of their  
18 purpose for being. They have, and I make these as findings,  
19 and I don't think that they are contradicted, they provide  
20 for ninety low to moderate income citizens of the county,  
21 adults and children, if my memory is correct, who would not  
22 be eligible for Medicaid, because their income is just high  
23 enough to lack that disqualification.

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1 In other words people who would fall in that  
2 somewhat gray area, where they don't have health insurance  
3 but don't qualify through Medicaid, through, and I can't  
4 remember the name of the program, but provides that, and if  
5 I am correct I think the rate charged for the coverage is  
6 about seventy percent less than the regular rates, however,  
7 it does not have the same full coverage as the regular  
8 coverage would have.

9 I find providing health care to all members  
10 of this organization, plus the ones that are taken in at  
11 lesser rates, is in keeping with the welfare of the people  
12 of Fairfax County.

13 Now I would probably agree with the county  
14 that if this was solely just selling medical services for  
15 those wealthy enough to pay for it, that is a welfare to the  
16 public incidentally because they are taking care of the  
17 health of some of the people in the county, but if you  
18 didn't do it they would just go to someone else providing  
19 the same service.

20 But the ones that are not purely business  
21 oriented but are to the benefit of the public, they conduct  
22 a considerable amount of health care training to members and  
23 non-members alike.

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1           They made a special assistance contribution  
2 in the last reported year of \$240,000, and I tried to figure  
3 it out that same year I think that they had a \$3.5 million  
4 surplus as compared to a \$13 million loss the year before.

5           It was the first year in recent history they  
6 have had any kind of a surplus. They expended \$240,000 for  
7 this granting of temporary help and premium payments to  
8 people who couldn't keep up their premiums, fell into bad  
9 times, and/or those who had need for certain medical  
10 treatments, I think that was the AIDS treatment, which would  
11 normally not be covered by the policy in question.

12           If you take that \$240,000 and add it to the  
13 surplus you would have about a seven percent increase in  
14 surplus for that calendar year. I don't think that we can  
15 look to gross revenues as really a test.

16           It is when you get to the point of whether  
17 you are making it or not making it on the year. I mean  
18 their purpose is to break even and a little better so that  
19 they can continue operating and providing these services.

20           I cannot find that \$240,000 is not a  
21 substantial contribution of what would have been a surplus  
22 or part of a surplus in assisting people in need, and those  
23 people certainly were in need.

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1           They do a considerable amount of medical  
2 research, which I find to have some collateral benefit to  
3 the public, because the results of that research are made  
4 available to other health care providers and organizations  
5 who can then use it or not as they deem appropriate.

6           A smaller part of this but certainly of  
7 benefit to the general public is the sharing of general  
8 rounds by the pediatricians at Fairfax Hospital which  
9 specifically included some care of indigents.

10           You add all of these together, and I find  
11 that this is a fairly good part of the functioning of this  
12 organization. Their primary part, and I am repeating  
13 myself, is to provide services to paying members, but I find  
14 that they do make a very good strong effort to aid those who  
15 cannot afford it.

16           Therefore, I find that they are operating  
17 the facilities for the welfare of the residents in the area.  
18 Now what residents in the area, all I can say is the general  
19 area of Northern Virginia would be my interpretation of it.

20           It could be as big as residents of the  
21 entire Washington, D. C. area. I would have hoped that the  
22 board when they did this if they meant to say residents of  
23 Fairfax County if they meant to say residents of Fairfax

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1 County could have said it, and that would have made it very,  
2 very clear.

3 But area could be the county, it could be  
4 Arlington, Alexandria, Prince William, who knows. It does  
5 not say for the welfare of the public. It does not say  
6 charitable welfare. It does not go that far in setting  
7 forth the terms of the qualification for someone to come  
8 under this exemption.

9 I find that they are exempt for the reasons  
10 stated.

11 ~~\_\_\_\_\_~~  
12 will prepare an order.

13 (Whereupon, at approximately 4:30 o'clock pm., the  
14 ~~meeting was adjourned.~~



V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

GROUP HEALTH ASSOCIATION, INC. )

Petitioner, )

v. )

AT LAW NO. 97213 )

THE BOARD OF SUPERVISORS OF )  
FAIRFAX COUNTY, VIRGINIA, )  
et al. )

Defendants. )

FINAL ORDER

THIS CAUSE came on to be heard on the 19th and 20th days of March, 1991 for a hearing on the merits;

WHEREUPON, the Petitioner presented evidence both ore tenus and documentary and rested its case; and

WHEREUPON, the Defendants rested without presenting testimony; and

WHEREUPON, after closing arguments by the Petitioner and the Defendants, this cause was submitted to the Court for a decision upon the evidence presented by the Petitioner and the stipulated documents, and on the basis thereof;

IT APPEARING TO THE COURT from the evidence presented and the legal arguments of counsel for the Petitioner and counsel for the Defendants that the Petitioner is, and remains exempt for the years 1986 through and including the date of this Order, from Business, Professional and Occupational License taxes under Section 4-7-1(a)(3) of the Fairfax County Code as a non-profit organization operating




facilities for the welfare of the residents of the area, as more specifically set forth in the transcript of the Court's ruling from the bench, which transcript is attached hereto and incorporated herein; and

IT FURTHER APPEARING for the foregoing reasons that judgment should be entered herein in favor of the Petitioner; it is hereby

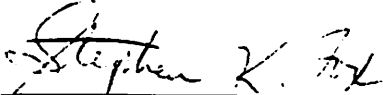
ORDERED AND ADJUDGED that the Petitioner is and shall be exempt from Business, Professional and Occupational License taxes imposed under Sections 4-7-1, et seq., of the Fairfax County Code for the years 1986 through and including the date of this Order.

AND THIS CAUSE IS ENDED.

ENTERED this 25<sup>th</sup> day of April, 1991.

  
William G. Plummer, Circuit  
Court Judge

WE ASK FOR THIS:

  
Stephen K. Fox, Virginia State  
Bar No. 15071  
Counsel for Petitioner  
FOX & PROFFITT, P.C.  
9401 Lee Highway, Suite 402  
Fairfax, Virginia 22031

SEEN AND OBJECTED TO:

David T. Stitt, County Attorney  
County of Fairfax  
4100 Chain Bridge Road  
Fairfax, Virginia 22030

By:



A. Robert Cherin, Deputy  
County Attorney

By:



Jill L. Rowe, Assistant  
County Attorney

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### ASSIGNMENTS OF ERROR

1. The trial court erred in ruling that GHA presented sufficient evidence to meet its burden of proving that it came within the terms of the exemption.

2. The trial court erred by applying the wrong standard of law in construing an undefined term in the exemption provision of the ordinance.

3. The trial court erred in ruling that community benefit activities which occurred outside of the taxing jurisdiction are proper bases for qualification for tax exemption.