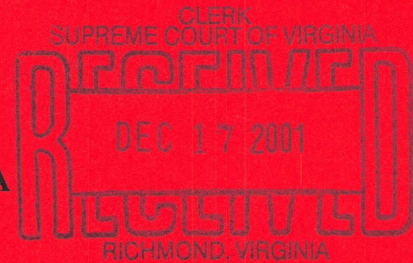


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IN THE  
SUPREME COURT OF VIRGINIA  
AT RICHMOND



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RECORD NO. 011150

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LASZLO N. TAUBER, LESLIE L. PETERS, IRWIN S. FREEDMAN, ESTATE OF SAMUEL BURTOFF, MICHAEL A. CORRADO, DAN J. FERIOZI, LESLIE P. GONDOR, REGINALD P. MCMANUS, MAGDOLNA A. IRANYI, ESTATE OF JAMES H. SCULLY, JEFFERSON MEMORIAL HOSPITAL JOINT VENTURE, JEFFERSON MEMORIAL HOSPITAL, INC., JEFFERSON MEMORIAL HOSPITAL ASSOCIATES, JEFFERSON MEMORIAL HOSPITAL CORPORATION, JEFFERSON CORPORATION OF ALEXANDRIA, THE TAUBER FOUNDATION, and THE CHARITABLE REMAINDER UNITRUST,

Appellants-Respondents,

v.

COMMONWEALTH OF VIRGINIA, *ex.rel.*, RANDOLPH A. BEALES, ACTING ATTORNEY GENERAL OF THE COMMONWEALTH OF VIRGINIA; RANDOLPH A. BEALES, ACTING ATTORNEY GENERAL OF THE COMMONWEALTH OF VIRGINIA; and THE COMMONWEALTH'S ATTORNEY FOR THE CITY OF ALEXANDRIA,

Appellees-Complainants.

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JOINT APPENDIX

VOLUME I

---



## **TABLE OF CONTENTS**

### **PAGE**

#### **Volume I**

Original Bill of Complaint as Finally Amended.....	0001
July 13, 2000 Letter Opinion Order.....	0022
October 25, 2000 Order .....	0025
November 30, 2000 Letter Opinion Order.....	0029
December 27, 2000 Letter Opinion Order .....	0031
January 23, 2001 Letter Opinion Order .....	0033
February 5, 2001 Order.....	0035
February 21, 2001 Letter Opinion Order .....	0038
April 25, 2001 Letter Opinion Order .....	0047
Testimony of Michael Dooley (January, 1997 Trial Testimony) .....	0052
Testimony of Dr. Laszlo N. Tauber (January, 1997 Trial Testimony) .....	0096
Testimony of Arthur Cobb (January, 1997 Trial Testimony).....	0493

#### **Volume II**

Testimony of R. Bruce Den Uyl (January, 1997 Trial Testimony) .....	0648
Testimony of John Thorpe Richards (January, 1997 Trial Testimony) .....	0795
Testimony of Robert E. Wilson (January, 1997 Trial Testimony) .....	0906

#### **Volume III**

Testimony of Celeste Burns Vella (January, 1997 Trial Testimony) .....	1064
Trial Testimony of Irwin Friedman (February 1, 2000)(Direct Examination by Mr. Bono, Cross-examination by Mr. Bettius, Redirect Examination by Mr. Cochran).....	1172

**PAGE**

Trial Testimony of R. Bruce Den Uyl (February 1, 2000)(Direct Examination by Mr. Bono, Cross-Examination by Mr. Bettius, Redirect Examination by Mr. Cochran, Redirect Examination by Mr. Bono, Recross-examination by Mr. Bettius).....	1202
--	------

**Volume IV**

Trial Testimony of Laszlo N. Tauber, M.D. (February 2, 2000) (Cross-examination by Mr. Bettius) .....	1417
---	------

Trial Testimony of Laszlo N. Tauber, M.D. (February 3, 2000) (Re-direct Examination by Mr. Bono, Re-direct Examination by Mr. Hirschkop, Cross-examination by Mr. Bettius) .....	1529
--	------

Trial Testimony of Arthur Cobb (February 3, 2000)(Direct Examination by Mr. Cochran, Direct Examination by Mr. Bono, Direct Examination by Mr. Hirschkop) .....	1622
---	------

**Volume V**

Trial Testimony of Laszlo N. Tauber, M.D. (February 4, 2000) (Direct Examination by Mr. Bono, Direct Examination by Mr. Cochran, Direct Examination by Mr. O'Donnell) .....	1728
---	------

Trial Testimony of Arthur Cobb (February 4, 2000)(Cross-examination by Mr. Bettius, Redirect Examination by Mr. Cochran, Redirect Examination by Mr. Bono, Redirect Examination by Mr. Hirschkop, Recross-examination by Mr. Bettius).....	1844
--	------

Robert E. Wilson (February 4, 2000)(Direct Examination by Mr. Bettius).....	2010
---	------

**Volume VI**

Trial Testimony of Robert E. Wilson (February 7, 2000)(Direct Examination by Mr. Bettius, Cross Examination by Mr. Cochran, Cross Examination by Mr. Bono, Redirect Examination by Mr. Bettius, Recross Examination by Mr. Cochran) .....	2029
---	------

Trial Testimony of Sharon K. Moore (February 7, 2000)(Direct Examination by Mr. Bettius, Cross Examination by Mr. Cochran, Cross Examination by Mr. Bono, Cross Examination by Mr. Hirschkop, Cross Examination by Mr. O'Donnell, Redirect Examination by Mr. Bettius).....	2208
---	------

	<u>PAGE</u>
Trial Testimony of Arthur Cobb (February 8, 2000)(Redirect Examination by Mr. Cochran, Redirect Examination by Mr. Bono, Recross-examination by Mr. Bettius, Redirect Examination by Mr. Cochran).....	2331
Hearing regarding Complainants' Motion to Compel Discovery Responses (March 24, 1999).....	2410
Bond Hearing (June 28, 1999) .....	2434
Hearing regarding the Motion to Compel Appointment of Administrator, CTA (July 28, 1999).....	2456

## Volume VII

Hearing regarding Respondents' Oral Motion for Leave to File a Supplemental Accounting (August 30, 1999).....	2488
Hearing regarding Scheduling Order (October 13, 1999) .....	2510
Pretrial Hearing (January 12, 2000).....	2528
Hearing of July 7, 2000, on Posting of Bond.....	2582
Hearing of November 13, 2000, on Title to Property and Attorney's Fees, including the Hearing Testimony of Kirk Foster (Direct Examination by Mr. Bettius, Cross-examination by Mr. Bono, Cross-examination by Mr. O'Donnell, Redirect Examination by Mr. Bettius), Grayson Hanes (Direct Examination by Mr. Bettius, Cross-examination by Mr. Bono, Cross-examination by Mr. Hirschkop, Redirect Examination by Mr. Bettius), and Thomas A. Reed (Direct Examination by Mr. Bettius, Cross-examination by Mr. Bono, Cross-examination by Mr. O'Donnell, Cross-examination by Mr. Hirschkop) .....	2588
Hearing of February 2, 2001, on Final Decree .....	2723
Hearing of March 23, 2001, on Posting of Bond.....	2754
Hearing of April 20, 2001, on Posting of Bond.....	2784

## Volume VIII

Exhibit 9.....	2787
Exhibit 11.....	2792



	<b><u>PAGE</u></b>
Exhibit 21 .....	2793
Exhibit 40 .....	2796
Exhibit 85 .....	2797
Exhibit 86 .....	2799
Exhibit 89 .....	2800
Exhibit 91 .....	2804
Exhibit 92 .....	2810
Exhibit 93 .....	2812
Exhibit 105 .....	2817
Exhibit 110 .....	2823
Exhibit 113 .....	2826
Exhibit 116 .....	2832
Exhibit 119 .....	2836
Exhibit 120 .....	2847
Exhibit 124 .....	2856
Exhibit 126 .....	2860
Exhibit 130 .....	2868
Exhibit 131 .....	2873
Exhibit 133 .....	2883
Exhibit 135 .....	2896
Exhibit 136 .....	2898
Exhibit 137 .....	2902
Exhibit 138 .....	2904
Exhibit 139 .....	2908

	<b><u>PAGE</u></b>
Exhibit 143.....	2911
Exhibit 144.....	2918
Exhibit 146.....	2922
Exhibit 149.....	2935
Exhibit 156.....	2941
Exhibit 161.....	2958
Exhibit 165.....	2967
Exhibit 166.....	2985
Exhibit 171.....	3002
Exhibit 178.....	3004
Exhibit 179 .....	3010
Exhibit 182.....	3017
Exhibit 184.....	3042
Exhibit 185.....	3050
Exhibit 186.....	3053
Exhibit 188.....	3062
Exhibit 189 .....	3074
Exhibit 190.....	3083
Exhibit 191.....	3096
Exhibit 192.....	3111
Exhibit 193.....	3127
Exhibit 194.....	3146



**PAGE**

**Volume IX**

Exhibit 195.....	3161
Exhibit 196.....	3174
Exhibit 200.....	3177
Exhibit 201.....	3191
Exhibit 202.....	3205
Exhibit 203.....	3220
Exhibit 204.....	3234
Exhibit 205.....	3262
Exhibit 206.....	3277
Exhibit 211.....	3313
Exhibit 213.....	3320
Exhibit 214.....	3324
Exhibit 217.....	3329
Exhibit 219.....	3335
Exhibit 220.....	3341
Exhibit 226.....	3348
Exhibit 227.....	3357
Exhibit 228.....	3361
Exhibit 230.....	3369
Exhibit 235.....	3377
Exhibit 236.....	3402
Exhibit 237.....	3409
Exhibit 238.....	3426

	<b><u>PAGE</u></b>
Exhibit 241 .....	3428
Exhibit 243 .....	3431
Exhibit 246 .....	3433
Exhibit 249 .....	3442
Exhibit 252 .....	3456

### **Volume X**

Exhibit 262 .....	3467
Exhibit 263 .....	3469A
Exhibit 266 .....	3470
Exhibit 267 .....	3475
Exhibit 268 .....	3477
Exhibit 269 .....	3487
Exhibit 271 .....	3491
Exhibit 272 .....	3502
Exhibit 273 .....	3503
Exhibit 274 .....	3506
Exhibit 275 .....	3507
Exhibit 276 .....	3509
Exhibit 277 .....	3511
Exhibit 278 .....	3512
Exhibit 279 .....	3516
Exhibit 280 .....	3520
Exhibit 281 .....	3524
Exhibit 287 .....	3528



	<b><u>PAGE</u></b>
Exhibit 289.....	3532
Exhibit 290.....	3582
Exhibit 291.....	3586
Exhibit 292.....	3591
Exhibit 293.....	3626
Exhibit 294.....	3642
Exhibit 296.....	3644
Exhibit 298.....	3650
Exhibit 299.....	3653
Exhibit 300.....	3659
Exhibit 301.....	3662
Exhibit 302.....	3365
Exhibit 303.....	3668
Exhibit 304.....	3671
Exhibit 305.....	3673
Exhibit 306.....	3675
Exhibit 307.....	3678
Exhibit 308.....	3682
Exhibit 309.....	3684
Exhibit 310.....	3701
Exhibit 311.....	3719
Exhibit 313.....	3722
Exhibit 324.....	3736

**PAGE**

**Volume XI**

Exhibit 325.....	3753
Exhibit 326.....	3755
Exhibit 328.....	3897
Exhibit 337.....	3901
Exhibit 338.....	3903
Exhibit 339.....	3936
Exhibit 340.....	3984
Exhibit 350.....	4018
Exhibit 350A.....	4020
Exhibit 354.....	4023
Exhibit 356.....	4024
Exhibit 358.....	4030
Exhibit 362.....	4031
Exhibit 364.....	4033
Exhibit 367.....	4035
Exhibit 368.....	4038
Exhibit 369.....	4049
Exhibit 372.....	4053
Exhibit 374.....	4057
Exhibit 375.....	4059
Exhibit 378.....	4062
Exhibit 379.....	4063



**PAGE**

**Volume XII**

Exhibit 380.....	4065
Exhibit 385.....	4082
Exhibit 386.....	4084
Exhibit 387.....	4086
Exhibit 387A.....	4087
Exhibit 388.....	4090
Exhibit 389.....	4091
Exhibit 394.....	4096
Exhibit 402.....	4097
Exhibit 403.....	4098
Exhibit 403A.....	4100
Exhibit 406.....	4101
Exhibit 409.....	4142
Exhibit 410.....	4143
Exhibit 420.....	4144
Exhibit 422.....	4145
Exhibit 424.....	4148
Exhibit 425.....	4150
Exhibit 426A.....	4153
Exhibit 426B.....	4154
Exhibit 428.....	4155
Exhibit 447.....	4163
Exhibit 451.....	4168

	<b><u>PAGE</u></b>
Exhibit 453.....	4169
Exhibit 455 .....	4170
Exhibit 456.....	4171
Exhibit 457.....	4175
Exhibit 461.....	4181
Exhibit 513.....	4188
Exhibit 514.....	4204
Exhibit 538.....	4217
Exhibit 603.....	4222
Exhibit 610.....	4224
Exhibit 613.....	4225
Exhibit 709(A) .....	4226
Exhibit 709(B) .....	4227
Exhibit 709(C) .....	4228
Exhibit 709(D) .....	4229
Exhibit 709(E).....	4230
Exhibit 709(F).....	4231
Exhibit 710.....	4232
Exhibit 711.....	4274
Exhibit 782.....	4282
Exhibit 789.....	4296

### **Volume XIII**

Exhibit 802.....	4305
Exhibit 803.....	4311



	<b><u>PAGE</u></b>
Exhibit 804.....	4313
Exhibit 805.....	4316
Exhibit 806.....	4319
Exhibit 816.....	4320
Exhibit 822.....	4339
Exhibit 823.....	4498
Exhibit 824.....	4507
Exhibit 825.....	4509
Exhibit 826.....	4517
Exhibit 827.....	4520
Exhibit 828.....	4529
Exhibit 832.....	4532
Exhibit 835.....	4542
Exhibit 856.....	4550
Exhibit 858.....	4553
Exhibit 860.....	4562
Exhibit 861.....	4570
Exhibit 862.....	4576
Exhibit 863.....	4580
Exhibit 864.....	4588

#### **Volume XIV**

Exhibit 865.....	4609
Exhibit 866.....	4617
Exhibit 867.....	4632

	<b><u>PAGE</u></b>
Exhibit 868.....	4635
Exhibit 873.....	4649
Exhibit 883.....	4660
Exhibit 886.....	4661
Exhibit 887.....	4663
Exhibit 890.....	4668
Exhibit 893.....	4670
Exhibit 894.....	4671
Exhibit 896.....	4679
Exhibit 898.....	4680
Exhibit 899.....	4681
Exhibit 900.....	4684
Exhibit 901.....	4686
Exhibit 902.....	4691
Exhibit 904.....	4693
Exhibit 906.....	4703
Exhibit 907.....	4711
Exhibit 908.....	4713
Exhibit 909.....	4716
Exhibit 910.....	4717
Exhibit 911.....	4719
Exhibit 915.....	4722
Exhibit 927.....	4726
Exhibit 942.....	4727

	<b><u>PAGE</u></b>
Exhibit 943.....	4728
Exhibit 944.....	4745
Exhibit 945.....	4752
Exhibit 946.....	4753
Exhibit 947.....	4755
Exhibit 949.....	4757
Exhibit 950.....	4759
Exhibit 952.....	4761
Exhibit 953.....	4763
Exhibit 954A.....	4767
Exhibit 955.....	4769
Exhibit 955A.....	4775
Exhibit 956.....	4777
Exhibit 962.....	4780
Exhibit 971.....	4783
Exhibit 974.....	4797
Exhibit 978.....	4800
Exhibit 994.....	4803
Exhibit 1001.....	4805
Exhibit 1002.....	4821

### **Volume XV**

Exhibit 1003.....	4836
Exhibit 1005.....	4851
Exhibit 1027.....	4862

	<b><u>PAGE</u></b>
Exhibit 1028.....	5018

### **Volume XVI**

Exhibit 1029.....	5106
Exhibit 1030.....	5249
Exhibit 1031.....	5357
Exhibit 1033.....	5370
Exhibit 1034.....	5380
Exhibit 1035.....	5390
Exhibit 1036.....	5400
Exhibit 1046.....	5411
Exhibit 1057.....	5418

### **Volume XVII**

Exhibit 1064.....	5425
Exhibit 1079.....	5429
Exhibit 000.....	5492
Exhibit A.....	5494
Exhibit B.....	5497
Exhibit F.....	5500
Exhibit G.....	5501
Exhibit H.....	5504
Exhibit I.....	5588
Exhibit J.....	5590
Exhibit N.....	5593
Exhibit P.....	5600

	<b><u>PAGE</u></b>
Exhibit R .....	5616
Exhibit S .....	5629
Exhibit T .....	5631
Exhibit T2 .....	5641
Exhibit T3 .....	5642
Exhibit T4 .....	5643
Exhibit T5 .....	5644
Exhibit T6 .....	5645
Exhibit T7 .....	5646
Exhibit T8 .....	5647
Exhibit T9 .....	5648

### **Volume XVIII**

Exhibit U .....	5649
Exhibit W .....	5755
Exhibit Z .....	5771
Exhibit AA .....	5794
Exhibit BB .....	5808
Exhibit CC .....	5841
Exhibit DD .....	5904
Exhibit EE .....	5956
Exhibit AAA .....	5957
Exhibit AAAA .....	5960
Exhibit AAAAA .....	5963
RESPONDENTS' ACCOUNTING .....	5967

	<b><u>PAGE</u></b>
RESPONDENTS' SUPPLEMENTAL ACCOUNTING .....	5992
COMPLAINANTS' ACCOUNTING .....	5996
ASSIGNMENTS OF ERROR .....	6123
ASSIGNMENTS OF CROSS-ERROR .....	6126



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

JAMES S. GILMORE, III,  
ATTORNEY GENERAL of the  
COMMONWEALTH OF VIRGINIA,

Complainant

v.

IN CHANCERY NO. CH950516

LASZLO N. TAUBER, SAMUEL BURTOFF, MICHAEL  
A. CORRADO, DAN J. FERIOZI, IRWIN S.  
FREEDMAN, LESLIE P. GONDOR, REGINALD P.  
McMANUS, LESLIE L. PETERS, MAGDOLNA A.  
IRANYI, and JAMES H. SCULLY, each  
individually and as a former director of  
Jefferson Memorial Hospital, Inc. (a now  
defunct Maryland corporation), and/or as  
partners in Jefferson Memorial Hospital  
Associates, or Jefferson Memorial  
Hospital Joint Venture, and/or directors  
or shareholders of Jefferson Memorial  
Hospital Corporation (a Delaware  
Corporation now known as "Jefferson  
Corporation of Alexandria"), and

JEFFERSON MEMORIAL HOSPITAL ASSOCIATES,  
a partnership, and

JEFFERSON MEMORIAL HOSPITAL JOINT  
VENTURE, a partnership, and

JEFFERSON CORPORATION OF ALEXANDRIA,  
a Delaware corporation,

Respondents

BILL OF COMPLAINT

1. James S. Gilmore, III, brings this action in his official capacity as Attorney General of the Commonwealth of Virginia pursuant to the Attorney General's common law authority and duty to enforce and supervise charitable trusts and gifts.
2. This Court has jurisdiction by virtue of Va. Code § 17-123 and

J.APP. 0001

its inherent equitable authority to supervise charitable gifts and charitable organizations.

3. Venue is proper in the Circuit Court of Alexandria because the conduct complained of occurred largely in Alexandria, Virginia, and the hospital involved is or was located at 4600 King Street in Alexandria, Virginia.

4. Respondents LASZLO N. TAUBER, SAMUEL BURTOFF, MICHAEL A. CORRADO, DAN J. FERIOZI, IRWIN S. FREEDMAN, LESLIE P. GONDOR, REGINALD P. McMANUS, LESLIE L. PETERS, MAGDOLNA A. IRANYI, and JAMES H. SCULLY are sued individually and as former directors of Jefferson Memorial Hospital, Inc., (a now defunct Maryland corporation) and/or its successors in interest, and/or as partners in Jefferson Memorial Hospital Associates, a partnership, or Jefferson Memorial Hospital Joint Venture, a partnership, and/or directors or shareholders of Jefferson Memorial Hospital Corporation (a Delaware corporation which changed its name to "Jefferson Corporation of Alexandria" on or about April 6, 1982). Respondent TAUBER is also sued as trustee and agent for the two partnerships Jefferson Memorial Hospital Associates and Jefferson Memorial Hospital Joint Venture.

5. In the 1960's, a partnership named "King Street Joint Venture" ("KSJV") was formed. KSJV bought, or leased for 99 years, several different parcels of land in Alexandria, Virginia, near the intersection of King and Beauregard Streets. Maps, not to scale, showing the various parcels are attached as Exhibits A and B.

6. By a deed dated October 8, 1962, and recorded on October 23,

1962 in Deed Book 563 at Page 160 among the land records of the City of Alexandria, Virginia, Gerard T. Hopkins and Helen C. Hopkins, his wife, granted, bargained, sold and conveyed certain lots or parcels of ground to Respondent Laszlo N. Tauber. These lots or parcels are labeled as "Hopkins Parcels No. 1 and 2" in attached Exhibit A.

7. By a deed of correction dated July 9, 1963, and recorded on August 28, 1963 in Deed Book 583 at Page 28 among the land records of the City of Alexandria, Virginia, Gerard T. Hopkins and Helen C. Hopkins, his wife, granted and conveyed the Hopkins Parcels No. 1 and 2 to Respondent Laszlo N. Tauber, Trustee.

8. By a deed of correction dated July 9, 1963, and recorded on March 17, 1964 in Deed Book 596 at Page 20 among the land records of the City of Alexandria, Virginia, Lilly K. Tauber, the wife of Respondent Tauber, released her dower interest, if any, in the Hopkins Parcels No. 1 and 2.

9. By said deeds dated October 8, 1962 and July 9, 1963, Respondent Tauber as Trustee for KSJV acquired the fee simple in land labeled in said Exhibit A as Hopkins Parcels No. 1 and 2.

10. On or about September 14, 1962, Tauber as Trustee for KSJV acquired a 99 year lease, or the remaining term of a 99 year lease, in land labeled as the "Hopkins Leasehold" in attached Exhibit A.

11. On March 5, 1963, some or all of the principals in KSJV created a Maryland for-profit company, Jefferson Memorial Hospital, Inc. ("JMHI").

12. On or about September 8, 1964, JMHI amended its charter to

become a non-profit corporation. Respondent Tauber was President of JMHI and signed the Articles of Amendment on or about August 25, 1964.

13. The JMHI Charter, as amended on or about September 8, 1964, included the following language:

SIXTH: The corporation shall not have any capital stock and no part of the net income of the corporation shall inure to the private benefit of any individual, except in payment for authorized services for the administration and conduct of the affairs of the corporation or in carrying out the scientific, educational, and charitable purposes of the corporation. ...

TENTH: In the event of dissolution of this corporation whether voluntary or involuntary, all of its net assets after the payment of all bills and expenses of dissolution shall be distributed for such purposes as are specified in Sec. 501(c) (3) of the United States Internal Revenue Service Code of 1954 and under no circumstances shall any such assets be distributed to any members of this corporation.

14. The JMHI charter was further amended on or about December 28, 1965, to include a revised Third Section, as follows, in part:

THIRD: The purpose or purposes of this corporation are as follows: To establish and maintain a non-profit charitable hospital center and adjuncts ...

15. This language of the 1964 and 1965 amendments prohibited JMHI's revenue or assets from ever being used for private gain, even upon dissolution. Fair compensation for services could be paid, but any surplus from operations had to be devoted to charitable work and not distributed as gifts or dividends to anyone.

16. JMHI preliminarily qualified for tax-exempt status under § 501(c)(3) of the Internal Revenue Code. Thus donations to it were deductible from the income of its donors.

17. Between October, 1962, and October, 1964, KSJV built a hospital known as "Jefferson Memorial Hospital" ("the Hospital") on Hopkins Parcels No. 1 and 2. KSJV leased the Hospital to JMHI on or about October 28, 1964.

18. Although chartered as a corporation by the State of Maryland, JMHI conducted no business in Maryland and owned no assets there. Its sole asset and activity was the Hospital in Alexandria, Virginia.

19. On or about December 15 through 30, 1964, Respondents Gondor, Burtoff, Scully, and others, acting with or through Respondent Tauber as KSJV Trustee, donated 65% of their undivided interest in the fee simple of the Hopkins Parcels No. 1 and 2 and 65% of their undivided interest in the 99 year Hopkins Leasehold to JMHI. See Exhibit A.

20. Respondent Burtoff reneged on his donation, which amounted to a 5% interest in each of the fee and lease. Respondent Tauber gave another 5% interest to replace Burtoff's donation.

21. At a time unknown to the Complainant but believed to be on or about January 1, 1966, Jefferson Memorial Hospital Associates ("Associates"), a partnership of approximately 19 individuals including Respondents Tauber, Gondor, Burtoff, Peters, Scully, Corrado, Feriozi, Freedman, and McManus succeeded to the interest of KSJV. In the alternative, the Complainant pleads that KSJV took in more partners and changed its name to Associates.

22. On or about January 1, 1966, Associates, successor in interest to KSJV, leased the Hospital to JMHI for 40 years, with an option

to renew for another 19 years. This lease was apparently a novation for that of October 28, 1964.

23. At this time, Associates owned the building while JMHI owned the 65% undivided interest of the Hopkins Parcels Nos. 1 and 2 in fee simple as a cotenant and a 65% undivided interest in the Hopkins leased parcel. JMHI ran the hospital. JMHI paid rent for the building to Associates.

24. The members of KSJV/Associates had deducted from their income the value of the land leaseholds donated to JMHI. As owners of the hospital building, the partners in KSJV/Associates collected rent from JMHI while deducting the depreciation of the building from their personal income.

25. By a deed dated January 6, 1966, and recorded on January 13, 1966, in Deed Book 642 at Page 402 among the land records of the City of Alexandria, Virginia, Irving Berman and Betty Berman, his wife, and George H. Hurwitz and Tessie Hurwitz, his wife, granted and conveyed property to JMHI. This property is labeled as the "Berman Lot" in attached Exhibit A.

26. On or about January 3, 1970, KSJV or Associates, acting through Respondent Tauber, and JMHI agreed to pool or combine their 35% and 65% interest in Hopkins Parcels No. 1 and 2 for the purpose of subdividing the land among various owners who would each take 100% of the fee simple for their subdivided portion. Pursuant to agreement, they plotted and recorded a deed of subdivision of Hopkins Parcels No. 1 and 2 into four lots.

27. On or about March 5, 1970, JMHI and KSJV or Associates,



through Respondent Tauber acting individually and as Trustee, deeded the four subdivided lots in fee simple to four individuals or entities. One lot went to each of JMHI, Respondent Gondor, Respondent Burtoff, and the Tauber Foundation, Inc., an entity believed to be controlled by Respondent Tauber, as indicated in attached Exhibit B.

28. At the same time or at a subsequent time unknown to the Complainant, Gondor leased his Lot No. 3821-03-01 to JMHI for 99 years.

29. IRS determined the arrangement and certain transactions between JMHI and KSJV/Associates did not meet its requirements for tax-exempt entities. IRS gave notice to JMHI that it intended to revoke its tax-exemption.

30. After this IRS notice, JMHI purported to change itself into a for-profit corporation. On or about May 18, 1971, JMHI Board members, Respondents Burtoff, Corrado, Feriozi, Freedman, Gondor, Iranyi, McManus, Peters, and Tauber agreed to establish a new corporation which would issue stock. Thus, they caused to be incorporated a new Delaware for-profit company named Jefferson Memorial Hospital Corporation ("JMHC") on or about June 3, 1971.

31. The initial Board of Directors of JMHC consisted of Respondents Tauber, Gondor, Iranyi, Burtoff, Freedman, Peters, Corrado, and McManus who were chosen by the JMHC stockholders on or about October 19, 1971.

32. The newly-elected JMHC Directors voted the same day, on or about October 19, 1971, to merge with JMHI.

33. Prior to or at the time of the purported 1971 merger, the JMHI Directors did not advertise the hospital for sale and did not seek potential purchasers other than JMHC.

34. In 1971, when JMHC took over the Hospital, as described above, the Hospital and its assets had a fair market value of at least \$4,000,000.00 on the open market.

35. Pursuant to the purported merger, in 1971 JMHC took over the operation of the hospital. JMHC simply took over operation of the hospital without paying any compensation for its assets, business opportunities, value as a going business, goodwill, licenses, land and leases.

36. JMHI Directors Respondents Burtoff, Iranyi and Tauber either affirmatively approved, permitted or knowingly acquiesced in this takeover by JMHC in that they were also simultaneously directors of JMHC on or after October 19, 1971.

37. The Hospital had generated net operating losses under JMHI's operation but was operating profitably at the time of the purported merger.

38. The two companies represented to the Internal Revenue Service and to the world that the two companies had merged and that the for-profit JMHC was the surviving entity.

39. Despite these representations, the federal income tax returns filed after the so-called merger used the federal identification number of JMHI, not JMHC.

40. JMHC took credit on its tax returns for as much as \$412,000 in JMHI's pre-1971 net operating losses, thereby reducing its tax

liability as the hospital generated revenue in excess of expenses after the purported merger. (The losses were carried forward over several years.) JMHC was the beneficiary of the profits earned by the hospital after it took it over from JMHI in 1971.

41. In fact, the merger was never effectuated. Maryland law forbid nonstock corporations to merge or consolidate with anything other than another nonstock corporation.

42. In 1973, the state of Maryland dissolved JMHI's corporate existence.

43. In 1974, the issue of the 8% JMHI bonds arose. The bonds totalling \$319,000 had been issued to some of the same doctors who controlled KSJV/Associates, JMHI and JMHC. JMHI also owed \$80,000 to another creditor. JMHI had no assets with which to pay its bonds or creditors because JMHC had taken its assets and income stream since 1971.

44. In 1974, the JMHC Directors admitted or realized that the merger had not been consummated.

45. Therefore, JMHC Directors including Respondents Freedman and Burtoff, and others, resolved on December 11, 1974, that JMHC assumed the liability of JMHI on its bonds and \$80,000 debt, in return for all JMHI's assets.

46. The JMHI Directors, Respondents Tauber, Iranyi, and Scully, resolved unanimously on January 27, 1975, to recommend to the members of JMHI that JMHI sell all of its land and equipment to JMHC in return for JMHC's assumption of JMHI debt in the amount of approximately \$399,000, plus interest. There was no other

consideration passing to JMHI.

47. Immediately thereafter, the same five Respondents met as the members of JMHI and unanimously voted to accept JMHC's offer.

48. On or about January 29, 1975, JMHC Directors including Respondents Freedman, Iranyi, Gondor, and others, confirmed the transaction.

49. Prior to or at the time of these 1974 resolutions, the JMHI Directors did not advertise the hospital for sale and did not seek potential purchasers other than JMHC.

50. In 1974, when the JMHI Directors sold JMHI's assets for nothing more than JMHC's assumption of its debts totaling \$399,000, plus interest, as described above, the Hospital and its assets had a fair market value of at least \$4,000,000.00 on the open market.

51. The \$399,000.00, plus interest, in debt assumed by JMHC included \$319,000, plus interest, which JMHI owed to some or all of the JMHI Directors.

52. The purported \$400,000 consideration given by JMHC was grossly inadequate in relation to the assets JMHI delivered to JMHC and in relation to the price JMHI would have brought on the open market. The purported \$400,000 consideration was also grossly inadequate in its failure to compensate JMHI for the income stream that JMHC commandeered to its own benefit from the time of the purported 1971 merger.

53. JMHI's assets included the Berman Lot and Lot No. 3821-03-02, both owned in fee simple,<sup>1</sup> the balance of the 99 year Hopkins

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<sup>1</sup> See Exhibits A and B.

Leasehold, the balance of the 99 year lease on Gondor's Lot No. 3821-03-01, the balance of its 40 year lease on the Hospital building and improvements (with 19 year renewal option), its licenses or certificates of need from the Commonwealth, its goodwill, and some equipment. Additionally, JMHI had some right, the exact terms of which are unknown to the Complainant, to use or occupy Lots No. 3821-03-03 and 3821-03-04. The January 29, 1975, JMHC board minutes reflect that JMHC valued the owned land at \$188,851, and the equipment at \$85,851. It further reflected the only other asset to be "a 20% interest in a 99-year lease on a small strip of ground ..."<sup>2</sup> No value was assigned to the 99 year Gondor lease or the Hopkins Leasehold. No mention or value was given to the Hospital's certificates, license to operate, building lease from Associates, its rights to use or occupy Lots No. 3821-03-03 and 3821-03-04, its value as an ongoing concern, or its value in the open market if advertised and offered for sale.

54. On or about March 13, 1974, the Directors of JMHC, including Respondents Tauber, Burtoff, Corrado, Gondor, Iranyi, McManus and Peters voted to transfer the Hospital land and building to a reinstituted KSJV, with everyone getting an interest in the KSJV partnership equal to the percentage of stock he owned in JMHC.

55. On or about November 27, 1974, the stockholders of JMHC resolved to sell the Hospital land and building to Tauber as trustee for a partnership to be formed. The partnership to be

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<sup>2</sup> In fact, by an unrecorded January 1, 1966, Assignment of Lease, JMHI actually held 100% of the Hopkins Leasehold.

formed was apparently the reinstituted KSJV contemplated by the JMHC Directors in their meeting of March 13, 1974.

56. On or after January 2, 1975, Associates took in more partners and changed its name to, or was succeeded by, Jefferson Memorial Hospital Joint Venture ("JMHJV"), a partnership of approximately 57 individuals believed to include Respondents Tauber, Corrado, Burtoff, Feriozi, Freedman, Gondor, McManus, Peters, Scully and others. JMHJV was the "reinstituted partnership" contemplated at the JMHC Directors' meeting of March 13, 1974.

57. On or about December 24, 1974 or June 1, 1975, JMHC sold, gave or assigned its land to JMHJV for \$240,000.00 above the outstanding amount owed on a first mortgage.

58. On or about February 1, 1975, JMHI conveyed the Berman parcel and Lot 3821-03-02 to JMHC, excluding the improvements thereon.

59. On or about July 1, 1975, JMHI and JMHC executed two versions of a document entitled "Lease Cancellation." These recite that the January 1, 1966, lease and January 2, 1966, sublease between Associates and JMHI "is cancelled" due to execution of new lease between Respondent Tauber, Trustee for JMHJV (successor to KSJV) and JMHC, "successor to JMHI." Other than an implied release from the obligation to pay rent in the future and perform other covenants of the lease, no consideration was given to JMHI for this termination of its 40 year lease with 19 year renewal option.

60. On or about October 27, 1976, JMHI assigned its 99 year lease in the Hopkins Leasehold to Tauber as Trustee for JMHJV.

61. During the 1970s, large national hospitals like Humana and



Hospital Corporation of America ("HCA") were buying hospitals across the country. Hospitals with certificates of need like the Hospital commanded premium prices.

62. The JMHI Directors owed to JMHI common law, statutory or fiduciary duties of loyalty and diligence. As Directors, the JMHI Directors were obligated to avoid conflicts of interest or self-dealing with JMHI. They were obligated to oversee JMHI in such a way that it would not violate the law or its articles of incorporation. They were further required to exercise that same standard of care in overseeing JMHI that a reasonable person would have exercised in his or her own personal affairs.

63. Said duties imposed certain requirements upon the JMHI Directors in the sale or other disposition of JMHI or its assets. In particular, in the sale of JMHI or its assets, the JMHI Directors were legally bound to seek the highest and best price. The proceeds of such sale were required by law to be donated to another charitable organization or to the government. Alternatively, in the donation of JMHI as an entity or in the donation of its assets, the JMHI Directors were legally obligated to donate only to another charitable organization or the government. JMHI could not simply absolve itself of its previously undertaken charitable duties and its charter's prohibitions against private gain.

64. In the conduct described above, JMHI Directors, Respondents Tauber, Iranyi and Scully breached their fiduciary duties of loyalty and care: (A) by failing to explore and promote the sale

of the Hospital to third parties like Humana and HCA; (B) by failing to seek any bidders or buyers other than JMHC, in which Respondent Tauber and perhaps other held a material interest; (C) by failing to obtain anything close to the \$4,000,000.00 fair market value of JMHI; (D) by cancelling, or agreeing to the cancellation of, the 40 year lease of the Hospital building held by JMHI without receiving fair consideration; (E) by cancelling or assigning without consideration the 99 year lease of Gondor Lot No. 3821-03-01; (F) by releasing or assigning the right to use or occupy Lots No. 3821-03-03 and 3821-03-04 without receiving fair consideration; (G) by their *ultra vires* self-dealing in their use of the Hospital from 1971 to 1974 without payment of fair consideration; and (H) by transferring the Hospital building, land and assets to their own for-profit corporation, JMHC, in 1974 through 1976, for grossly inadequate consideration.

ALLEGATIONS RELATING TO THE TRACING OF ASSETS  
AND IMPOSITION OF A CONSTRUCTIVE TRUST

65. Respondents Gondor, Freedman, Burtoff and Iranyi, as members of the JMHC Board of Directors, had actual or constructive knowledge of the transaction by which JMHI transferred the leased Hospital building, owned and leased land and other JMHI assets to JMHC without adequate consideration and in breach of the fiduciary duties owed to JMHI by its Directors, and by their conduct described above, conspired with Respondents Tauber, Scully and Iranyi to deprive JMHI of the leased Hospital building, owned and leased land and other JMHI assets.

66. Said leased Hospital building, owned and leased land and other JMHI assets were subject to a constructive trust for the benefit of JMHI while under the control, possession or ostensible ownership of JMHC.

67. Respondents Tauber, Corrado, Feriozi, Gondor, Freedman, McManus, Peters and Scully, and others as partners of JMHJV, had actual or constructive knowledge of the transaction by which JMHI transferred the leased Hospital building, owned and leased land and other JMHI assets to JMHC without adequate consideration and in breach of the fiduciary duties owed to JMHI by its Directors.

68. Said leased or owned Hospital building, owned and leased land and other JMHI assets were subject to a constructive trust for the benefit of JMHI while under the control, possession or ostensible ownership of JMHA and JMHJV.

69. As putative owner of the Hospital, the Beauregard Parcel and the Hopkins Parcels No. 1 and 2, and as lessee of the balance of the 99 year lease on the Hopkins Leasehold, JMHJV leased all or substantially all of these to Health Group of Virginia, Inc. in 1982.

70. On or about July 3, 1985, Fairfax Hospital Association (subsequently known as INOVA Health Systems Hospitals and/or INOVA Health System Foundation (collectively referenced as "INOVA") bought Health Group of Virginia, Inc. JMHJV executed a new lease of the Hospital and its underlying land to INOVA.

71. A condition of said lease was that the lessee INOVA keep the hospital in operation so as to maintain in good standing its

certificate of need and license from the Commonwealth of Virginia as an acute care hospital.

72. On or about May 12, 1992, Respondent Tauber as Trustee for the Tauber Foundation, Inc., deeded its subdivided lot Parcel No. 3821-03-03 to JMHJV.

73. On or about June 24, 1994, a Deed of Correction was filed for record in Alexandria to clarify that the May 12, 1992, deed was really to Tauber as Trustee for JMHJV.

74. INOVA negotiated with JMHJV to buy out the lease and purchase the Hospital in fee simple. INOVA and JMHJV, represented by Tauber, entered a letter agreement dated October 14, 1992, modifying the lease and exchanging the Hospital with INOVA for a building owned by INOVA, subject to, among other things, the insurability of the title to the Hospital as marketable.

75. In anticipation of closing this purchase, INOVA closed the Hospital. The Hospital's certificate of need was subsequently revoked.

76. INOVA refused to close the contract for purchase of the Hospital and sued JMHJV and Respondent Tauber as Trustee for a declaratory judgment that INOVA was excused from closing by virtue of defects in the title.

77. INOVA, JMHJV and Respondent Tauber settled said litigation upon approximately these terms, among others: INOVA has paid or will pay JMHJV and/or Tauber as Trustee for JMHJV a total of approximately \$35,000,000.00, consisting of installments from August 1, 1994, through September 1, 2005, and ending with a lump

sum payment of \$10,000,000.00 on or before October 1, 2005. JMHJV will retain ownership of the Hospital; INOVA will be released from all other obligations relating to its lease or the purchase contract; INOVA will keep the building which it was to trade to JMHJV.

78. As a result of the above-described breaches of duty, the revenue, income and assets of the not-for-profit JMHI have inured to the private benefit of the individual Respondents, JMHC, Associates, and JMHJV, in which Respondents Tauber, Gondor, Burtoff, Freeman, Corrado, McManus, and Feriozi were or are partners, directors, officers and/or stockholders. Correspondingly, the Commonwealth of Virginia and its citizens have been deprived of that same value, which should have been continuously devoted to charity, particularly to charitable health care. The above-described payments from INOVA, by right and equity, should be made to or for the benefit of JMHI, if it were still in existence. Because JMHI has been dissolved, the Court should exercise its cy pres authority to redirect all payments from INOVA to legitimate charities providing charitable health care.

WHEREFORE, Attorney General James S. Gilmore, III, prays that the Court:

1. order each Respondent to account for the money or other value he has received in these transactions;
2. surcharge the JMHI Directors Respondents Tauber, Scully and Iranyi, and the JMHC Directors Respondents Gondor, Freedman,

Burtoff and Iranyi, all jointly and severally, for the charitable assets which they usurped, took or sold in 1971 and/or 1974, the amount of said surcharge to be proved at trial but to total at least \$4,000,000.00;

3. grant judgment to the Commonwealth of Virginia against the JMHI Directors Respondents Tauber, Scully and Iranyi, and the JMHC Directors Respondents Gondor, Freedman, Burtoff and Iranyi, all jointly and severally, in an amount to be proved at trial but of at least \$4,000,000.00, to be applied by the Commonwealth when collected to indigent or other charitable health care or maintenance;

4. grant judgment to the Commonwealth of Virginia against the JMHI Directors Respondents Tauber, Scully and Iranyi, and the JMHC Directors Respondents Gondor, Freedman, Burtoff and Iranyi, all jointly and severally, for pre-judgment interest at the various judgment rates in effect from 1971 to the present to be applied by the Commonwealth when collected to indigent or other charitable health care or maintenance;

5. trace the assets taken from JMHI in order to impose a constructive trust upon the Hospital, its land, equipment and any other assets, and the settlement proceeds being paid by INOVA to JMHJV (or at least the share of Respondents Tauber, Corrado, Feriozi, Gondor, McManus, Peters, Freedman, Scully and any others proved to have knowledge of or responsibility for the transactions described above), and, through said constructive trust, take the Hospital, its land, equipment and any other assets, and the said

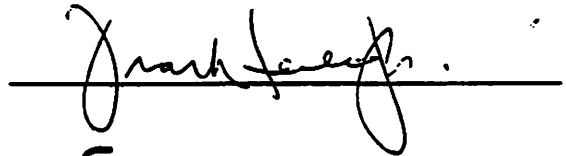
INOVA settlement proceeds and devote them all to charitable health care and maintenance;

6. award the Commonwealth of Virginia its costs and attorneys' fees in the investigation and prosecution of this case; and

7. grant such other relief as is just and equitable.


JAMES S. GILMORE, III,  
ATTORNEY GENERAL of the  
COMMONWEALTH OF VIRGINIA

By:



Date: April 26, 1995

By:



James S. Gilmore, III  
Attorney General

David E. Anderson  
Chief Deputy Attorney General

Catherine C. Hammond  
Deputy Attorney General  
Civil Litigation Division

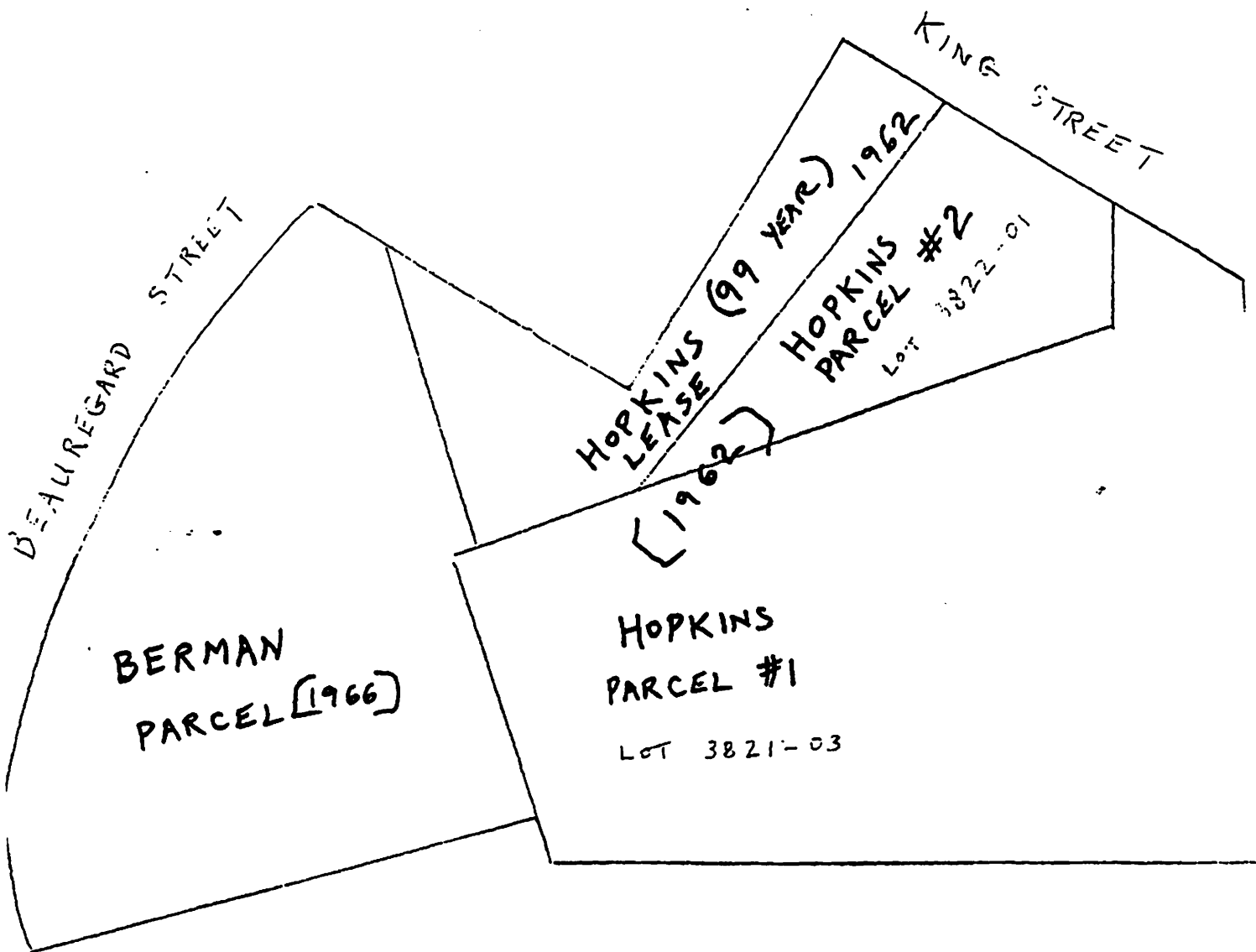
Frank Seales, Jr.  
Senior Assistant Attorney General  
and Chief, Antitrust and  
Consumer Litigation Section

Edward P. Nolde  
Assistant Attorney General

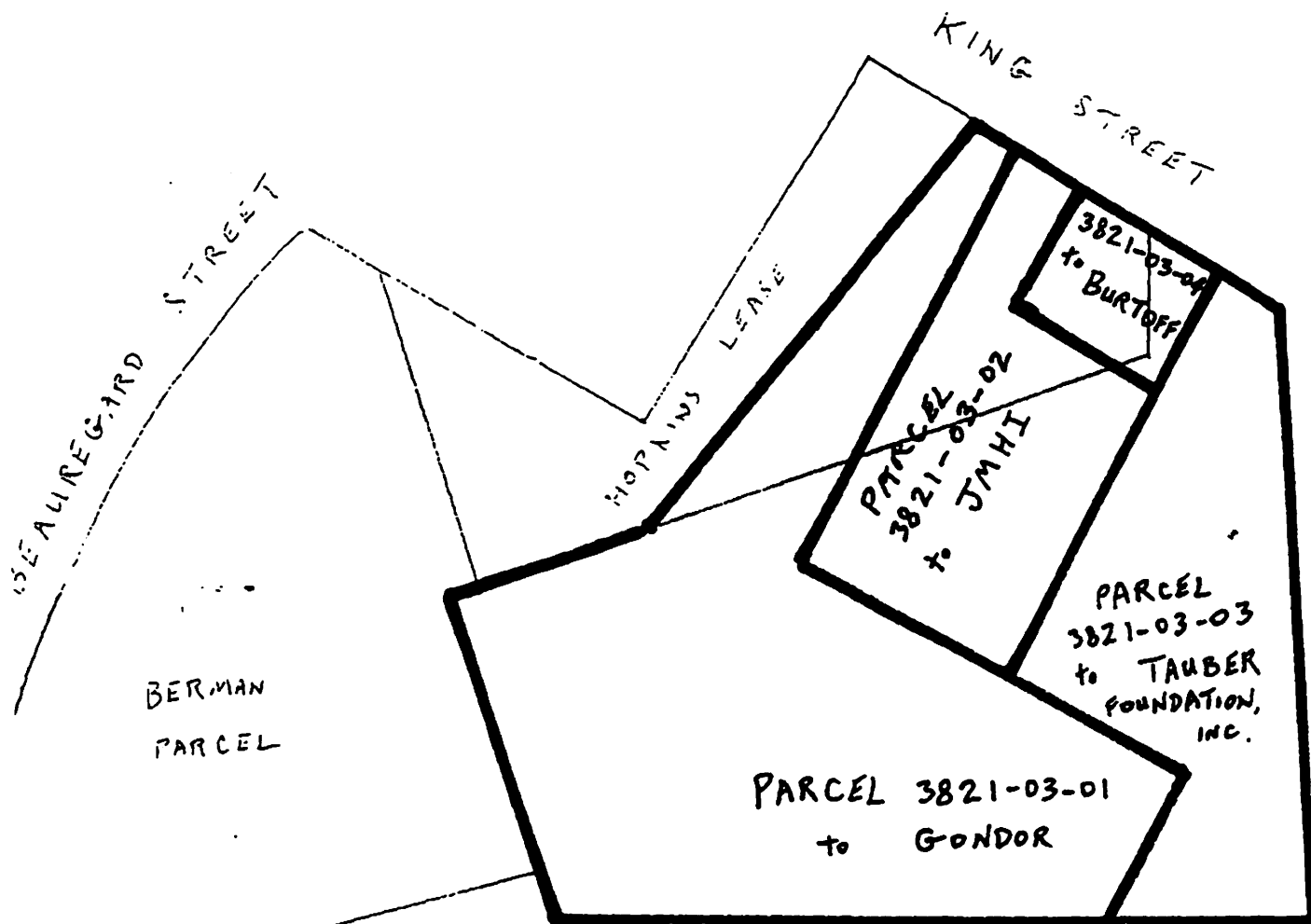
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J.APP. 0020



1970 SUBDIVISION OF HOPKINS PARCELS 18



J.APP. 0021

Circuit Court of Alexandria  
Virginia

Judges

DONALD M. HADDOCK

ALFRED D. SWERSKY

JOHN E. KLOCH



July 13, 2000

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Miller & Chevalier  
655 Fifteenth Street, NW, Suite 900  
Washington, D. C. 20005

Re: Commonwealth Ex Rel. Early v. Tauber, et al.  
Chancery No. CH961241

Dear Counsel,

J.APP. 0022

Commonwealth Ex Rel. Early v. Tauber, et al.  
Chancery No. CH961241  
July 13, 2000  
Page 2

The accountings offered by Respondents are rejected. The hypothetical bases, assuming dissolutions in 1973, 1982, 1992, and 2005 and calculating a value based upon various returns on capital, does not afford the Court an opportunity to calculate the receipts, disbursements, rents, and profits that actually accrued to Respondents.

Respondents obtained interests in real property, were paid "dividends" in excess of their capital contributions, and finally obtained a settlement of a dispute with Inova directly arising out of hospital operations.

Under accepted principles, Respondents cannot profit from the wrong doing found by the Court and must be called to account for the profit obtained. In addition, where the Respondents, trustees in dissolution, comingle their interests with those of the charity, they bear the burden of proving the separate nature of the assets. Respondents have not met that burden. Hence, they are accountable for all of the assets, rents, profits, and receipts they obtained. Hanshaw v. Day, 202 Va. 818 (1961).

*Real Property:*

The Court finds that interest held by Respondents in the realty as trustees in dissolution to be as follows:

1. Hopkins parcel 1 and 2: 70%.
2. Beauregard Street: 100%.
3. Hospital Improvements: 100%.
4. Beauregard and Building: 100%.

The Court will hear argument on whether or not Respondents are entitled to a credit for costs of acquisition and improvements to the realty actually incurred. In addition, argument will be allowed on whether or not Dr. Gondor is entitled to a personal credit of One Hundred Fifty Thousand Dollars (\$150,000.00) for sums advanced by him as payment for a purported one-half held interest in the real property and the manner by which such credit could be given.

Commonwealth Ex Rel. Early v. Tauber, et al.  
Chancery No. 961241  
July 13, 2000  
Page 3

*Benefits and Payments to Respondents:*

Complainant's accounting reveals that Respondents received net revenue through June 30, 1999, in the amount of \$26,372,438.00, and that anticipated revenue from the Inova settlement through October 1, 2005, is \$24,703,145.00 (including the \$10,000,000.00 payment).

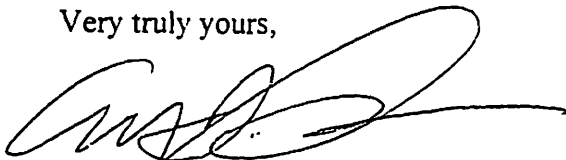
Under strict accounting rules, Respondents would be liable for the accrued revenues plus the present value of the future payments due from Inova. However, equitable principles require that a fairness test be applied to any award in this case.

Since Respondents now hold valuable real estates as trustees in dissolution, and since the benefit to other charities will be substantial even if Respondents are not required to account dollar-for-dollar, and the purposes of this cause will be served, this Court finds that an award of Twenty Million Dollars (\$20,000,000.00) in addition to the real property is fair and just under all of the circumstances. In addition, Respondents will be liable for Complainant's attorney's fees as well as those of Inova in the related matter.

Counsel shall promptly schedule a hearing on the following:

1. Presentation of orders.
2. Appointment of an appropriate receiver.
3. Attorney's fees.
4. Credits, if any, for real property acquisition.
5. Plans for the disbursement of funds acquired by the Receiver.

Very truly yours,



Alfred D. Swersky

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN RE:

JEFFERSON MEMORIAL HOSPITAL  
JOINT VENTURE,

Alleged Debtor.

COMMONWEALTH OF VIRGINIA, et al.,

Plaintiffs,

v.

JEFFERSON MEMORIAL HOSPITAL  
JOINT VENTURE,

Defendant.

)  
)  
) Bankruptcy Case  
) No. 00-12445-RGM  
) Chapter 11  
)  
)  
)

)  
) Contested Matter  
) No. 00-0718  
)  
)  
)  
)

**ORDER CONSTRUING AND CLARIFYING CONSENT ORDER**

THIS MATTER CAME ON FOR CONSIDERATION of the Motion for Order Construing and Clarifying Consent Order previously entered in this contested matter ("Motion") filed by the Commonwealth of Virginia, *ex rel.* Mark L. Earley, Attorney General of the Commonwealth of Virginia, Mark L. Earley, Attorney General of the Commonwealth of Virginia, and the Commonwealth's Attorney for the City of Alexandria ("Movants"), by special counsel, GOLD MORRISON & LAUGHLIN, PC, H. Jason Gold, Valerie P. Morrison, and Raymond R. Pring, Jr.;

H. Jason Gold, Va. Bar No. 19117  
Valerie P. Morrison, Va. Bar No. 24565  
Raymond R. Pring, Jr., Va. Bar No. 39104  
GOLD MORRISON & LAUGHLIN PC  
1660 International Drive, Suite 450  
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(703) 836-7004  
Special Counsel for the Commonwealth of Virginia, *et al.*

A TRUE COPY TESTE:  
WILLIAM C. REDDEN, CLERK  
BY *Shirley Stewart*  
DEPUTY CLERK

PAGE ONE OF FOUR

J.APP. 0025

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IT APPEARING TO THE COURT that this Court entered a consent order on June 21, 2000 ("Consent Order") which clearly and unambiguously lifted the automatic stay (to the extent it ever applied) to permit the suits pending in the Circuit Court for the City of Alexandria (the "State Court") at Chancery Nos. 961241 and 970488 (the "State Court Proceedings") to proceed in all respects; and

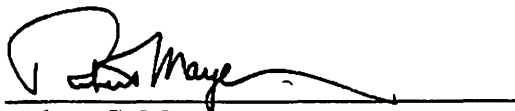
IT FURTHER APPEARING TO THE COURT, that the Consent Order clearly and unambiguously permitted the State Court to hear and determine any matter, and to enter any order, judgment or decree in the State Court Proceedings; accordingly, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that to the extent the automatic stay applied to the State Court Proceedings, the stay was lifted in its entirety by the Consent Order to permit the State Court Proceedings to proceed in all respects; and it is further

ORDERED that pursuant to the Consent Order, the automatic stay did not, does not and shall not impede the State Court from (i) hearing and determining any matter that arose or arises in the State Court Proceedings; or (ii) from entering any order, judgment or decree in the State Court Proceedings, including by way of example, and not by limitation, any order, judgment or decree concerning the INOVA Payments or their disposition.

Dated: 10/25/00

  
Robert G. Mayer  
United States Bankruptcy Judge

NOTICE OF JUDGMENT OR ORDER

Entered On Docket 10/25/00


PAGE TWO OF FOUR

J.APP. 0026

PREPARED BY:

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1660 International Drive, Suite 450  
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(703) 836-7004

By:

  
H. Jason Gold, Va. Bar No. 19117  
Valerie P. Morrison, Va. Bar No. 24565  
Raymond R. Pring, Jr., Va. Bar No. 39104

Special Counsel to the Commonwealth of Virginia, *et al.*



Certification of Service Pursuant to Local Bankruptcy Rule 9022-1(C)

I HEREBY CERTIFY that on this 25<sup>th</sup> day of October, 2000, the foregoing Order Construing and Clarifying Consent Order was sent via first class mail, postage prepaid, to:

OFFICE OF THE UNITED STATES TRUSTEE  
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Gaspere J. Bono, Esquire  
Long Aldridge & Norman LLP  
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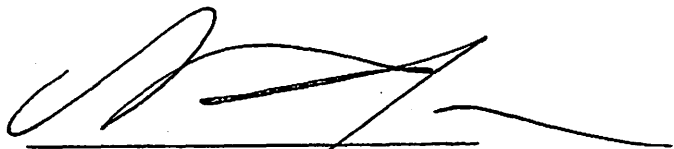
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Raymond R. Pring, Jr.

United States District Court of Alexandria  
Virginia

Judges  
DONALD M. HADDOCK  
ALFRED D. SWERSKY  
JOHN E. KLOCH



Courthouse  
520 King Street  
Alexandria, Virginia  
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November 30, 2000

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David J. Kiyonaga, Esquire  
526 King Street, Suite 213  
Alexandria, VA 22314

Re: Commonwealth, *ex. rel.* v. Tauber, et al.  
Chancery No. CH961241

Dear Counsel,

Complainants' motion to award attorneys' fees and costs will be denied. Special counsel will be awarded a fee for services based upon his contract with the Attorney General; however, that fee will be paid from the fund created.

There is no contract nor statutory basis for an award of additional attorneys' fees against Respondents.

J.APP. 0029

November 30, 2000  
Chancery No. CH961241  
Page Two

While there are some exceptions to the requirement that there be a contract or statutory basis for an additional award of attorneys' fees, the Court finds none are applicable. *See, Gilmore v. Basic Industries, Inc.*, 233 Va. 485 (1987).

Complainants' claim that Title 26, Code of Virginia, §23 provides a statutory basis to award attorneys' fees and costs. They claim costs in excess of Six Hundred Thousand Dollars (\$600,000.00). This argument is without merit. The statute provides:

The costs of all proceedings against fiduciaries failing, without good cause, to make the returns and exhibits required, shall be paid by them personally, and they shall receive no allowance for the same in the settlement of their accounts.

This statute is silent as to attorneys' fees and the Court will not read into the plain language of the statute a legislative intent to authorize an award of fees. The word "costs" has been interpreted by the Supreme Court to be limited to those costs essential to the prosecution of the suit such as filing fees or charges for service of process. *See, Advanced Marine Enterprises, Inc. v. PRC, Inc.*, 256 Va. 106 (1998), where the Court interpreted the legislature's use of the word "costs" in the civil conspiracy statute (Title 18.2, Code of Virginia, §499, *et seq.*).

All other matters remain under advisement including the revisiting of the award of the real estate; any credit Respondents may be awarded for the costs of acquiring the real estate; the claim of The Tauber Foundation, *et al.* to release assets of charitable entities; and the assessment of fees for Inova Hospital's interpleader action. I will try to resolve these matters shortly on the pleadings filed.

Respondents' counsel should prepare an appropriate decree embodying the ruling on attorneys' fees and costs and note Complainants' objection.

Very truly yours,

Alfred D. Swersky

Circuit Court of Alexandria  
Virginia

Judges  
DONALD M. HADDOCK  
ALFRED D. SWERSKY  
JOHN E. KLOCH



Courthouse  
520 King Street  
Alexandria, Virginia  
22314-3164  
(703) 838-4123

December 27, 2000

Marc E. Bettius, Esquire  
Ina C. Charvet, Esquire  
Lawson & Frank  
6045 Wilson Boulevard, Suite 100  
Arlington, VA 22205

Richard S. Schweiker, Jr., Esquire  
Senior Assistant Attorney General  
900 East Main Street  
Richmond, VA 23219

Gaspere J. Bono, Esquire  
Long, Aldridge & Norman  
701 Pennsylvania Avenue, Suite 600  
Washington, D.C. 20004

Anthony J. Trenga, Esquire  
Miller & Chevalier  
655 Fifteenth Street, NW, Suite 900  
Washington, D.C. 20005

Philip J. Hirschkop, Esquire  
Hirschkop & Associates  
108 North Columbus Street  
Alexandria, VA 22314

Barbara P. Beach, Esquire  
416 Prince Street  
Alexandria, VA 22314

Kevin M. O'Donnell, Esquire  
Henry & O'Donnell  
4103 Chain Bridge Road, Suite 100  
Fairfax, VA 22030

David J. Kiyonaga, Esquire  
526 King Street, Suite 213  
Alexandria, VA 22314

Re: Commonwealth, *ex. rel.* v. Tauber, et al.  
Chancery No. CH961241  
Inova v. Tauber, et al.  
Chancery No. CH970488

Dear Counsel:

Respondents' motions for acquisition credits against the award of the real estate will be denied. Likewise, Respondents' motion to release portions of the award to the charities will be denied. These issues were considered by the Court in arriving at its

J.APP. 0031

December 27, 2000  
Page Two  
Chancery Nos. CH961241 and CH970488

initial award of the assets subject to the constructive trust.

In view of this ruling, Respondents' motion to strike Mr. Reed's testimony will be denied.

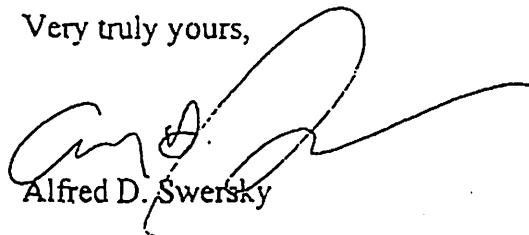
In Chancery No. 970488, Inova's attorney's fees are assessed equally between Complainant and Respondents in this cause.

Mr. Trenga should submit the final amount to counsel for the parties. Any objections must be filed as to the amount within ten (10) days of the receipt of the final amount, and if necessary, a hearing scheduled.

Counsel for Complainant should prepare a decree embodying these rulings as well as the previous ruling denying Complainant's motion for attorney's fees. The decree should include the Court's award of the Twenty Million Dollars and the realty interests, noting objections of any party.

Once this decree is entered the Court will deal with the remaining issues of a receiver, the disposition of the real estate, and the disposition of the monetary assets of the trust, giving the parties an opportunity to appeal the award.

Very truly yours,



Alfred D. Swersky

J.APP. 0032

TOTAL P.0

Circuit Court of Alexandria  
Virginia

Judges  
DONALD M. HADDOCK  
ALFRED D. SWERSKY  
JOHN E. KLOCH



Courthouse  
520 King Street  
Alexandria, Virginia  
22314-3164  
(703) 835-4123

January 23, 2001

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Ina C. Charvet, Esquire  
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Richard S. Schweiker, Jr., Esquire  
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4103 Chain Bridge Road, Suite 100  
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David J. Kiyonaga, Esquire  
526 King Street, Suite 213  
Alexandria, VA 22314

Re: Commonwealth, *ex. rel.* v. Tauber, et al.  
Chancery No. CH961241  
Inova v. Tauber, et al.  
Chancery No. CH970488

Dear Counsel,

In accordance with my ruling of December 27, 2000, the parties in CH961241 shall share equally the attorneys' fees to be paid to Complainant in CH970488.

January 23, 2001

Page Two

Chancery Nos. 961241 and 970488

The Court finds the attorneys' fees and costs submitted to be fair and reasonable and are fixed at Fifty Two Thousand Fifty-one Dollars (\$52,051) for attorneys' fees and Five Thousand Thirty-four Dollars (\$5,034) as costs.

In my December 27<sup>th</sup> letter, I urged counsel to prepare an appropriate decree embodying the most recent rulings of the Court. No Decree having been submitted, the Court will prepare and enter its own Decree unless counsel furnish one on or before February 5, 2001.

Very truly yours,



Alfred D. Swersky

Circuit Court of Alexandria  
Virginia

Judges  
DONALD M. HADDOCK  
ALFRED D. SWERSKY  
JOHN E. KLOCH



Courthouse  
520 King Street  
Alexandria, Virginia  
22314-3164  
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February 5, 2001

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(Fax No. 703-273-6884)

David J. Kiyonaga, Esquire  
526 King Street, Suite 213  
Alexandria, VA 22314  
(Fax No. 301-585-0821)

Re: Commonwealth, *ex. rel.* v. Tauber, et al.  
Chancery No. CH961241  
Inova v. Tauber, et al.  
Chancery No. CH970488

Dear Counsel,

I have reviewed the proposed decree and the objections made. There are some

J.APP. 0035



February 5, 2001

Page Two

Commonwealth, *ex. rel.* v. Tauber, et al.

CH961241 and CH970488

revisions necessary to the decree proposed by the Complainant. I will deal with the objections as follows:

I believe the special warranty deed is the appropriate manner of conveyance of the realty.

A constructive trust will be imposed upon the anticipated revenues and the Respondents are individually, jointly, and severally liable.

Inova's counsel fees will be paid from the proceeds paid into Court without further liability on any party. Interest on the monetary portion of the judgment will be awarded from July 13, 200, at the statutory rate.

Respondents' requests to stay enforcement of the judgment so long as the Inova payments are being made will be denied. The Court would, however, request that Complainant take no immediate collection actions as the Inova payments will continue to be received by the Court.

The Court finds that the distribution of the assets is governed by the rules of cy pres and not corporate dissolution, Respondents' request that the decree reflect that it is subject to Maryland's law of distribution will be denied.

While the Commonwealth will be the trustee for all of the assets, the question of who will eventually be the receiver for accumulation and distribution remains for decision by the Court.

Respondents will be allowed to remain in the case for purposes of input into the plan of distribution.

The decree proposed by Complainant is appropriate except for the following:

1. Page 3 - the third full paragraph should state that a special commissioner to be determined later shall be appointed.
2. Page 6 - the language barring Respondents from participating in further proceedings should be deleted.

February 5, 2001

Page Three

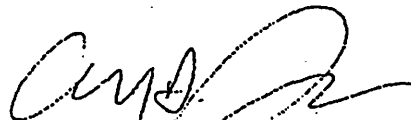
Commonwealth, *ex. rel.* v. Tauber, et al.

CH961241 and CH970488

3. Language should be included reflecting the Court's finding that the distribution is subject to the cy pres rules and not Maryland's corporate dissolution statutes.

I expect counsel to promptly prepare and circulate such a decree so that Respondents may note their respective objections. If I do not have the decree in hand by February 19, 2001, I will prepare and enter an appropriate decree.

Very truly yours,



Alfred D. Swersky

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

COMMONWEALTH OF VIRGINIA, *ex rel.* )  
MARK L. EARLEY, ATTORNEY )  
GENERAL OF THE COMMONWEALTH OF )  
VIRGINIA; MARK L. EARLEY, )  
ATTORNEY GENERAL OF THE COMMON- )  
WEALTH OF VIRGINIA; and THE )  
COMMONWEALTH'S ATTORNEY FOR THE )  
CITY OF ALEXANDRIA, )

Complainants, )

v. )

LASZLO N. TAUBER, et al., )

Respondents. )

) CHANCERY NO. 961241

---

INOVA HEALTH CARE SYSTEM, et al., )

Complainants, )

v. )

COMMONWEALTH OF VIRGINIA, *ex rel.* )  
MARK L. EARLEY, ATTORNEY )  
GENERAL OF THE COMMONWEALTH OF )  
VIRGINIA, et al. )

Respondents. )

) CHANCERY NO. 970488

DECREE

THIS CAUSE came to be heard upon the merits at a trial commencing on February 1,  
2000 until its conclusion; and

Pursuant to this Court's direction as more fully set forth in its July 13, 2000 Letter Opinion, a hearing was conducted on November 13, 2000 for the purpose of taking additional evidence and the presentation of argument by counsel; and upon testimony, exhibits and papers formally filed, the arguments of counsel, and the authorities submitted and considered, and for the reasons stated and fully set forth in the Court's Letter Opinions dated July 13, 2000, November 30, 2000, December 27, 2000, January 23, 2001 and February 5, 2001 which are hereby referenced and incorporated as if set forth in full, it is hereby:

ORDERED, ADJUDGED and DECREED that, pursuant to the herein referenced July 13, 2000 Letter Opinion, the December 27, 2000 Letter Opinion, and the February 5, 2001 Letter Opinion, the Commonwealth, as trustee, shall have judgment against and shall recover individually and jointly and severally from each of the Respondents named herein in Chancery No. 961241, to-wit: Laszlo N. Tauber, the Estate of Samuel Burtoff, Michael A. Corrado, Daniel J. Feriozi, Irwin S. Freedman, Leslie P. Gondor, Reginald P. McManus, Leslie L. Peters, Magdolna A. Iranyi and the Estate of James H. Scully, individually and as former directors and/or trustees and/or trustees in liquidation of Jefferson Memorial Hospital, Inc. and/or its successors in interest; and as directors and/or shareholders of Jefferson Memorial Hospital Corporation and/or Jefferson Corporation of Alexandria; and as partners in Jefferson Memorial Hospital Associates, a partnership and/or Jefferson Memorial Hospital Joint Venture, a partnership; and Jefferson Memorial Hospital Associates, a partnership, Jefferson Memorial Hospital Joint Venture, a partnership and Jefferson Corporation of Alexandria; and Laszlo N. Tauber, also as trustee and agent for Jefferson Memorial Hospital Associates, a partnership, and Jefferson Memorial Hospital Joint Venture, a partnership; in the amount of

TWENTY MILLION DOLLARS (\$20,000,000) with interest from July 13, 2000 at the statutory judgment rate of interest which is currently nine percent (9%) per year; it is further

ORDERED, ADJUDGED and DECREED that the Commonwealth, as trustee, shall have judgment against, and shall recover from, the Respondents named herein in Chancery No. 961241, individually and jointly and severally, the real property and improvements delineated in the Court's July 13, 2000 Letter Opinion; it is further

ORDERED, ADJUDGED and DECREED that Respondents named herein in Chancery No. 961241 motion for credits for any claimed acquisition costs of the real estate and improvements is denied; it is further

ORDERED, ADJUDGED and DECREED that the Respondents named herein in Chancery No. 961241, individually and jointly and severally, are responsible for the appropriate execution and delivery of special warranty deeds for the real estate interests awarded herein to the Commonwealth, as trustee. Further, failing delivery of said deeds within twenty-one (21) days of entry of this Decree, a Special Commissioner to be determined later, shall be appointed by the Court to make and execute the appropriate deeds so as to effect the transfer of real property and improvements herein decreed; it is further

ORDERED, ADJUDGED and DECREED that, notwithstanding the Court's prior ruling set forth in the July 13, 2000 Letter Opinion, and pursuant to the Court's Letter Opinion dated November 30, 2000, the Respondents in Chancery No. 961241 will not be held personally liable for payment of the attorneys' fees of the Complainants in Chancery No. 961241, but that special counsel will be awarded a fee for services based upon his contract with the Attorney General, with said fee to be paid from the fund created; it is further

ORDERED, ADJUDGED and DECREED that all of the assets referenced and described herein are subject to a constructive trust, including but not limited to any and all anticipated revenue from a certain Settlement Agreement dated July 11, 1994 between INOVA Health System Hospitals and Inova Health System Foundation and Laszlo N. Tauber, Trustee, and Jefferson Memorial Hospital Joint Venture (hereinafter referred to as the "INOVA Settlement") through October 1, 2005, including the \$10,000,000 lump sum payment, and that said constructive trust shall remain in full force and effect until the judgments and the terms of this Decree are fully and completely satisfied and complied with by the Respondents named herein in Chancery No. 961241, including without limitation, payment of the award of attorneys' fees and expenses to the Complainants in Chancery No. 970488 (hereinafter referred to as the INOVA Complainants); it is further

ORDERED, ADJUDGED and DECREED that the INOVA Complainants shall continue to pay or cause to be paid into the registry of the Court, in care of the General Receiver of the Circuit Court for the City of Alexandria, or such other person or entity as this Court may subsequently direct, those amounts due and payable under the INOVA Settlement until such time as the amounts deposited therein are sufficient to satisfy completely the judgments entered herein, including, without limitation, any postjudgment interest that will accrue thereon and the amount of the INOVA Complainants' attorneys' fees and expenses awarded herein, or until such time as the judgments have otherwise been completely satisfied; that pursuant to *Virginia Code* Section 8.01-364 (C), 1950, as amended, the Respondents in Chancery No. 970488, and their agents and employees and anyone acting in concert with or under their direction, are permanently restrained from instituting or prosecuting any

proceeding in any court of this Commonwealth with respect to any payments made by the INOVA Complainants pursuant to this Decree; that upon payment into the registry of this Court or as otherwise directed by this Court, the INOVA Complainants are hereby discharged from any further liability to the Respondents in Chancery No. 970488, or any one of them, with respect to the payments made pursuant to this Decree; it is further

ORDERED, ADJUDGED and DECREED that, notwithstanding the Court's prior ruling set forth in the July 13, 2000 Letter Opinion, and pursuant to its Letter Opinions dated December 27, 2000 and January 23, 2001, for purposes of the matter now before this Court, to-wit: Chancery No. 970488, the INOVA Complainants' attorneys' fees are fixed at Fifty Two Thousand Fifty-one Dollars (\$52,051) and costs at Five Thousand Thirty-four Dollars(\$5,034), which fees and costs shall be assessed equally between Complainants and Respondents in Chancery No. 961241, judgment for which he, and the same hereby is, entered against said Complainants and Respondents, with postjudgment interest as set by law, and with said fees and interest to be paid from the funds paid into Court without further liability on any party or to such other person or entity as this Court may direct pursuant to this Decree; and the General Receiver of this Court is hereby authorized and directed to make such distributions to the INOVA Complainants sufficient to satisfy the judgment and award of attorneys' fees herein out of funds currently on deposit or which shall be deposited into the General Registry of this Court in the future; it is further

ORDERED, ADJUDGED and DECREED that the Motions of The Tauber Foundation, the Laszlo N. Tauber, M.D. Charitable Remainder Unitrust for the Benefit of the Neutrophil Research Fund, Inc., the Laszlo N. Tauber, M.D. Charitable Remainder Unitrust

for the Benefit of the Holocaust Center of Northern California, Inc. (hereinafter non-party organizations) and Respondent Jefferson Memorial Hospital Joint Venture to preclude transfer of a portion of the real estate and improvements and to reduce the monetary award to the Commonwealth are hereby denied; it is further

ORDERED, ADJUDGED and DECREED that the Motion of The Tauber Foundation and Respondents to strike the testimony of Mr. Thomas Reed is denied; it is further

ORDERED, ADJUDGED and DECREED that in addition to the July 13, 2000, November 30, 2000, December 27, 2000, January 23, 2001 and February 5, 2001 Letter Opinions previously referenced and incorporated herein, the Court's Letter Opinion of February 7, 1997 and its March 7, 1997 Order and December 6, 2000 Decree, are hereby adopted, referenced and incorporated as if set forth in full; it is further

ORDERED, ADJUDGED and DECREED that, the judgments entered herein are final and this matter is now concluded except with regard to the execution of this Decree, as set forth herein; it is further

ORDERED, ADJUDGED and DECREED that all parties may immediately proceed with an appeal if so desired, pursuant to the applicable laws of the Commonwealth and the Rules of the Supreme Court of Virginia; it is further

ORDERED, ADJUDGED and DECREED that this matter shall be continued on the Court's docket to consider the appointment of a Special Receiver or Custodian, and for the adoption of a plan for the use and disposition of the assets of Jefferson Memorial Hospital, Inc., and its successors in interest, which are subject to the constructive trust imposed herein, including the disposition of the real estate and the monetary assets of the trust; and it is further

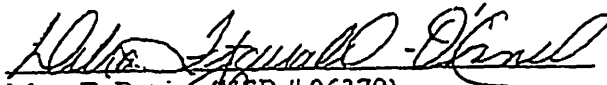


ORDERED, ADJUDGED and DECREED that the distribution of the assets described herein and subject to the constructive trust imposed by this Court shall be in accord with and subject to Virginia *cy pres* rules and not Maryland's corporate dissolution statutes.

ENTERED this 21 day of February, 2001

  
\_\_\_\_\_  
Circuit Court Judge

SEEN AND OBJECTED TO: For the reasons set forth in the record of this case, including but not limited to the pleadings and papers formally filed herein by Complainants.



Marc E. Bettins (VSB # 06379)

Ina C. Charvet (VSB # 39969)

Debra Fitzgerald-O'Connell (VSB # 31778)

Lawson & Frank, P.C.

6045 Wilson Boulevard

Suite 100

Arlington, Virginia 22205

(703) 534-4800

Counsel for Commonwealth of Virginia

A COPY TESTE:

Edward Samoniar, Clerk

  
\_\_\_\_\_, Deputy Clerk

Richard S. Schweiker, Jr. (VSB # 34258)

Senior Assistant Attorney General

Office of the Attorney General

900 East Main Street

Richmond, Virginia 23219

(804)786-2116

Counsel of Record for the Commonwealth of Virginia

SEEN AND OBJECTED TO:

*See attached copy for Signature* *AS*

Anthony J. Trenga  
MILLER & CHEVALIER  
655 Fifteenth Street, NW  
Suite 900  
Washington, DC 20005  
Counsel for INOVA Health Care System and  
INOVA Health System Foundation

SEEN AND OBJECTED TO:

*Gaspere J. Bono*

Gaspere J. Bono  
LONG, ALDRIDGE & NORMAN, L.L.P.  
701 Pennsylvania Avenue, N.W.  
Suite 600  
Washington, DC 20004  
Counsel for Respondents Jefferson Memorial Hospital  
Joint Venture, Jefferson Memorial Hospital Associates, Jefferson Memorial  
Hospital Corporation, Jefferson Corporation of Alexandria, Laszlo N. Tauber,  
Leslie L. Peters, Irwin S. Freedman

SEEN AND OBJECTED TO:

*Objections of Respondents are noted.*  
*Counsel has failed to*  
*endorse this decree*  
*AS*

Philip J. Hirschkop  
HIRSCHKOP & ASSOCIATES  
108 North Columbus Street  
Alexandria, Virginia 22314  
Counsel for Respondents Jefferson Memorial Hospital  
Joint Venture, Jefferson Memorial Hospital Associates, Jefferson Memorial  
Hospital Corporation, Jefferson Corporation of Alexandria, Laszlo N. Tauber,  
Leslie L. Peters, Irwin S. Freedman

SEEN AND OBJECTED TO:

Stephen G. Cochran  
The Jefferson Law Firm, PLC  
7th Floor  
McLean, Virginia 22101  
Counsel for Respondents

SEEN AND OBJECTED TO:

*Objections of Respondents are noted.  
Counsel has failed  
to endorse this Decree  
ADS*

Kevin M. O'Donnell  
HENRY & O'DONNELL, PC  
4103 Chain Bridge Road  
Suite 100  
Fairfax, Virginia 22030  
Counsel for Respondents Michael A. Corrado, Daniel J. Feriozi, Leslie P. Gondor,  
Magdolna Iranyi, Reginald McManus, Estate of Samuel Burtoff

SEEN AND OBJECTED TO:

*Objections of Respondent are noted.  
Counsel has failed to  
endorse this Decree  
ADS*

David Y. Kiyonaga  
526 King Street  
Suite 213  
Alexandria, Virginia 22314  
Counsel for Respondent Estate of James H. Scully

F:\TAUBER\PLEADINGS\Final Decree - 2/08/01

Circuit Court of Alexandria  
Virginia

Judges

DONALD M. HADDOCK

ALFRED D. SWERSKY

JOHN E. KLOCH



Courthouse  
520 King Street  
Alexandria, Virginia  
22314-3164  
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April 25, 2001

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Miller & Chevalier  
655 Fifteenth Street, NW, Suite 900  
Washington, D.C. 20005

Re: Commonwealth, *ex. rel.* v. Tauber, et al.  
Chancery No. CH961241  
Inova v. Tauber, et al., Chancery No. CH970488

Dear Counsel,

Respondent's decree accurately reflects the rulings of the Court and I have entered their proposed decree.

I have noted on the decree the objections of all parties.

Very truly yours,

A handwritten signature in black ink, appearing to read "A. Swersky", is written over a horizontal line. Below the signature, the name "Alfred D. Swersky" is printed in a serif font.

Alfred D. Swersky

Enclosure

J.APP. 0047

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

COMMONWEALTH OF VIRGINIA, ex. rel.,  
MARK EARLY, ATTORNEY GENERAL  
OF THE COMMONWEALTH OF VIRGINIA;  
MARK EARLEY, et al.,

Complainants,

v.

LASZLO N. TAUBER, ET AL.,

Respondents.

Chancery No. 961241

INOVA HEALTH CARE SYSTEMS, et al.,

Complainants,

v.

COMMONWEALTH OF VIRGINIA, ex. rel.,  
MARK EARLY, ATTORNEY  
GENERAL OF THE COMMONWEALTH OF  
VIRGINIA, et al.,

Respondents.

Chancery No. 970488

DECREE

**THIS MATTER** came to be heard on Friday, March 23, 2001, upon Respondents' *Motion to Suspend Enforcement of Decree Pending Outcome of Appeal*, and Friday, April 20, 2001, upon Respondents' *Motion for Reconsideration of its Motion to Suspend Enforcement of Decree Pending*

J.APP. 0048

*Outcome of Appeal or in the Alternative for Interim Stay of Enforcement Pending Review by Virginia Supreme Court.*

**IT APPEARING TO THE COURT**, upon consideration of the memoranda and pleadings filed and oral argument by counsel at the March 23, 2001 hearing, that for the reasons stated from the Bench at the time of the March 23, 2001 and April 20, 2001 hearings, that:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. Respondents' *Motion for Reconsideration of its Motion to Suspend Enforcement of Decree Pending Outcome of Appeal or in the Alternative for Interim Stay of Enforcement Pending Review by Virginia Supreme Court* is DENIED and the Court will require that the additional \$12 million be secured for purposes of appeal.


2. Any execution upon the February 21, 2001 Decree in this matter is hereby suspended for thirty days, until May 21, 2001, so as to provide Respondents in this matter with an opportunity to appeal this Court's ruling with respect to *Virginia Code* Section 8.01-676.1(C), and to allow the Supreme Court to review and decide whether or not the cash and supercedeas bond with surety rider currently on deposit with this Court which totals more than \$8.5 million together with the continuing monthly deposit with the General Receiver of the Inova settlement payments of \$177,083.33 per month constitute sufficient security for a stay of enforcement of this Court's February 21, 2001 decree pending appeal of that decree to the Virginia Supreme Court.

3. The existing supercedeas bond with surety rider and cash on deposit with this Court, as well as all future settlement payments which are to continue to be paid by Inova to the General Receiver, will remain on deposit with the Court until such time as an appropriate receiver is appointed by this Court and an appropriate plan of distribution has been adopted.

J.APP. 0049

4. After the Supreme Court has decided whether this Court's February 21, 2001 decree is correct or not, and if a receiver is then appointed by this Court after the appeal is decided, the appointed receiver will handle proposing a plan of distribution, collection of the judgment, execution on the bond and all of those other matters.

ENTERED this 25 day of April, 2001.

  
Circuit Court Judge

SEEN AND ALL OBJECTIONS NOTED  
AND PRESERVED FOR APPEAL:

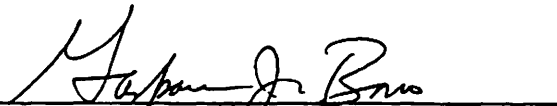
*objections noted  
AMS*

Marc E. Betties, Esq. (VAB # 06379)  
Lawson & Frank, P.C.  
6045 Wilson Boulevard, Suite 100  
Arlington, Virginia 22205

Richard S. Schneider, Jr., Esq. (VAB # 34258)  
Senior Assistant Attorney General  
900 East Main Street  
Richmond, VA 23219

COUNSEL FOR COMPLAINANTS

SEEN AND ALL OBJECTIONS NOTED  
AND PRESERVED FOR APPEAL:

  
Gaspare J. Bono, Esq.

Cameron Chick, Esq. (VA Bar No. 40224)  
Long Aldridge & Norman, LP  
701 Pennsylvania Avenue, NW  
Suite 600  
Washington, D.C. 20004

J.APP. 0050

*objections noted  
MS*

---

Philip J. Hirschkop, Esq.  
Hirschkop & Associates  
108 North Columbus Street  
Alexandria, Virginia 22314

*objections noted  
MS*

---

Kevin M. O'Donnell, Esq.  
Henry & O'Donnell, PC  
4103 Chain Bridge Road  
Suite 100  
Fairfax, Virginia 22030

COUNSEL FOR RESPONDENTS

SEEN AND ALL OBJECTIONS NOTED  
AND PRESERVED FOR APPEAL:

*objections noted  
MS*

---

Anthony J. Trenga  
Miller & Chevalier  
655 Fifteenth Street, N.W.  
Suite 900  
Washington, D.C. 20005

COUNSEL FOR INOVA HEALTH CARE SYSTEM  
AND INOVA HEALTH SYSTEM FOUNDATION

J.APP. 0051



1 P-R-O-C-E-E-D-I-N-G-S.

2 (Whereupon, the court reporter was sworn and  
3 the following proceedings were held:)

4 THE COURT: Call your first witness.

5 MR. BETTIUS: I call Michael Dooley, please.

6 THE COURT: All right.

7 BAILIFF: Mr. Dooley, please come forward.

8 Whereupon,

9 MICHAEL P. DOOLEY

10 was called for examination by counsel for complainant, and,  
11 after having been first duly sworn, was examined and  
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BETTIUS:

15 Q. Professor Dooley, state your name, please?

16 A. Michael P. Dooley.

17 Q. What is your profession or occupation?

18 A I'm a professor of law at the University of  
19 Virginia.

20 Q. Is there a particular area of specialization or  
21 concentration in your teaching?

22 A Yes. In my teaching on scholarship I have  
23 concentrated on court law and court government.

1 Q. Could you describe the chair which you hold?

2 A. The William S. Potter Chair is a memorial for  
3 William S. Potter who was a distinguished member of the  
4 Wilmington Bar and the position was established by his  
5 partners in his memory.

6 Q. And, Mr. Dooley, would you tell us what your  
7 education is?

8 A. Yes. I hold a law degree from the University of  
9 Iowa. I graduated with a JD degree in '63.

10 Q. After your graduation from college, would you  
11 tell the Court what your experience has been?

12 A. After my graduation from law school I practiced  
13 with Dooley Valentine in New York from '63 until '86. I was  
14 on the University of Illinois faculty from 1968 to 1971 and  
15 in 1971 I came to the University of Virginia as a visiting  
16 professor, was given a permanent appointment in 1972 and I  
17 have remained there ever since. I have taught as a  
18 visiting professor at the University of Michigan,  
19 University of Southern California and Salsburg Seminar in  
20 American Studies.

21 Q. Would you tell the Court do you conduct any  
22 activities outside of your teaching responsibilities at the  
23 University of Virginia.

1           A     Yes. I have served on a consulting basis on  
2 several occasions to other lawyers. I have served as an  
3 expert witness in cases and have on some occasions advised  
4 clients directly.

5           Q.     Would you inform the Court of some of the clients  
6 that you advised with respect to the conduct and legality  
7 of their corporate affairs?

8           A     Yes. The Virginia State Retirement System,  
9 Dominion Resources, Archer Daniel Midland Company.

10          Q.     All right, sir. Have you published in the area  
11 of corporate governance and director responsibility?

12          A.     Yes.

13          Q.     Would you tell His Honor about your publications,  
14 the nature and what they're used for?

15          A.     My publications have been both in the area of  
16 securities law in which I also have a significant interest  
17 and in corporate law and corporate governance. Among my  
18 publications that would be most directly relevant I suppose  
19 would be my book which is called Fundamentals of Corporate  
20 Law, which treats very heavily on corporate governance and  
21 a monograph that I published for the National Association  
22 of Corporate Directors, which is entitled "A Practical  
23 Guide for the Corporate Director." Two articles in the

1 Business Lawyer, one co-authored with Chief Justice Keesey  
2 (phonetic) which is the role of the board in derivative  
3 suits. A second model entitled "Two Models of Corporate  
4 Governance."

5 Q. You are familiar with the difference between  
6 conclusions of law in corporate governance apart from  
7 conclusions of law?

8 A. Yes.

9 Q. Is it your intention to offer any conclusions of  
10 law this morning?

11 A. No.

12 MR. BETTIUS: I'm going to offer Professor Dooley  
13 as an expert in corporate governance and matters pertaining  
14 to the proper discharge of corporate functions.

15 BY MR. BETTIUS:

16 Q. Before I do that, Professor Dooley, have you had  
17 any extensive experience in the area of not for profits?

18 A. I served as counsel to a not-for-profit  
19 organization entitled The Institute for financial Analysts,  
20 1974 until 1990. I have advised the Attorney General on  
21 several different occasions on matters relating to  
22 not-for-profit corporations.

23 Q. Have you had recent involvement in Trigon issues?

1 A. Yes.

2 Q. What was your involvement with Trigon?

3 A. I served as a consultant to the Attorney General.

4 Q. What that in relation to the appropriate transfer  
5 of assets?

6 A Yes.

7 THE COURT: Any questions about qualifications?

8 A. MR. CHOCKLEY: Briefly, Your Honor.

9 VOIR DIRE EXAMINATION

10 BY MR. CHOCKLEY:

11 Q. Good morning, Mr. Dooley.

12 A. Good morning.

13 Q. Mr. Dooley, you have testified only once before  
14 in the state court in Virginia; isn't that right, sir?

15 A Yes.

16 Q. That was in the Commonwealth versus Asher case in  
17 Loudoun County Circuit Court?

18 A Yes.

19 Q. That was the one occasion on which you have  
20 testified in Virginia?

21 A. In Virginia, yes.

22 Q. And in that case, the Court rejected your expert  
23 testimony, did it not?

1           A.    It did.

2           MR. CHOCKLEY:  Your Honor, we renew our motion.

3           BY MR. CHOCKLEY:

4           Q.    And it rejected your expert testimony, did it  
5 not, on the basis that it went to the ultimate issue?

6           A    Yes, that's correct.

7           MR. CHOCKLEY:  We renew our motion in limine on  
8 the grounds that this witness is being offered,  
9 notwithstanding the testimony, solely for the purposes of  
10 giving legal conclusions, and as Professor Friend has said  
11 in his book, that even if the witness is well qualified to  
12 give opinions -- and I'm not disputing the witness'  
13 qualifications obviously, his being a professor from the  
14 University of Virginia -- however, even notwithstanding his  
15 qualifications, if he's giving opinions that are not on  
16 areas where the matters should be obvious to the finder of  
17 fact, there is no need.  In fact, the Court may not receive  
18 that testimony.  And we ask to exclude his testimony, and  
19 we ask that it be excluded.

20           THE COURT:  I rule that Professor Dooley is a  
21 qualified expert and can testify, and you can object to any  
22 questions or answer that calls for a conclusion of law.

23           MR. CHOCKLEY:  Thank you.

1 BY MR. BETTIUS:

2 Q. Professor Dooley, in your representation of  
3 clients, do occasions present themselves when you deal with  
4 the appropriate ways to conduct business and appropriate  
5 ways to go out of business?

6 A Yes.

7 Q. Do lay people on a regular basis seek advise as  
8 to how to structure and conduct these kinds of  
9 transactions?

10 A Yes.

11 Q. I would like you to tell the Court in order to  
12 give a background of the opinions you are going to express  
13 in this case --

14 MR. BETTIUS: And, Your Honor, this is not going  
15 to be long testimony. At least I hope it's not.

16 BY MR. BETTIUS:

17 Q. -- what material have you studied and what  
18 material was furnished to you?

19 A. For this case?

20 Q. Yes.

21 A. I have examined the corporate history of JMHI and  
22 JMHC as represented in minutes of meetings of the Board of  
23 Directors, minutes of members, and minutes of shareholders

1 meetings.

2 I have further examined financial statements  
3 relating to JMHI, JMHC, the various affiliated partnerships  
4 to those two corporations.

5 I have examined some tax returns pertaining both  
6 to the corporations and to the partnerships. I have  
7 examined other correspondence, memoranda, that were  
8 apparently prepared relating to transactions that have been  
9 effected by the corporations.

10 Q. In terms of a director's discharge of his  
11 responsibilities both in the conduct and/or termination of  
12 business, would an appropriate knowledge of these documents  
13 in your opinion be prerequisite to a foundation for a  
14 decision?

15 A Yes, it would.

16 Q. Have you studied the record with particular care  
17 with respect to all the transactions which proceeded the  
18 activities of the Board of JMHI in 1971?

19 A Yes, I have.

20 Q. And did you further examine the situation as it  
21 existed at the time that Mr. Reeves was called upon for  
22 advice?

23 A Yes, I have.



1           Q.    Did you also develop an appreciation for the  
2           events which had transpired as a result of the IRS  
3           investigation which was commenced in 1969?

4           A     Yes.

5           Q.    In terms of the situation that then existed, have  
6           you come to a conclusion with respect to the conduct that  
7           the transactions that resulted as a result of Mr. Reeve's  
8           advice and the actions taken by the Board of JMHI and JMHC  
9           subsequent to that advice?

10           MR. BONO:  Objection.  The question necessarily  
11           calls for a legal conclusion.

12           THE COURT:  Well, that's a "yes" or "no."  He has  
13           either reached a conclusion or he hasn't, so it may be one  
14           question too early.

15           MR. BETTIUS:  It's two or three questions too  
16           early.

17           MR. BONO:  Yes, sir.

18           MR. DOOLEY:  Could you restate the question?

19           MR. BETTIUS:  Could you read the question back?.

20           (The court reporter read back the pending  
21           question:)

22           Q.    In terms of the situation that then existed, have  
23           you come to a conclusion with respect to the conduct that

1 the transactions that resulted as a result of Mr. Reeve's  
2 advice and the actions taken by the Board of JMHI and JMHC  
3 subsequent to that advice?

4 MR. BETTIUS: Let me restate the question.

5 BY MR. BETTIUS:

6 Q. Professor Dooley, with respect to appropriate  
7 steps in the normal course of business, have you come to a  
8 conclusion as to the compliance with good business practice  
9 in terms of the actions taken by the directors of the  
10 various corporate entities after the advice of Mr. Reeve's  
11 with reference to the IRS investigation?

12 A Yes, I have.

13 Q. Will you tell the Court what you have concluded?

14 MR. BONO: I object, Your Honor. The question  
15 necessarily calls for a legal conclusion, notwithstanding  
16 the statement of the question and the witness' disclaimer  
17 in the course of the voir dire.

18 MR. BETTIUS: Your Honor, my position is that in  
19 terms of the testimony that you are about to hear, these  
20 people say they want to go out of business. They said they  
21 went out of business, and I want to understand in terms of  
22 the normal business practices, did they follow normal  
23 accepted business practice in doing so. And I think that's

1 not a legal conclusion. That's the way you get it done.

2 THE COURT: What if they didn't? And I assume  
3 that's what his answer is going to be.

4 MR. BETTIUS: I'll ask what they should have  
5 done.

6 THE COURT: What relevance does that have to the  
7 determination of this case whether it was good business  
8 practice, which is what you phrased your question?

9 MR. BETTIUS: Your Honor, in terms of parlance,  
10 if you don't observe the corporate proprieties, you haven't  
11 accomplished the transaction. That's the conclusion that  
12 you have to come to.

13 And my sense of it is and as I read this ultimate  
14 issue question and question of law thing, we ultimately in  
15 many cases come down to a status of title issue.

16 Your Honor has done contested quiet title issues,  
17 you've done contested trespass issues, you've done adverse  
18 possession issues, and witnesses get on the stand all day  
19 and tell this Court about their interpretation of documents  
20 and the way documents went together and what they conclude  
21 and they apply fact to law and the application of fact to  
22 law in many areas.

23 If you ask a doctor, for instance, did he in

1 performing a first trimester abortion accord with good  
2 medical practice, the doctor is going to have to tell you,  
3 if he's testifying today, yes. If he's testifying in 1971,  
4 no, it was illegal.

5 You get into these kinds of questions all the  
6 time. "Based on your understanding --"

7 THE COURT: But your question is phrased "Did  
8 they follow good business practice."

9 MR. BETTIUS: That's right.

10 THE COURT: And the question to you is, what does  
11 that have to do with his case?

12 MR. BETTIUS: To this extent, Your Honor: To the  
13 extent that good business practice leads Your Honor to  
14 conclude that there was a way this had to be done and the  
15 witness is going to tell you why in his opinion good  
16 business practice dictates the way you do this.

17 He's not going to tell you what the law is. He's  
18 going to tell you why he thinks the law dictates this  
19 practice, and then Your Honor has to make a decision.

20 Your Honor has to make a decision whether he's  
21 right and or wrong and whether that practice is dictated by  
22 law.

23 He's going to tell you why I would advise a

1 client to do this, and I don't think there's any question  
2 we're dealing in many of these areas with application of  
3 fact to law.

4 I mean I don't find --

5 THE COURT: But you're missing my point. You  
6 have phrased this question not in terms of the legality or  
7 illegality of this transaction but in terms of whether or  
8 not it was a good business practice.

9 MR. BETTIUS: Let me withdraw the question.

10 BY MR. BETTIUS:

11 Q. Professor Dooley, do you have an opinion as to  
12 whether requisite and required steps were followed which  
13 are dictated by practice in every day transactions in  
14 Virginia and what the consequence of that failure is in  
15 this case?

16 A Yes, I do.

17 Q. What do you conclude?

18 MR. BONO: Your Honor, I object. Same basis. It  
19 necessarily draws upon the Professor's legal knowledge, and  
20 notwithstanding and --

21 And with respect to his testimony in general, I  
22 think what Mr. Bettius is saying in response to the  
23 previous objection reveals exactly the problem with this

1 witness' testimony and why it should be excluded.

2 Mr. Bettius said that -- he's going to be asked  
3 why the law dictates this practice. That is precisely the  
4 issue, Your Honor. That is a legal conclusion and that's  
5 something that the Court can decide on its own without the  
6 benefit of Mr. Dooley's admitted legal expertise in that  
7 area, and again, I ask to exclude the testimony generally  
8 notwithstanding, and I also ask you to sustain my  
9 objections to these questions.

10 THE COURT: I'll overrule the objection and I  
11 will deal specifically when I decide the case the effect  
12 that this testimony might have. I'll just have to deal  
13 with it specifically.

14 You may rest assured, Mr. Bono, that Professor  
15 Dooley, if he states an opinion as to what he believes the  
16 law requires, that that's not binding on the Court at all;  
17 in fact, probably would not be admissible.

18 MR. BETTIUS: We would hope you would disregard  
19 it if it's inappropriate.

20 THE COURT: I'll let you know specifically the  
21 effect on the Court's ruling.

22 MR. BETTIUS: I would appreciate it if you would  
23 do so.

1 BY MR. BETTIUS:

2 Q. All right, Professor Dooley.

3 A. Perhaps the easiest way for me to go at this is  
4 for me to recount the history of what happened in response  
5 to Mr. Reeve's advice of November 20.

6 Mr. Reeve's, on November 20th, principal advice  
7 was to convert the non-stock, non-profit corporation into a  
8 for-profit stock corporation and to merge it with another  
9 corporation to be formed. That subsequently became the  
10 Delaware corporation known as JMHC.

11 Resolutions were passed by the Board of Directors  
12 and the members of JMHI looking toward a merger of JMHI  
13 into JMHC. So far as I can determine from the record, that  
14 merger was never effected.

15 Subsequently in 1974 and 1975 further action was  
16 taken which ignores and contradicts the assertion made in  
17 1971 that there had been a merger of those two companies.

18 Nevertheless, it appears in 1971 onward, from  
19 June 30 or July 1, depending upon how you count it, that  
20 the business of JMHI ceases, its assets are used by JMHC,  
21 which continues then to operate as a hospital as though it  
22 were JMHI even though so far as I can tell there were no  
23 steps taken to effect a transfer of the assets of JMHI to

1 JMHC.

2 Q. All right, sir. I want you to tell the Court  
3 based on your understanding of the situation extant as of  
4 1971, if these people desired not to stay in business --  
5 let's assume they had come to a conclusion of insolvency --  
6 what they had to do under those circumstances to shed JMHI  
7 as an ongoing entity?

8 MR. CHOCKLEY: I object only as to the vagueness  
9 of the question as to which time period counsel is  
10 referring to.

11 MR. BETTIUS: 1971. I can't be more specific  
12 than that.

13 BY MR. BETTIUS:

14 Q. And let's take June 30th or July 1st of 1971,  
15 '70 - '71. From the period of time of Mr. Reeve's letter  
16 in, November of 1970 to the period which they alleged that  
17 they effected an equitable transfer of the assets.

18 A. If it was desired to put JMHI out of business, to  
19 bring a termination to its corporate existence in 1971,  
20 there are standard practices and procedures that are  
21 followed and observed in order to do that.

22 In essence, what the corporation does in order to  
23 end its legal existence is to begin a process of



1 dissolution. In dissolution, assets and liabilities are  
2 accounted for, liabilities are discharged, and the  
3 remaining assets are then distributed in accordance with  
4 statutory procedures which are by-and-large uniform across  
5 all fifty states.

6 Q. In terms of the procedure of dissolution, do you  
7 take formal steps with regard to the state to notify the  
8 state to dissolve?

9 A Yes, you do.

10 Q. Could you tell us what that is?

11 A. After a plan of dissolution has been completed,  
12 one then files such a statement with the applicable state  
13 authority and receives a document called a Certificate of  
14 Dissolution.

15 Q. In terms of formalities and prerequisites within  
16 the corporation itself, is the decision to dissolve highly  
17 formalistic or is it a required step that you must go  
18 through, in your opinion and practice, to get yourself  
19 dissolved?

20 A Yes. It is the same set of steps and procedures  
21 that are followed for any basic corporate reorganization.  
22 That is to say that first of all there is a determination  
23 by the Board of Directors that it is advisable and in the

1 best interest of the corporation to dissolve it, a devising  
2 of a plan of dissolution which is then presented to the  
3 shareholders or members of corporation depending on whether  
4 its for-profit or not-for-profit.

5 The members themselves must then vote to approve  
6 the dissolution. Then begins the process of liquidation.

7 Once the members have approved the act of  
8 dissolution, the corporation is to cease doing business and  
9 to devote its efforts entirely to carrying out the  
10 liquidation and dissolution.

11 Q. Based on your understanding of the situation as  
12 it pertains to corporations in Virginia, Maryland, or  
13 Delaware if there is any difference, is a simple majority  
14 enough to get this done with the members, or do you need a  
15 larger amount?

16 A. At least in Virginia you need more than  
17 two-thirds, I believe, and it is a two-thirds vote in  
18 Maryland as well.

19 Q. Did you observe that any of the formalities --  
20 Let's go through this issue of merger. What  
21 happens if you want to merge? What are the requisite and  
22 appropriate formalities that you follow in merger?

23 MR. CHOCKLEY: I object. Here he's simply

1 stating what the law is.

2 THE COURT: What's required, isn't it?

3 MR. BETTIUS: Yes, sir, but --

4 BY MR. BETTIUS:

5 Q. Do you find that these transactions are  
6 appropriately documented in the corporate records?

7 A. No, they are not.

8 MR. CHOCKLEY: I object, Your Honor. I  
9 understood his question to be --

10 THE COURT: He changed the question.

11 MR. CHOCKLEY: I understood the question to be a  
12 general question and I moved to strike the answer. And he  
13 asked him a general question, not about this particular  
14 transaction, as I understood it.

15 THE COURT: I thought Mr. Bettius changed the  
16 question after you objected.

17 MR. BETTIUS: I did.

18 MR. CHOCKLEY: I understood he changed the  
19 question, Your Honor. My understanding of the question is  
20 that he was asking him a general question about  
21 corporations in general.

22 THE COURT: Hold on a second. Mr. Chockley has  
23 an objection.

1                   Go ahead and ask the question again.

2                   BY MR. BETTIUS:

3                   Q.   Do you find that the requisite formalities were  
4 followed in this case?

5                   THE COURT: That wasn't what you asked. You  
6 asked something about whether it was documented.

7                   BY MR. BETTIUS:

8                   Q.   Are requisite formalities documented in this  
9 case?

10                  MR. CHOCKLEY: One, the record speaks for  
11 itself. Two, whether it's requisite or not is a legal  
12 conclusion.

13                  THE COURT: Overruled.

14                  THE WITNESS: We're speaking now with respect to  
15 the 1971 merger?

16                  BY MR. BETTIUS:

17                  Q.   Transaction.

18                  A.   There is a partial record in the sense that there  
19 is a resolution of the Board of Directors, there is a  
20 resolution of the members of the corporation. Subsequently  
21 the minutes reveal that the merger has not yet been  
22 completed, and that is the last reference I have been able  
23 to find to the purported merger in 1971.

1           And, again, subsequent developments in the  
2           corporation indicate that at least from the JMHC directors'  
3           viewpoint, that merger was not completed, nor have I been  
4           able to find any indication in the official state records  
5           that such a merger was ever effected.

6           Q     You indicated that there were conflicting  
7           indications and inconsistencies in the corporate records  
8           between the '71 transaction and the '75 transaction.

9                     Can you tell us what those irregularities and  
10           inconsistencies were?

11           A     Yes. If a merger had in fact been effectuated in  
12           1971, the commonly-understood effect of a merger is that  
13           all assets and liabilities of the disappearing corporation  
14           are transferred by operation of law to the surviving  
15           corporation, JMHC in this case.

16                     Beginning in 1974 and then eventually in 1975  
17           there is a recitation in the minutes that JMHI has  
18           defaulted both on bond obligations that were outstanding  
19           prior to that time and on a contract dispute with one Dr.  
20           Palmer.

21                     As a result of that, it is recited in the minutes  
22           that JMHI is insolvent and has agreed to sell its assets to  
23           JMHC in exchange for JMHC's assumption of those

1 liabilities.

2           There is then purported minutes of the Board of  
3 Directors of JMHI and of the members of JMHI, although not,  
4 I believe, the number of members that would be required to  
5 approve such a transaction authorizing the sale of all  
6 assets and assumption of liabilities, notwithstanding the  
7 fact that in 1973, according to official state records,  
8 JMHI ceased to have any corporate existence at all because  
9 its charter has been revoked by the State of Maryland.

10           Q. All right, sir. I'm going to ask you to examine  
11 with me this situation. Let us suppose that in the '71  
12 time period a determination was made --

13           Let me ask you this. Do you find, and would you,  
14 if you were acting as a director of JMHC, look for and try  
15 to find within the records a basis for the assumption of  
16 assets if you were going to try and assume the assets of a  
17 non-profit?

18           A. If I were a director of JMHC?

19           Q. JMHC and/or a director of JMHI.

20           A Well, yes. I mean, if --

21           MR. CHOCKLEY: I object, Your Honor. He was  
22 qualified, as the Court has ruled, to testify about  
23 corporate law and at least corporate governance, but he's

1 not qualified to testify as a director. He's qualified to  
2 advise --

3 MR. BETTIUS: He advised directors. I'll  
4 rephrase the question.

5 THE COURT: Rephrase it.

6 BY MR. BETTIUS:

7 Q. Let's assume this is the situation extant in  
8 1971. The directors of JMHI tell you that they want to go  
9 out of business.

10 A Yes.

11 Q. And that they want to assume all of the assets.  
12 What is the first caution or what is the first thing that  
13 you tell them with respect to the transaction they're  
14 contemplating?

15 A. Just so I understand the question, we're now in  
16 1970-1971. The JMHI Board has decided it is advisable to  
17 go out of business and some or all of those members also  
18 have a desire to continue in the business of being a  
19 hospital but on a for-profit basis.

20 Q. Yes. And you have dealt with this very issue  
21 yourself in real practice, have you not?

22 A Yes.

23 Q. What do you tell them?

1           A     Well, the primary problem that has to be overcome  
2 here is somehow to bring an orderly end to the corporate  
3 existence of JMHI, and what I would advise the directors is  
4 that first of all they must be able to make a good-faith  
5 business judgment that for whatever reason it is not  
6 possible to carry out the corporate mission of JMHI.

7           Q.     Now, before you go, have you examined the records  
8 of this corporation and the motivation as you see it and  
9 the financial condition that existed as of the time they  
10 made this decision?

11          A     Yes, I have.

12          Q.     Do you find the basis for the decision clearly  
13 expressed?

14          A.     The basis that --

15                 There is no corporate basis clearly expressed for  
16 doing this; no reason given for why the not-for-profit  
17 hospital can no longer continue.

18          Q.     Is a personal basis stated?

19          A.     There are certainly personal bases stated.

20          Q.     What are those personal bases stated?

21          A.     Well, they have primarily to do with the spectre  
22 of personal liability of the directors.

23                 MR. CHOCKLEY: Objection. Move to strike the



1 witness' answer on the grounds that all he is asking him to  
2 do is recite what the documents say and the documents speak  
3 for themselves.

4 THE COURT: Objection overruled.

5 BY MR. BETTIUS:

6 Q. Continue, please, sir.

7 A. Part of this can be gleaned from Mr. Reeve's  
8 letter of November 20, 1970. There is a subsequent  
9 explanation by Dr. Tauber in the March 13, 1974 minutes of  
10 JMHC that also bears upon this, and together these two  
11 letters seem to me to indicate pretty clearly what the  
12 basis for this transaction was.

13 Q. The dilemma that the parties found themselves in,  
14 was that a corporate dilemma or was it a personal dilemma  
15 in dealing with the corporation?

16 A. In my judgment, it was primarily a personal  
17 dilemma, although since they had lost their tax exempt  
18 status, if they had in fact had any bona fide intention of  
19 continuing as a charitable hospital, that would eventually  
20 cause them problems as well.

21 Q. Would you explain that to the Court?

22 A Yes. After the 501(c)(3) exemption had been  
23 lost, JMHI was now in a position in which, in my judgment,

1 it would have been extremely difficult to secure donations  
2 from outside parties in order to fund the hospital if that  
3 had been their intent and if they had in fact been trying  
4 to run a not-for-profit hospital with broad community  
5 support.

6 The reason for that is that unless the  
7 corporation is qualified under 501(c)(3), personal  
8 contributions are not deductible from the individual income  
9 tax of those individuals or corporations that may make  
10 donations.

11 This would mean that as a practical matter that  
12 unless they somehow were able to regain that exemption  
13 through a corporate restructuring of some sort that they  
14 would never be able to obtain donations. So that is a very  
15 significant roadblock to the continued success of JMHI as a  
16 not-for-profit corporation in terms of expansion.

17 There is nothing in the loss of the tax status of  
18 JMHI as a not-for-profit corporation that in my judgment  
19 would have prohibited them from going ahead and continuing  
20 to operate the hospital on that basis.

21 Q. Many not-for-profits do operate without  
22 exemption, do they not?

23 A Yes, they do.

1 Q. And are there business reasons why they do?

2 A Yes. Very often, particularly in the case of  
3 smaller private foundations, the foundation members do not  
4 wish to make the kind of public disclosure that would be  
5 required in order to maintain 501(c)(3) exempt status.

6 Q. So how do they proceed to act in a charitable  
7 way?

8 A. They continue to operate on a not-for-profit  
9 basis, which means basically that no part of the income can  
10 enure to the private benefit of any individual or group of  
11 individuals, that assets and earnings of the corporation or  
12 foundation are to be devoted to the purposes for which the  
13 foundation or corporation was created, and they simply file  
14 whatever taxes are due.

15 Q. And to the extent that they distribute, there's  
16 no income tax; this is a charitable deduction; is that  
17 correct, Professor Dooley?

18 A. They would be able to take for any donations that  
19 they make that themselves would qualify under 501(c)(3) in  
20 offsetting charitable deductions; correct.

21 Q. So as I understand your testimony, from the  
22 corporation's point of view, the revocation of tax exempt  
23 status may have affected donations but they could have kept

1 on just as they had before.

2 A. They could have kept on just as they had before,  
3 although they themselves would undoubtedly have ended up  
4 paying income tax on any income that the hospital  
5 realized. So it is certainly not as advantageous in terms  
6 of the bottom line. But they could have done so.

7 Q. Now, why could they not have just merged the two  
8 corporations together?

9 A Well, because --

10 MR. CHOCKLEY: That calls for a legal conclusion.

11 THE COURT: Sounds awfully like one, doesn't it,  
12 Mr. Bettius?.

13 BY MR. BETTIUS:

14 Q. Is there a prohibition that you know of that  
15 prohibits that?

16 MR. CHOCKLEY: Same objection.

17 BY MR. BETTIUS:

18 Q. Is there a basic difference in the relationship  
19 of a director, as you understand it, to a not-for-profit  
20 corporation and a director in a for-profit corporation that  
21 structures every decision that you make?

22 A Well, the basic decision is on for whose benefit  
23 the corporation is being run. In terms of fiduciary duty,

1 of course, the duties are quite close. In both instances  
2 the director is always to advance the interest of the  
3 corporation; he is to subordinate any personal interest.

4 What makes the not-for-profit somewhat different  
5 is that you have to be very careful that no part of the  
6 income goes to benefit a director, a member, an officer or  
7 someone else in a personal benefit.

8 For example, directors of for-profit corporations  
9 sometimes have dealings with their own corporation. While  
10 in both instances those dealings are subjected to  
11 disclosure, approval and fairness requirements, you have to  
12 be particularly careful in the case of not-for-profit  
13 corporations.

14 Q. Is there a difference in who owns the assets? Is  
15 that in fact what you are saying?

16 A Yes. In the case of a for-profit corporation  
17 you have a very clear ultimate owner; that is, the  
18 shareholders own the residual interest, so that your duty  
19 as a director is to try to increase the size of the  
20 residual interest.

21 In the case of a not-for-profit corporation, no  
22 one really owns the residual interest, that residual  
23 interest is to be devoted to carrying out the purposes of

1 the corporation for the benefit of whatever beneficiaries  
2 of the corporation there are and your objective then is to  
3 maximize the services, maximize the benefits for the  
4 benefit of the intended clients insofar as you can.

5 Q. In a merger is there an exchange or pooling of  
6 assets and an exchange of stock?

7 MR. CHOCKLEY: I object, Your Honor. Again, it's  
8 a legal conclusion.

9 MR. BETTIUS: No. Is that technically what  
10 happens.

11 MR. CHOCKLEY: He's asking what is a merger.

12 THE COURT: Objection overruled.

13 BY MR. BETTIUS:

14 Q. What is a merger?

15 A. A merger is a joining of two corporations.

16 MR. CHOCKLEY: Objection, Your Honor.

17 THE COURT: The objection to that ought to be  
18 that it asks the obvious, but I'll let the professor answer  
19 it.

20 BY MR. BETTIUS:

21 Q. I want to know what do the directors of a  
22 non-stock corporation have to trade to get stock. If they  
23 try to set up one of these trades, what have they got to

1 trade?

2 A. Well, they have no residual interest to trade,  
3 for one thing. There are no net assets that can be traded  
4 in exchange for a consideration coming back from the  
5 surviving corporation.

6 Normally in a merger, consideration comes from  
7 the surviving corporation directly to the owners of the  
8 residual interest of the disappearing corporation, but as  
9 we have already seen, there are no owners of the residual  
10 interest of the disappearing corporation in the case of a  
11 not-for-profit.

12 Q. Let's suppose, based on your experience with the  
13 transfer of assets and conversions, there's an --

14 Do you find any decision by Board of Directors  
15 manifested anywhere that the corporation is insolvent --  
16 I'm talking about JMHI -- and can't continue in business?  
17 Is this anywhere in the records?

18 A. No.

19 MR. CHOCKLEY: Objection, Your Honor.

20 THE COURT: Overruled.

21 BY MR. BETTIUS:

22 Q. Now, let's suppose formally or informally that  
23 we're running this corporation and we have come to a

1 conclusion it's just out -- it has no assets. Let's assume  
2 this IRS thing out is out of here. We're just not going to  
3 continue another day.

4 Can we save the assets, just start up tomorrow  
5 and do business and call ourselves another name in any  
6 circumstances?

7 A No.

8 Q. What is the prohibition against that, as you see  
9 it?

10 MR. CHOCKLEY: I object, Your Honor. What's the  
11 "prohibition."

12 BY MR. BETTIUS:

13 Q. What obstacles are there in implementing that  
14 transaction?

15 MR. CHOCKLEY: Same objection.

16 THE COURT: I'll hear the answer, and if it  
17 involves statutory prohibition, I'll do whatever is  
18 necessary.

19 THE WITNESS: Well, it simply is a logical  
20 matter. You have to bring an end to one corporate life  
21 before you can carry on with another. Corporations are  
22 legal persons. Once you have created them by incorporating  
23 them, unlike human persons, they endure in perpetuity, so



1     that some formal steps have to be taken to bring an end to  
2     the life of this one legal person; some accounting and  
3     disposition of its assets and liabilities, just as you  
4     would do in the case of a deceased person, before any other  
5     organization or individual can begin to carry on in a new  
6     form with some of those assets.

7             BY MR. BETTIUS:

8             Q.     All right. It's 1971 and we have come to the  
9     formal conclusion we just are not able to go on and we're  
10    community-spirited and we want to keep this hospital  
11    going. Is there something we must do in order to take the  
12    property and keep going? How would we do it?

13            A.     To take the property and keep going?

14            Q.     Let's suppose we want to make an argument about  
15    net assets. We say our liabilities are greater, and I  
16    understand you said they didn't assume the liabilities, but  
17    let's say we're going to assume the liabilities and we  
18    determine that the liabilities are greater than the  
19    assets. How can we keep going if we're willing to then go  
20    in and support the liabilities and save the assets? What  
21    must we do?

22            A     Well, there were two paths that might have been  
23    taken in 1971. One I have already alluded to and I gather

1 that's not what your question goes to, but one is to  
2 continue the business as a bona fide not-for-profit  
3 charitable institution.

4 That would have involved taking steps to be able  
5 to reclaim the 501(c)(3) exemption, which in my judgment  
6 would have required very significant changes in the way  
7 that the corporation did business. Let's put that to one  
8 side.

9 Let us assume then that the decision by the Board  
10 of Directors is that it is infeasible to carry on this  
11 community hospital in a not-for-profit way, although at  
12 some point in the future, we, the same individuals, may  
13 wish to run a community hospital on a for-profit basis.

14 First step, again, is some orderly termination of  
15 the not-for-profit corporation, which would involve a  
16 disposition of its assets, presumably for the -- well, not  
17 "presumably" -- clearly for the best possible price that  
18 could be gotten for those assets.

19 Then we would follow the usual steps in  
20 dissolution, which would be to have a plan of dissolution  
21 approved by the Board, approved by the members, eventually  
22 filed with the state and eventually getting a state  
23 certificate.

1           If I may say so, one of the difficulties with  
2 dissolving this corporation in a way that assets might be  
3 left to carry on perhaps later in a for-profit basis in  
4 1971 is that the corporation has from the beginning been  
5 sort of hopelessly conflicted.

6           It is very difficult to have any arm's-length  
7 transactions because the people who are selling things and  
8 leasing things to the corporation are the members of the  
9 partnership who are also members of the hospital who  
10 by-and-large are also the directors of the corporation.

11           So if we were to bring about an orderly end to  
12 this corporation in 1971, in my judgment it would have been  
13 very important to get some sort of independent  
14 decision-maker involved.

15           Q.   Is there a procedure that allows you to do just  
16 that?

17           A    Yes.  Again, in virtually all states, and  
18 certainly it's the case in both Virginia and Maryland, that  
19 you may in a voluntary dissolution proceeding apply to the  
20 Court to have a receiver appointed.

21           In addition, in Virginia you may also apply to  
22 the Circuit Court to oversee and approve the plan of  
23 dissolution.

1 Q. I'm going to put one more fact in here. When we  
2 finish at the end of the day, all the directors of the  
3 corporation are going to be in common and the new  
4 corporation is going to have the same directors. Under  
5 those circumstances, is the procedure to get judicial or  
6 other appropriate scrutiny mandatory?

7 A. Well, it is not mandatory in terms of the  
8 statute.

9 MR. CHOCKLEY: I object. Whether it's mandatory  
10 or not is a legal conclusion.

11 THE COURT: You mean required by statute?

12 BY MR. BETTIUS:

13 Q. How could you remove the stain of fiduciary  
14 conflict in your opinion as a practitioner without going to  
15 court?

16 MR. CHOCKLEY: Same objection.

17 THE COURT: Objection overruled.

18 THE WITNESS: Well, the other possibility would,  
19 in my judgment, not be very practical, and the way that one  
20 tries to remove questions about conflicted interest is to  
21 make sure that you have an independent Board of Directors.

22 That would mean then going out and securing  
23 people of talent and rectitude and integrity to serve as

1 independent directors of this corporation during the period  
2 of dissolution, and in my judgment, that's not something I  
3 would recommend.

4 I think it would be very difficult to get leading  
5 members of the community to serve as pallbearers for a  
6 brief period of time. There is no payoff in terms of  
7 community service.

8 So that's certainly a possibility. It's not one  
9 that in my judgment would be very feasible and I wouldn't  
10 recommend it.

11 Q. Now, I'm going to ask you to assume that you are  
12 looking at this situation in 1975 and you have seen these  
13 purported inconsistencies and you have seen what these  
14 people have done again in 1975 and are now conveying to  
15 JMHJV. I want you to assume that these assets are now in  
16 JMHJV.

17 Is it your opinion that that conveyance which you  
18 said you believe is flawed -- how would you fix that?

19 MR. CHOCKLEY: I object, Your Honor. The  
20 conveyance to JMHJV is beyond this proceeding. It's beyond  
21 the scope of this proceeding. This is well up into 1975.

22 MR. BETTIUS: That's right. Your Honor, we have  
23 to now determine --

1           We have a situation where we have an invalid  
2           conveyance because this corporation is no longer in  
3           business. It's conflicted itself out. And now the day  
4           after this conveyance, how do we fix it. How do we go  
5           about fixing that.

6           THE COURT: What should they have done?

7           MR. BETTIUS: What could they have done having  
8           effected yet another invalid conveyance.

9           THE COURT: How is that relevant to the facts  
10          here when I have to deal with what actually was done?

11          MR. BETTIUS: I want to know from there how you  
12          fix it today.

13          THE COURT: How do you fix it today?

14          MR. BETTIUS: Yes.

15          THE COURT: I'll sustain the objection.

16          MR. BETTIUS: All right.

17          BY MR. BETTIUS:

18          Q. Now, Professor Dooley, in terms of the 1975  
19          transaction, once it's determined that the corporation has  
20          lost its corporate existence and has acted with respect to  
21          the property as they have, do you have a conclusion that  
22          you believe, based on failure or lack of formality, as to  
23          where the assets of JMHI were after the attempt to convey

1       them to JMHC?

2           A.     This is after 1971?

3           Q.     Yes, and after the 1975 transaction.  Where are  
4       the assets?

5           A     Well, from --

6           MR. CHOCKLEY:  I object, Your Honor.  He changed  
7       the question.

8           BY MR. BETTIUS:

9           Q.     Where are they after the '71 transaction?

10          MR. CHOCKLEY:  I object again.  That calls for a  
11       legal conclusion.

12          THE COURT:  Objection sustained.

13          BY MR. BETTIUS:

14          Q.     Do you have a conclusion as to the effect --

15                 As I understand it, you believe that the 1971  
16       attempted merger is a failed transaction; is that correct?

17          A     Yes.

18          Q.     In terms of the two corporations, what did JMHC  
19       acquire based on your understanding of the resolutions and  
20       what was attempted to be transferred?  What did JMHC  
21       acquire then?

22          A.     From JMHI nothing.

23          Q.     What did JMHI divest itself of?

1           A.    Nothing.

2           Q.    Do you have an opinion, sir, with reference to  
3 the '75 transaction --

4           MR. CHOCKLEY: I object, Your Honor. Vague.

5           THE COURT: I think you are really into the  
6 effects of the facts, Mr. Bettius.

7           Let me come to an understanding every time this  
8 case strays into '75. It's not a timeframe issue for me  
9 because I have ruled before that some of the actions taken  
10 in '74 and '75 were relevant and that they clearly reflect  
11 that at least somebody believes there was a problem with  
12 what happened in 1970 and '71 and there were efforts made  
13 to correct it, but Professor Dooley, to sit here and  
14 testify that in his opinion these assets still rest with  
15 JMHI or its trustees is the conclusion that I've got to  
16 reach.

17          MR. BETTIUS: That's true.

18          THE COURT: And that's what you just asked him.

19          MR. BETTIUS: That's true.

20          THE COURT: I'll sustain the objection.

21          MR. BETTIUS: May we have just a moment?

22          THE COURT: All right.

23          MR. BETTIUS: Your Honor, I have nothing



1 further. Thank you.

2 CROSS-EXAMINATION

3 BY MR. CHOCKLEY:

4 Q. Professor, one of the things that you talked  
5 about was that you had relied on your reading of minutes?

6 A Yes.

7 Q. And there are no minutes from the period of 1965  
8 to 1971 for you to review, were there?

9 A. There are no minutes from 1965 until -- I believe  
10 there are minutes of the merger, but perhaps I am mistaken  
11 about that, in 1971. But generally-speaking, that's  
12 correct.

13 Q. And there is no requirement that the corporation  
14 keep minutes, is there?

15 A. No, there is not.

16 Q. Now, among other things that you also relied  
17 upon, sir, was a memorandum of law prepared by counsel for  
18 the complainants; isn't that correct, sir?

19 A. I don't think it is accurate to say that I relied  
20 upon it.

21 Q. You did review it, did you not?

22 A. I did review it.

23 Q. And you relied upon it at your deposition to seek

1 out some answers to some questions I posed to you, did you  
2 not?

3 A. I relied upon it to give you a statutory citation  
4 which you had asked for.

5 Q. Now, if a Board for a non-profit concludes that  
6 they need to change the form of the corporation to  
7 for-profit status in order to continue providing medical  
8 services, it can be appropriate to do that; isn't that  
9 correct, sir?

10 A. Well, not in the terms of the way you have put  
11 the question because there is no easy way to convert a  
12 not-for-profit into a for-profit without going through the  
13 sorts of steps that I outlined in my direct examination.

14 Q. But if the non-profit is providing medical  
15 services and they determine that the only way they can  
16 continue to provide medical services is to change the  
17 corporate form, there are appropriate ways of doing that,  
18 are there not?

19 A Yes. By dissolving and then by selling those  
20 assets and then by having another corporation begin to  
21 carry on the same business.

22 Q. Now, Mr. Dooley, this is the fifth time that you  
23 have been engaged by the Attorney General in the last ten

1 or twelve years, is it not?

2 A. Several of those occasions, services were  
3 rendered by me on a pro bono basis.

4 Q. Well, the answer to my question, it is the fifth  
5 time, is it not?

6 A. Five sounds right.

7 Q. In fact, this is the fourth time in the last five  
8 years; is that not right?

9 A Yes, that's probably correct.

10 Q. And those four occasions are not pro bono, are  
11 they?

12 A. The most recent one was, Trigon. Portions of the  
13 advice I gave in relation to the Virginia Retirement System  
14 were done on a pro bono basis.

15 Q. And you have never been engaged in a matter  
16 opposing the Attorney General, have you?

17 A. No, I have not.

18 Q. Thank you.

19 REDIRECT EXAMINATION

20 BY MR. BETTIUS:

21 Q. Is your testimony for sale?

22 A. No, it is not.

23 Q. Thank you.

1 THE COURT: May Professor Dooley be excused?

2 All right, thank you. You are free to go or you  
3 may stay in the courtroom if you like.

4 (Witness excused.)

5 THE COURT: Please come forward to the witness  
6 stand over here, sir.

7 Whereupon,

8 ROBERT E. WILSON

9 was called for examination by counsel for Complainant, and,  
10 after having been first duly sworn, was examined and  
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FOX:

14 Q. Good morning, Mr. Wilson.

15 A. Good morning.

16 Q. Would you state for the Court your full name?

17 A. Robert E. Wilson.

18 Q. Mr. Wilson, by whom are you employed?

19 A. Arthur Anderson.

20 Q. And Arthur Anderson is what?

21 A. Arthur Anderson is a public accounting and  
22 consulting firm.

23 Q. And you are located in which office, sir?

## P R O C E E D I N G S

MR. BETTIUS: The Commonwealth calls  
Dr. Tauber.

MR. CHOCKLEY: As a preliminary matter, I would  
like to hand up to the Court the file, to file  
Respondents' objections to Complainant's trial exhibits  
that we asserted yesterday. I just wanted to  
memorialize them for the Court, because there seemed to  
be a little confusion, at least on our side. Maybe not  
anybody else's side about which ones.

THE COURT: All right.

MR. FOX: We reserve the right to further argue  
this objection.

THE COURT: All right. I'll hear you.

Doctor, would you take the witness stand,  
please.

MR. FOX: Your Honor, I have Ms. Harper from  
our office. She's going to assist in turning to  
exhibits from those books, if she may sit --

THE COURT: All right. That will be all right.

Whereupon,

LASZLO N. TAUBER,

1 was called as a witness by and on behalf of the  
2 Complainant and after having been first duly sworn, was  
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 MR. BETTIUS: Your Honor, one of the  
6 difficulties we have is that I'm hard of hearing and  
7 Dr. Tauber is very soft spoken.

8 BY MR. BETTIUS:

9 Q Doctor, would you try during the examination to  
10 the best of your ability to keep your voice up?

11 A I'll do my best.

12 Q Thank you, Doctor. Good morning, Dr. Tauber.

13 A Good morning, Mr. Bettius.

14 Q Dr. Tauber, would it be fair to say that the  
15 creation of a physician-owned hospital in Alexandria in  
16 its inception was your idea?

17 A Yes, sir, that's correct.

18 Q To that end, in 1962, you began to acquire  
19 property as described yesterday in testimony; is that  
20 correct?

21 A That is correct.

22 Q And initially, you used L&L as a vehicle?

23 A Yes, I did.

1 Q And then subsequently, at a subsequent time,  
2 you began to take title as Tauber, Trustee; is that  
3 correct?

4 A Yes.

5 Q And I'll get to the specific conveyances with  
6 you. Initially, Dr. Tauber, you formed a corporation,  
7 did you not, called Jefferson Memorial Hospital, Inc.?

8 A Yes, I did.

9 Q And it was originally filed as a stock  
10 corporation, was it not?

11 A Yes. It was a stock corporation.

12 Q Ms. Harper, would you show the witness Exhibit  
13 70, please?

14 A Yes, sir, I have it.

15 Q Doctor, the first meeting of that corporation  
16 was held on March 6 at 2 o'clock in Washington, D.C.;  
17 was it not?

18 A According to the record, yes.

19 Q And we can determine from corporate records  
20 that the first members of that corporation were  
21 yourself, Dr. Derzavis -- do I pronounce his name  
22 correctly?

23 A That's correct.

1 Q Dr. Ware, Dr. Novak, Dr. Iranyi, Dr. Hufnagel,  
2 Dr. Pizer and Dr. Scully; is that correct?

3 A That's correct.

4 Q And there came a time, did there not, Doctor,  
5 that you elected to issue stock in that corporation?  
6 And I'm going to ask you to show the witness Exhibit 71.

7 A Yes, sir.

8 Q And there were two classes of stock; is that  
9 correct, Doctor?

10 A That's correct.

11 Q And you yourself were issued some of that  
12 stock; were you not?

13 A I would say the corporation issued to me.

14 Q Perhaps I wasn't clear. You were issued some  
15 of that stock by the corporation; is that correct?

16 A Right. The corporation issued it to me.

17 Q May the witness be shown Exhibit 72? There  
18 came a time, Doctor, did there not, when an election was  
19 made to make JMHI a not-for-profit corporation?

20 A That's correct.

21 Q And is that memorialized in the minutes of  
22 Exhibit 73?

23 A That's correct.



1 Q And if you'll note, we deal with the same  
2 members in this corporation who were directors in the  
3 previous iteration of a for-profit corporation. Is my  
4 question clear, Doctor?

5 A Yes, clear, and it is correct.

6 Q And these initial members -- and there are  
7 like, I think, seven or eight -- the membership, as time  
8 went on, expanded substantially from this organizational  
9 meeting, did it not?

10 A Yes. Other doctors were involved.

11 Q And as more doctors came in, more members were  
12 admitted to the not-for-profit; is that correct?

13 A That's correct.

14 Q And the directors changed from time to time,  
15 did they not?

16 A I think so.

17 Q Yes, sir. And in that meeting, you proposed a  
18 new set of bylaws, did you not? Look at the second  
19 page, Doctor, where it says you proposed a new set of  
20 bylaws.

21 A Yes, sir.

22 Q And they implemented more clearly the  
23 charitable purposes of the corporation, did they not?

1           A     That's correct.

2           Q     And from the outset, Doctor, you did not view  
3 the corporate entity as a profit maker, did you?

4           A     Would you be kind to repeat the question?

5           Q     You did not view the hospital entity as  
6 something that should make profit, did you?

7           A     That's correct.

8           Q     And in fact, the reason for forming that entity  
9 was to protect yourself against malpractice liability;  
10 isn't that true?

11          A     No. That question I don't understand clearly.  
12 Will you repeat it again?

13          Q     Well, Doctor, let me refer you to several  
14 documents. Would you show the witness Exhibit 119?

15                 Doctor, I'm going to jump ahead in history.  
16 I'm going to ask you to very carefully look -- I moved  
17 you ahead to 1974 now. And on the second page of those  
18 minutes, do you not describe the history of the holdings  
19 of JMHI and the purposes for which they were formed?

20                 And do you not say the reason for this is, was  
21 that if the hospital was sued for malpractice, then they  
22 would not have any other assets except equipment, and  
23 creditors could not touch the building?

1 MR. BONO: Your Honor, I object to the question  
2 and the document as implying that it relates to JMHI.  
3 This is a board minute from 1974 for Corp..

4 MR. BETTIUS: Your Honor, if he will read those  
5 board minutes, it's going back to the history. I submit  
6 I want the Court to read the minutes.

7 THE COURT: If it's in evidence, Mr. Bettius.  
8 I'll read it.

9 MR. BETTIUS: Yes, sir. Would you show it to  
10 the Court, please?

11 THE COURT: I'm not going to read it now. Go  
12 ahead with your question.

13 BY MR. BETTIUS:

14 Q Dr. Tauber, I'm going to ask you in this  
15 recitation if you weren't describing the history of  
16 ownership and why you owned it this way?

17 A In the very beginning when we had the concept  
18 to build the hospital, we wanted to separate the  
19 ownership from the corporation which was supposed to run  
20 it. And that was the reason, one of the reasons that we  
21 wanted to avoid any type of liability if a malpractice  
22 suit would be raised, that the owners, the owner of the  
23 hospital weren't affected.

1           Q     And Doctor, on no less than 11 occasions over  
2 the course of the history of the corporation when sued  
3 for malpractice did you not interpose the defense of  
4 charitable immunity within the jurisdiction of this  
5 corporation, your corporation?

6           A     Naturally when we were a nonprofit  
7 organization, I would not tell it that I did it. But  
8 naturally we took the position that we are a nonprofit  
9 organization and the hospital should be protected in any  
10 type of a lawsuit that was brought.

11          Q     And do you know or did you know a gentleman  
12 named Krakow?

13          A     Yes, I did.

14          Q     And who was Mr. Krakow?

15          A     Mr. Bernard Krakow was our lawyer. His  
16 specialty was a tax lawyer and he was responsible to set  
17 up the corporation as well as the partnership.

18          Q     Would you show the witness Exhibit No. 364?  
19 Was Mr. Krakow an individual, Dr. Tauber, who you would  
20 say was close to you in the formation of this business?

21          A     Yes, he was.

22          Q     And did he understand what you were doing and  
23 implement your desires in the organization and operation

1 of the business?

2 A Yes. He was a tax lawyer and he was  
3 responsible for everything, yes.

4 Q With respect to Exhibit 364, do you recognize  
5 that document?

6 A Yes, I do.

7 Q Would you look, Doctor, at the point under  
8 three and read that for the Court?

9 A Jefferson Memorial Hospital, Inc. was created  
10 in order to avoid the personal liabilities of the  
11 sponsor from malpractice suits. That what I said  
12 before.

13 Q Thank you, sir. There is another issue that  
14 we'll come back to later, Doctor. But while we're  
15 looking at this, would you look and read to yourself  
16 note seven in that letter, the seventh bullet?

17 A Yes, I read it.

18 Q All right, sir. And it has a provision there  
19 the partners are to receive a 10 percent return of  
20 \$39,000 a year, is that right, 10 percent return to  
21 investors?

22 A Right. In compensation the sponsors took  
23 \$1,771.44, that one percent as a charitable

1 contribution.

2 Q I'm not talking about the charitable  
3 contribution part, Doctor. I'm going to get to that  
4 later. I'm talking about the line that says 10 percent  
5 return to investors. Do you see that?

6 A Yes.

7 Q All right, sir. And that number is 39,000; is  
8 that right?

9 A Right. Ten percent return to investors,  
10 39,000.

11 Q For the purposes -- I don't want to disturb  
12 these notes. But I just want to write that number down  
13 because we'll come back to it later.

14 Doctor, as a matter of business practice, you  
15 are a fairly sophisticated real estate investor; are you  
16 not?

17 A If you say so.

18 Q It's always been your practice in commercial  
19 and business investments to separate land from  
20 improvements, is that not correct, and to keep the  
21 improvements in a partnership?

22 A Not correct.

23 Q Not correct?

1           A     No. You cannot generalize it. Each case  
2 stands for itself. And I make the decision accordingly  
3 what I thought was best.

4           Q     Doctor, I'm going to ask you to turn your  
5 attention for a moment to Exhibit 375. And I'm going to  
6 restate my question. Has it not always been your  
7 practice always to keep the real estate either  
8 personally or in some partnership but to own it  
9 personally?

10          A     Would you repeat the question?

11          Q     In a business transaction has it not always  
12 been your practice to keep the ownership of the building  
13 as an individual or partnership rather than in corporate  
14 form?

15          A     That's correct.

16          Q     All right. That's what you did here, isn't it?

17          A     That's what I did.

18          Q     And there's a reason for that, a good, sound  
19 business reason; isn't there, Doctor?

20          A     I think so.

21          Q     First of all, in a commercial transaction, land  
22 isn't deductible, is it?

23          A     I don't know any case where the land

1 deductible, depreciation. I don't know that such things  
2 exist.

3 Q I want you to search your mind carefully.  
4 You've been involved in one transaction where land is  
5 deductible, haven't you?

6 A Land is deductible?

7 Q Yeah.

8 A Is that depreciation?

9 Q No, land is deductible, the purchase of the  
10 land is a deductible expense. You've been involved in  
11 one transaction like that, haven't you?

12 A Would you be kind to recall it because I don't  
13 know.

14 Q Jefferson Memorial Hospital, Inc., Doctor.

15 A Yes.

16 Q You deducted the land, didn't you?

17 A I deducted the land?

18 Q Yes, sir. For federal income tax purposes, you  
19 and each of your associates, deducted the land from your  
20 personal income tax returns, didn't you?

21 A Your question is absolutely improper. I answer  
22 it. What we did, we donated the land. That what you  
23 mean?



1 Q Yes, sir.

2 A Right, that we did not deduct the land because  
3 that land is not deductible. We donated the land. As a  
4 charitable contribution, we deducted the donation.  
5 That's entirely different what you ask.

6 Q So in this transaction, because you indicated  
7 that and took a charitable form, you were allowed to  
8 deduct the donation of the land; is that correct?

9 A Any time when you are making a donation to a  
10 charity, you deduct it. And that is not the land  
11 deducted.

12 Q Well, let's see. I want to trace with you now,  
13 Doctor, if you will, how we donated this land and how it  
14 worked.

15 As I understand it -- and we're going to go  
16 through these transactions. Mrs. Vella described them  
17 yesterday. But I would like you, since you're the  
18 author of the deeds, to look at them.

19 Would you show Dr. Tauber Exhibit 262? Do you  
20 recognize that document, Doctor?

21 A It's a very poor copy. I cannot read it.

22 Q This is a copy of the deed. Let's see if we  
23 can get through this. There is no doubt in your mind --

1           A       Maybe you can copy it and read it but I cannot  
2 read it.

3           MR. BETTIUS:   The quality of some of these  
4 copies -- do you have the originals of these deeds with  
5 you, Mr. Bono?

6           MR. BONO:   No, I do not.   I was relying on your  
7 exhibits.

8           BY MR. BETTIUS:

9           Q       Let's see if this helps you, Doctor. This is a  
10 deed, is it not, in October between the Hopkins and  
11 yourself?

12          A       Mr. Bettius, I'm very sorry, but I cannot read  
13 it.

14          Q       Let me put it this way.

15          A       Why don't you read it to me and then I can  
16 recognize it.   But I cannot read it because it's  
17 impossible to read.

18          Q       Do you recall on or about October 8, 1962, you  
19 took a deed from the Hopkins to yourself as trustee for  
20 the property?

21          A       I remember.   But not based on reading this  
22 document because it's impossible to read.

23          Q       Would you show the witness, Mr. Fox, Exhibit

1 265 because we can go to the next deed. Can you read  
2 that one, Doctor?

3 A Yes, I can read that one.

4 Q All right. Would you tell the Court what  
5 transaction is memorialized there?

6 A That from the Hopkins we purchased the land and  
7 I took the land in my name as trustee for the benefit of  
8 all the partners in the partnership.

9 Q We have parallel transactions running here,  
10 Doctor, some in fee and some in lease, is that correct,  
11 long-term lease from the Hopkins?

12 A Correct.

13 Q And the Hopkins wished to structure a portion  
14 of this property based on a 99-year lease, did they not?

15 A No. The original was that we wanted to  
16 purchase outright. However, they had some problems in  
17 connection of dividing Beauregard Street. Therefore,  
18 they came back and they ask us whether we would be  
19 willing to buy one part of the property and the other to  
20 be leased for 99 years.

21 Q Perhaps you didn't understand my question. It  
22 was the Hopkins who had some problems and wanted to  
23 convey the lease.

1           A     That's right. They had the ownership. They  
2 had the property and they asked if we would cooperate.  
3 And I cooperated with them.

4           Q     Now, Doctor, on -- show the doctor, please,  
5 Exhibit 273.

6                     On the 12th day of December, 1964, you conveyed  
7 the land, did you not, or at least a 65 percent interest  
8 of record to JMHI?

9           A     That's correct. 65 percent on the land was  
10 donated to Jefferson Memorial Hospital, Inc.

11          Q     And that's the 29th of December, '64?

12          A     That's correct.

13          Q     And that conveyance and all of the other  
14 conveyances that we've just discussed, Doctor, appear on  
15 the land records of Alexandria; is that correct?

16          A     If you say so.

17          Q     They were recorded deeds. In fact, you can see  
18 the recording information right on the deeds, can't you?

19          A     Correct.

20          Q     So if we can trace it, we have Hopkins to  
21 Tauber, Trustee, to JMHI; is that right?

22          A     That's correct.

23          Q     And that's what appears of record, these three

1 transactions; is that right?

2 A That's right.

3 Q Now, Doctor, is there any agreement that you  
4 know of that we could read that would tell us what your  
5 trust relationship to this property is or was at that  
6 time?

7 A As I understood it at the advice of the late  
8 Mr. Bernard Krakow, I took title as Laszlo N. Tauber,  
9 Trustee, for the benefit of all the partners in the  
10 partnership. And the history was that, according to his  
11 explanation, if I take it as a trustee, then we would  
12 not need the signature of any other participant with  
13 respect to their wives. That one reason why he --

14 Q We don't need to go into the details. But you  
15 had a bad previous experience with getting a signature  
16 that was important to you; isn't that correct?

17 A In another transaction that we had, we had 6  
18 members in the partnership and 6 wives and we received  
19 only 11 signatures and we had problem to get from the  
20 wife of one of the partners.

21 Q So the purpose of this designation of trustee  
22 was so you wouldn't have to deal with other people in  
23 your transactions with the property. You could deal

1 with it and not have to run around and get their  
2 signatures; is that correct?

3 A That made it, according to Mr. Krakow's  
4 recommendation, that was simplest way of handling it,  
5 that I take title in the name of the trustee for the  
6 benefit of all the partners.

7 Q Doctor, for whom, or for who -- it shows really  
8 the inferior part of my education -- did you hold title  
9 as trustee?

10 A For all the partners in the partnership.

11 Q Isn't it true, Doctor, that you never  
12 formalized the partnership with an agreement? King  
13 Street Joint Venture never had an agreement.

14 A I don't think so, that's true, because I never  
15 had any partnership which I did not have a written  
16 agreement with everything possible entered into the  
17 partnership.

18 Q But to the world, Doctor, an examination of  
19 this title up to and including 1975 and '76, this is  
20 what it would show; is that correct?

21 A It showed the record, which speaks for itself.

22 Q But the record doesn't really speak for who  
23 owned the property, does it?

1           A     No. The record shows only that I own the  
2 property as trustee for the benefit of every single  
3 partner in the partnership without specifying who the  
4 partners are.

5           Q     And is it not true, Doctor, that you had a  
6 retained interest, after conveying 65 percent of this  
7 property, there still was a retained interest of 35  
8 percent?

9           A     When you say I retained it, I did not retain  
10 it.

11          Q     I understand that.

12          A     You ask me that question; therefore I answer  
13 it. I did not retain it. There was a 100 percent  
14 interest in anything, in the land. 65 percent you have  
15 donated to the Jefferson Memorial Hospital,  
16 Incorporated, and 35 percent owned by others.

17          Q     35 percent was owned by you, remained in you as  
18 trustee?

19          A     I was a trustee for everybody.

20          Q     And did there come a time when you advised the  
21 federal government in tax returns that 30 percent of  
22 that 35 percent was held for a charity?

23          A     Donated to the charity.

1 Q What charity was it donated to?

2 A The Tauber Foundation.

3 Q Okay. So for income tax and reporting  
4 purposes, we have 95 percent of this property in  
5 charitable use, do we not, charitable ownership?

6 A At that time.

7 Q Yes, sir. Did you not then engage in or cause  
8 to be executed a number of off record conveyances,  
9 Doctor?

10 A I don't remember.

11 Q Let's see if we can go through --

12 A Show it to me and then I can recall.

13 MR. BETTIUS: Would the Court indulge me one  
14 moment, Your Honor?

15 BY MR. BETTIUS:

16 Q Doctor, before we get to this point, there was  
17 a loan committed to this property, was there not, in  
18 April of 1963 by First Federal Savings and Loan  
19 Association of Arlington, trial Exhibit 350?

20 I'm asking you to exhibit to him Exhibit 353, a  
21 letter from First Federal Savings and Loan. Is that not  
22 a letter? 350A. I'm sorry. I apologize.

23 A Yes, sir. What is the question?



1 Q A loan was committed by First Federal Savings  
2 and Loan; was it not?

3 A That's correct.

4 Q And that loan was personally guaranteed, to be  
5 personally guaranteed by you and other participants; is  
6 that correct?

7 A Partially is true. Partially is not true.

8 Q Are you telling -- well, tell me in what sense  
9 it's untrue, Doctor.

10 A It is true that any construction loan until the  
11 building is finished is recourse note to the sponsors.  
12 But the loan is recorded and when the building is  
13 finished, then it turns to be a nonrecourse note.

14 Q That loan was never replaced, was it, Doctor?

15 A Replaced?

16 Q Yes, sir. That loan stayed on this property  
17 from the beginning until the end, did it not?

18 A Yes.

19 Q And tell me where the exculpation clause is  
20 that you find where it says upon the completion -- it  
21 says not only are you to remain liable on it but all the  
22 individual shareholders are to remain liable; doesn't  
23 it?

1           A     As the trustee who signed for construction loan  
2 agreement, I'm liable and in turn all the sponsors are  
3 liable to me according to their percentage. And as a  
4 general rule, when we are running a building --

5           Q     Don't tell me about a general rule. I want to  
6 talk to you about that commitment there. There is no  
7 exculpation clause upon completion. It's a single  
8 purpose building; isn't it, Doctor?

9           A     Yes, it's a single purpose building.

10          Q     And the value of it is the lease, is it not, in  
11 economic terms?

12          A     What lease?

13               MR. BETTIUS: Well, Your Honor, I will submit  
14 that document and let the Court come to its own  
15 conclusion.

16               Give him Exhibit 370.

17               BY MR. BETTIUS:

18          Q     Now, we can see, Doctor, we can determine from  
19 Exhibit 370, can we not, who the members of the venture  
20 are?

21          A     Yes.

22          Q     And we now have 92.5 percent of the venture  
23 members -- and these are the partners owning the real

1 estate investment; is that correct?

2 A Yes.

3 Q And we now have, as of May 17, 1966, 92.5  
4 percent of them identified; is that correct?

5 A Excuse me. On October 20th. And what do you  
6 call the May? You said May, 1966?

7 Q Are you looking -- would you look at Exhibit  
8 367?

9 A Yes, sir.

10 Q Now that identifies who they are and what their  
11 percentage is; is that correct?

12 A That's correct.

13 Q And we've now accounted for 92.5; is that  
14 correct?

15 A That's correct.

16 Q Now, Doctor, the equipment in the hospital, how  
17 is the equipment owned?

18 A What document, sir?

19 Q I'm talking about when you opened the hospital,  
20 and that would be -- let's see if we can come to an  
21 agreement. That would be March of '65?

22 A Right.

23 Q The hospital was staffed and had equipment to

1 open and operate; didn't it?

2 A That's correct.

3 Q Who owned that equipment?

4 A Some of the equipment was owned by a group of  
5 people who purchased it and leased it to the hospital  
6 corporation.

7 Q That group of people turned out to be JMHA;  
8 didn't it?

9 A I don't know exactly whether --

10 Q You were one of the major owners of the  
11 equipment, were you not?

12 A I think so. Major owner, maybe 25 percent.

13 Q Right. And that allowed, this lease  
14 arrangement allowed for all of you to take investment  
15 credit; is that correct?

16 A That's correct.

17 Q And was this disclosed initially to the federal  
18 government, that you all were leasing this equipment?  
19 Or did you tell the federal government that you had  
20 canceled the lease?

21 A You asked me the question that it was disclosed  
22 or not. I did not prepare the federal income tax  
23 return. It was done by Mr. Bernard Krakow, the tax

1 lawyer, and Allen Bear was the accountant. And it was  
2 public knowledge, it was public, who owned the equipment  
3 because certainly we took the seven percent investment  
4 credit deduction. And some of the equipment was donated  
5 to the hospital.

6 Q Doctor, a great deal of the revenue that comes  
7 to hospitals comes from insurance companies, does it  
8 not?

9 A From paying patients. Whether they are paying  
10 from their pocket or from insurance, it doesn't make any  
11 difference.

12 Q And in terms of capital ownership and capital  
13 structure, they will inquire of you about ownership,  
14 will they not?

15 A Would you repeat the question?

16 Q Pardon?

17 A Would you be kind to repeat the question?

18 Q Well, GHI, Group Hospitalization, they will  
19 inquire in reimbursement about your capital structure,  
20 will they not?

21 A Right.

22 Q Is it not true that you affirmatively  
23 represented during the course of this transaction to

1 Group Hospitalization that the lease had been canceled?

2 Do you remember that?

3 A Lease canceled?

4 Q Yes.

5 A No, I don't remember. Show it to me.

6 Q All right. And the lease of the equipment was  
7 never memorialized in a written document, was it,  
8 Doctor?

9 A I'm sure it was.

10 Q Well, in any event, it's never been produced to  
11 us, has it? You can't find a document anywhere produced  
12 to us in response to requests as to an equipment lease.  
13 It's just not here anymore, is it?

14 A I don't know, Mr. Bettius, but you received 65  
15 boxes of documents. I don't know what it contained.

16 Q Well, we did, Doctor. We do, however, have a  
17 list of that equipment. Would you show the witness  
18 Exhibit 352, please?

19 A Very poor copy but I looked at it. What do you  
20 want to ask me?

21 Q Doctor, would you look at exhibit -- is it 367?

22 A Yes, sir.

23 Q Strike that. I'll get back to that, Doctor.

1 Dr. Tauber, would you look at Exhibit 353?

2 A Yes, sir.

3 Q And there's an exhibit, series of exhibits;  
4 right?

5 A I don't know. Call my attention --

6 Q Would you look behind it, all dated the same  
7 day?

8 A December 15, 1964, when different partners did  
9 the same thing.

10 Q Is this the dedication of land to charity?

11 A Yes, it is that donation, not dedication.  
12 Donation.

13 Q Donation. Where did these people get this land  
14 to donate, Doctor?

15 A They bought it.

16 Q They bought it?

17 A Yes.

18 Q From who?

19 A From Hopkins.

20 Q No, you bought it from Hopkins; isn't that  
21 correct?

22 A No, but you -- just you conveniently forget the  
23 things that I told it. I bought it technically on my

1 name as a trustee for the benefit of all the partners in  
2 the partnership; that when I acted, it did not mean that  
3 I owned it 100 percent. But I did it for every single  
4 partner.

5 Q And where, Doctor, would I find evidence of  
6 that?

7 A With the action and anything. It was stated  
8 exactly what is the partnership interest of the King  
9 Street Joint Venture. And I acted as a trustee for the  
10 benefit of every single person.

11 Q So let me see if I understand this. You have  
12 what appears to be a nondocumented venture. There is no  
13 agreement.

14 A There is an agreement, Mr. Bettius.

15 Q Where is it, Doctor?

16 A King Street Joint Venture agreement, which was  
17 signed by every single person.

18 Q Where is it, Doctor?

19 A Well, in the 65 boxes that were delivered to  
20 you. I did not look it over. There was not a single  
21 paper which was retained.

22 Q Didn't you tell me just a few minutes ago that  
23 you don't recall King Street Joint Venture having an



1 agreement?

2 A No.

3 Q You don't recall telling me that earlier in  
4 your testimony?

5 A It was a mistake, because I don't recall any  
6 single partnership that I ever formed in my life that I  
7 did not have a written agreement with the participating  
8 people.

9 Q Then, Doctor, show me the next agreement for  
10 Jefferson Memorial Hospital Associates. Where is the  
11 written agreement for that?

12 A Jefferson Memorial Hospital Associates, as the  
13 Internal Revenue Service knew it, is just a plain  
14 successor of King Street Joint Venture and it was only a  
15 name change. It was not formation. It is the same  
16 people participating.

17 But the original agreement, and I repeat it, I  
18 don't recall any single case in my life that I submitted  
19 any partnership that I did not have every single partner  
20 sign it, their obligation, their privilege and how much  
21 percentage they own in the partnership.

22 Q Doctor, I'm going to represent to you now  
23 through two pieces of contested litigation, you have

1 never been able to produce these two agreements. If I'm  
2 wrong, I'll stand corrected by your counsel.

3 But you're telling me these agreements  
4 certainly exist; is that correct?

5 A As far as I remember, I repeat it again, I  
6 never had in my life any time a partnership that I did  
7 not have a written agreement with the participating  
8 people.

9 Q It's interesting, is it not -- well, when was  
10 this venture formed, Doctor?

11 A I think it was formed when I decided to buy the  
12 land for the benefit of the partners and it was either  
13 1962 or 1963. .

14 Q You would agree, would you not, Doctor, that  
15 it's a strange anomaly that we have documents all around  
16 it, in fact, these participation letters, but we don't  
17 have the agreement. Is that not correct?

18 A I don't know what happened to the agreement.  
19 But I tell it to you repeatedly, that never in my life  
20 have I ever had any partnership that I did not have the  
21 letters, agreement or whatever it is to sign by each  
22 participant indicating what is the partnership interest.

23 Q Isn't it true, Doctor, that you produced

1 literally hundreds of documents around these  
2 transactions, and I'm talking about '65 and '66. It  
3 would be exceedingly strange that you wouldn't have the  
4 agreement but all the contribution letters?

5 A I cannot tell you anything else.

6 Q Doctor, is it true -- and I want you to look at  
7 these letters -- that on December 15, 1964, Dr. Gondor  
8 contributed 25 percent of the total venture to JMHI?

9 A Not the total venture. That was 1964,  
10 December. Right? It was only three months short to  
11 finish the building; therefore, he had an interest in  
12 the building that was never contributed to the Jefferson  
13 Memorial Hospital, Inc.

14 Q Now, Doctor --

15 A You ask me the question; let me answer it.

16 Q Doctor, you don't understand my question.

17 A I understood the question.

18 THE COURT: Let him finish the answer and then  
19 you can correct the question.

20 THE WITNESS: You asked the question whether I  
21 know it that Dr. Gondor contributed his 25 percent  
22 interest in the partnership. I said no. The  
23 partnership consisted of land ownership and beneficial

1 ownership in the land lease and ownership in the  
2 building. And this letter clearly states it, that he  
3 contributed only 25 percent of his land holding, 25  
4 percent of his interest in the land lease, but  
5 definitely, positively no donation of the building to  
6 anybody.

7 BY MR. BETTIUS:

8 Q Doctor, I know that is very important to your  
9 position in this case, and we're going to discuss that  
10 at length. Right now --

11 A I'm reading the letter.

12 THE COURT: Just a minute, Doctor. Wait for  
13 the next question.

14 BY MR. BETTIUS:

15 Q The question I asked you, Doctor, was did he  
16 contribute 25 percent of the total land to JMHI?

17 A The land, yes.

18 Q And that, we see that, that of the 65 percent  
19 of the land that JMHI got, 25 percent comes from Gondor;  
20 is that correct?

21 A That's correct.

22 Q And it comes on December 15th --

23 A 1964.

1 Q Okay. Now, let's look, Doctor, at some  
2 conveyances that you made at or about that time that  
3 aren't in the record.

4 Show the witness Exhibit 272, please. I'm  
5 sorry. 354, Exhibit 354.

6 Doctor, while we're looking for that, this made  
7 the donations of all of these individuals tax  
8 deductible; is that correct?

9 A That was the purpose, exactly the case.

10 Q Now, I want you to look at that letter.

11 A Which letter?

12 Q That Ms. Harper just put in front of you.

13 A That's correct.

14 Q So the 25 percent contributed on the 15th of  
15 December was a tax deduction for Dr. Gondor; right?

16 A Yes.

17 Q What's the date of that letter you have in  
18 front of you?

19 A December 21st, 1964.

20 Q Tell me why several days later he was agreeing  
21 to buy 50 percent back when he had just put 25 percent  
22 in six or seven days earlier?

23 A That shows Dr. Gondor generosity.

1 Q Pardon?

2 A That shows the generosity of Dr. Gondor. And I  
3 explain to you. You ask the question; I'm answering.

4 Q In your sworn interrogatories --

5 A Excuse me, sir. You asked the question; let me  
6 finish it. You ask the question.

7 Q I want you to finish, Doctor.

8 THE COURT: Whoa, whoa. Let's not quibble.  
9 Are you finished the answer?

10 THE WITNESS: No, sir.

11 THE COURT: Go ahead and finish.

12 THE WITNESS: Yes, sir. Why on the 15th of  
13 December that Dr. Gondor donated along with other people  
14 to the Jefferson Memorial Hospital, Inc. 25 percent of  
15 his interest in the land in order to have a charitable  
16 deduction. And on the 21st of December, I talked to him  
17 meantime and I told it that the corporation, that is the  
18 Jefferson Memorial Hospital, Inc., has no capital to  
19 start the hospital. We need capital.

20 And then he was willing to purchase 50 percent  
21 of that land of Jefferson Memorial Hospital, Inc.  
22 approximately for the double amount of money what he  
23 took as a deduction that he earlier donated to the

1 incorporated.

2 BY MR. BETTIUS:

3 Q And he got an 8 percent note for that, didn't  
4 he, Doctor?

5 A Yes, sir. You asked me the question and I'm  
6 telling to you this one. In this case, it is only just.  
7 We have to be thankful to Dr. Gondor that he did it. He  
8 gave the 25 percent donation. And then he bought it,  
9 double the price that he bought for 50 percent interest  
10 in the land from the Jefferson Memorial Hospital, Inc..

11 Therefore, he created an \$88,000 badly needed  
12 capital to the incorporation to start the operation.  
13 Nobody, I repeat it, nobody else was willing to do.  
14 Only Dr. Gondor.

15 Q Dr. Gondor went to the bank and borrowed the  
16 money and the corporation leased it back and paid him a  
17 profit; isn't that correct?

18 A That's --

19 Q Isn't that exactly what happened?

20 A That's not correct. How in the world do you  
21 dare to tell it how did Dr. Gondor get the \$88,000? You  
22 are not his bookkeeper. You did not --

23 THE COURT: Doctor, just a minute. Don't argue

1 with Mr. Bettius. Just answer the question.

2 BY MR. BETTIUS:

3 Q I'm asking of your own personal knowledge,  
4 Dr. Gondor went to the bank, if you know -- and if you  
5 don't know, you can tell me -- borrowed the money and  
6 then leased it back. And this covered his loan plus a  
7 two percent profit. Is that true?

8 A No.

9 Q I'm going to ask you, Doctor, this land resided  
10 in this charity -- well, first of all, Doctor, when this  
11 letter was written, the charity didn't even own it, did  
12 it? The charity was selling it to Dr. Gondor before  
13 they owned it; isn't that correct?

14 A That's not correct.

15 Q Not correct. Then I'm going to ask you,  
16 Doctor, if you will, to look at the conveyance date from  
17 Tauber, Trustee, to JMHI.

18 Show the witness 273, please.

19 What's the date of that deed, Doctor?

20 A 29th of December, 1964.

21 Q Would you go back and look at the date of the  
22 previous exhibit? It's the 21st of December, isn't it?

23 A Yes. It was the 15th of December, the letter



1 where he donated, and the 21st of December the second  
2 letter when he purchased. And it was recorded, recorded  
3 on the 29th of December.

4 Q So it becomes abundantly clear, does it not,  
5 Doctor, that Dr. Gondor was going to take a deduction  
6 for a transaction to a charity that hadn't occurred yet?

7 MR. BONO: Objection, Your Honor.

8 MR. BETTIUS: Isn't that clearly -- let's back  
9 up.

10 THE COURT: Just a minute. What's your  
11 objection?

12 MR. BONO: The objection is Dr. Tauber can't  
13 say what Dr. Gondor --

14 THE COURT: Objection sustained.

15 BY MR. BETTIUS:

16 Q Isn't it memorialized here -- and Mr. Ware  
17 signed it; did he not? Who is Mr. Ware?

18 A Which letter are you talking?

19 Q I'm talking about the 21st.

20 A George Ware.

21 Q Exhibit 354.

22 A Dr. Ware was a thoracic surgeon and he was  
23 vice-president of the corporation and he signed the

1 letter.

2 Q And it says, "confirming our understanding, you  
3 agreed to buy 50 percent ownership in the land described  
4 below as follows."

5 And it's signed by Jefferson Memorial Hospital,  
6 Inc.; isn't it, Doctor?

7 A Yes. He signed it as vice-president of  
8 Jefferson Memorial Hospital, Inc.

9 Q And we now know that Jefferson Memorial  
10 Hospital, Inc. didn't own the property then?

11 A As far as, as far as we concerned, they owned  
12 it.

13 Q No, no, Doctor, of record.

14 A The recordation was on the 29th of December.  
15 But the transaction took place earlier.

16 Q So if Dr. Gondor wanted to be a good-spirited  
17 citizen without tax deduction even before the  
18 transaction was structured, he could have bought the  
19 land and leased it back; isn't that correct?

20 MR. BONO: Objection, Your Honor.

21 THE COURT: Objection sustained.

22 BY MR. BETTIUS:

23 Q And, Doctor, can you tell me why -- would you

1 show the witness 274?

2 A Yes, sir.

3 Q Isn't this exactly the same letter, word for  
4 word that was written on December 21st? It's the same  
5 letter, word for word, isn't it?

6 A I would not call it word for word. But  
7 essentially the same.

8 Q And this is dated January 2nd, isn't it,  
9 Doctor?

10 A January 2nd, 1965 which is a confirmation from  
11 the --

12 Q So somebody thought it might be a good idea to  
13 write the letter again after the charity got the  
14 property; is that correct?

15 A No, nothing to do with it.

16 Q Why do we have one letter, Doctor, dated the  
17 21st and then you write the same letter the day after  
18 the charity gets the property? Do you know why this was  
19 done? And you signed it this time.

20 A This time I signed it. Originally Dr. Ware as  
21 vice-president signed it, and on January 2nd, 1965, was  
22 nothing else but confirmation of the action what was  
23 taken.

1 Q Was it confirmation? It's exactly the same  
2 language. One would believe this transaction was taking  
3 place this date if they read this letter, wouldn't they?

4 A No, no.

5 Q No? Doctor, you all never thought it advisable  
6 to record this deed or even prepare a deed for this  
7 transaction, did you? Is there a recorded deed for  
8 this?

9 A Mr. Bettius, you know it two years ago we had  
10 original --

11 Q Doctor, please answer it.

12 A I answer it.

13 MR. BETTIUS: Your Honor, would you direct --

14 THE COURT: It's a simple question, Doctor.

15 Either it was or it wasn't.

16 THE WITNESS: It was not recorded until 1994.

17 MR. BETTIUS: Thank you, Doctor.

18 BY MR. BETTIUS:

19 Q There were a number of other off record  
20 conveyances, were there not, Doctor?

21 A Understanding that it's reduced in letter form.  
22 Whether it was recorded, I don't know. But ask the  
23 question. I will answer it.

1 Q Would you show the witness Exhibit 279?

2 A Yes, sir.

3 Q Now, that conveyance is not recorded either, is  
4 it?

5 A This is a deed book, I see it here.

6 Q Do you see any recording information? This is  
7 deeded to Dr. Burtoff; isn't it?

8 A Yeah, Dr. Burtoff.

9 Q And that deed never went to record, did it?

10 A I don't know. It was an agreement. But  
11 whether the deed was recorded or not, I don't know.

12 MR. BETTIUS: In effect -- well, Your Honor,  
13 we'll ask the Court to take judicial notice of its own  
14 records. I think there will be a stipulation this deed  
15 was never recorded. In fact, I think the testimony  
16 yesterday was it was not.

17 BY MR. BETTIUS:

18 Q And then, Doctor, there's another unrecorded  
19 conveyance, is there not? 278.

20 A Would you -- what are you referring --

21 Q Exhibit 278. Do you remember that transaction?

22 A Just a second, sir.

23 Yes.

1 Q That deed is not recorded, either, is it?

2 A No.

3 Q That's 30 percent to you individually?

4 A Right.

5 Q And that's 30 percent you gave to the Tauber  
6 Foundation?

7 A That's correct.

8 Q For which you took a tax deduction; is that  
9 correct?

10 A When I was the owner and I donated to the  
11 Tauber Foundation, naturally, I took the deduction.

12 Q Well, at least with respect to Dr. Gondor, we  
13 know that he deducted 25 percent and ended up off record  
14 owning 50 percent; is that correct?

15 A No, he deducted the donation of 25 percent.

16 Q That's right.

17 A And later in a separate transaction, he  
18 purchased 50 percent of the ownership.

19 Q Now, Doctor, you did not acquire a land lease  
20 to erect the hospital on these improvements, the  
21 improvements on this ground, did you?

22 A Would you repeat the question? I don't  
23 understand it.

1 Q That deed is not recorded, either, is it?

2 A No.

3 Q That's 30 percent to you individually?

4 A Right.

5 Q And that's 30 percent you gave to the Tauber  
6 Foundation?

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11 Tauber Foundation, naturally, I took the deduction.

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13 know that he deducted 25 percent and ended up off record  
14 owning 50 percent; is that correct?

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16 Q That's right.

17 A And later in a separate transaction, he  
18 purchased 50 percent of the ownership.

19 Q Now, Doctor, you did not acquire a land lease  
20 to erect the hospital on these improvements, the  
21 improvements on this ground, did you?

22 A Would you repeat the question? I don't  
23 understand it.

1 Q Well, you went out and you built a major  
2 hospital complex, or let's call it a hospital complex,  
3 Doctor, on land which is owned 95 percent by charities.  
4 And one of the charities who owned 65 percent ultimately  
5 is going to lease the property; isn't that right?

6 A That's correct.

7 Q And you don't have a land lease?

8 A What do you mean land lease?

9 Q Well, were you there when Mr. Richards  
10 testified at deposition?

11 A No, I was not there.

12 Q All right. Did you understand that you had no  
13 lease or no right to build the land on the building of  
14 these charities? You didn't -- JMHA did not own the  
15 land; did it?

16 A No, they leased it.

17 Q It leased it?

18 A Leased it.

19 Q JMHI -- JMHA had a land lease?

20 A No. No. Jefferson Memorial Hospital, Inc.,  
21 the nonprofit organization, built the building -- leased  
22 the building and leased the land. That's right.

23 Q No, no, Doctor. You're a partnership and you've



1 got a partnership and these men own it and that's an  
2 investment for them. And they are going to go build on  
3 a piece of ground.

4 A Right.

5 Q That's owned by somebody else.

6 A Right.

7 Q Where is the permission to do that? It doesn't  
8 exist, does it?

9 A It exist.

10 Q It exists only, does it not --

11 A Excuse me, sir. You are talking about 1964,  
12 December, three months before the construction finished.  
13 And this construction started two years prior to that.  
14 And at that time, naturally King Street Joint Venture or  
15 the successor, Jefferson Memorial Hospital Associates,  
16 owns the land. And they build the hospital and they own  
17 the hospital.

18 And when they finished it, then it came to  
19 Jefferson Memorial Hospital, Inc. as a tenant. And they  
20 leased it and they leased the land and the building.

21 Q Doctor, they are leasing a building built on  
22 land that they own. Where is the underlying -- I mean,  
23 it happens all the time, does it not, where you go on

1 someone else's land? I mean, you mentioned the Chrysler  
2 Building and the Empire State Building. You get a  
3 99-year lease and you build on someone's land. That  
4 happens, doesn't it?

5 A It happens. But in this case, you ask the  
6 question, this building was built on the land which  
7 owned by the sponsor who build the hospital. Then on  
8 March the 15th, 1965, it was finished. Then Jefferson  
9 Memorial Hospital, Inc. entered the picture and they  
10 leased the hospital and the land.

11 Q Did you hear Mrs. Burns -- and suppose your own  
12 lawyer were to come into this court and tell you that  
13 the improvements on that land, based on the deeds that  
14 you had, existed as a tenant at sufferance. Do you know  
15 what a tenant at sufferance is?

16 A No.

17 Q Okay.

18 A Will you explain to me?

19 Q Doctor, the only right you ever reserved with  
20 reference to those buildings is contained in these  
21 deeds, is it not, where you say the tenant, that the  
22 grantor reserves the right to the improvements? Isn't  
23 that what you say in these deeds?

1           A     I don't know what you're talking about.

2           Q     You don't understand that?

3           A     I don't understand a single word what you ask.

4           Q     What I'm asking you, Doctor, is, you're a  
5 businessman. You're going to convey this land out.  
6 What right do you have to own this building on someone  
7 else's land?

8           A     The building, we built the building on our  
9 land. And then the land changed hands. It would be  
10 donated into Jefferson Memorial Hospital, Inc.. And  
11 then later Jefferson Memorial Hospital, Inc. retained 20  
12 percent and then sold 50 percent to Dr. Gondor. And  
13 Dr. Burtoff had originally 5 percent, donated, but he  
14 took it back. Therefore, the 30 percent which was owned  
15 by the Tauber Foundation, I released 5 percent and  
16 donated to the hospital in order that the Jefferson  
17 Memorial Hospital, Inc. would have 20 percent interest  
18 in the land. That is absolutely clear.

19          Q     Doctor, let's suppose that something happened.  
20                 Incidentally, all of the doctors on JMHI's  
21 board were also partners; isn't that correct?

22          A     Yes, that's correct.

23                 Excuse me; not correct.

1 Q There was one, was there? Who was that?

2 A Dr. Novak was not a partner and Dr. Pizer  
3 wasn't.

4 Q All right. These two gentlemen. But suppose  
5 by some happenstance overnight when JMHI owned 65  
6 percent of this land, they got an independent board of  
7 directors and they said get your building off my land.  
8 That could have happened, couldn't it?

9 A No. You are fabricating things which never  
10 existed because Jefferson Memorial Hospital, Inc. had  
11 already elected members of the board, and they knew  
12 exactly what the situation is. They had a lease and it  
13 was not only an obligation but a privilege to have the  
14 place there.

15 Q Dr. Tauber, you were advised -- there came a  
16 time -- I want to ask you a couple of other questions.  
17 We're going to come back to this issue of whether they  
18 can tell you to get off the land.

19 It's your recollection that you were never told  
20 that your ownership position of this land, even at the  
21 inception, could cause you very serious problems. You  
22 weren't advised by the lawyer to that effect?

23 A Serious problem to own the land?

1 Q Yes.

2 A I don't recall.

3 Q The fact that you had built the improvements  
4 and didn't own the land.

5 A When I build, and I repeat it again, when we  
6 build the building --

7 Q Doctor, my question is, were you advised right  
8 from the beginning that the structure of this  
9 transaction of not owning the land and building the  
10 building could cause you serious problems?

11 A There is not such advice that I know. It was  
12 no separate --

13 Q The answer is no, you don't remember that  
14 advice?

15 A No, not remember it; it doesn't exist.

16 Q Doctor, there came a time, did there not, when  
17 the Internal Revenue Service indicated to you that there  
18 was going to be an investigation looking toward the  
19 revocation of JMHI's tax exempt status; is that correct?

20 A Yes.

21 Q Now, in terms of the lease that was structured,  
22 who were the board members -- do you remember having a  
23 board meeting in JMHI to consider the lease?

1           A     I don't remember. But if you show me the  
2 documents, I will recall it.

3           Q     Well, Doctor, after it was formed and you  
4 started to construct it, you just kind of disregarded  
5 JMHI as an operating entity for a long time; didn't you?

6           A     Not true, because Jefferson Memorial Hospital,  
7 Inc. came into operation on the 15th of March, 1965, and  
8 anything previously, it was no separation at all.

9           Q     Well, I properly, I think, am corrected by you.  
10 You observed no corporate formalities with respect to  
11 JMHI; did you? I mean, you didn't even have board  
12 meetings?

13          A     I don't think that true you're telling because  
14 you showed me certain documents that reflected board  
15 meetings. Obviously it's taken out of the board meeting  
16 minutes.

17          Q     We don't have a single board minute for the  
18 year '66, '67, '68, '69 or '70, do we, Doctor?

19          A     I don't know.

20          Q     I'm going to represent to you, Doctor --

21          A     Represent it to me but I will tell you that --

22          Q     -- that there was never a minute furnished. Do  
23 you recall having any meetings?

1           A       We had meetings, sure. I spent the night until  
2 11 o'clock every month there. Sure, we had meetings.

3           Q       Did you have formal board meetings?

4           A       Sure. Whether you call formal or informal, we  
5 start at 8 p.m. and still there until 11 p.m.

6           Q       You had meetings of the board of JMHI that  
7 lasted all day and into the night?

8           A       Oh, yeah. That's the only time that we met,  
9 from 8 p.m. until 11 or later.

10          Q       At night.

11          A       At night.

12          Q       And how often would you have these meetings?

13          A       In the conference room.

14          Q       How often?

15          A       I think once every month.

16          Q       And you kept no minutes.

17          A       I don't know. I think that we had minutes.

18          Q       And there are no minutes in -- and your minute  
19 book is here in court, isn't it? May I see it, Counsel?  
20 Can you show me the evidence of these meetings, Doctor?

21               MR. BONO: Objection, Your Honor, to his  
22 question. I think his inquiry is misleading. The  
23 implication is two things. One is that every board

1 minute is contained in that book. And in this record,  
2 there are board minutes that are marked as exhibits  
3 which are not contained in that book. And I think it's  
4 unfair to imply that every one got put in there in his  
5 question.

6 MR. BETTIUS: Will counsel stipulate there were  
7 no board minutes produced for '67, '68, '69 and '70?

8 MR. BONO: Your Honor, I stipulate that we  
9 couldn't find them. But the --

10 MR. BETTIUS: Thank you.

11 THE COURT: All right.

12 MR. BONO: But the implication that after 30  
13 years whether they existed or not originally is unfair  
14 and not any matter of proof.

15 BY MR. BETTIUS:

16 Q Well, we see when the problems arise in 1971,  
17 don't we, Doctor, well documented board meetings.

18 A We had problem all the time, not only '71. We  
19 had problem starting in 15th of March, 1965, all the  
20 time.

21 Q When the IRS undertook its investigation and  
22 you elected to change your corporate form, you certainly  
23 started to keep minutes, didn't you, because you



1 produced them; isn't that right?

2 A As far as I know, we have always at least once  
3 a month board meeting and the secretary was responsible  
4 to type up the minutes. And that's the only thing I can  
5 answer you. And you refer to Internal Revenue  
6 investigation. Yes, I'm aware of it.

7 Q Well, Doctor, we have documentation, do we not,  
8 in Exhibit 365 -- show the witness 365. Do you  
9 recognize that, Doctor?

10 A Yes, I recognize it.

11 Q And that evidences, does it not, the beginning  
12 of JMHA in '66?

13 A Yes, sir.

14 Q What's it say the purpose in forming JMHA is,  
15 Doctor? Isn't it to build an addition to the present  
16 hospital?

17 A The purpose will be to build an addition to the  
18 present hospital building, and that was the reason why  
19 we did it.

20 Q So you had been open, as I understand it, you  
21 opened in March of 1965; correct?

22 A March '65.

23 Q And already, in January of '66, you're planning

1 expansion?

2 A Yes, I did.

3 Q And in fact, you did expand in '68; is that not  
4 correct?

5 A That's correct. We added 24 additional beds.

6 Q And you proposed to expand again in 1971; isn't  
7 that correct?

8 A That's correct.

9 Q And it would indicate, would it not, Doctor,  
10 that the hospital had an ever increasing demand for its  
11 services; is that correct?

12 A Not at all.

13 Q So you're expanding the hospital while services  
14 are contracting?

15 A The reason why we did it only for one reason:  
16 that at that time we have to prove it that we have  
17 enough parking facility to add beds to the hospital.  
18 And like I said, we have hospital investment. We  
19 increased from 165 beds to 350 beds. And we had  
20 facilities to expanding to 275 beds. We had problems to  
21 build the hospital with paying patient.

22 Q Doctor, you built an addition in 1968, didn't  
23 you?

1           A       That's right. 1968 we build it, a 24 bed  
2 addition. So we increase the bed capacity from 96 to  
3 120.

4           Q       Would you show the witness Exhibit 508? Do you  
5 see that, Doctor?

6           A       Yes, I do.

7           Q       Would you turn to the identification MMRW 762,  
8 page 762?

9           A       Yes, sir.

10          Q       Mr. Richards is your lawyer?

11          A       He was my lawyer and he's my lawyer.

12          Q       Do you see that justification he wrote?  
13 Mr. Richards is a truthful man; isn't he?

14          A       Very much so.

15          Q       And he would not file a letter to the City  
16 based on your knowledge unless he believed it to be true  
17 and accurate in representing your position, would he?

18          A       Representing my position; that's correct.

19          Q       Doesn't he say, "since the hospital last year  
20 ran at 85 percent of capacity and since last month the  
21 hospital was running at 92 percent capacity, the  
22 hospital board felt it essential to start planning an  
23 expansion at this time"? Isn't that what it says?

1 A Right. That's what he said.

2 Q Thank you, Doctor.

3 And the date of that letter from Mr. Richards,  
4 as I understand it, is April 19, 1971?

5 A Correct.

6 Q All right, sir. Do you know who Dr. Bashir is?

7 A Yes, I know him.

8 Q Before we do that, could the witness be shown  
9 Exhibit 358, please? There are a series of those  
10 letters, are there not, Doctor?

11 A I don't know it's series. I see this letter.

12 Q Well, they are there. Does it say, "in  
13 accordance with our agreement, your rental income from  
14 the property is \$390 for one percent"?

15 A I don't have the correct --.

16 Q I'm sorry, look at 358C. I apologize,  
17 Dr. Tauber.

18 A Yes, sir. What is the question?

19 Q You signed that letter, didn't you?

20 A I don't see my signature. But I suppose I  
21 signed it.

22 Q Well, if one percent is \$390, what's 100  
23 percent? 39,000; isn't it?

- 1           A     Multiply it.
- 2           Q     Remember this number I showed you earlier,  
3     Mr. Krakow's letter, 39,000?
- 4           A     Right.
- 5           Q     You all were taking your rent in bonds for your  
6     profit, weren't you?
- 7           A     What is the question?
- 8           Q     You were taking your \$39,000 rent in bonds from  
9     the hospital, were you not, your profit? Mr. Krakow  
10    calculated your profit to the investors at 39,000. Do  
11    you remember that in a letter?
- 12          A     \$39,000 which would be -- but what is the bond?  
13    I don't understand it.
- 14          Q     You don't understand? If you were deferring  
15    rent --
- 16          A     Deferring rent, all right.
- 17          Q     You were taking bonds for it, weren't you?
- 18          A     Yeah.
- 19          Q     Thank you.
- 20          A     In lieu of the cash, we got bond.
- 21          Q     And then a lot of the doctors financed their  
22    bond purchases; didn't they, Doctor?
- 23          A     That's correct.

1 Q And they financed them with 6 percent loans,  
2 didn't they?

3 A I don't know. Some of them 5 and a half  
4 percent, some of them 6 percent, some of them 8 percent,  
5 whatever it was.

6 Q And when they went into default, if the doctors  
7 didn't pay their notes, the hospital paid them; is that  
8 correct?

9 A If they did not pay the note, then the bond  
10 which we issued was recaptured and we took it back.

11 Q Doctor, the hospital paid the interest, for  
12 instance, on Dr. Bashir's notes when he was late, didn't  
13 it?

14 A Yes. We had.

15 Q So let's see if we understand or I understand  
16 the structure. At this point, the hospital owns leases  
17 and it's operating the building; is that correct?

18 A That's correct.

19 Q The partners own the assets, that is, the  
20 building and the equipment; is that correct?

21 A Some of the equipment.

22 Q And they are financing the hospital with notes;  
23 isn't that correct?

1 A Financing the hospital with notes?

2 Q With notes and bonds. Like for instance,  
3 didn't you lend the hospital money and take notes?

4 A Lend money?

5 Q To the hospital for operating costs?

6 A Yeah, we lent money to the hospital, yes.

7 Q So the hospital operation was financed by notes  
8 and by funds from -- furnished on loan and by bonds; is  
9 that correct?

10 A That's correct.

11 Q So at this point in time, if we had a  
12 malpractice claim that got lucky and hit a big number,  
13 they walked into a shell, is that correct, essentially?

14 MR. BONO: Object to the question, Your Honor.  
15 Calls for a legal conclusion.

16 BY MR. BETTIUS:

17 Q If the hospital was hit with a large judgment,  
18 there wasn't any assets. That's the way you tried to  
19 structure it; isn't that right?

20 A Mr. Bettius, before that you said it: 11 times  
21 we claimed immunity that we were a nonprofit  
22 organization. Why do you ask me the question that if  
23 the hospital is hit? If it is a nonprofit organization

1 and you claimed it, then in 11 instances we took  
2 immunity that we cannot be sued as Jefferson Memorial  
3 Hospital, Inc.

4 Q The general assembly changed the law.

5 A You changed the law, but that's not the case.

6 THE COURT: Let's move on, Mr. Bettius.

7 MR. BETTIUS: Yes, sir.

8 BY MR. BETTIUS:

9 Q If in fact, then, the goal as expressed in  
10 Mr. Krakow's memorandum, number 364, was that Jefferson  
11 Hospital, Inc. was created in order to avoid personal  
12 liability to the sponsors from malpractice suits, you  
13 were pretty well on your way to doing that at this  
14 point, weren't you?

15 A That was advised by Mr. Krakow who was a tax  
16 lawyer. And that was a general concept about it. And  
17 you separate the ownership as an operating entity in  
18 order to avoid any personal liabilities on the part of  
19 the sponsors if you have any type of lawsuit.

20 Q There was another major benefit to this  
21 structure, wasn't there, Doctor? If the hospital were  
22 to start earning money, it would be tax exempt in terms  
23 of its income, isn't that correct, its surpluses?



1           A       Surpluses like nonprofit organization has. The  
2       Jefferson Memorial Hospital, Inc., if they would have  
3       made money, naturally as a nonprofit organization,  
4       charitable, it would not pay taxes and it would be in  
5       the hospital to advance, to expand, to improve the  
6       equipment and improve the salary of the employees and  
7       many other things. But not a single penny could be  
8       diverted to the sponsors.

9           Q       Well, Doctor, in point of fact, in 1970, the  
10      hospital turned profitable, didn't it?

11          A       Not that I know of. According to your  
12      assumption, yes. Not that I saw it. They're absolutely  
13      in the red.

14          Q       Doctor, we're going to examine in detail your  
15      financial statements and your tax returns.

16          A       That's correct.

17          Q       But your position is, in 1970 you were not  
18      showing excess earnings?

19          A       You say we. Jefferson Memorial Hospital,  
20      Incorporated was in the red. And you can show me any  
21      financial statement --

22          Q       No, no, Doctor, I think you misunderstand. I'm  
23      not talking -- let's look at a balance sheet for a

1 moment. I'm not talking about balance sheet profit.  
2 You want to tell me that balance sheet profit. In the  
3 first year of operation, hospitals are capital  
4 intensive, are they not?

5 A Capital intensive? What do you mean --

6 Q They need a lot of capital.

7 A All the time.

8 Q When you open it up, you've got to have it  
9 fully staffed and ready to go; is that not right?

10 A You have to have fully staffed hospital to run  
11 the place.

12 Q And no patients. And I think you said that you  
13 better have like almost \$700,000 in the bank to start,  
14 didn't you, two months of full operation?

15 A Right. That based only on a 4,200,000 -- two  
16 months gross income that is generally expected that any  
17 hospital corporation would own as cash to operate the  
18 place.

19 Q And do you remember telling me when you opened,  
20 you had zero?

21 A I would not say zero because we generated  
22 \$88,000 by selling 50 percent of the land with a hundred  
23 percent profit to the incorporated to Dr. Gondor and

1 Dr. Gondor helped us to create some capital to start  
2 operating the hospital.

3 Q If I understand what you're saying, the  
4 hospital was so desperate for capital, it started  
5 selling its assets even before it was opened to get  
6 cash?

7 A That is correct.

8 Q All right. Now, when we get to the end of the  
9 first year, we take all the assets, right, and we  
10 depreciate the building; correct?

11 A Again, you can't depreciate building what you  
12 don't own. Jefferson Memorial Hospital, Inc. never  
13 owned the building. Why do you ask me that we took  
14 depreciation? We took depreciation as a partnership.

15 Q I'm well corrected, Doctor. They didn't even  
16 have the benefit of depreciation. They are going to  
17 show a big retained earnings deficit, aren't they, the  
18 first year?

19 A Who are you talking about?

20 Q The hospital, JMHI.

21 A Right. Jefferson Memorial Hospital, Inc. did  
22 not get any depreciation. Only the depreciation of the  
23 equipment what they owned.

1           Q     Now, Doctor, in the first few years of  
2 operation, these losses cumulated every year, did they  
3 not?

4           A     They were always in the red and they had more  
5 and more debts.

6           Q     Isn't that exactly what you expect in a  
7 start-up business, that you're going to have these  
8 operating losses and you're going to come down after a  
9 few years and you're going to have large cumulative net  
10 retained earnings losses; isn't that correct?

11                     And when you say it's in the red, isn't this  
12 what you're referring to: The hospital still always had  
13 these cumulative losses? Isn't that what you're talking  
14 about?

15          A     No. Actual cash losses.

16          Q     Okay. That's good.

17          A     Because the income did not cover the expenses,  
18 not counting about the working capital.

19          Q     So then when you or your counsel refer to  
20 losses, you're not talking about cumulated, accumulated  
21 net retained earnings losses; are you? You mean every  
22 year it was in the red?

23          A     Every year, sir.

1 MR. BETTIUS: Okay.

2 THE COURT: Is this a good place to take a  
3 break, Mr. Bettius?

4 MR. BETTIUS: I would appreciate it, Your  
5 Honor.

6 THE COURT: All right.

7 (A brief recess was taken.)

8 MR. BETTIUS: May the witness be shown Exhibit  
9 368?

10 BY MR. BETTIUS:

11 Q Doctor, I'm going to refer you to page 2155 of  
12 that document where it discusses leases of equipment.  
13 First of all, do you recognize the document?

14 A I think so.

15 Q The IRS is told in this letter, is it not, that  
16 the leases have been canceled for the equipment?

17 A Excuse me, sir. Which page are you referring  
18 to?

19 Q I'm sorry, Dr. Tauber. That's page 2155, where  
20 it starts to describe the lease and then it comes over  
21 on the next page and says the hospital corporation is  
22 buying the equipment from Westwood, and it says the  
23 leases with the doctors were canceled on September 1,

1 '65.

2 Does it not indicate that the company paid  
3 105,000 in cash, 45,000 in bonds and assumed the  
4 \$200,000 note?

5 A Let me read it, sir.

6 Q Take your time, sir. I don't mean to rush you.

7 A Yes, sir.

8 Q The lease was canceled; is that correct?

9 A Yes.

10 Q Now, I would like you, Doctor, if you will, to  
11 turn to Exhibit 372.

12 A Yes, sir.

13 Q Do you recognize that document?

14 A Yes, I do.

15 Q And it details, does it not, the allegations  
16 brought by the IRS of charges with respect to the loss  
17 of the 501(c)(3) status?

18 A Yes.

19 Q And the first item it gets into is the lease  
20 with King Street Joint Venture; is that correct?

21 A Yes, it does.

22 Q Doctor, I know that copy is very difficult to  
23 read. If you will look behind the copy, you'll see a

1 typed text, which I submitted to your counsel yesterday  
2 for comparison with the very difficult to read copy.

3 MR. BONO: Your Honor, I agree it's difficult,  
4 but I've not had an opportunity to proofread.

5 MR. BETTIUS: Your Honor, it's an important  
6 document. Could we just take a few minutes and allow  
7 Mr. Bono to do that?

8 MR. BONO: I don't want to delay the  
9 proceedings. I don't know how long it's going to take  
10 me.

11 MR. BETTIUS: Let me ask you this. May we  
12 proceed on the assumption that we made a true copy?

13 THE COURT: I'll take a brief recess if you  
14 want to take a look at it, Mr. Bono.

15 MR. BONO: All right.

16 MR. BETTIUS: Please.

17 (A brief recess was taken.)

18 MR. BONO: Thank you for the opportunity to  
19 review the document. We've been able to confirm that  
20 it's substantially correct. Some words were literally  
21 not readable. But it's substantially accurate.

22 THE COURT: All right.

23 BY MR. BETTIUS:

1 Q Dr. Tauber, the first area of inquiry that the  
2 IRS has concerns the leases for the King Street Joint  
3 Venture dated 1964; is that correct?

4 A That's correct.

5 Q And a new lease entered into on January 1, '66.  
6 Do you note that?

7 A Yes.

8 Q Later the King Street Joint Venture  
9 reorganized?

10 A Yes, into Jefferson Memorial Hospital  
11 Associates, yes.

12 Q And the charity redid its lease; is that  
13 correct?

14 A Right.

15 Q Why?

16 A It was reorganized --

17 Q I'm asking you why was it necessary for the  
18 charity to sign a new lease?

19 A Because King Street Joint Venture was the first  
20 lessor, and then the King Street Joint Venture was  
21 replaced by the Jefferson Memorial Hospital Associates,  
22 and the lease was signed.

23 Q Lessors change all the time and the leases



1 convey; don't they? Was there a change in terms,  
2 Doctor, in the '66 lease?

3 A I don't think so.

4 Q Let me show you the two documents, Doctor.

5 A Show it to me.

6 Q In fact, there are three leases, aren't there?  
7 Would you show the witness 268?

8 Doctor, the original lease that you have before  
9 you in 268 provided for a payment of \$51,000 above the  
10 mortgage; is that correct? Look under paragraph 7.

11 A Right. \$51,000.

12 Q Above the mortgage.

13 A Above the mortgage.

14 Q And the --

15 A Above the mortgage payment.

16 Q And subsequently, on the 30th of November, that  
17 was changed by an amendment to reduce the rent to 39,000  
18 above the mortgage; is that correct?

19 A That is what it states.

20 Q Look at -- if you don't remember, Doctor, but  
21 it's 37155, exhibit 269. Go to page 37155, following  
22 that exhibit on 269, page 269, lease agreement.

23 A Yes. Annual rental shall be \$39,000.

1 Q And the tenants agreed to pay costs in  
2 consideration of that above 950,000; is that correct?

3 A \$950,000 mortgage.

4 Q If the lessee is called upon to make payment of  
5 building costs in excess of 950,000, lessee agrees to  
6 reimburse lessor for all costs in excess of 950,000. Is  
7 that in this document?

8 A Yes. It meant that \$950,000 was allocated to  
9 build the hospital. And if the cost runs higher than  
10 \$950,000, then the tenant will be responsible for any  
11 excess money.

12 Q And they did run higher, didn't they?

13 A They did run higher.

14 Q And the hospital paid for them with bonds and  
15 notes, is that correct, and cash?

16 A They paid, I think, \$39,000 in cash and \$39,000  
17 in the form of an 8 percent 20 year bond.

18 Q So this really squared the tenant away. After  
19 the building was complete, he was operating it; is that  
20 correct? The tenant was now ready to occupy the  
21 building and had entered into all the financial  
22 considerations it needed to enter into.

23 A This was a lease signed by the lessor and the

1 lessee.

2 Q And you don't recall a meeting of the hospital  
3 to approve the terms?

4 A I don't recall the meeting, but it was signed  
5 and I'm sure about it.

6 Q Well, you'll admit, will you not, Doctor, you  
7 would tell us, would you not, not an admission, that the  
8 hospital was in pretty desperate shape when it signed  
9 this lease, was it not?

10 A I told to you that desperate shape was all the  
11 time as far as I remember.

12 Q Doctor, we're going to get "all the time." But  
13 at that time, you're telling the Court, are you not,  
14 that it was having to sell off assets to get operating  
15 capital?

16 A That's correct.

17 Q And you don't remember a meeting where this  
18 lease was discussed?

19 A I don't remember exactly when it was but it is  
20 documented and I signed it. Naturally I acknowledge it.

21 Q You signed it both as landlord and tenant, in  
22 effect, didn't you? You really represented the landlord  
23 interest and you also represented the tenant interest,

1 didn't you?

2 MR. BONO: Objection, Your Honor.

3 A Not exactly.

4 THE COURT: Just a minute, Doctor.

5 MR. BONO: The document does not show  
6 Dr. Tauber signed it on both sides.

7 MR. BETTIUS: When I say you -- I'm sorry. I  
8 withdraw the question and I stand corrected.

9 BY MR. BETTIUS:

10 Q Doctor, the entity that owned the lease, the  
11 whole premises, JMHA, was composed of the same people  
12 that composed the charity, JMHI; isn't that correct?

13 A It is not correct what you tell, because the  
14 document shows it that the King Street Joint Venture  
15 was -- I signed it as the trustee, and attest by  
16 Mr. Nadas. And the other entity, the tenant Jefferson  
17 Memorial Hospital, Inc. was signed by Dr. George Ware as  
18 vice-president and Dr. James Scully as secretary. And I  
19 did not sign it. But that's what you ask.

20 Q But Scully and Ware were both members of JMHA;  
21 isn't that correct?

22 A That's correct.

23 Q And in fact, the whole membership of JMHI was

1 the same as JMHA, isn't that correct, except for two  
2 doctors?

3 A Except the two doctors, that's correct.

4 Q Okay. And what percentage did they own? None,  
5 isn't that correct, of JMHA?

6 A The two doctors?

7 Q Yeah. What percentage did they own?

8 A If they are not members, then how could they  
9 own anything?

10 Q I'm talking about -- they didn't own anything  
11 in --

12 A Would you be kind to say who are you referring  
13 to?

14 Q They did not own anything in JMHA, did they?

15 A Who? The two doctors, Dr. Novak and Dr. Pizer,  
16 they had no interest in the partnership. Therefore,  
17 they owned nothing.

18 Q Who was Dr. Novak?

19 A He was a general practitioner practicing in the  
20 City of Alexandria.

21 Q He was a staff physician, wasn't he? Did you  
22 all pay him?

23 A What he was, he was a member of the staff, and

1 he had many duties like assisting in surgery, covering  
2 the house, I'm calling it the house, and that was his  
3 goal.

4 Q He was your assistant, wasn't he, surgical  
5 assistant?

6 A I wouldn't say my assistant. He was an  
7 assistant in the surgical department assisting different  
8 doctors and me.

9 Q How much was he paid, do you remember?

10 A I know that he was underpaid. But how much,  
11 maybe a thousand or \$1,200 a month.

12 Q Okay. Who was Dr. Pizer?

13 A Dr. Pizer is practicing oral surgeon in  
14 Alexandria, and he did not have any paying job. Only he  
15 was representing the Alexandria doctors.

16 Q Okay. Now, do you ever recall Pizer and Novak  
17 were asked what they thought about the lease? They  
18 wouldn't have any interest in it, would they?

19 A They were members of the board of directors;  
20 therefore, I'm sure about it they had the full right to  
21 express an opinion. But if you ask me after 32 years  
22 what they said, I honestly tell you, I don't remember.

23 Q Do you remember ever having a meeting where

1 JMHI looked at the lease to see if its terms were fair?  
2 Do you remember that kind of meeting? Or did you just  
3 decide this was the way it was going to be done?

4 A No, I did not decide it alone. It was decided  
5 by the two entities, by the lessor and the lessee.

6 And you ask me the question, what was the  
7 feeling of Dr. Novak and Dr. Pizer? Dr. Pizer is still  
8 alive. You can ask him. Dr. Novak is dead and he  
9 cannot answer you.

10 Q The answer is, though, the lease was structured  
11 so that you folks did not have to come up with any  
12 money; is that correct?

13 A The lease was entered in this contract was fair  
14 to everybody.

15 Q Well, if we read Dr. Krakow's, Mr. Krakow's  
16 summary, it was structured so that it paid all the  
17 expenses and you got a 10 percent return as partners, is  
18 that correct, Mr. Krakow's letter is correct?

19 A Where is the letter what you refer to?

20 Q Okay. That is the exhibit we had out earlier,  
21 Doctor.

22 A I beg your pardon.

23 Q Dr. Krakow's letter. Do you remember the

1 39,000, that was the 10 percent return to the doctors,  
2 Exhibit 364?

3 A Yes, sir, I read it.

4 Q That's 10 percent profit, right, Doctor, the  
5 39,000?

6 A All the cash invested.

7 Q Now, Doctor, let me show you, we looked at the  
8 '64 lease. You entered into two leases, did you not?  
9 And I'm going to ask you to look at 292 and 293.

10 All right, sir?

11 A Is there a question pending?

12 Q I'm sorry, sir?

13 A Did you ask me anything?

14 Q I'm going to ask you, sir, why did you enter  
15 into a lease on January 1st between Jefferson Memorial  
16 Hospital Associates, a venture, and then on the 2nd of  
17 January, enter into a sublease between the same parties,  
18 do you know?

19 A No, but let me read it and I try to give you an  
20 answer if you let me refresh my memory.

21 I think just glancing at the paper, when Blue  
22 Cross/Blue Shield finally approved the hospital for  
23 reimbursement, then Blue Cross requested that all the



1 equipment should be put into the corporation. That  
2 means that the finance company which purchased and took  
3 the 10 percent investment credit and leased -- the  
4 original concept was that they lease it at an 8 percent  
5 basis. And after ten years, they will donate it.

6 Q Doctor, there is no --

7 A I cannot tell you anything else. You asked me  
8 what is my recollection. Therefore, I answer.

9 Q Let me point you to the fact there is no  
10 equipment in this lease.

11 A Point to the fact? What do you ask?

12 Q This is for land and building, Doctor, no  
13 equipment.

14 A I cannot answer you why it was.

15 Q Isn't it true that you added land payments and  
16 the lease is not a sublease at all? It's just an add-on  
17 of land payments to the Hopkins lease; do you remember?

18 A No.

19 Q I don't know. You tell me.

20 A I tell it to you, that it modified the  
21 arrangement; when Dr. Gondor purchased the 50 percent,  
22 then he was supposed to get ground rent. And just the  
23 same way that the Tauber Foundation was 25 percent and 5

1 percent of the Burtoff was a rental payment. I think  
2 that Jefferson Memorial Hospital, Inc. owned 20 percent;  
3 therefore, the total rent was \$15,600. That means it  
4 was based on the \$90,500 total rent if Jefferson  
5 Memorial Hospital, Inc. would have to pay the 20  
6 percent.

7 Q The long and short of it is, Doctor, the  
8 hospital is paying for the off record conveyances, isn't  
9 it?

10 A For what?

11 Q It's paying Gondor and it's paying Burtoff the  
12 off record conveyances.

13 A What conveyances? They own the land.

14 Q That's what I'm saying.

15 A And therefore, the land is leased to the  
16 hospital. That was an additional consideration. And  
17 this land -- basically it was a third mortgage.

18 Q In effect, Doctor, isn't what you're saying  
19 that while Dr. Gondor made this very generous  
20 contribution, he entered into one lease on January 1st  
21 and entered into a lease on January 2nd to secure, like,  
22 mortgage payments to Gondor and Burtoff which were off  
23 record?

1           A     No, no. It is absolutely not right. You had a  
2 first mortgage \$800,000 for the building. You had a  
3 \$100,000 original building. They called it, the  
4 mortgage, a junior mortgage, and the land was  
5 subordinated behind these two mortgages. Therefore, it  
6 was a third mortgage.

7                     And we took only the very generous 10 percent  
8 return which is absolutely unusual in any business  
9 transaction that you are satisfied with 10 percent  
10 return on a third mortgage, because this is a third  
11 mortgage.

12           Q     Bear with me, Doctor. You concede, do you not,  
13 that this lease secured Dr. Gondor and Dr. Burtoff for  
14 their land in connection with the off record  
15 conveyances? That's what it's doing, isn't it? That's  
16 what it says.

17           A     Yeah, this is -- they build the building and --  
18 they lease the building and they lease the underlying  
19 land. That is nothing unusual about it. This is a  
20 normal --

21           Q     It's not unusual. But if the IRS looks at it,  
22 we have Gondor taking a 25 percent tax deduction on the  
23 21st and then six days later, conveying the land back

1 and in a lease on the 2nd of January, getting secured by  
2 a mortgage. Isn't that in effect --

3 MR. BONO: Objection, Your Honor.

4 THE COURT: I haven't heard a question yet.

5 MR. BETTIUS: Isn't that what happened?

6 MR. BONO: Objection, Your Honor. The witness  
7 can't say what the IRS --

8 THE COURT: We've been through that,  
9 Mr. Bettius.

10 MR. BETTIUS: I'm sorry.

11 BY MR. BETTIUS:

12 Q This is how he gets paid, isn't it?

13 A Dr. Gondor should be congratulated by the  
14 Internal Revenue Service that he was willing to take a  
15 deduction based on the \$150,000 value and then he bought  
16 it at 300,000 plus value. It shows the generosity of  
17 Dr. Gondor. That's what you want to put in the record,  
18 put it, because it belongs in the record.

19 Q He got a deduction, Doctor, and then he sold --

20 THE COURT: We've been through this already,  
21 Mr. Bettius.

22 MR. BETTIUS: I'm sorry, Your Honor.

23 BY MR. BETTIUS:

1 Q All right. The first thing that the Service  
2 focused on, was it not, in this revocation letter was  
3 the relationship of JMHA and JMHI? That's the first  
4 thing that comes under scrutiny in this letter.

5 A Yeah, that's right. The Internal Revenue  
6 Service felt it that it was partly, that it regarded it  
7 as a conflict. And that's --

8 Q Next, the Service focused on the way the  
9 hospital was capitalized, the sale of bonds at 8 percent  
10 and the payment for those with notes at 6 percent; isn't  
11 that correct?

12 A That was a point what the Internal Revenue  
13 raised. I didn't agree on it. Because 8 percent bond  
14 was sold with no commission. That means if you go out  
15 on Wall Street --

16 Q Doctor, the question I asked you was the next  
17 area of focus was the series of transactions where the  
18 hospital sold its bonds for 8 percent and 6 percent  
19 notes were taken; is that correct?

20 A Yeah. But the 6 percent was given by most of  
21 the banks. At that time they charged 5 and a half  
22 percent depending on the credit of the bond buyer.

23 Q And the hospital paid the interest when doctors

1 didn't. Isn't that the whole thrust of this?

2 A I think that only one case as far as me  
3 concerned that I remember one single case and Dr. Bashir  
4 who we mentioned did not pay it. But the rest are paid.  
5 Dr. Peters is mentioned in here. He paid faithfully his  
6 interest payment all the time.

7 Q Dr. Peters was a substantial purchaser of these  
8 bonds, was he not?

9 A That's correct. He helped us because he used  
10 his own credit instead of the hospital credit which has  
11 no credit and had no asset to go out to the bank without  
12 personal endorsement. Therefore, he did a great favor  
13 to us.

14 Q Isn't it true that the Service found that the  
15 majority of bonds issued by the hospital were plain  
16 arbitrage transactions where you sold -- that's what the  
17 letter says, isn't it?

18 MR. BONO: Objection, Your Honor. The witness  
19 can't say -- the witness is not competent to testify --

20 THE COURT: The letter speaks for itself,  
21 doesn't it, Mr. Bettius?

22 MR. BETTIUS: Yes, sir.

23 BY MR. BETTIUS:

1 Q Now, in terms of the structure of the equipment  
2 lease, the Service found that leases hadn't been  
3 canceled at all; isn't that correct?

4 A No. As far as I remember, as I mentioned to  
5 you before, Blue Cross wanted that the hospital should  
6 own the equipment because they had to have certain type  
7 of financial backing, some substance. And later on, the  
8 Internal Revenue Service, whenever it was originally  
9 planned and documented, that after ten years the  
10 equipment would be donated to the Jefferson Memorial  
11 Hospital, Incorporated. But the Internal Revenue  
12 Service position that they did not agree, and --

13 Q Well, what the Service said was that the  
14 hospital entered into an arrangement with certain  
15 individuals in a partnership known as Jefferson Memorial  
16 Hospital Associates to sell this equipment to the  
17 mentioned individuals who had prearranged to contribute  
18 said equipment to Jefferson Memorial Hospital Associates  
19 for an interest in the partnership. The hospital then  
20 arranged to lease this equipment from the partnership  
21 for ten years for a rental equal to the sales price,  
22 after which the equipment is to be contributed to the  
23 hospital. The hospital pays the rental for the

1 equipment in the form of its 8 percent bonds.

2 The individuals who purchased the equipment  
3 gave cash and notes in exchange for the equipment. Some  
4 of the notes were placed with First National Bank of  
5 Maryland for collection and the balance of the notes are  
6 held by the hospital. None of the individuals assumed  
7 the hospital's liability of the equipment, namely, the  
8 liability to Public National Bank for 127,000 and a  
9 liability to the First National Bank of Maryland for  
10 190,000.

11 Isn't what happened, Doctor, after Mr. Krakow  
12 represented to the Service that the lease had been  
13 canceled, it was reentered into? Isn't that exactly  
14 what happened here?

15 A No. No. Not that I see it.

16 Q All right. In any event, is it not true that  
17 after receiving this notice, the partnership found it  
18 propitious or advantageous to suddenly separate the land  
19 ownerships? In 1970 you created a subdivision, didn't  
20 you?

21 A What are you talking about? The land  
22 subdivision?

23 Q Yes, sir.



1 A Yes, sir.

2 Q And that came after the IRS notice, didn't it?

3 A Yes, it indicates that.

4 Q Well, why -- let me ask you this, Doctor. And  
5 the subdivision created parcels of land over which  
6 buildings overlapped the parcels; didn't it?

7 A Yes. It was subdivided into four different  
8 lots.

9 Q And Dr. Gondor insisted on you entering into  
10 this subdivision, didn't he?

11 A I would not use the word insisted. He ask it  
12 that he rather have a smaller part with a loan because  
13 that was his mode of operation, always.

14 Q As it ended up, rather than having an undivided  
15 interest in the whole, JMHI agreed to having an interest  
16 in a parking lot.

17 A That's correct.

18 Q All right.

19 A And it was Mr. Richards --

20 Q I don't have a pending question, sir.

21 Now, also, you at that time began to seek or  
22 the hospital began to seek and the partnership began to  
23 seek the advice of an attorney as to how to respond to

1 the recently announced investigation by the Internal  
2 Revenue Service; is that correct?

3 Would you show the witness Exhibit 374 and 375  
4 will come right behind it?

5 A You refer to the letter, Mr. Bettius, November  
6 of 1970?

7 Q Yes. From Mr. Reeves.

8 A What was the pending question?

9 Q The hospital and the partnership sought advice  
10 from Mr. Reeves with respect to the question, questions  
11 raised by the Internal Revenue Service?

12 A Definitely no.

13 Q No?

14 A No.

15 Q Only the hospital?

16 A No.

17 Q Who sought advice?

18 A You ask the question whether Mr. Reeves was  
19 asked to express an opinion about the Internal Revenue  
20 Service ruling. That's what you ask about.

21 Q Um-hum.

22 A He was never asked it. He was asked for a  
23 different purpose, nothing to do with the Internal

1 Revenue Service decision.

2 Q Let me ask you, then, how do you explain this  
3 paragraph. Based on the latest communications to the  
4 hospital from the Internal Revenue Service, it appears  
5 that the decision whether to operate as a profit or  
6 nonprofit corporation may have already been forced upon  
7 you by the decision of the Internal Revenue Service to  
8 revoke your exemption from federal income tax for years  
9 beginning after December 31st, 1965.

10 And then he says, although you have a right to  
11 appeal the proposed action by the Internal Revenue  
12 Service, it is my opinion, based on the history of the  
13 transactions among the parties involved, that the  
14 Internal Revenue Service will prevail in this matter.

15 Did he not express an opinion as to where this  
16 was going to go?

17 A You asked the question whether we asked his  
18 opinion, not what he expressed his opinion. Mr. Reeves  
19 has never been asked to render an opinion about the  
20 Internal Revenue Service. He recollects in his letter  
21 in the second paragraph what has happened and how he  
22 understands it.

23 But the question was whether we asked him to

1 make an interpretation of the Internal Revenue Service  
2 ruling? Absolutely not. He came into the picture for  
3 an entirely different reason. When you ask the question  
4 next I answer it. But this one was a voluntary  
5 summarization as he saw it and that opinion was never  
6 asked from Mr. Reeves.

7 Q So this was a gratuitous opinion on his part?

8 A Use another word what I understand it.

9 Q He gave his opinion unasked, unsolicited. It  
10 was just a favor.

11 A Unsolicited question from him. He volunteered  
12 and he incorporated in his letter. But it was never  
13 told to him to question or advise, ask of him as far as  
14 the Internal Revenue Service letter was concerned. He  
15 had nothing to do with it.

16 Q So his opinion expressed in the letter -- and  
17 it says, it is my opinion based on the history of the  
18 transactions among the parties involved, that the  
19 Internal Revenue Service will prevail in this matter.  
20 He was giving you an opinion you didn't ask for?

21 A Yeah, he volunteered opinion. It was never  
22 asked for and never -- I never considered it.

23 Q Dr. Tauber, we had earlier, I think,

1 established that the partnership was created to hold the  
2 improvements and that the charity was to operate the  
3 hospital, and would also provide liability shelter from  
4 malpractice. Is that a fair statement?

5 A This is -- this occurred only later, this  
6 concept, and really I tell to you that I did not know it  
7 that the nonprofit hospital is immune from any type of  
8 malpractice. It came up that issue --

9 Q They are not immune, Doctor, from any kind of a  
10 lawsuit, just a certain kind.

11 A Certainly, I know it, because Fairfax Hospital  
12 was sued on the infant's killing, that one case. I know  
13 that they are not immune from anything.

14 Q When did you learn about this immunity concept?

15 A Which one?

16 Q When did you learn about this immunity concept?

17 A In the course of the lawsuit when the lawyer  
18 who handled it from the insurance company brought up the  
19 issue that this is a nonprofit organization. Therefore,  
20 the hospital itself cannot be sued.

21 Q Well, let's look at the advice --

22 A That was not the original plan, simply because  
23 I did not know it. That was not a consideration.

1           Q     Mr. Krakow said right in the beginning, did he  
2 not, in 1964 and '65, the purpose -- I mean, right at  
3 the outset, Dr. Tauber, and you said earlier in your  
4 testimony this morning, I believe, that he was  
5 knowledgeable that the purpose for forming the  
6 corporation, the charity, was to avoid liability. It  
7 was right at the beginning, wasn't it?

8           A     Mr. Bettius, that is two different things.  
9 Protect the sponsors, but not the hospital. We created  
10 this entity separating that the sponsor would not be  
11 sued and liable for it. But you talk about it now that  
12 Jefferson Memorial Hospital, Inc. that they are immune.

13                 I did not know it. Only by experience when we  
14 were sued, then we found it out. But that was not  
15 created, and that what I said it, that the sponsor  
16 should be harmless.

17           Q     Doctor, the statute didn't protect doctors at  
18 all; did it?

19                 MR. BONO: Objection, Your Honor.

20                 MR. BETTIUS: He's telling me what immunity is.

21                 THE COURT: No, he wasn't, Mr. Bettius. He  
22 said that the immunity you talked about in your earlier  
23 examination, he thought you were talking about the

1 immunity of the owners, the investors.

2 MR. BETTIUS: That's right. I am. He's  
3 precisely correct about that. And through the owners,  
4 you get to the assets, don't you?

5 MR. BONO: Ha.

6 MR. BETTIUS: Well, Mr. Bono, you may laugh,  
7 but I'm going to read the next paragraph.

8 BY MR. BETTIUS:

9 Q "As a consequence of the loss of your tax  
10 exempt status, you will henceforth be operating a profit  
11 corporation within the framework of the present  
12 corporate structure and its affiliations, none of which  
13 were designed to accommodate the requirements of a  
14 profit corporation. It appears to me that you have a  
15 very unwieldy corporate structure to operate as a profit  
16 corporation. The tax treatment of the various items of  
17 income deductions for interest expense and so forth,  
18 which have already been challenged by the Internal  
19 Revenue Service, would continue to be confused and  
20 uncertain in each of your future tax years."

21 And then we get to the heart of the opinion,  
22 don't we, Doctor? "Perhaps more important, the present  
23 corporate structure and the relationship of the

1 partnership as well as the individual members of the  
2 partnership and the members of the hospital board of  
3 directors makes it quite uncertain in my opinion that  
4 members of the Jefferson Memorial Hospital, Inc., its  
5 directors and officers, are really protected from  
6 individual personal liability in the operations of the  
7 hospital."

8 I mean, he's telling you right then and there  
9 that you've so controlled the operations of this thing  
10 through JMHA and individually, that you're now in danger  
11 of being sued; isn't that correct?

12 A That is his opinion. But you asked me the  
13 question and I answered it to you.

14 Q That's clearly his opinion to you?

15 A Clearly what he thinks but not what I think.

16 Q And then he recommends -- I mean, we get right  
17 to the heart of his recommendation. And it's expressed  
18 in the letter. "It is my recommendation, therefore,  
19 that you undertake a complete reorganization of the  
20 hospital and its affiliates. I recommend that you  
21 establish a new profit corporation with the same name,  
22 that the old nonprofit corporation be merged into it,  
23 and that all property and equipment which is now being



1 treated by the Internal Revenue Service as though it  
2 were owned outright by a profit corporation be acquired  
3 by the new corporation."

4 And that's exactly what he said. We'll create  
5 a for-profit corporation and we'll merge them together.  
6 Isn't that correct?

7 A That what the letter says.

8 Q And it was very important, was it not -- what  
9 did you understand the consequence of the revocation of  
10 the tax ruling was, Doctor?

11 A The consequences was very clear. Every single  
12 sponsor had to amend their tax return way back from the  
13 very beginning and to repay to the government the  
14 disallowed deductions.

15 What happened, they paid the price. They took  
16 the deduction in good faith and it turned to be it did  
17 not work out. Therefore, every single sponsor  
18 readjusted their income tax way back to 1966 and paid  
19 back to the government every single penny what they  
20 deducted. That what you want to ask me; that what I  
21 answer.

22 Q It meant, Doctor, that JMHI had to go back to  
23 '66, '67, '68, '69 and '70 and file tax returns, did it

1 not?

2 A File them, sure.

3 Q And it meant that going forward in 1971 and  
4 1972 that if you did what he said, you would have a new  
5 entity, right?

6 A What do you mean "new entity"?

7 Q Well, you were going to merge JMHI into JMHC;  
8 is that correct?

9 A Merger or successor and assume the liabilities  
10 and took the assets; that's correct.

11 Q And anyone looking at the situation rationally  
12 would understand that you had problems going backward  
13 and you had problems going forward. You weren't going  
14 to close the hospital down; isn't that right?

15 MR. BONO: Objection, Your Honor. He can't ask  
16 this witness what anyone else understands.

17 THE COURT: Rephrase the question, Mr. Bettius.

18 BY MR. BETTIUS:

19 Q You had two operational problems as president,  
20 and your board did. You were going to have to go back  
21 and file past returns. And you continued to stay in  
22 business, didn't you?

23 A Right. But I told to you that we amended all

1 our returns and we paid --

2 Q Doctor, that's not the question. The question  
3 is you intended to stay in business, did you not?

4 A Yes.

5 Q And that meant that any appropriate plan would  
6 have to look backward and forward, isn't that correct,  
7 in the organization of the business?

8 A The reorganization by Mr. Reeves, you know, was  
9 given to him. How he had planned it, I agreed with him  
10 because that was the decision of the majority of the  
11 members of the board of directors, and --

12 Q Doctor, please try and listen to my question.  
13 As an ongoing business, whatever corporate form you  
14 took, had to look backward and forward; didn't it?

15 A They had to.

16 Q Yes, sir. Now, if your testimony this morning  
17 is correct that there was no profit going backwards, no  
18 problem, is it? Maybe for the individual members but  
19 it's certainly no problem for the corporation, is it?

20 A Would you ask the question again?

21 Q Well, if they didn't have any profit, they  
22 didn't have any tax, did they?

23 A That's right. It was a nontaxable corporation.

1 I don't understand it what you talk always tax  
2 advantage. People pay taxes.

3 Q So from your point of view, tax planning only  
4 had to look forward because there were no tax  
5 consequences in prior years; is that correct?

6 A No. When it was a not-for-profit organization,  
7 tax exempt organization, they did not pay taxes. And  
8 you refer all the time that the tax losses what  
9 Jefferson Memorial Hospital, Inc. had, they did not pay  
10 taxes. What type of losses are you talking about?

11 Q What I'm saying, Doctor, is if we're a taxable  
12 organization and we're taxed on profit and there weren't  
13 any profits prior to 1971, there wasn't any tax to pay  
14 going backward, is it?

15 A When the merger or the succession occurred  
16 between Jefferson Memorial Hospital, Inc. and Jefferson  
17 Memorial Hospital Corporation, then naturally they took  
18 all the liabilities and then --

19 Q Doctor, you're not answering my question.

20 A I cannot answer it.

21 Q You're not answering my question.

22 MR. BONO: Your Honor, he is answering. He has  
23 repeatedly interrupted Dr. Tauber in the middle of his

1 answers.

2 THE COURT: Doctor, the question is, if your  
3 testimony about the lack of profit in JMHI,  
4 Incorporated, Jefferson Memorial Hospital, Incorporated,  
5 if there were no profits for '66, '67, '68, '69 and '70,  
6 then just looking backward, as Mr. Bettius described it,  
7 would have resulted in no tax liability for the  
8 corporation.

9 THE WITNESS: That's correct.

10 MR. BETTIUS: Thank you, Your Honor.

11 BY MR. BETTIUS:

12 Q Now, you responded to Mr. Reeves' letter, did  
13 you not? And I'm going to ask you to look at 375.

14 A Yes, sir.

15 Q Now, you refer, do you not, to a board meeting  
16 on December 9, 1970?

17 A That's correct.

18 Q What was agreed to at that board meeting,  
19 Doctor?

20 A That they accepted the recommendation of  
21 Mr. Reeves that we will -- let me use the word he use --  
22 we merge Jefferson Memorial Hospital, Inc. into  
23 Jefferson Memorial Hospital Corporation. The first was

1 a non-for-profit, not-for-profit tax exempt organization  
2 of Maryland, and the new corporation for profit and it  
3 was organized in the state of Delaware.

4 Q All right. You didn't want the hospital to  
5 become for profit, did you?

6 A Personally?

7 Q Right.

8 A What I personally wanted or not, it is a  
9 secondary question. Personally I did not want it. But  
10 I went along with the majority of the members of the  
11 board of directors. Therefore, I joined them, and I  
12 expressed my opinion about it, which is on the record.  
13 You know it well. But I agreed in this so-called  
14 merger.

15 Q That's right. You supported it 100 percent,  
16 right?

17 A As soon as I was defeated by the majority, I  
18 wholeheartedly 100 percent supported the decision of the  
19 board.

20 Q Who had furnished the financing for the  
21 hospital when it was in trouble? When it didn't have  
22 money, you'd come up with the money, Doctor.

23 A I think so.

1 Q You always did, didn't you?

2 A Dr. Gondor was helping, too.

3 Q Right. But there was always money. If they  
4 needed money, you weren't going to let it go broke;  
5 isn't that correct?

6 A In the past did not go broke, Mr. Bettius. You  
7 asked me in the past what I did, I did. But it doesn't  
8 mean I will do it forever.

9 Q I understand that.

10 A But you did not ask me.

11 Q You said, here by losing -- "by changing the  
12 charter, we will certainly lose very important benefits  
13 which will be additional burdens to the hospital."

14 A That's correct.

15 Q And you knew financially it was not a good  
16 decision; isn't that correct?

17 A Again, you separate my personal opinion which  
18 became void after the 9th of December when the board  
19 decided by majority what direction we go.

20 But personally in my own opinion, I expressed,  
21 I expressed my opinion and everybody know it, that the  
22 moment that it was adopted by the member of the board of  
23 directors by the majority, I adhered it 100 percent; I

1 supported it.

2 Q And you then go on and you say, "I have talked  
3 to the administrator, Mr. Forthman, who was highly  
4 impressed by you and the concept of how to conduct the  
5 transfer. I especially welcome your strong suggestions  
6 that members of this venture should pay up their current  
7 obligations before any change in the charter is made."

8 Then, Doctor, you say, "For being 18 years in  
9 real estate investment, without lack of modesty, I can  
10 state that these ventures were successful, so I  
11 definitely wish to adhere to the method used by me  
12 previously, that is to keep my ownership in the building  
13 as an individual rather than in corporate form."

14 Mr. Reeves' wanted, did he not, the assets of  
15 the hospital, because of the problems that he had  
16 enunciated of indebtedness and control and being sued,  
17 to be placed in one basket, didn't he?

18 A That has entirely a different reason for it.  
19 Ask me; I answer to you.

20 Q There is an entirely different reason for it?

21 A Entirely different reason for it.

22 Q And what is that reason?

23 A That what I am answering you. He planned to go



1 to Wall Street, the public, and he emphasize it that  
2 this concept, what with the help of Mr. Bernard Krakow  
3 constructed, that I separate the partnership which owned  
4 the place and the corporation. Without owning the  
5 hospital, they will not have any chance to go to the  
6 Wall Street and try to sell it to the public.

7 Q Isn't it true, Dr. Tauber --

8 A I did not finish.

9 THE COURT: Let him finish.

10 BY MR. BETTIUS:

11 Q I'm sorry.

12 A Therefore, that was the reason which I  
13 reluctantly agreed about it, because it was not my  
14 principle of how I sell the thing. But I again adopted  
15 the majority vote, and I was willing to give the  
16 Jefferson Memorial Hospital Association asset, the  
17 building, in lieu of the 240,000 shares we get from the  
18 Jefferson Memorial Hospital Corporation. But that was  
19 the reason. No other reason at all --

20 Q We don't see that reason, Doctor.

21 A The only reason was --

22 Q I understand that's the reason. We don't see  
23 that reason expressed anywhere in Mr. Reeves' letter, do

1 we? This is a tax investigation he was responding to.

2 A This is nothing to do with the tax. This is a  
3 business decision what Mr. Reeves as a security lawyer  
4 who recommended us that he has no chance to go to the  
5 public to sell it, this corporation which is showing  
6 only deficit and losses all the time without having  
7 asset. That's the reason why we went. That the reason  
8 why you ask it.

9 Q Dr. Tauber, in a tax context, Mr. Reeves  
10 desired and the necessity of conveying the building was  
11 expressed to you in 1966 by another lawyer looking at  
12 your tax problems, wasn't it? Do you remember  
13 Mr. Sexton?

14 A Sexton?

15 Q Yes.

16 A Oh, that one from Arent Fox?

17 Q Yes.

18 A No, that has absolutely -- you are mixing up as  
19 usual everything. Arent Fox came into the picture  
20 because Mr. Gant represented us when is the word from  
21 Alexandria Hospital and Fairfax Hospital, we were denied  
22 the approvement by Blue Cross for insurance purpose.  
23 And that was the reason that Mr. Sexton, who was a tax

1 lawyer with Arent Fox company, recommended us that we  
2 put in the building in the asset.

3 Q Show the witness Exhibit 369, please. I'm  
4 going to refer you to page 4. And I'm going to ask you  
5 to remember Mr. Bono's examination yesterday where he  
6 talked about these improvements and how they were owned,  
7 Mrs. Vella saying that the tenant could remove them and  
8 ask that they be removed.

9 Read that paragraph, please, Doctor.

10 A Which paragraph?

11 Q That paragraph where he talks about his  
12 concerns, where he says, "before continuing, it seems  
13 appropriate for me once again to express our concern  
14 about the order and form of several transactions which  
15 you have required. First of all, as you know, the  
16 record nowhere indicates that at any time the owner of  
17 the hospital also simultaneously owned parcel one or a  
18 lease on parcel one or two. This leads us to question  
19 whether Associates or anyone will be able to claim  
20 depreciation on the hospital for federal and state tax  
21 purposes."

22 I mean, you were warned right then in 1966, in  
23 October, you had this problem. Am I correct?

1           A     Mr. Sexton as a tax lawyer for the Arent Fox  
2 company had on one side advised us. And we had  
3 Mr. Bernard Krakow, who is another tax lawyer, advise us  
4 the other way. And I took Mr. Bernard Krakow's advice.

5           Q     And you got your exemption revoked, didn't you?

6           A     Yes.

7           Q     Okay. Now, you had warning from Mr. Sexton.  
8 Now you've got a revocation and now you see Reeves  
9 recommending that you do the same thing.

10                   Now, let's see, Dr. Tauber, whether you had  
11 problems going backward and whether you had problems  
12 going forward or not in terms of these loss carry  
13 forwards. It's your testimony, as I understand it,  
14 there was no tax liability for the prior years; is that  
15 correct?

16           A     No tax for -- Mr. Bettius, when you have  
17 Jefferson Memorial Hospital, Incorporated, a tax exempt  
18 organization, how do you express this opinion that they  
19 had tax liability? Because the definition of tax  
20 exempt, organization doesn't pay taxes. That doesn't  
21 mean that they don't have liabilities. And when you are  
22 merging a corporation, then you take over the  
23 liabilities. And naturally the liabilities you have

1 will reduce your tax payment. That is only around 20  
2 percent of the liabilities, because that's not tax --

3 Q Didn't you tell the Court in response to the  
4 Court's question, you had no past tax liability? Are  
5 you telling me that you had a profit, now, in '67, '68,  
6 '69 and '70?

7 A No. Mr. Bettius, I told you exactly what I  
8 said before. The tax exempt organization which did not  
9 pay taxes, how can it have a tax liability?

10 Q Doctor, you know your exemption -- in fact, you  
11 know your exemption is going down the drain, don't you?  
12 You don't fight the IRS, based on Mr. Reeves' advice.

13 A That would not be the first time I fought the  
14 Internal Revenue Service decision. And many times I  
15 prevailed. And this time, because that was the advice  
16 of my partners that they want a profit-making hospital,  
17 no sense to go back to Internal Revenue Service and  
18 challenge it. If you would ask me whether I would have  
19 challenged it, yes.

20 Q Doctor, are you answering my question?

21 THE COURT: I'm not sure what the question is  
22 at this point, Mr. Bettius. I'm sure at some point  
23 you're going to illuminate for me what this has to do

1 with this case and what the doctor's own personal  
2 thoughts and objections have to do with this case when  
3 he says he went along with the majority and whatever was  
4 done, was done. The corporation was formed and the  
5 stock was issued. Wasn't it?

6 MR. BETTIUS: Your Honor, what happened was --  
7 and you're about to get into the area of what happened  
8 to the assets of the partnership and why. They had  
9 steadfastly maintained that the assets of the  
10 partnership went to C, and Your Honor should create a  
11 transaction called an equitable dissolution and  
12 conveyance. And I'm going to show you the assets went  
13 to I where they were intended to go and where they  
14 needed to be all along. And that's why it was done.

15 THE COURT: I understand you clearly,  
16 Mr. Bettius. What I'm trying to understand is the  
17 doctor's objections in '66 and his objections again in  
18 '71 and their relevance to this case, in view of what  
19 actually happened in the case, and that is the Corp., C  
20 corporation was formed. The stock was issued and it may  
21 have been distributed. I haven't heard any evidence  
22 about that, but I assume it was.

23 MR. BETTIUS: You are going to see, Judge

1 Swersky, as this case unveils, valuation testimony that  
2 says that you should value this thing as if there wasn't  
3 a unity of asset. You're going to see tax losses taken  
4 forward and backward, and they're saying there is no  
5 value to them.

6 THE COURT: I understand that. But what you've  
7 inquired into for about the last 20 minutes or so was  
8 Dr. Tauber's personal objections to this and wasn't he  
9 told in '66 he was going to have a problem and didn't he  
10 lose his exemption. And all that's true. But I'm still  
11 trying to figure out what it has to do with this case.  
12 Because we have facts as to what actually happened.

13 MR. BETTIUS: We have Respondents, Your Honor,  
14 coming into this court and asking for equity. And we're  
15 having Respondents in this court asking you to create a  
16 transaction that didn't happen. And ultimately you're  
17 going to be asked in connection with this transaction to  
18 approve an insider transaction that never occurred. And  
19 if Your Honor feels it's immaterial what that  
20 transaction --

21 THE COURT: All I'm saying is I assume at some  
22 point you're going to illuminate it for me. Go ahead.

23 MR. BETTIUS: What I'm illuminating, Your

1 Honor, is a lack of clean hands. That's what I'm  
2 illuminating.

3 THE WITNESS: You mean your hands.

4 THE COURT: Just a minute, Dr. Tauber.

5 BY MR. BETTIUS:

6 Q Dr. Tauber, is it not true that in your  
7 financial statements, you reported that on advice of  
8 counsel, the protest to the Internal Revenue Service  
9 challenge was withdrawn, on advice of counsel? And I'm  
10 asking what counsel that was?

11 A Any tax advisement I received was Mr. Bernard  
12 Krakow. And I know Bernard Krakow very well. He would  
13 tell it that we challenge it. But --

14 Q No, no. In the statements it's asserted that  
15 JMHC and JMHI withdrew the protest on advice of counsel  
16 in 1970.

17 Do you know what counsel they are talking  
18 about?

19 A It was all the time, any tax-related advice  
20 came from Mr. Bernard Krakow and from Mr. Richard Thorpe  
21 who was and still lawyer to the hospital.

22 Q So if the financial notes of the corporation  
23 reflect it was done on advice of counsel to withdraw



1 your protest, it's on the advice of Krakow or Richards.

2 A No. I told to you, Mr. Bettius, many times  
3 that the majority of the board decided that they don't  
4 want -- we have a nonprofit organization. They want to  
5 have a profit organization. I did not tell you at any  
6 time whether Mr. Bernard Krakow --

7 Q No, I'm asking you, sir --

8 THE COURT: Let him finish, Mr. Bettius.

9 THE WITNESS: I told to you that it was  
10 decided, but that's not on the advice of Mr. Bernard  
11 Krakow or Mr. Thorpe Richard. That was the advice of  
12 the majority; therefore, we follow it. I told to you  
13 counsel help us; that this is a decision of the  
14 majority. They agreed. That's all.

15 BY MR. BETTIUS:

16 Q My question, Dr. Tauber, is what lawyer advised  
17 you not to resist the protest?

18 THE WITNESS: Your Honor, I tried to answer.

19 THE COURT: He said it was Mr. Krakow and  
20 Mr. Richards.

21 BY MR. BETTIUS:

22 Q And they told you that the IRS was going to  
23 prevail and you should withdraw your protest?

1           A       No, I did not tell that one. You can read the  
2 record.

3                   What I said it, the majority of the board of  
4 directors decided that they wanted to go to a profit  
5 organization. Therefore, I advised the two lawyers and  
6 told to them, this is the majority of the sponsor want.  
7 Therefore, they went along with the decision. That did  
8 not mean that they advised me.

9           Q       Doctor, listen carefully to my question. I'm  
10 reading now from your financial statement, the financial  
11 statement of Jefferson Memorial Hospital on July -- June  
12 30, 1970, for the year ended June 30, 1971. And that  
13 statement is issued --

14                   THE COURT: Which exhibit, Mr. Bettius?

15                   MR. BETTIUS: 195.

16                   BY MR. BETTIUS:

17           Q       That statement is issued February 14, 1972, and  
18 it says, "during 1971, counsel for the hospital withdrew  
19 the hospital's protest and the hospital has accepted the  
20 revocation."

21                   I want to know what counsel they are talking  
22 about. And you can only tell me if you know.

23           A       I answered this question earlier. I repeat it,

1 that it was partly on the advice of the counsel. It was  
2 the decision by the majority of the board of directors  
3 made and I told both lawyers that is a decision. Please  
4 go ahead. That's all.

5 Q So this is an inaccurate note.

6 A I wouldn't say inaccurate. The two lawyers  
7 agreed and accepted the decision of the majority. But  
8 you don't tell me that one. You don't ask which lawyer  
9 did it. I told --

10 Q I'm reading your note, Doctor, and asking you  
11 if you can respond to the question. "During '71,  
12 counsel for the hospital withdrew the hospital's  
13 protest." Do you know who that was? If you don't, you  
14 don't.

15 A I answered this question.

16 Q All right.

17 A And it stands.

18 Q Doctor, let's look at the return filed by the  
19 hospital in 1970. Now, these returns, you filed three  
20 returns --

21 A Excuse me. What is that number?

22 Q You filed three returns on the same day, did  
23 you not? You had to go back and file these tax returns

1 going back, did you not, because of the revocation?

2 A Mr. Bettius, would you be kind to tell me what  
3 is it you refer, the number?

4 Q All right. Look at Exhibit 234.

5 A Yes, I see it.

6 Q All right. Now, if you will look, Dr. Tauber,  
7 I'm going to refer you to Tauber Bates stamp 43513 in  
8 that return.

9 MR. BERGHOLD: It's TAG 0021955. Is that the  
10 carry over?

11 MR. FOX: Yes.

12 BY MR. BETTIUS:

13 Q You find the hospital utilizing loss carry  
14 forwards, do you not, for previous years of operation?  
15 And more specifically, with -- in connection with this  
16 year, 1970.

17 A I see only '69. How do you get the '70?

18 Q Look on the front page of 1970 -- you have the  
19 1969 return, for instance, and that is --

20 A This is the '69 return.

21 Q That's right. I'm sorry. On the '69 return,  
22 you use, do you not, \$172,000 of previous loss carry  
23 overs?

1           A       I'm sorry. We used it because we lost it.

2           Q       Doctor, it appears that you have income of  
3   515,000 in '69 and taxable income of 172,000 for which  
4   you used loss carry forwards; is that correct? That's  
5   what the return clearly shows, isn't it?

6           A       What do you talk about? In '68 --

7           Q       I want you to look at your total income on the  
8   front page of the return.

9           A       Yes.

10          Q       You show a total income of \$515,618, don't you?

11          A       Income.

12          Q       Yes. Then you come down and you take your  
13   losses and you come down to line 28, taxable income.

14          A       That's again, wrong, Mr. Bettius, because you  
15   taking that income tax return not only the income, but  
16   you have to list the expenses, too.

17          Q       Doctor, I did. This is taxable income, Doctor,  
18   172,000. Look at line 28.

19          A       Yeah, but you don't take the deduction what we  
20   have.

21          Q       Doctor, the deduction that you had is a loss  
22   carry forward, is it not?

23          A       That's not. Because if you read it correctly

1 what you want to read, that \$343,436 which is a  
2 deductible item, and then the next one is the 172,192,  
3 which is a carry over loss from the previous years.

4 Q That's my point.

5 A But don't give that type of a presentation to  
6 me here now. That was a --

7 THE COURT: Doctor, you know, you're here to  
8 answer questions. This is not a debate or an argument  
9 between you and Mr. Bettius.

10 Mr. Bettius, the same is true for you.

11 He's supposed to ask you questions in an effort  
12 to elicit facts that will help me decide this case.  
13 This is not a debate. And please, Doctor, just answer  
14 the question. All right?

15 The tax return speaks for itself, Mr. Bettius.  
16 The numbers are on there. Ask him about the numbers.

17 MR. BETTIUS: All right.

18 BY MR. BETTIUS:

19 Q Does the tax return report that you have  
20 taxable income of \$172,192?

21 A That's correct.

22 Q Does it not say less net operating loss  
23 deduction? 29 is less net operating loss deduction,

1 isn't it?

2 A Yes. 515,000 income less 343,000 --

3 Q No, no, Doctor. Look at line 29. Net  
4 operating loss deduction. Isn't that what it says?

5 A Yes.

6 Q And you use the net operating loss deduction  
7 and you take it away from the taxable income and you  
8 come to zero; is that right?

9 A That's correct.

10 Q All right. So in 1970 we're using these loss  
11 carry forwards.

12 Now, how about 1971, Doctor? Was that a  
13 profitable year for the hospital?

14 A May I see it?

15 Q Yes, sir. I want you to look at Exhibit 235.  
16 Do you see the return, Doctor?

17 A Yes, I do.

18 Q Now, in this year, we had total income -- and  
19 let's not go through that debate again. Let's get down  
20 to line 28 again. What's our taxable income, Doctor, or  
21 profit?

22 A \$219,388.

23 Q And what do we use for net operating losses,

1 Doctor?

2 A The carry over, 219,388. So that taxable  
3 income is zero.

4 Q So at least now we know in two years, 19 --  
5 well, if you look at the previous schedules, if we look  
6 at these years, these loss carry forwards are being used  
7 to reduce the income; is that correct?

8 A That's correct.

9 Q And we have an explanation, do we not, of how  
10 that's being done?

11 A Yes.

12 Q Look at Exhibit 235.

13 Doctor, would you look at the return and tell  
14 me if you find on TAG page 002921, Doctor, an  
15 explanation is written there, is it not? It says, "on  
16 July 1, 1971, Jefferson Memorial Hospital Corporation  
17 received all the assets and liabilities of Jefferson  
18 Memorial Hospital Associates."

19 Is that what it says?

20 A That's correct.

21 Q And then it says, "this distribution was made  
22 and the same proportion of shares held between the  
23 distribution therefore resulting in no percentage change



1 of ownership"; is that correct?

2 A That's correct.

3 Q Well, that is the return, Doctor, of JMHC; is  
4 it not?

5 A That's correct.

6 Q At the same time, JMHI was filing -- or JMHA  
7 was filing a return, was it not?

8 A Yes. Jefferson Memorial Hospital Association  
9 filed a return every year.

10 Q And it was reporting to the Internal Revenue  
11 Service, was it not, that all of its assets had been  
12 distributed to JMHI?

13 A No.

14 Q It was not? Well, let me see if I can -- look  
15 at 211. 231. Look at document 231. And I'm looking at  
16 Bates page 45196. Do you see the statement there,  
17 Doctor?

18 A Yes.

19 Q Partnership was liquidated on 6/30/71.

20 A Which page are you talking? 45196?

21 Q Yeah. And assets and liabilities were  
22 transferred to Jefferson Memorial Hospital, Inc. in  
23 exchange for stock representing an excess of 80 percent

1 of the ownership.

2 A It is a mistake, because --

3 Q It's a mistake?

4 A Yeah, because Inc. never had stock. It should  
5 have been read Jefferson --

6 Q Look at the page immediately before that,  
7 Doctor. It represents the capital balances through June  
8 30, 1971, which are reduced to zero by a proportionate  
9 distribution of the stock --

10 A Excuse me. What page are you?

11 Q I'm on 45195, the page just before the one you  
12 just looked at. He made a mistake, didn't he?

13 A Correct.

14 Q It says, represents capital balance as of June  
15 30, 1971; correct?

16 A Correct.

17 Q Now, this is prepared by Mr. Bear, is it not?

18 A Right.

19 Q Now, I would like you to look, Doctor, if you  
20 will, at the partnership tax return for JMHA filed on  
21 2/30/1971. And that's document 230.

22 I'm sorry. I've given you the wrong document,  
23 Doctor. Would you look at document 211, Doctor? Now,

1 would you look at page 45168?

2 A Correct.

3 Q Somebody else also made a mistake, didn't they,  
4 Doctor?

5 A The indication of the instance where I received  
6 the stock should have read Jefferson Memorial Hospital  
7 Corporation, because Jefferson Memorial Hospital, Inc.  
8 did not have any stocks to distribute. It was an error  
9 of the --

10 Q It's the same error now we're seeing repeated  
11 twice; is that correct?

12 A Correct.

13 Q And we now know, do we not, that both times the  
14 error is alleged -- the transaction that's in error is  
15 alleged to have happened on June 30, correct, 1971?

16 A It should have been 1st of July.

17 Q That's right. But twice now it's June 30.

18 A Yes. It was designated Jefferson Memorial  
19 Hospital, Inc. exchanged the stocks. But Inc. did not  
20 have any stocks. Only corporation had stocks.  
21 Therefore, the accountant made the mistake. It was  
22 designation which he gave it.

23 Q And two tax lawyers have given you advice to

1 unite, and you say one for selling stock, and I can see  
2 that. It's not said in the letter but two lawyers have  
3 told you now unite the assets with the operating entity;  
4 is that correct?

5 A I told to you that one. I cannot answer  
6 anything that the statement of the accountant that  
7 "Jefferson Memorial Hospital, Inc., in order to exchange  
8 stocks," but Inc. never had stocks. It should have read  
9 Corporation, which was for profit who had the stock.  
10 And all it is was a typographical error of the auditor,  
11 nothing else.

12 Q Doctor, we now know, and I think you may have  
13 found out for the first time today, that you were using  
14 loss carry forwards in the operating entity forward and  
15 backward now. That's established; is that correct?

16 A No. The rule is that one, that you can go back  
17 three years and then when you exhaust the entirety of  
18 your tax loss, you go forward.

19 Q But you have to own the losses, don't you,  
20 Doctor? You have to own those losses to use them.

21 A Yes.

22 Q Okay. And "I" was the operating corporation,  
23 was it not? There is no doubt that "I" was the

1 operating corporation in '66, '67, '68, '69, and 70; is  
2 that right?

3 A Right. And they had the losses.

4 Q And you recite -- or pardon me. You don't  
5 recite. It's recited in the representations in both  
6 state and federal tax returns that a merger took place  
7 between JMHI and JMHC on the 1st of July; isn't that  
8 correct?

9 A No. It was the 30th of June, 1971.

10 Q All right. Let me look again and I'll stand  
11 corrected.

12 You're right, Doctor. I'm sorry. You're  
13 right. And I just, in my own way, transposed dates.

14 In all the financial statements, it says that  
15 JMHI or JMHC acquired the assets of JMHA on the 1st of  
16 July.

17 A That's correct.

18 Q Well, Doctor, if they had been acquired on the  
19 30th of July as the financial statement says -- for  
20 instance, JMHA's assets had been acquired on the 30th of  
21 July --

22 MR. FOX: June.

23 MR. BETTIUS: June, I'm sorry.

1 BY MR. BETTIUS:

2 Q -- 30th of June, 1971, then there weren't any  
3 assets to acquire on the 1st, were there?

4 MR. BONO: Objection, Your Honor. Calls for a  
5 hypothetical.

6 THE COURT: It's almost a rhetorical question,  
7 isn't it?

8 BY MR. BETTIUS:

9 Q Well, in fact, doesn't it say in the financial  
10 statements of JMHC that it was acquired on the first,  
11 that the assets of JMHI were acquired on the first?

12 A No. The Councilor, Mitchell & Buchanan, doing  
13 the accountant work, stated that the Jefferson Memorial  
14 Hospital Corporation merged with Jefferson Memorial  
15 Hospital, Inc. on the 30th of June, 1971. The next day,  
16 dated the 1st of July, 1971, when the Jefferson Memorial  
17 Hospital Associates gave their asset to the Corporation  
18 which had 240,000 common shares in exchange it. That  
19 how it happened.

20 Q Doctor, the question I asked you is, is there  
21 not a note appended to your 1971 tax return of Jefferson  
22 Memorial Hospital Corporation that on June the 30th,  
23 looking at Exhibit 235, JMHI underwent F reorganization

1 and a mere change in place of operation and a change of  
2 name?

3 A Which page are you referring to?

4 Q 43 -- 43466.

5 Let's put this on paper and maybe we can look  
6 at it.

7 MR. FOX: Exhibit 235.

8 MR. BERGHOLD: The page number within Exhibit  
9 235 is TAG 002911.

10 BY MR. BETTIUS:

11 Q If you read that, Doctor, doesn't it say --

12 A Excuse me. I can't read it because it's such a  
13 poor copy. Would you read it to me?

14 Q Yes. "On June 30, 1971, JMHI, a Maryland  
15 corporation, underwent a reorganization through a mere  
16 change of name."

17 MR. BONO: Excuse me. You're misreading.

18 MR. BETTIUS: An F reorganization through a  
19 mere change of name and the place of operation and a  
20 change of name -- organization. I'm sorry. And a  
21 change of name to JMHC, a Delaware corporation, being  
22 the surviving corporation.

23 BY MR. BETTIUS:

1 Q So this return says, as I understand it, as of  
2 June 30, on 6/30/71, JMHI became JMHC; is that correct?

3 A That's correct.

4 MR. BONO: Objection, Your Honor, calls for a  
5 legal conclusion.

6 THE COURT: Objection overruled. He can answer  
7 if he knows.

8 THE WITNESS: Yes, sir.

9 BY MR. BETTIUS:

10 Q It says, does it not -- and let me see if  
11 there's further reinforcement for that statement. Let's  
12 look at the financial statement of JMHC, Dr. Tauber, for  
13 1972, which is Exhibit 200. It's even more explicit in  
14 note one, isn't it? It says, "on June 30, 1971, JMHI  
15 merged into" --

16 A What is the page?

17 Q Page 44028.

18 A Yes.

19 Q 44028. Do you have it, Doctor?

20 A Yes, I have it.

21 Q It says, "on June 30, 1971, Jefferson Memorial  
22 Hospital, Inc. merged into Jefferson Memorial Hospital  
23 Corporation, a new corporation, incorporated in the



1 state of Delaware. JMHC received all of the assets and  
2 assumed all of the liabilities of JMHI as of that date  
3 and 5,000 shares of JMHC stock were given to JMHI  
4 stockholders in exchange for all the outstanding 5,000  
5 shares of JMHI stock."

6 And then it goes on to say, Doctor, "the  
7 exchange resulted in a mere change of name and state of  
8 organization with no change in management and percentage  
9 of ownership by each shareholder."

10 So in effect, as I understand what's written in  
11 the corporate records, JMHI became JMHC; is that  
12 correct?

13 A Yes.

14 Q I mean, that's a fair -- so if JMHI became JMHC  
15 on the 30th, it had a million shares of stock; didn't  
16 it?

17 A Authorized one million shares.

18 Q That's right. And then it would have been very  
19 logical if what -- if what you say occurred for the next  
20 day for JMHI, who is JMHC, to issue these shares of  
21 stock.

22 A No.

23 Q No?

1           A     No. The stock was issued by Jefferson Memorial  
2 Hospital Corporation and not the incorporated.

3           Q     On the 30th, they became the same, didn't they?

4           A     No, the surviving corporation was Jefferson  
5 Memorial Hospital Corporation. Not Inc..

6           Q     Right.

7           A     Inc. ceased to exist.

8           Q     That's right. So if what you recited  
9 happened -- not what you recited. If the corporate tax  
10 return and the corporate minutes are correct, there were  
11 a million shares of stock available to the new merged  
12 corporation which had merely changed its name in place  
13 of organization. It now had a million shares, did it  
14 not?

15          A     The corporation.

16          Q     C.

17          A     C.

18          Q     Had a million.

19          A     Authorized, yes.

20          Q     And so it very easily the next day could have  
21 issued that stock and acquired JMHA; is that correct?

22               MR. BONO: Your Honor, objection. Calls for  
23 speculation.

1 THE COURT: Could have, Mr. Bettius?

2 BY MR. BETTIUS:

3 Q It says you did. Isn't that exactly what you  
4 said you did? Isn't that what the note says?

5 MR. BONO: This is argumentative, Your Honor.  
6 The testimony is what he said.

7 THE COURT: You asked the question,  
8 Mr. Bettius. I'm not sure if I understand the question.

9 MR. BETTIUS: I'll go on with it.

10 BY MR. BETTIUS:

11 Q Let's look now at the note that's attached to  
12 the JMHC statement number 2 and see if that isn't what  
13 you said happened. Note two is acquisition of  
14 partnership; isn't it?

15 A Yes, note two.

16 Q And it says on July 1, the hospital -- now, the  
17 hospital on July 1 is now JMHC; isn't it?

18 A JMHC. Yes.

19 Q And JMHC is in effect JMHI merely having  
20 changed its name and place of organization?

21 A No. JMHI ceased to exist on this merger. The  
22 surviving corporation is Jefferson Memorial Hospital  
23 Corporation of Delaware, a profit making hospital.

1           Q     Doctor, doesn't it say this exchange resulted  
2     in a mere change of name and state of organization with  
3     no change in management and percentage of ownership?  
4     Isn't that what it says?

5           A     In my concept, the management was the same.  
6     The percentage ownership was the same, but the moment  
7     that the 30th of June merged or whatever you want,  
8     ceased --

9           Q     The Court can come to whatever conclusion that  
10    language said.

11           MR. BONO: May I ask Mr. Bettius not to  
12    interrupt the witness.

13           THE COURT: He kind of tailed off at the end,  
14    Mr. Bettius.

15           MR. BETTIUS: I apologize. I wouldn't be rude  
16    to Dr. Tauber. And I think Dr. Tauber knows that and I  
17    think the Court knows it.

18           MR. BONO: Could I ask that Dr. Tauber be  
19    allowed to complete his answer?

20           THE COURT: Yeah. Go ahead and finish the  
21    answer.

22           A     Jefferson Memorial Hospital Corporation became  
23    the only surviving corporation. Jefferson Memorial

1 Hospital, Inc., for all practical purpose, ceased to  
2 exist. Therefore, the 1 million share which was  
3 authorized by the surviving corporation, that was  
4 Jefferson Memorial Hospital Corporation of Delaware,  
5 because other was not in existence.

6 BY MR. BETTIUS:

7 Q Is this note, wrong, Doctor, that it was a mere  
8 change of name and place of organization? But it was  
9 basically the same company with the same people and it  
10 accounted -- well, I'll take it a little bit further.

11 There is no doubt in your mind -- we'll let the  
12 Court interpret what this note says -- that JMHC, after  
13 the merger of JMHI, had 240,000 shares of stock.

14 A Issued.

15 Q Well, it then issued these shares of stock and  
16 acquired JMHA; didn't it?

17 A That's correct. It states it in the note.

18 Q And you're telling me that JMHI is out of  
19 business, just ceased to exist?

20 A Yes.

21 Q Well, who was operating the hospital?

22 A Jefferson Memorial Hospital Corporation.

23 Q Doctor, you're very knowledgeable, are you not,

1 about hospital licenses? I mean, you've been in  
2 litigation with the state. You know about them, don't  
3 you?

4 A Litigation?

5 Q Over the licenses.

6 A No.

7 Q Oh.

8 A No.

9 Q Are you aware, Doctor, that section 32-299 of  
10 the Virginia code says that "no person shall establish,  
11 conduct, maintain or operate in the state any hospital  
12 as defined in and included within the provisions of this  
13 chapter without having a license to do so as provided in  
14 this chapter or such hospital under regulation of the  
15 board is required to obtain a license."

16 And it says in the next paragraph, "no license  
17 hereunder shall be assignable or transferred."

18 A Yes.

19 Q Are you telling me, sir, that JMHI transferred  
20 its license to JMHC? It did no such thing, did it?

21 A No, no. What I said it, that Jefferson  
22 Memorial Hospital Corporation was a surviving  
23 corporation, and in the agreement what we had, that if

1 the lessor/lessee relationship ceases between Jefferson  
2 Memorial Hospital Associates and the tenant, that is  
3 Jefferson Memorial Hospital, Inc., then the license is  
4 surrendered and given to the successor corporation.

5 Q But it says you can't do that right in the  
6 code, Doctor.

7 A I tell you again, sir, I was, I think chairman  
8 of the board of directors. But it was given all back to  
9 the lawyers, Mr. Reeves, Mr. Krakow.

10 Q So this is another lawyer mistake, Doctor?

11 A I don't say mistake. You tell it to me. I  
12 don't say it mistake. I did not -- I was not involved  
13 in this phase of the transaction. That is not my field.

14 Q Doctor, isn't it true that JMHC never applied  
15 for authority to transact business in Virginia until  
16 1975?

17 A According to the record, the foreign  
18 corporation, Jefferson Memorial Hospital, Inc., applied  
19 for a license to conduct business. And the assumption  
20 of the advising lawyer was that the corporation, since  
21 it was the successor corporation, does not have to  
22 apply. And on the basis of Jefferson Memorial Hospital,  
23 Inc., they continued the business until what you

1 mentioned, 1975 --

2 Q A lawyer told you this?

3 A The lawyer, every step of the way, we were  
4 advised by the lawyers.

5 Q So --

6 A In this case, by three lawyers.

7 Q So the lawyers told you that, as I understand  
8 it, you can operate this hospital even though JMHI is no  
9 longer in existence and that you can do business in  
10 Virginia as a new Delaware corporation? This is what  
11 you believe lawyers told you to do?

12 A This question never arose because in all case  
13 was given to the three lawyers, and the three lawyers,  
14 they did whatever they felt it is right. And I was  
15 absolutely uninvolved. I had no knowledge. I cannot  
16 answer to you whether I authorized or not because that  
17 was never a question.

18 Q Doctor, is it your testimony, and I think it  
19 is, that as of that moment JMHI in your mind was dead,  
20 ceased to exist?

21 A That's correct.

22 Q And in fact, it was allowed just to expire in  
23 Delaware; is that correct?



1 A Not Delaware.

2 Q Maryland. I'm sorry. And it ceased to exist  
3 in April of 1973; didn't it? I'm going to show you,  
4 Doctor --

5 A Is the question pending now?

6 Q The question pending is did JMHI, because you  
7 failed to pay its taxes and annual report, filing fees,  
8 rather and annual report, expired in Maryland in 1973,  
9 April; is that correct?

10 A That was the advice of the --

11 Q Doctor, I'm just asking you a yes or no. Was  
12 it allowed to expire?

13 A That's correct.

14 Q And I'm going to ask you to look at -- Your  
15 Honor, that's Exhibit 11. You don't need to look at it.  
16 And the date of that is April 18, 1973.

17 Do you find it at all strange, Doctor, that  
18 while your corporate franchise in Maryland was being  
19 allowed to expire, that JMHI caused to be filed in  
20 Virginia, in May, a month after it expired in Maryland,  
21 an annual report indicating its robust good corporate  
22 health?

23 MR. BONO: Objection to relevance.

1 MR. BETTIUS: Filed in Virginia, I'm sorry.  
2 You filed in May in Virginia the statement that JMHI was  
3 alive and well.

4 MR. BONO: Objection, Your Honor. No  
5 foundation.

6 MR. BETTIUS: I'm going to show you the  
7 document.

8 THE COURT: Show him the document.

9 BY MR. BETTIUS:

10 Q Look at Exhibit 21, Doctor. Annual report,  
11 State Corporation Commission of Virginia. Is that not a  
12 filing, Doctor, for JMHI?

13 A Jefferson Memorial Hospital, Inc. was -- had  
14 the same name as had been advised by our lawyers. But  
15 in 1972, when I made my Virginia tax return --

16 Q Doctor, I didn't ask you that. I asked you if  
17 this is a report of Jefferson Memorial Hospital, Inc.  
18 filed with Virginia corporate authorities in May of  
19 1973?

20 A Yes, "Jefferson Memorial Hospital, Inc., a  
21 corporation formerly existing under the laws of  
22 Virginia, was ultimately terminated on June, 1975 for  
23 failure to file annual reports as required by law."

1 Q You're reading the Delaware, I mean the  
2 Maryland statement. I'm asking you to look at the  
3 Virginia statement. I'm sorry. It's trial exhibit --

4 THE COURT: It is what it is, Mr. Bettius. I  
5 don't know if his signature is on it. Do you want to  
6 ask --

7 MR. BETTIUS: That's exactly where I'm going,  
8 Your Honor.

9 THE COURT: Ask him if that's his -- I don't  
10 know. I don't have it in front of me. If that's his  
11 signature, ask him if he signed it and why if that's  
12 what you're getting to.

13 BY MR. BETTIUS:

14 Q Did you not file a statement with Virginia  
15 authorities in May of 1973 that says that you, Laszlo  
16 Tauber, are saying that this corporation is alive? And  
17 in fact, you gave the date of its last annual meeting as  
18 January 26th, 1973.

19 A This was filed by Mr. Krakow and the registered  
20 agent was Mr. Thorpe Richards. And they did what they  
21 had felt that should be done. And I signed it.

22 Q And Doctor, it asserts that there was an annual  
23 meeting of the stockholders on January 26th, 1973, of

1 JMHI. Is that correct?

2 A Would you be kind to tell me --

3 Q I'm looking at the line, Doctor, it says, "the  
4 last annual meeting of members, January 26, 1973."

5 A I cannot read it, because --

6 Q Let me show you my copy.

7 A Show me your copy.

8 The date of the last meeting of stockholders or  
9 members, or members, because it didn't have any  
10 stockholders.

11 Q I understand, Doctor. The question is, you  
12 represent there was a meeting on that day, do you not?

13 A Yes. I signed it.

14 Q Yes, sir. I'm going to now ask you to look at  
15 Exhibit 100. There was a board meeting that day, wasn't  
16 there?

17 A If stated there, yes. According to the record.  
18 You asked me about that and without the record, I cannot  
19 tell.

20 Q Do you see the board of directors meeting or  
21 shareholders meeting that day?

22 A Yes. January 26th, '73.

23 Q Um-hum.

1 A At the Jefferson Memorial Hospital Corporation.

2 Q So the board meeting that was held on that day  
3 was of JMHC. Isn't it true, Doctor, in every way and in  
4 every possible and conceivable circumstance, you were  
5 representing to the Commonwealth of Virginia that JMHC  
6 and JMHI were the same, both in license, operation and  
7 qualification to do business in Virginia? Isn't that  
8 really what it appears to be, to an innocent outside  
9 observer?

10 A I'm not speculating. Only I tell to you that  
11 in 1972, I filed tax return in the state of Virginia,  
12 and --

13 Q Doctor, your tax return --

14 MR. BONO: Let him answer.

15 MR. BETTIUS: I'm going to object --

16 THE COURT: It's not responsive to the  
17 question, Mr. Bono.

18 MR. BONO: Your Honor, if you let him finish --

19 MR. BETTIUS: Your Honor --

20 THE COURT: Just a minute, Mr. Bettius.

21 MR. BETTIUS: I'm sorry. I apologize, sir.

22 MR. BONO: If you let him finish, I believe it  
23 will be directly responsive.

1 THE COURT: His '72 tax return relates to the  
2 filing of '73?

3 MR. BONO: And the question as I understand it,  
4 if it was, was there any way that the Commonwealth of  
5 Virginia was informed --

6 MR. BETTIUS: No, that's not the question.

7 THE COURT: The question needs to be rephrased  
8 anyway because he asked how it would appear to the  
9 innocent observer. And I don't know that the doctor can  
10 answer that. So, you need to start again, Mr. Bettius.

11 BY MR. BETTIUS:

12 Q Dr. Tauber, is it not true now that it's been  
13 represented to the Commonwealth that as of the day that  
14 you were holding a JMHC meeting, that it's a JMHI  
15 meeting?

16 A It clearly tells it Jefferson Memorial Hospital  
17 Corporation meeting, not Incorporation.

18 Q And you concede, do you not, you never  
19 transferred the hospital license to C?

20 A This is a technical question which I answered  
21 to you already before.

22 Q The Court will decide whether it's technical.  
23 I want to know if you ever transferred the license.

1           A     I told you that I was guided by three lawyers.

2           Q     Yes or no, Doctor. Was the license  
3 transferred?

4           A     I cannot answer it.

5           Q     You don't know?

6           A     I have thought it was. The lawyers who did it,  
7 if they did it, they did it. I don't know. I did not.

8           Q     Doctor, absolutely nothing happened in 1971  
9 that involved any corporate action to merge, dissolve or  
10 do anything else, did it? Nothing happened. There was  
11 no transaction of any kind in 1971, was there?

12          A     That's not true.

13          Q     Okay. Let me get you a record, then, Doctor.  
14 Do you recall -- would you look at Exhibit 85? The  
15 minutes that day would seem to indicate, if I read them,  
16 that you called the meeting to order at 7:30 p.m. and  
17 that the purpose of the meeting was to discuss, was to  
18 finalize the plans for reorganization of the hospital;  
19 is that correct?

20          A     That's correct.

21          Q     The name of the new corporation will be  
22 Jefferson Memorial Hospital Corporation.

23          A     That's correct.

1 Q And you're going to have a million shares of  
2 stock; is that correct?

3 A Authorized common stock.

4 Q And JMHA will receive 240,000 shares of its  
5 stock subject to a public offering at \$10 a share.  
6 Jefferson Memorial Hospital Associates will receive  
7 240,000 shares for its assets subject to a public  
8 offering at \$10 a share.

9 A Right.

10 Q Okay. The amount of shares and the price of  
11 each ultimately will be determined at the time of public  
12 offering. Is that correct?

13 A Yes.

14 Q The aggregate, however, is anticipated to be \$1  
15 million in stock subscriptions; is that correct? The  
16 initial stockholders of the Jefferson Memorial  
17 Associates must retain ownership of their stock for two  
18 years. That was the plan, wasn't it, that was  
19 discussed?

20 A That what Mr. Reeves presented, that we be  
21 under restriction for the 240,000 shares, that they  
22 cannot dispose of it for two years.

23 Q When was Mr. Reeves directed to have this work



1 done by?

2 A Should be prior to the May 18 meeting because  
3 we refer on the recommendation of Mr. Reeves. But I  
4 don't know when.

5 Q Doesn't it say Mr. Reeves was asked to  
6 consummate all the legal work for an effective date of  
7 incorporation on July 1, 1971?

8 A Right.

9 Q So you were supposed to be in place and doing  
10 business by July 1; right?

11 A That was the target date, 1st of July, 1971.

12 Q Turn with me, if you will, to the next exhibit  
13 which is 86. Oh, I'm sorry. The other board meeting we  
14 described was a JMHI board meeting, was it not?

15 A No.

16 Q Look what it says.

17 A It doesn't say anything.

18 Q So you're saying that's a C -- that can't be a  
19 C meeting, can it, because C is not running the  
20 hospital.

21 A The name of the new corporation will be the  
22 Jefferson Memorial Hospital Corporation. That is the  
23 surviving corporation.

1 Q Who is having this meeting, I or C?

2 A Just a second. If it was the 18th of May, that  
3 was -- cannot be corporation. I cannot answer you  
4 whether it was Incorporated or Corporated. The only  
5 thing is that I read it here that on the 18th of May was  
6 arranged for a 1st of July exchange of 240,000 common  
7 shares of the corporation and go to incorporation, was  
8 the Jefferson Memorial Hospital Association.

9 Q Would it be fair to say in reading this letter  
10 nor in this meeting do we see any mention of financial  
11 distress of the corporation? There is no mention of  
12 financial distress, is there?

13 A You don't have to mention it. Everybody knew  
14 it.

15 Q I understand. It's not mentioned either in the  
16 letter as a consideration nor is it mentioned here; is  
17 that correct? Well, it speaks for itself.

18 Now, let's go on, Doctor, to the next meeting.  
19 And that's in June, June 22, 1971. You're approving  
20 bylaws, are you not, for the proposed new corporation?

21 A What is the question?

22 Q You're looking towards organizing this  
23 corporation. You're approving the bylaws, aren't you?

1 A That's correct.

2 Q Now, would you look, Doctor, at Exhibit 87?

3 A Yes, sir.

4 Q Now, whose minutes -- it's clear whose minutes  
5 these are supposed to be, isn't it, what corporation,  
6 isn't it?

7 A August 24, yes, Jefferson --

8 Q It says Jefferson Memorial Hospital  
9 Corporation, doesn't it?

10 A That's correct.

11 Q And do you recall there having been a  
12 shareholders meeting or stockholders meeting to approve  
13 this merger prior to the 31st of July?

14 A It had to be.

15 Q It had to be; right? Okay. Well, then, we see  
16 in this meeting no mention that the corporation is in  
17 any financial problems, but we do see, do we not,  
18 Doctor, that the committee is anticipating 115 percent  
19 annual growth in the hospital?

20 A How much?

21 Q It says with the establishment of this  
22 committee, there be a discussion to outline the driving  
23 goals of the hospital for growth and development over

1 the next five years. Several suggestions were made and  
2 the board concluded that they would push for an overall  
3 115 percent --

4 MR. BONO: Objection, Your Honor.

5 A Sir, you are --

6 THE COURT: Just a minute, Doctor.

7 MR. BONO: Mr. Bettius is misreading the  
8 document.

9 MR. BETTIUS: I am?

10 MR. BONO: Yes, you are. It is 5 percent. The  
11 word over all is spelled --

12 MR. BETTIUS: Oh, you're going to have a five  
13 percent growth.

14 THE WITNESS: Over all is double L.

15 BY MR. BETTIUS:

16 Q So it's your recollection you've had your  
17 stockholders meeting and you're now JMHC; right?

18 A Yes.

19 Q Now, Doctor, would you look at Exhibit 89?

20 A 89.

21 Q Yes. Look at note 5.

22 A Paragraph 5?

23 Q Yes. The fifth item in that meeting.

1 Mr. Reeves was asked to discuss the status of the merger  
2 and the reason for delay. It appears there had been no  
3 board minutes, meeting -- or shareholders meeting. He  
4 said he had run into some unsolved tax considerations.  
5 But he's come to a determination of exactly how this  
6 merger should take place. Isn't that what he says?

7 A According to this document, Mr. Reeves asked to  
8 discuss this standard merger and the reason for the  
9 delay. And he outlined -- the record speaks for itself.  
10 What he recommended is that we replace -- that Jefferson  
11 Memorial Hospital, Inc. was not a stock corporation.  
12 Therefore, he recommended that an all nonstock Jefferson  
13 Memorial Hospital, Inc., the Maryland corporation, be  
14 changed to a stock for-profit corporation. That was his  
15 suggestion.

16 Q Then my question was, it's now apparent this  
17 merger hasn't taken place; correct?

18 A As far as the document shows it, that it was  
19 intended the whole purpose --

20 Q Doctor, it hasn't taken place; is that correct?

21 A He reported it that he did not take care of it.

22 Q And he says the problem is unsolved tax  
23 considerations. And he says he's going to amend the

1 charter of the nonstock, nonprofit corporation to be a  
2 stock, for-profit corporation. Isn't that what he's  
3 going to do?

4 A That what he recommended that he wants to do.

5 Q And then he's going to merge the Maryland  
6 corporation into the Delaware corporation.

7 A That's correct.

8 Q And then he's going to have the Delaware  
9 corporation buy JMHA -- JMHA, Jefferson Memorial  
10 Hospital Associates; right?

11 A No, that was done on the 1st of July.

12 Q But that's not what it says here. It says the  
13 Delaware corporation will buy JMHA. So your tax returns  
14 that were previously filed were wrong if this is true.

15 A No. You go to the accountant report that it  
16 occurred on the 1st of July. And according to my  
17 recollection and the best of my knowledge, it happened.  
18 This was documented here that he experienced certain  
19 type of difficulty how he structured the deal. And that  
20 is -- this is the reason why he amend it. He said it;  
21 essentially the merger took place and everything. But  
22 he wants to change the instrument how he did it.

23 Q Doctor, isn't it true that there isn't any

1 document anywhere in the form of a legal agreement that  
2 describes the exchange of these two corporations except  
3 one attached to a tax return which I'll get to in a  
4 minute?

5 A As far as I know, that was attached to the tax  
6 return, right.

7 Q But this note says, and it's speaking as of  
8 October, it says the Delaware corporation will buy.  
9 That's what it says, doesn't it, Doctor?

10 A Yeah. But it bought the 1st of July, it  
11 bought.

12 Q And it says the stock ownership will remain the  
13 same paid up ownership amount for both corporations.

14 A Right.

15 Q Isn't it true the Maryland nonstock  
16 not-for-profit corporation, JMHI, was never amended to  
17 be a for-stock? That did not happen.

18 A I cannot answer you that. He read it in the  
19 book now which stated that Mr. Reeves at first wanted to  
20 do it this way on the 30th of June, 1971. And then  
21 further here on October, 1971, he said it that he had  
22 figured out how to do it but that was --

23 Q Did you ever receive stock in JMHI? You never

1 did, did you?

2 A I cannot say that one because technically I --  
3 because I think under Jefferson Memorial Hospital, Inc.  
4 as a profit-making hospital, I received some stock.

5 Q But you didn't get any stock in 1971, did you?

6 A From Inc.?

7 Q Yeah.

8 A I would not be able to, because they did not  
9 have any stocks. They couldn't give me stocks.

10 Q So far as you know, this determination that  
11 you're going to amend the charter of JMHI, that never  
12 happened; did it? Or if it is --

13 A I don't know.

14 MR. BETTIUS: We submit, Your Honor, that  
15 Maryland records indicate that it never happened.

16 BY MR. BETTIUS:

17 Q Now, there's also, is there not -- there's no  
18 mention of financial distress in these minutes, is  
19 there, Doctor?

20 A I didn't read it now. But if you say so --.

21 Q Okay. Then I'm going to ask you this. And I  
22 want to note this for later, Doctor. An event did  
23 happen, did it not, with respect to Dr. Palmer, and



1 isn't it true that in the first meeting of -- and I want  
2 to try to get this straight -- of JMHC, which is  
3 exhibit -- strike that. The second meeting, this will  
4 be the second meeting, did you resolve Dr. Palmer's  
5 contract? I want you to look at item 4. I'm on page --  
6 I'm sorry, Mr. Bono. And I probably confused the  
7 Doctor, too. 89.

8 A Page 4?

9 Q Dr. Palmer's contract is resolved.

10 MR. BERGHOLD: Page 4 of Exhibit 89. Item  
11 four, I'm sorry.

12 BY MR. BETTIUS:

13 Q You note, Doctor, that -- and these are JMHC  
14 notes; is that correct?

15 A Yes.

16 Q -- that on October 19, Dr. Palmer's contract  
17 was resolved in a settlement entered into between JMHC  
18 and Dr. Palmer; is that correct? That's what it says  
19 here.

20 A My recollection is that the contract with  
21 Dr. Palmer ended in March, 1970, after five years  
22 serving as pathologist in the hospital.

23 Q Doctor, I don't need the history of it. I just

1 want to know if this controversy was resolved on this  
2 day by resolution that you're going to pay Dr. Palmer  
3 some money?

4 A I thought it was resolved on that day.

5 Q All right. So let's see if we can review,  
6 then. As of October, notwithstanding some glitches in  
7 the merger, it's my understanding that JMHI no longer  
8 has any liabilities; is that correct?

9 A After 30th of June, no liabilities, no asset.

10 Q Nothing. So if I say that at least at the  
11 status of October, the Palmer contract is resolved, JMHC  
12 has resolved it and Associates has no liabilities -- I  
13 mean, JMHI has no liabilities, you agree with that,  
14 right?

15 A The moment when they merge or successor, 30th  
16 of June, 1971, Jefferson Memorial Hospital, Inc. did not  
17 have any liability whatsoever. That liability was  
18 assumed by Jefferson Memorial Hospital Corp..

19 Q Doctor, don't we have another little problem  
20 with that? Who's leasing -- who's got the lease now?

21 A Which one?

22 Q For the hospital.

23 A Jefferson Memorial Hospital Corporation did not

1 have a lease because they owned the facility when they  
2 exchanged the 240,000 shares. I think that clear. That  
3 is no lease.

4 Q But that would not be the case if the Court  
5 concluded no merger had taken place; is that correct?

6 MR. BONO: Objection, Your Honor.

7 MR. BETTIUS: I withdraw that.

8 BY MR. BETTIUS:

9 Q How could there be a -- would you say this,  
10 Doctor, that the transfer of assets -- well, I'm sorry.  
11 I don't mean to argue. I apologize.

12 THE COURT: Not to cut you short, Mr. Bettius,  
13 but may I ask how much longer you intend to be on this?

14 MR. BETTIUS: About an hour.

15 THE COURT: Well, I think it's probably an  
16 appropriate time to break for lunch. In addition, I do  
17 have a personal matter that I'm going to be attending to  
18 over lunch and I may not be back right at 2 o'clock. So  
19 figure sometime between 2:15 and 2:30.

20 MR. BETTIUS: Absolutely, Your Honor.

21 THE COURT: Okay. We're in recess.

22 (At 1:00 p.m., the trial was recessed  
23 to reconvene at 2:15 p.m.)

1 AFTERNOON SESSION (2:40 p.m.)

2 THE COURT: Sorry for the delay, Doctor. You  
3 may resume the stand.

4 Whereupon,

5 LASZLO N. TAUBER,

6 resumed the stand and was further examined and  
7 testified as follows:

8 DIRECT EXAMINATION (Continued)

9 BY MR. BETTIUS:

10 Q Doctor, when we recessed, we were trying to  
11 determine what did or didn't happen in 1971. We had  
12 covered the October meeting. And I think we  
13 established, at least from the point of view of  
14 Mr. Reeves, this merger had not been accomplished, but  
15 that we knew, as I understand your position, that JMHI  
16 had resolved -- JMHC had resolved the Palmer contract  
17 and that JMHC no longer had any debts or liabilities, is  
18 that correct, assets or liabilities? JMHI no longer had  
19 assets or liabilities; is that correct?

20 A As I understand your question, Jefferson  
21 Memorial Hospital, Inc. did not have any liabilities or  
22 assets.

23 Q Now, Doctor, I'm going to ask you if it's not

1 true that in 1972, no merger was completed or no  
2 liquidation was completed; isn't that true?

3 A In my own mind, it was completed.

4 Q Well, I'm going to ask you formally concluded.

5 Let's turn, if you will, Doctor, to Exhibit 200.

6 Doctor, will you turn to Bates page 43965?

7 It's the date -- to the board of directors of  
8 Jefferson Memorial Hospital. It's dated February 14,  
9 1972. Do you see that, Exhibit 200? I'm on a -- what's  
10 the Bates number?

11 MR. BERGHOLD: That's what I'm looking at. I  
12 want the issue date.

13 BY MR. BETTIUS:

14 Q Look at Bates number 44020. I'm sorry. I got  
15 the wrong one. I'm sorry. I apologize. Exhibit 195.  
16 The Bates number is 43965. What's the date there,  
17 Doctor?

18 A February 14, 1972.

19 Q And that's the date of issue of this report; is  
20 that correct?

21 A That is.

22 Q I want you to turn -- go on back a number of  
23 pages, if you will.

1 A Back or forward.

2 Q Backward in the report. I want you to go  
3 backward into the report and look at the second note.

4 A You mean the front, not the back, Mr. Bettius?

5 Q Yes, sir, I want you to look at page 43972,  
6 back of the report, back into the report.

7 A Yes, sir, I have it.

8 Q That report indicates, does it not, that this  
9 merger has still not taken place. It says that -- it's  
10 called the pending acquisition; isn't it?

11 A Mr. Bettius --

12 Q See note two.

13 A -- I don't think that we look at the same  
14 document.

15 Q Let me come over and see, Doctor. Have you got  
16 him at Bates number 43972? You see note two, pending  
17 acquisition?

18 A Right. Yes, I have it here.

19 Q So it's now apparent, Doctor, that we're well  
20 into -- we're starting into 1972 and there's been no  
21 merger or acquisition; isn't that correct?

22 A Yes, as it's stated on July 1st, 1971,  
23 Jefferson Memorial Hospital had entered into an

1 agreement with a new corporation entitled Jefferson  
2 Memorial Hospital Corporation whereby all the assets and  
3 liabilities of the hospital as of June 30, 1971, will be  
4 acquired for the exchange --

5 Q Will be.

6 A Yes.

7 Q Now, that hasn't happened yet because it's  
8 still called, Doctor, isn't it, a pending acquisition?

9 A I will not call pending, but --

10 Q They call it pending, do they not? Isn't that  
11 the title of the note, pending acquisition?

12 A Excuse me, sir. Let me read it.

13 Q Sir, read the title to the note, please. Note  
14 two. What is it called?

15 A All the assets and liabilities --

16 Q Doctor, isn't it called a pending acquisition,  
17 note two, underscored?

18 A Where is that? I don't see it. Oh, excuse me.  
19 Note two. Pending acquisition.

20 Q Okay. So as of March, we're still dealing with  
21 a pending acquisition and we're into 1972; is that  
22 correct?

23 A The report said also the acquisition is not

1 completed. It will be accounted for as a pooling of  
2 interests of the two corporation books.

3 Q And you just anticipated my next point. They  
4 account for it as a pooling of assets. Doesn't that  
5 mean both corporations are still alive, Doctor, pooling  
6 assets. You've got the same management; we just changed  
7 our name.

8 A No. I repeatedly answer to you, as far as me  
9 concern, I took the advisement of our lawyers and they  
10 told it that the way it happened, hospital incorporated  
11 ceased to exist the 30th of June. And it's not recorded  
12 or completed, but it does reflect that the actual date  
13 is the 30th of June, 1971.

14 Q Now, Doctor, let's talk in terms of common  
15 understanding of business terms. When two things merge,  
16 they come together, don't they?

17 A Yes.

18 Q And when something is dissolved, it ends; isn't  
19 that correct?

20 A That's correct.

21 Q And you know the difference between a merger  
22 and a dissolution; don't you?

23 A Yeah, I think so.



1 Q And isn't what's being described here clearly a  
2 merger and not a dissolution?

3 A I think that the record speaks for itself. I  
4 can't --

5 Q Thank you. I'll accept that, Doctor.

6 You were advised near this time, Doctor, in  
7 January, were you not, that the Service had finally  
8 revoked the charitable exemption? This was the official  
9 notification of revocation; is that correct?

10 A Which --

11 Q On JMHI.

12 A Which document are you referring --

13 Q I'm going to ask you if you remember it  
14 occurred at or about this time.

15 A It was already.

16 Q Okay. Doctor, are you aware that in March of  
17 1972, March 29th, that JMHA came under investigation?

18 A Jefferson Memorial Hospital Associates?

19 Q Associates.

20 A No.

21 Q Would you show the witness Exhibit 380?

22 Do you recognize that, Doctor?

23 A Yes. I don't see it for a long time.

1 Q 16 days later, you dissolved JMHA; didn't you?  
2 And let me give you the statement. The final statement  
3 of JMHA -- could the witness be referred to Exhibit 230  
4 or 211?

5 Do you have it, Doctor?

6 A I have it here. What is your question?

7 Q This is a return where it's recited that the  
8 partnership was liquidated 6/30/71 and all assets and  
9 liabilities were transferred to Jefferson Memorial  
10 Hospital; is that correct? And that return was filed on  
11 3/15/72; is it not?

12 A Excuse me. What number?

13 Q That return is filed 3/15/72. Look at the  
14 first page, Doctor.

15 MR. BONO: What exhibit?

16 THE COURT: 230, not 211.

17 BY MR. BETTIUS:

18 Q 230 or 211. But the tax return is 230.

19 A Yes, I have it.

20 Q Is that return not filed on the 15th of March,  
21 1972? This is the final return?

22 A That is right. It's 1971 return.

23 Q In '71?

1 A Right.

2 Q So it's filed on the 15th of March of '72; is  
3 that correct?

4 A That's correct.

5 Q On the same day, Exhibit 211 is prepared; is it  
6 not?

7 A It's dated March 15.

8 Q The document is dated March 15, 1972 --

9 A Right.

10 Q -- is the final financial statement prepared  
11 for JMHA; is it not?

12 A That's correct. I do not find it, but --

13 Q And it also reflects that the assets were  
14 conveyed to I?

15 MR. BONO: Your Honor, again, it's the same --

16 MR. BETTIUS: He's right. That's correct. It  
17 is the same thing.

18 MR. BONO: It's the same testimony we have been  
19 over for two hours this morning.

20 THE COURT: We've been through it, Mr. Bettius.

21 MR. BETTIUS: Just the coincidence of time,  
22 Your Honor, as to when it was done.

23 BY MR. BETTIUS:

1           Q     Now, Doctor, can you indicate to me -- give me  
2 the tax return for '71 -- any document that you can  
3 remember that memorializes what occurred with respect to  
4 the transfer and sale of assets that you may have  
5 personally signed or been party to?

6           A     No, I don't have any idea.

7           Q     Would you look at Exhibit 235, Doctor? Do you  
8 recall that document?

9           A     I recognize. I don't recall.

10          Q     And it's your position, is it not, that this  
11 could not have happened?

12               MR. BONO: Objection, Your Honor. I think the  
13 question is incomprehensible.

14               BY MR. BETTIUS:

15          Q     Doctor, haven't you previously taken the  
16 position that this -- that the events and recitals in  
17 this agreement could not have happened? I'll approach  
18 it -- it's in his deposition. We'll approach it -- did  
19 this happen? Did the events and recitals set forth in  
20 this agreement happen?

21               MR. BONO: Your Honor, just for clarification.  
22 What agreement? He's referring to --

23               MR. BETTIUS: I'm sorry. I'm referring to the

1 agreement attached to the 1971 tax return, Exhibit 235.

2 MR. BERGHOLD: Bates number TAG 2912.

3 THE WITNESS: I have it.

4 BY MR. BETTIUS:

5 Q Could the events recited in that agreement  
6 possibly have happened?

7 MR. BONO: Objection, Your Honor, calls for  
8 speculation.

9 THE COURT: He can answer if he knows.

10 A The plan and agreement of reorganization, I'm  
11 familiar with this document, and this document was --

12 BY MR. BETTIUS:

13 Q Doctor, the question is could that have  
14 happened or did it happen?

15 A It could have happened.

16 Q Did it happen?

17 A As far as me concerned, it happened, every  
18 single -- June 30, 1971.

19 Q So you're telling me, then, that on June 31 --  
20 I'm looking at the whereas, Doctor -- the board of  
21 directors of JMHI and JMHC deem it advisable and for the  
22 benefit of JMHI and JMHC and their shareholders that  
23 JMHI be merged into JMHC on the terms hereinafter set

1 forth and that each have approved this plan and  
2 agreement of reorganization. Did that happen?

3 A As far as I know, it did happen.

4 Q So there was a merger of JMHI and JMHC?

5 A Well, whether you're calling it merger or  
6 Jefferson Memorial Hospital, Inc. ceased to exist and  
7 the corporation --

8 Q Doctor, I asked you --

9 THE COURT: Let him finish answering,  
10 Mr. Bettius.

11 A As far as me concerned, it happened and always  
12 the date 30th of June, 1971.

13 BY MR. BETTIUS:

14 Q So a merger occurred between JMHI and JMHC and  
15 you're saying that the date of that merger was the 30th  
16 of June, 1971?

17 MR. BONO: I'm going to object, Your Honor, at  
18 this point because the question is calling for a legal  
19 conclusion on merger. We've been through this testimony  
20 now for probably almost five hours. I think the  
21 testimony on the record is imminently clear that the  
22 witness has testified that a merger --

23 MR. BETTIUS: Your Honor, I would rather him

1 not say what the witness testified.

2 THE COURT: Go ahead, Mr. Bono.

3 MR. BONO: That a merger as a formal merger did  
4 not occur. I represented that to this court in my  
5 opening statement. That's not the issue.

6 What the witness has said was that the --

7 THE COURT: It may not be the issue. But this  
8 doctor's answering is what he's asking. We have been  
9 over this, Mr. Bettius. We've been over this a lot.

10 MR. BETTIUS: The point I want to make, Your  
11 Honor, I don't know what an informal merger is. And I  
12 want to tell you, Your Honor, under the laws of  
13 Delaware, Maryland and Virginia, this is illegal:

14 THE COURT: That may well be, but you keep  
15 asking the doctor did it happen and he keeps saying to  
16 the best of his understanding, it did happen and it  
17 happened on June 30th, 1971, whatever "it" was. Whether  
18 it was a merger or dissolution or a pooling of assets or  
19 whatever you want to call it, he says it happened on  
20 June 30th, '71.

21 BY MR. BETTIUS:

22 Q Let's look at article 3 in this document. Go  
23 back to page 43471.

1           A       Excuse me. This is 2314?

2           Q       We're on the same exhibit where it says, JMHC,  
3 who is the surviving corporation, shall issue in the  
4 merger its shares of common stock for all the  
5 outstanding shares of common stock, no par value, of  
6 JMHI.

7           A       Yes, sir.

8           Q       There were no shares to exchange, were there,  
9 Doctor?

10          A       The actual exchange, I testified already many  
11 times that Jefferson Memorial Hospital, Inc. is a  
12 nonprofit organization, did not have any stocks, and  
13 they could not exchange.

14          Q       So anyone who would attempt to value the  
15 continuing interest of JMHI after June based on an  
16 exchange of 5,000 shares of stock would be valuing a  
17 transaction that did not occur?

18                 MR. BONO: Objection, Your Honor. He can't  
19 testify to what anyone thinks.

20                 MR. BETTIUS: You see, this is the point, Your  
21 Honor. If this transaction didn't occur -- and a  
22 valuation expert they are going to put on later values  
23 these 5,000 shares. And I want to know could it have



1 happened.

2 THE COURT: You want to know from this witness  
3 could it have happened?

4 MR. BETTIUS: Yeah. He says, Your Honor, there  
5 aren't 5,000 to exchange.

6 THE COURT: He has said all along, Mr. Bettius,  
7 that there were not -- and he's been consistent in this  
8 for a while; you've been through this a number of  
9 times -- that JMHI had no stocks because it was a  
10 nonstock corporation and therefore the shares could not  
11 have come from them.

12 MR. BETTIUS: The point I want to make is I'm  
13 trying to search for any rational basis for the  
14 conclusion of this transaction. It's the only document  
15 I've ever seen that supports it. If Your Honor  
16 understands that's where I am, fine.

17 THE COURT: I've got the picture. But I think  
18 most of your questions are, quite frankly, argument  
19 that's addressed to me as to the effect of these  
20 documents. And you've been through Dr. Tauber's  
21 understanding of the transaction a number of times.

22 MR. BETTIUS: My difficulty with it is, Your  
23 Honor, somebody has to put these documents before the

1 Court. This case is entirely based --

2 THE COURT: Mostly it's a document case and  
3 most of them quite frankly have been admitted and can be  
4 referred to by counsel. There is some objections we  
5 have to deal with, but --

6 MR. BETTIUS: I'm trying, Your Honor, and I  
7 don't mean to test the Court's patience, to bring some  
8 light to the case from the principals who were there at  
9 the time as to how it occurred.

10 THE COURT: All right.

11 BY MR. BETTIUS:

12 Q Now, Doctor, can you, in this entire period of  
13 time, recall any occasion in the board minutes, and they  
14 are all before the Court, when you can think of when  
15 financial distress of the corporation was ever discussed  
16 at the board meeting?

17 A That was a topic of every board meeting.

18 Q It's never documented in any board meetings, is  
19 it?

20 A I don't think that's right. It reflects all  
21 the financial problems the corporation had. I don't  
22 know why you ask that.

23 Q Do you recall, Doctor, when the loss carry

1 forwards were exhausted, when you had used up all the  
2 loss carry forwards of the merger?

3 A I did not prepare any tax return. I signed it.  
4 And it was done by the accountants.

5 Q Well, by 1974, they were exhausted, were they  
6 not?

7 A The record speaks for itself. If it states it  
8 is exhausted, then it did.

9 Q Well, starting in 1973, Doctor, did you not  
10 begin to --

11 A Which document are you referring to?

12 Q Sir?

13 THE COURT: Finish your question, Mr. Bettius.

14 BY MR. BETTIUS:

15 Q Starting in 1973, did you not begin to express  
16 or hear pressures or hear complaints expressed from your  
17 fellow doctors that it was time that they got return on  
18 their investment?

19 A It occurred on the first moment that we, when  
20 we incorporated what will be the return. But there was  
21 no return because there was no money generated by the  
22 corporation. And it was no different in 1973 than any  
23 other time.

1 Q Doctor, would you look at exhibit -- and we  
2 were not furnished the complete exhibit -- 110?

3 While we are getting that, Doctor, in 1973, the  
4 financial administration of the hospital was handled by  
5 a finance committee, was it not?

6 A Just a second, sir. What is it?

7 Q In 1973, the day-to-day financial operations  
8 were handled by a finance committee, were they not?

9 A I don't know exactly but there was --

10 Q I'm sorry?

11 A I don't know the exact date, but there was a  
12 finance committee which handled the financial affairs of  
13 the corporation.

14 Q Well, what I put in front of you are finance  
15 committee minutes of July 10, 1973, are they not?

16 A July 10, 1973?

17 Q Yeah.

18 A That's correct.

19 Q Will you look at item F?

20 A Which item?

21 Q F, on page 00137, Tauber.

22 A Okay. Yes. I refer to F. What is your  
23 question?

1           Q     I'm going to refer you to the subject, "Dr.  
2     Vlahos stated he would like to discuss a plan which he  
3     felt had a good deal of merit and gained its name from  
4     Dr. Peters who had come up with the idea. The Peter  
5     plan is an attempt to have the hospital pay something of  
6     dividends to the stockholders for their rather large  
7     investment in the hospital. The plan calls for  
8     stockholders to buy the hospital building from the  
9     corporation for some 10 percent of its value and in turn  
10    rent or lease the building back to the hospital."

11                   Do you remember that plan?

12           A     No. I told to you, but I read it and it is a  
13    part of the minute.

14           Q     Doctor, let's go back to 1971 when allegedly  
15    this transfer of hospital assets occurred. There were  
16    two other 501(c)(3)s operating right in your same area,  
17    service area, were there not?

18           A     I don't understand the question.

19           Q     Fairfax Hospital is a 501(c)(3)?

20           A     I don't know. But if you say so, yes.

21           Q     Well, you know it's a not-for-profit, don't  
22    you?

23           A     No.

1 Q How about Alexandria?

2 A How do I doubt you that they are a tax exempt  
3 organization or not? You say so. So I accept it.

4 Q Did you ever approach Alexandria or Fairfax and  
5 say to them: "Look, we're in financial trouble. Come  
6 just take our hospital. Assume the liabilities and you  
7 can have it. Just walk in and take it over, because we  
8 don't want to do it anymore. It's broke and we don't  
9 want it"? Did you ever do that?

10 A This particular two so-called nonprofit  
11 organization, Alexandria and Fairfax, is that what  
12 you're asking?

13 Q Yeah. Did you consider saying: "Look, we  
14 can't do this anymore. We're going to give you the  
15 asset. You take over the mortgage and the asset and  
16 here it is"?

17 A Mr. Bettius, I mentioned it many times. Our  
18 goal was to keep Jefferson Memorial Hospital alive. And  
19 I have no inclination to go to an executor who would  
20 close the hospital. Therefore I approached other  
21 nonprofit organization like Georgetown University  
22 Medical School. That's right. But not these two of the  
23 so-called nonprofit organization. No, because their aim

1 would have been to close the place.

2 Q Let's talk about the approaches you made to  
3 others. You didn't approach anyone else about this  
4 hospital until 1973, did you?

5 A No. That's not true, because my recollection  
6 as a matter of fact, I did it in 1965 when I invited my  
7 friend, Dr. Hufnagel, who was professor of surgery at  
8 that time, not chairman, professor, in order to get some  
9 information and give the whole hospital to Georgetown.  
10 But definitely not Fairfax and not Alexandria. But that  
11 is a nonprofit organization. And continuous discussion  
12 started in 1965. As a matter of fact until today, I'm  
13 still negotiating.

14 Q Well, we're going to, in a few moments, get  
15 over to the situation with Georgetown because it's  
16 documented and I'll at least give you the courtesy of  
17 the notes. But would you look at Exhibit 111?

18 A Yes, sir.

19 Q Before we get there, Doctor, would you give the  
20 doctor his deposition?

21 MR. FOX: The original is with the Court. What  
22 day of his deposition was that first day?

23 MR. BERGHOLD: June 11.

1 MR. BETTIUS: 132.

2 MR. BONO: Why is this document --

3 MR. BETTIUS: Impeachment.

4 THE COURT: Go ahead, Mr. Bettius.

5 BY MR. BETTIUS:

6 Q Do you recall, Doctor, appearing at my office  
7 for a deposition on June 11, 1996?

8 A Yes, sir, I do.

9 Q Do you recall that I asked you the question on  
10 page 132, line 10, do you recall I asked you the  
11 question, "did you make any attempt to give it", by that  
12 I mean the hospital, "in this time period, 1970 to '71,  
13 to any other institution"?

14 MR. BONO: Your Honor, I object. I don't  
15 believe that this is impeachment testimony.

16 THE COURT: What testimony is it sought to  
17 impeach, Mr. Bettius?

18 MR. BETTIUS: The witness said, "I went to  
19 Georgetown. I went to other places. But I never went  
20 to Fairfax and I didn't" -- but he said he went to other  
21 places in an attempt to give it away. I want to know if  
22 he wants to correct that answer.

23 THE COURT: I thought I heard him say



1 Georgetown was the only place. I didn't hear any  
2 others, I didn't hear the expression about any others.

3 MR. BETTIUS: That's right, Your Honor. I'm  
4 going to ask him if he wants to retract that testimony  
5 and answer the question, "I never thought about giving  
6 it to anybody."

7 THE COURT: I don't recall that -- go ahead,  
8 Mr. Bettius. I'll hear the question and I'll rule  
9 before he answers it.

10 BY MR. BETTIUS:

11 Q Doctor, I'm going to ask you this question  
12 today: Did you make any attempt to give the hospital in  
13 this time period, 1970 or '71, to any other institution?  
14 Do you recall your answer?

15 A Yes.

16 Q Did you respond, "why would I give it? I'm  
17 asking you, what institution? To INOVA? To Fairfax?"

18 "Yes."

19 "Sure. That's closer to my heart. Or  
20 Alexandria Hospital. Sure."

21 "Did you consider giving it to them? Just  
22 saying here it is; I give it to you?"

23 "Me? To them?"

1 "Yes."

2 "Under no condition in the world, period. Why  
3 would I give it to them?"

4 Question, "because your articles of  
5 incorporation said you had to."

6 There is an objection by Mr. Bono. And then I  
7 said, "I'm trying to ask you, Doctor, did you go to any  
8 other hospital?"

9 "No. Forget it. I did not go anywhere. The  
10 only thing is that one not a single moment that it  
11 occurred that we would give up our right."

12 MR. BONO: Your Honor, I don't believe this is  
13 impeachment because the question in this deposition  
14 started off by asking "in this time period, 1970 to  
15 '71." It was not addressed to any other time period,  
16 these series of questions, and it's not impeachment.  
17 It's not contradictory to Dr. Tauber's testimony.

18 THE COURT: I don't believe it contradicts what  
19 he said, Mr. Bettius.

20 BY MR. BETTIUS:

21 Q Dr. Tauber, it never crossed your mind in 1971  
22 to give this hospital to anyone, did it?

23 A That's not true. I told to you that in 1965 --

1 Q I said in 1970 and '71, Doctor. When this  
2 transfer was allegedly made, it never crossed your mind  
3 to give it to anyone, did it?

4 A That's not true.

5 Q Then why did you say, in this deposition, "No.  
6 Forget it. I did not go anywhere. The only thing is  
7 that one not a single moment that it occurred that we  
8 would give up our right"?

9 A To survive. To keep it open.

10 Q That's right. It was your right; wasn't it?

11 A We had the hospital, and I told it now  
12 repeatedly, I invited Dr. Hufnagel and I started in  
13 1965.

14 Q Doctor, please confine your answer to 1970?

15 THE COURT: He said earlier, Mr. Bettius, they  
16 were ongoing and I think he even said they are still  
17 ongoing even up to including today.

18 MR. BETTIUS: His response in the deposition,  
19 Your Honor, is he didn't consider it for a moment.

20 THE COURT: All right. I understand that.

21 BY MR. BETTIUS:

22 Q You never viewed this hospital as anything but  
23 your own hospital, did you, Doctor, and those that

1 formed it? It belonged to you and it was your right to  
2 practice medicine there; is that right?

3 A That's absolutely incorrect.

4 Q Who did the hospital belong to? The community?

5 A To the partners.

6 Q To the partnership.

7 Doctor, isn't it true -- and I'm going to ask  
8 you to look at Exhibit 115. And we're in a period,  
9 Doctor, of 1973.

10 Wasn't it true that this hospital had ready  
11 credit lines available to it up to \$200,000 secured  
12 merely on its accounts receivable at good commercial  
13 terms?

14 A At one point -- they had a credit line at one  
15 point. Behind the credit line was the receivables.

16 Q Is it not true, Doctor, that this hospital  
17 could borrow at 2 percent above, or two above prime, in  
18 the market, on a ready line of credit, \$200,000 just on  
19 the strength of its own accounts receivable?

20 A I don't think so, because --

21 Q Read note C. 220,000. I'm sorry. Almost a  
22 quarter of a million dollars.

23 A Yes, I read it. But it was offered a loan,

1 which was prime plus 2 percent. The bank compensated  
2 bonds and the hospital would keep in the bank.

3 Q It would be less than 2 percent. You had a  
4 compensating balance; isn't that what it says?

5 A No.

6 Q We'll let the Court read it.

7 A If this \$200,000 maintained, then it would have  
8 an interest rate of one and a half percent above prime.  
9 That's the usual commercial transaction. And actual  
10 charge of the bank to charge you depend on how much  
11 money and compensated bonds you keep in the account.

12 Q Insolvent and distressed companies don't enter  
13 into usual financial transactions, do they?

14 A What is the question?

15 Q Withdrawn.

16 Doctor, would you look at Exhibit No. 116? Do  
17 you have it in front of you, Doctor?

18 A Yes, I read it many times.

19 Q Would you look at item F and tell us if that  
20 explains your Georgetown proposal?

21 A Yes, sir, I read it.

22 Q Your plan was to give the operation of the  
23 hospital to Georgetown and charge it \$200,000 a year

1 rent and distribute that to your partners, wasn't it,  
2 Doctor. That's the Georgetown plan?

3 A No. The Georgetown plan, when you mention the  
4 \$200,000, out of the \$200,000 we have to pay mortgage  
5 obligation. What left over, approximately \$100,000 --

6 Q The mortgage was \$100,000?

7 A Approximately.

8 Q The debt service on the mortgage was less --  
9 was right around 50,000. The rest was equity and  
10 amortization, wasn't it?

11 A No, no. You had at this time, originally we  
12 had \$900,000, \$950,000 first mortgage.

13 Q Doctor, that was paid down, wasn't it?

14 A Paid down but it is slow payment because at  
15 first the interest was applied. At first the interest  
16 would be paid and it means that the constant payment we  
17 applied to curtail the mortgage. So -- but the constant  
18 payment never changed.

19 Q The Court will have some financial people who  
20 can tell us that. But the plan, was it not, Doctor, was  
21 to get \$200,000 a year from Georgetown for rent and you  
22 would let them operate the hospital? Is that the plan?

23 A The plan what I propose was that we are

1 donating the whole equipment and everything to  
2 Georgetown for \$200,000, that payment, and out of the  
3 \$200,000 would pay our mortgage obligation, which was  
4 not changed over 20 years.

5 Q But the plan was you would keep the asset and  
6 sell the operation; correct?

7 MR. BONO: Objection, Your Honor. That is  
8 contrary to what his testimony just was.

9 THE WITNESS: I just told it.

10 THE COURT: Just a minute, Doctor.

11 BY MR. BETTIUS:

12 Q It wasn't your testimony that you would convey  
13 to Georgetown the operation of the hospital and you  
14 would keep the asset, the building? That wasn't your  
15 testimony?

16 A Yes. Leasing the land and the building.

17 Q I'm sorry.

18 A Yes, that was the plan.

19 Q Thank you. Doctor, you wrote a letter, did you  
20 not, in April of '73 that expressed your feelings about  
21 the merger, alleged merger, and its effect. And that's  
22 Exhibit 384. Isn't that correct?

23 A Yes.

1 Q And, Doctor, you indicated that the conversion  
2 did not realize monetary gain for the hospital; isn't  
3 that correct?

4 A Yes.

5 Q And you also indicate that the general morale  
6 is much better than it was two years ago, and that you  
7 see the census is steadily improving and the picture  
8 slowly shows some profit.

9 A If the letter say that, that's what I put.

10 Q Okay. You also indicate that the conversion  
11 cost you more than 100,000, this conversion, whenever it  
12 took place, supposedly, cost you more than \$100,000 a  
13 year in increased expenses.

14 A That's sounds right.

15 Q So while the merger produced this conversion to  
16 where the -- and the effect of the conversion was the  
17 doctors who were participants in a charity were now  
18 owners of the hospital; is that correct?

19 A In 1973, no, no, because the Jefferson Memorial  
20 Hospital Associates already gave to the corporation an  
21 exchange of 240,000 shares.

22 Q Well, the effect, Doctor, of this alleged  
23 conversion, was that the doctors who were trustees of



1 the asset or members of the charity now owned the  
2 operation; isn't that correct?

3 A You talk about the whole thing April, 1973,  
4 Mr. Bettius. Jefferson Memorial Hospital, Inc. did not  
5 exist at that time.

6 Q That's right. And what happened was, where the  
7 operation was presently owned -- was previously owned by  
8 a charity, it was now owned by these doctors; wasn't it?

9 A No. Owned by the corporation. And the  
10 corporation, the stocks, 240,000, were owned by the  
11 doctors. But the corporation was the owner at this  
12 time.

13 Q Well, it was all the same people, wasn't it?  
14 The partners and the doctors and the members of the  
15 board were all the same; weren't they? In fact, that's  
16 what the financial notes say.

17 A Not exactly, because the financial statement  
18 said it that I kept 92 and a half percent. I kept 7 and  
19 a half percent.

20 Q But for 7 and a half percent.

21 A Whatever the record state that it is.

22 Q So the change was, JMHC was now owned by the  
23 doctors, is that correct, where JMHI was a charity?

1           A     Again, Mr. Bettius --

2           Q     Doctor, was JMHC owned by the doctors?

3           THE COURT: Don't go talking at the same time.

4           MR. BETTIUS: I sorry. Your Honor, I'm trying  
5 to get an answer.

6           THE COURT: Give him a chance to explain. If  
7 his answer is not responsive, you can ask another  
8 question.

9           THE WITNESS: Jefferson Memorial Hospital  
10 Corporation was the owner. However, there were  
11 authorized one million share, but issued only 240,000  
12 share. The 240,000 share were owned by the former  
13 Jefferson Memorial Hospital Associates; that's correct.  
14 But you cannot tell it that they owned the place. The  
15 corporation owned the place.

16           BY MR. BETTIUS:

17           Q     There were no other shareholders of the  
18 corporation but the inside doctors; is that correct?

19           A     The inside or outside, the members were  
20 partners.

21           Q     There were no other owners of the stock but the  
22 doctors who were partners, previous partners of JMHA; is  
23 that correct?

1 A I would not say that, because --

2 Q Of the 92 percent?

3 A We invited other doctors to participate, to buy  
4 stocks, be financially responsible, that it would help  
5 the hospital survive.

6 Q Doctor, you only ever had one stock issue other  
7 than the 240,000 shares; isn't that right?

8 A I think so.

9 Q And you restricted that stock issue to former  
10 insiders; didn't you?

11 A I would call it not former insider, but former  
12 present stockholders, not insider, because it was open  
13 to the public but nobody bought it.

14 Q The very issuance of those shares restricted  
15 them to the doctors. The shares were sold only to those  
16 individuals who had participated in the '71 transaction  
17 and they could buy them one share for four; isn't that  
18 the way it was done?

19 A Not exactly.

20 Q But isn't that the way it was authorized,  
21 Doctor?

22 A No. Not authorized. It was offered to them,  
23 and everyone who had four stocks was able to buy for one

1 additional stocks. And if they -- and the memorandum  
2 clearly states if somebody does not want to buy their  
3 share, that other outsider, as you call them, are able  
4 to come in and buy.

5 Q Doctor, it didn't say other outsiders, did it?  
6 It said, and you sent numerous letters to your  
7 shareholders that said, that if the people who were  
8 already insiders didn't take them, then other insiders  
9 could pick up their share?

10 MR. BONO: Objection, Your Honor.

11 MR. BETTIUS: I'll show him the letter.

12 BY MR. BETTIUS:

13 Q Doctor, would you look at Exhibit 383?

14 A All right. I read it.

15 Q Now, it indicates that it was decided an option  
16 would be offered to each stockholder to purchase one  
17 additional share of JMHC stock for every four you  
18 currently own at the rate of \$4. 60,000 will be  
19 offered. It was offered to these individuals, wasn't  
20 it?

21 A Yes. That's right. The first was offered.

22 Q And when you attempted to offer the stock to  
23 anyone but insiders, Dr. Corrado threatened to sue you,

1 didn't he?

2 MR. BONO: Objection. I object to the term  
3 insiders.

4 MR. BETTIUS: I'll withdraw. I'll rephrase the  
5 question.

6 MR. BONO: It was offered to stockholders.  
7 That is what was testified to and --

8 THE COURT: All right. If you'll rephrase the  
9 question.

10 BY MR. BETTIUS:

11 Q When you were suggesting that it might be  
12 offered to others, Dr. Corrado threatened to sue you,  
13 didn't he?

14 A I don't remember that he ever threatened to sue  
15 me. Do you have a document?

16 Q I have a document. Would you look at 394,  
17 Doctor, Exhibit 394?

18 It's clear from this letter, Doctor, is it  
19 not --

20 A Excuse me. Give me a chance to read it.

21 Q I'm sorry. Please.

22 A Yes, sir.

23 Q This document says that those members who have

1 not exercised their option -- that's the conversion.

2 I'm sorry. I'm referred to the wrong document.

3 MR. FOX: I apologize.

4 MR. BETTIUS: Show the witness Exhibit 93,  
5 please. I'm looking at item D on 00528.

6 BY MR. BETTIUS:

7 Q Is that the proposal, Doctor, that authorized  
8 the shares in the first instance as best you recall it?

9 A Paragraph D?

10 Q Yes, sir. You asked that --

11 A Right.

12 Q -- the board authorize the issuance of these  
13 shares and how they were to be sold; isn't that correct?

14 A That's correct.

15 Q Does that correctly state how they were to be  
16 sold?

17 A It was my proposition to sell it, yes.

18 Q And what you did was, after the shares of stock  
19 were offered, if there were none left, you went back and  
20 reoffered them to members who also had the stock and  
21 gave them the opportunity to buy the surplus; isn't that  
22 correct?

23 A "If all the shares are not subscribed for,

1 10,000 shares will be sold to Dr. Melvin D. Small. This  
2 recommendation was seconded and unanimously passed."

3 Q And that exhausted the issue. Everybody sold,  
4 bought the stock?

5 A I don't know. That was only the proposition.  
6 What was the outcome, I don't have that with me.

7 Q There is no doubt in your mind Doctor, that all  
8 240,000 shares were sold; is that correct?

9 A I can speculate. But I don't -- if you have --

10 Q Strike that. I'm sorry, Doctor. All 60,000  
11 shares were sold.

12 A I don't know about sold. We offered it. If  
13 you have documentation it was sold, then sold. If not,  
14 then not.

15 Q All right. Doctor, would you look at Exhibit  
16 386? I'm sorry. Let me take you back, Doctor, before  
17 386. A document dated February 26, and it is Exhibit  
18 385. Who is Mr. Ridder?

19 A I think he was a hospital controller.

20 Q Okay. Do you recall this letter being signed  
21 at the time, Doctor?

22 A Let me read it. Yes. As I read it, Mr. Ridder  
23 was the controller of the hospital. And he approached

1 Councilor, Buchanan & Mitchell, which was the certified  
2 public accountant firm, and raised the question of  
3 possibilities we have, options we have with different  
4 transactions.

5 Q What he wanted to know is if you can sell the  
6 building and then have the person you sold it to lease  
7 it back; isn't that correct?

8 A This is Mr. Ridder, the controller. I have  
9 not -- I did not write that letter. Therefore, you have  
10 to ask him.

11 Q Well, you're the president of the corporation.  
12 If the letter goes out -- and the purpose of the  
13 letter, were you not aware, was how can the stockholders  
14 receive money from the corporation? Wasn't that the  
15 whole thrust of this? Did it not -- excuse me. Answer  
16 that question, first. I'm sorry.

17 Doesn't the letter say the purpose of the  
18 sale-lease back arrangement is to provide the owners a  
19 return on their investment?

20 This brings us to another question. How can  
21 the stockholders receive this money from the  
22 corporation? Isn't that the purpose of the inquiry?

23 A I cannot answer you any --



1           Q     It was directed by the board, wasn't it,  
2     Doctor?

3           A     I have no idea. I can assume it, but I don't  
4     know it. If you show it that it was adopted in the  
5     board that we ask Mr. Ridder the controller to compose  
6     that letter, then you can say it. But I don't remember.  
7     It was 22 years ago decision. Certainly I would have  
8     turned to Mr. Ridder for any type of --.

9           Q     Doctor, would you look at Document 386? So you  
10    didn't see the letter and you don't know anything about  
11    the response from the letter, is that correct, from the  
12    accountant?

13          A     That was between the accountant, our  
14    controller, that we call it, Mr. Richard Ridder, and  
15    between the Councilor, Buchanan & Mitchell, an  
16    accounting firm.

17          Q     Well, 13 days later, Doctor, at the board  
18    meeting -- would you show the doctor Exhibit 119?

19          A     What is the question?

20          Q     We read a portion of this this morning.  
21    Shortly after the letter, exchange of letters between  
22    Mr. Ridder, the controller, and your accountant, you  
23    discussed the sale and lease back of the building, did

1 you not, after first reporting that the Georgetown  
2 negotiations were dead because the board couldn't agree?  
3 Look at item three.

4 A Which one?

5 Q Item 3 in the board minutes of Wednesday, March  
6 13, page 00632.

7 A Dr. Tauber reported that the negotiations with  
8 Georgetown Medical School for affiliation would not take  
9 place. The entire board of directors did not agree to  
10 the proposal. Further stated that Dr. Coffey at  
11 Georgetown made no further mention of the idea of taking  
12 over --

13 Q All right, Doctor. It's not necessary to read  
14 further unless you want to.

15 A No, I just don't understand the question. Why  
16 don't you ask me?

17 Q We covered it this morning. You indicated in a  
18 history of the transaction that the original reason for  
19 creating the corporation was in case you got sued for  
20 malpractice. Do you see that?

21 MR. BONO: Your Honor, this is off --

22 MR. BETTIUS: I'm just going through this and  
23 I'm getting to the --

1 THE COURT: Let's get to it.

2 BY MR. BETTIUS:

3 Q Okay. You then discussed how the transaction  
4 to get these shareholders some money would be affected,  
5 didn't you, Dr. Tauber?

6 A If you ask me a question that -- let me read  
7 it.

8 Q Look, Doctor, on the next page. Dr. Tauber  
9 stated at the previously mentioned meeting that he had  
10 come up with the following proposal. Do you recognize  
11 this proposal, Doctor?

12 A Excuse me, sir. Where you read from?

13 Q I'm on the next page, 00633, where you see an  
14 A.

15 A A, got it. A or B?

16 Q Did you come up with a proposal? It says,  
17 Dr. Tauber stated that at the previously mentioned  
18 meeting, they had come up with the following proposal.  
19 I'm going to ask you if you recognize that proposal?

20 A I really don't understand it. Where is that  
21 from? Would you tell it to me that I can read it and I  
22 can intelligently answer?

23 Q You can't see where I'm pointing to?

1 A No.

2 Q The now profit making corporation of Jefferson  
3 Memorial Hospital --

4 A Okay, sir. Let me read it. Then I answer.

5 What's the pending question, please?

6 Q Doctor, you suggested, did you not, that they  
7 return, they return to the time when you reinstated the  
8 old King Street Joint Venture. You convey the hospital  
9 back to the Joint Venture and you lease it to the  
10 hospital for \$100,000 more than the cost; is that  
11 correct?

12 A No. You ask me a question, I answer. What  
13 basically my proposition was to reverse the situation to  
14 the original form; that the partnership, they call it  
15 King Street Joint Venture, Jefferson Memorial Hospital  
16 Associates, whatever you want to, will own again the  
17 land and the building and lease it back to the  
18 for-profit corporation, just the same thing as we wanted  
19 to achieve with Georgetown for a gross \$200,000 lease  
20 which would include the mortgage and the ground rent  
21 payment and payment for our equipment, everything. And  
22 that would be exactly a reverse what happened in June  
23 30th -- July 1st, 1971.

1 Q Did anybody make an inquiry to see how the  
2 corporation felt about that? You didn't have to, did  
3 you, Doctor?

4 A Sure.

5 Q You were sitting in the corporate meeting while  
6 you were coming up with these proposals for the  
7 partnership, weren't you?

8 A Yes, because there was a constant problem how  
9 to raise capital.

10 Q Doctor, hadn't you just had a report from your  
11 controller that the year-to-date you had a \$200,000  
12 profit?

13 A 1974?

14 Q Yes, 1973, Doctor. Strike that.

15 A Show it to me that we told that we had \$200,000  
16 profit.

17 Q Okay. One moment, please. Would you look at  
18 the board minutes, Doctor?

19 A Which one?

20 Q For September of 1973.

21 A What number is that?

22 Q That's Exhibit 111. Would you look under new  
23 business on page 2 of those minutes under item B?

1           A       This is page 123?

2           Q       124. Look at page 124, item B, Mr. Linton  
3 states the hospital made a profit of more than \$200,000  
4 in fiscal year '73, and that means more than \$100,000 in  
5 tax must be paid?

6           A       Excuse me, sir. I'm reading.

7           Q       All right.

8           A       I'm reading the page you had, 124.

9           Q       Doctor, I'll let the Court find it. But your  
10 testimony is, as I understand it, there was no profit of  
11 \$100,000 that the board was trying to take off in the  
12 way of rent?

13                   MR. BONO: Objection.

14                   BY MR. BETTIUS:

15           Q       If you have \$100,000 for taxes, there's  
16 \$100,000 after taxes, what rent are you suggesting that  
17 you're going to pay for the building? \$100,000. Isn't  
18 that right, Doctor?

19           A       You referred me to read section B. If I read  
20 it, I can answer your question.

21           Q       Doctor, I withdraw the question. You were  
22 proposing, were you not, in these minutes, to lease the  
23 building to the -- reform the King Street Joint Venture

1 and lease this building for \$100,000 a year over the  
2 expenses. Isn't that what you were proposing?

3 A It would have been a triple net lease if you  
4 want to say it.

5 Q I'm sorry.

6 A If you made it a triple net lease, \$100,000,  
7 which means that the hospital pays all the mortgage  
8 obligation and everything.

9 Q And you all take \$100,000?

10 A \$100,000 as a profit.

11 Q On July 24, 1974 -- and I want you, Doctor, to  
12 look at -- I'm sorry. Exhibit 125.

13 At this meeting, Doctor, it was decided,  
14 because various physicians were concerned about some  
15 people making money and others not, to give every  
16 director a job, to pay him a salary; isn't that true?

17 A No.

18 Q Would you look at page 00808?

19 There was a lengthy discussion of all of these  
20 subjects by members of the board. And in summary, it  
21 was the consensus of the majority of the members that  
22 each member of the board be given a job and paid for  
23 their services so no one should be given special

1 consideration for supporting the hospital?

2 A No. It was -- evidently it was suggested that  
3 certain duties, certain duties would be delegated to  
4 different members of the board of directors like the  
5 finance committee, which was less expensive than hiring  
6 a chief financial officer.

7 Q Isn't this the motion that was made and passed,  
8 the motion was made and seconded -- by Dr. Gondor and  
9 seconded by Dr. Burtoff that each member of the board  
10 would be given a segment of the hospital operation and  
11 control to work with and each member would be assessed a  
12 job and responsibilities and be required to spend at  
13 least two hours in that capacity, and that each member  
14 be paid \$3,000 a year for that?

15 A For that work what they would do at the  
16 hospital, they would get paid because we did not want to  
17 offer any free service. But when you say every member  
18 of the board, keep me out because I did not receive a  
19 single penny for my service.

20 Q Well, I don't know one way or the other,  
21 Doctor.

22 A You know it.

23 Q Well, on September 24, Dr. Freedman fired all



1 of these directors from their job, didn't he?

2 A Where was it?

3 Q I'm going to direct you to Exhibit 128, point  
4 4. Dr. Freedman stated he directed the hospital  
5 administrator to make no further payment to the hospital  
6 controllers or executive vice-presidents; that the duty  
7 of the controllers will be taken over by the board  
8 members and officers of the hospital corporation, and  
9 they have agreed to perform their duties at no salary.  
10 The thought is to put this money into improving the  
11 hospital. You fired them; didn't you?

12 A I fired?

13 Q No, Dr. Freedman did, and you resigned, didn't  
14 you? As a result of this, you resigned.

15 A I did not resign for that reason. I resigned  
16 for a different reason.

17 Q Well, you resigned the 26th, didn't you?

18 A If you say 26, but I'm telling you that I  
19 resign, but not for that reason.

20 Q Well, we see here that on September 25th -- I'm  
21 sorry, the day after the meeting where they fired the  
22 directors, you resigned; is that correct?

23 MR. BONO: Objection, Your Honor. His

1 question --

2 MR. BETTIUS: Where they took --

3 THE COURT: Just a minute, Mr. Bettius. Let me  
4 hear the objection.

5 MR. BONO: The objection is it mischaracterizes  
6 the document and the testimony in his question. I ask  
7 him to rephrase it.

8 BY MR. BETTIUS:

9 Q The day after the salaries were taken away, you  
10 resigned; didn't you?

11 A My resignation had nothing to do with any type  
12 of --

13 Q Why did you resign, Doctor?

14 A I resigned for very simple reason: that the  
15 members of the board of directors started to fight and  
16 created a situation that I could not take any side  
17 because if I would take one side, then I would hurt the  
18 feeling of the other side.

19 Q Well, they accepted your resignation, didn't  
20 they?

21 A Let me finish.

22 Q I'm sorry. I didn't know you weren't finished.

23 A And then I tendered my resignation that I don't

1 want to be a member of the board and I don't want to do  
2 anything with it, because the way how it was handled.  
3 It was not the way I wanted to see it.

4 Therefore, I stepped out, and I discontinued  
5 being a member of the board of directors.

6 Q You let them run one more board meeting, didn't  
7 you, on October 16th, and then called for a special  
8 meeting of the board of -- of the stockholders, is that  
9 correct? They had one more meeting on October 16th, did  
10 they not? And I refer you to Exhibit 130.

11 A October 16 of '74, I had resigned and my  
12 resignation was accepted as chairman and as president.  
13 So I was not a member of the board of directors, so I  
14 don't understand the question.

15 Q Well, you understood that the board had a  
16 meeting, do you not, on October 16, 1974?

17 A I was not present.

18 Q I know. But you as a member of the hospital,  
19 were you aware of what happened at the board meeting on  
20 the 16th?

21 A What do you mean a member of the hospital? I  
22 was a member of the medical staff. I was the chairman  
23 of the department of surgery. I was medical director.

1 But I had no participation in the board of directors  
2 after that. I was not present and I don't know. But  
3 the record speaks for itself.

4 Q It sure does, Doctor. Would you look at --

5 A Where do you want me to read?

6 Q Would you look at Exhibit 131? Within two days  
7 of that board meeting, you had sent out to all the  
8 stockholders a letter that said "as a stockholder owning  
9 more than 20 percent, I request a special stockholders  
10 meeting be held on the 29th of October"?

11 A That's correct.

12 Q So that within two days of that board meeting,  
13 you sent out that special meeting notice; is that  
14 correct?

15 A The stockholder meeting, yes.

16 Q Yes, sir. And the subject of what you wanted  
17 to do at that meeting are contained in those minutes;  
18 isn't that correct?

19 A I think so. Because it is signed by  
20 Mr. Richard, as secretary, and Dr. Freedman as chairman,  
21 and Harold Goald, as substitute chairman.

22 Q And is it your testimony, Doctor, that the  
23 calling of the special meeting had nothing to do with

1 the matters discussed on the 16th?

2 A I do not remember the exact dates, but the  
3 special stockholder meeting was necessary in 1974  
4 because there had been in the hospital certain  
5 changes --

6 Q There had been what, sir?

7 A Certain changes happened there in the hospital  
8 which was not approved by the different members, the  
9 former members of the hospital.

10 Q They knew without you there as president, they  
11 wanted to modernize and change the hospital; is that  
12 correct, Doctor?

13 A Not exactly. As I told you, I was not a member  
14 of the board of directors, and I was not involved in the  
15 everyday business.

16 However, I owned certain stocks and I had the  
17 power of attorney for a number of stocks. Therefore, I  
18 had the majority. Therefore, I had the right, I think  
19 within 12 days to call a special meeting. I called the  
20 special meeting and discussed different items which I  
21 was very deeply concerned.

22 Q And one of the things that you were going to do  
23 at that meeting was to get the hospital back under your

1 control as the general partner in a joint venture.

2 Would you look at page 5?

3 A Which one?

4 Q Of the minutes of the special meeting of  
5 shareholders of October 29th. In addition to a series  
6 of resolutions, Doctor, did you not have this resolution  
7 made on the floor and passed? Be it resolved that the  
8 stockholders of the corporation approve in principle the  
9 sale and lease back of the building and land to Laszlo  
10 N. Tauber as trustee of a partnership for the sum of  
11 \$240,000 plus assumption of the mortgage presently  
12 against the land and building and the understanding that  
13 each stockholder in the corporation would be offered  
14 participation as a partner in such partnership in the  
15 same ratio as his percentage of stock ownership in the  
16 corporation. And that a lease for a term of 20 years  
17 with a six month cancellation clause to either party.  
18 Isn't that really what you proposed at that meeting?

19 A Yes. Most likely that was because the record  
20 states that.

21 Q So if anybody ever tinkered with this hospital  
22 again, you could cancel the lease on six months notice;  
23 isn't that correct?

1           A     Both parties had the right.

2           Q     And you would then be the trustee of a  
3 partnership; is that correct?

4           A     I was the trustee of the partnership from day  
5 one. That would not change a single thing at all.

6           Q     And you also provided, did you not, that the  
7 partnership would be obligated to fund any further or  
8 future expansion of the hospital with a commensurate  
9 adjustment in rent of such an expanded facility?

10          A     Where do you refer, Mr. Bettius?

11          Q     Right at the end of your resolution. "Be it  
12 further resolved," right at the end of that resolution.

13          A     Yes.

14          Q     That would put to rest any question of anyone,  
15 Doctor, ever doing anything to the hospital without your  
16 consent or concurrence; isn't that correct?

17          A     That's not correct. Because you know that I  
18 had the power to do it and still I took the majority  
19 vote. And in spite of the fact that I wanted to have  
20 the hospital as a nonprofit, I joined them and we became  
21 a profit. So therefore, don't put me in that position  
22 that I told them what to do. Because I accepted the  
23 majority.

1           In this resolution, I spoke for the 85 percent,  
2 as you see in the other part, 85 percent of the sponsor  
3 supported my view. It was not me. 85 percent.

4           Q     Doctor, within the month when you resigned, you  
5 had gotten a proposal voting, as you say, proxies, and a  
6 few members present to take control of the hospital by  
7 purchase; isn't that correct? Isn't that what these  
8 minutes say?

9           A     Mr. Bettius, I had the power from day one.

10          Q     You were exercising it here, weren't you?

11          A     I exercised it the first time. I felt it that  
12 I had to exercise it. I felt it was the time that I had  
13 to exercise it. I never did before.

14          Q     Doctor, the hospital then proceeded with all  
15 due dispatch to do this sale; is that correct?

16          A     I think so. Again, I don't have the record.  
17 But the record speaks for itself.

18          Q     Well, you ran into an obstacle, didn't you?

19          A     Many obstacles.

20          Q     Well, JMHI of record still owned a lot of the  
21 assets; didn't it?

22          A     No, no, sir. Jefferson Memorial Hospital,  
23 Incorporated never owned the asset. We went through



1 that many, many times this one.

2           Jefferson Memorial Hospital, Inc. owned 20  
3 percent of the land, the so-called Berman-Hopkins land,  
4 and certain type of movable equipment or fixed equipment  
5 which was transferred to Jefferson Memorial Hospital  
6 Corporation.

7           Q     Well, you had to deal with this land and  
8 equipment in this acquisition, didn't you?

9           A     What do you mean?

10          Q     Well, you found out, did you not, that the  
11 merger -- it came to your attention -- again, the merger  
12 wasn't complete. So therefore, you didn't own the  
13 assets of JMHI; isn't that correct?

14          A     Mr. Bettius, I told to you I don't know how  
15 many times, as far as we concerned, the transfer  
16 occurred on the 30th of June, 1971.

17                   Do I finish my answer?

18           THE COURT:   Yeah, go ahead and finish your  
19 answer.

20           MR. BETTIUS:   I'm sorry?

21           THE WITNESS:   You asked a question and before I  
22 finish, you turn away. I did not know whether --

23           BY MR. BETTIUS:

1 Q I'm sorry, Doctor. I didn't mean to be rude.  
2 I apologize.

3 A Accepted.

4 Q Doctor, as early as October of 1974 -- and I'm  
5 going to ask you to look at the minutes of the meeting  
6 of October 16, 1974.

7 A Where are you looking?

8 Q I'm looking at 5, note 5.

9 MR. BONO: Your Honor, I object unless it's  
10 made clear -- I don't know what the question is going to  
11 be. But I believe the testimony was before that  
12 Dr. Tauber said he was not at this meeting. The record  
13 reflects he was not.

14 MR. BETTIUS: He can say he doesn't know what  
15 happened.

16 BY MR. BETTIUS:

17 Q Isn't it true, Mr. Richards, of your own  
18 knowledge, advised the board that the merger was still  
19 incomplete, that it had never been consummated?

20 A Mr. Bettius, as I see it, Jefferson Memorial  
21 Hospital Corporation board of directors meeting of  
22 October 16, 1974, I was not present. I have no right to  
23 be there, and I had nothing to do with it. However, you

1 ask me do I know what happened? Yes, I know about it.  
2 Afterwards.

3 Q Right. Everyone had kind of forgotten the  
4 undocumented merger, hadn't they?

5 A Everybody in their own mind were firm about it,  
6 that Jefferson Memorial Hospital, Inc. ceased to exist  
7 and the Corporation came into play June 30, 1971. And  
8 that is already Dr. Freedman wanted to put everything in  
9 the proper documentation and asked Mr. Richards to go  
10 out and past, present and future action should be put in  
11 proper documented form.

12 Q Doctor, do you remember telling me that after  
13 1971 that JMHI had no assets and no liabilities?

14 A I don't know how many times I told you.

15 THE COURT: He said that. A lot.

16 BY MR. BETTIUS:

17 Q And you remember that on October, 1971, it was  
18 JMHC that came to a settlement with Dr. Palmer?

19 THE COURT: We've been over that, too,  
20 Mr. Bettius.

21 BY MR. BETTIUS:

22 Q All right. Let's get on with what happened.

23 The purpose of the board meeting, Doctor,

1 Jefferson Memorial Hospital, Inc. bonds. The chairman  
2 brought to the attention the fact that the bonds issued  
3 by Jefferson Memorial Hospital, Inc. --

4 A Excuse me. Where are you?

5 Q I'm sorry. Exhibit 133.

6 A It's a board meeting, right?

7 Q Yes, sir.

8 A As you see, I did not attend it. I wasn't a  
9 member. What can I say?

10 Q I'm looking at the purpose of the meeting.  
11 Were you aware that your board determined that JMHI was  
12 now in default of its bonds?

13 A Mr. Bettius, I was not there. The record  
14 speaks for it. The original issue --

15 Q Doctor, if you weren't there, that's all you  
16 have to --. Were you aware that a default was declared  
17 in connection with the payment of JMHI bonds?

18 A The date is 1974, December 11. Mr. Bettius, I  
19 don't know how many times I told you. All the  
20 liabilities of Jefferson Memorial Hospital, Inc. was  
21 taken over by the corporation. Therefore, this  
22 liability is not the Inc.. It did not exist. This is  
23 the liability of the corporation.

1           Q     Thank you, sir. Now, it's apparent from these  
2 minutes, though, that the officers of Jefferson Memorial  
3 Hospital are authorized and directed to convey a  
4 proposal where they are going to buy, now, JMHI's assets  
5 in order to alleviate this bond default; isn't that  
6 correct? They are going to get these assets for paying  
7 the bonds?

8           A     No. Mr. Bettius, I don't know how many times I  
9 have to tell you. Jefferson Memorial Hospital, Inc. did  
10 not exist. Anything that, obligation that Inc. had is  
11 transferred to the corporation.

12           MR. BETTIUS: Your Honor, I can see I'm testing  
13 your patience, but what we're seeing here is the basis  
14 for the 1975 transfer, a declared default of liabilities  
15 that this witness is saying didn't exist. And if the  
16 Court understands that, I'm going right on.

17           THE COURT: I understood he said it several  
18 times.

19           MR. BETTIUS: Okay.

20           BY MR. BETTIUS:

21           Q     Now, would you turn to Exhibit 135? Did you  
22 ever attend a meeting like this that's described?

23           A     I don't remember.

1 Q Well, it purports to be the annual meeting of  
2 the membership of JMHI; does it not, Doctor?

3 A That's what the document says, yes.

4 Q Doctor, you signed these minutes twice, once as  
5 chairman and waiving notice; is that correct?

6 A Yes. I signed it as the chairman.

7 Q Do you find it at all inconsistent with your  
8 testimony that JMHI didn't exist after 1971, that you're  
9 having a meeting of what purports to be its membership  
10 on January 27th, 1975?

11 A No. What I see here and I remember that in  
12 order to clear the smoke out of the undocumented  
13 actions, Mr. Richards temporarily revived this  
14 corporation, Jefferson Memorial Hospital, Inc. And to  
15 correct it what was not proper, he record. And that how  
16 I saw it.

17 Q I'm going to ask you to look very carefully at  
18 these minutes. It doesn't speak about documenting  
19 something that happened in 1971, does it? It says the  
20 chairman introduced Richards who reported to the  
21 membership on the status of the corporation in that the  
22 liabilities of the corporation exceeded its asset and  
23 that interest on the bonds of the corporation were in

1 default and the corporation was insolvent.

2 Do you know when this default occurred? Are  
3 you aware when the default occurred?

4 A No.

5 Q I'm going to show you in a minute, Doctor. It  
6 was in 1974 while JMHC was operator.

7 A They never operated anything after June 31.  
8 And all that what Thorpe Richards do, I'm sure, would do  
9 what necessary to. He temporarily reinstated this  
10 corporation to do certain paperwork, what you call --

11 Q He reinstated it to do certain paperwork?

12 A Right. But you can ask him and he will answer  
13 what he did.

14 Q Well, when he reinstated it, Doctor, he only  
15 got a very few of its members, didn't he, and in fact  
16 its officers?

17 A It was not a stock corporation, and --

18 Q Well, Doctor, we can quickly tell who waived  
19 notice of that meeting by looking at the May, 1973,  
20 filing of the directors of JMHI filed with Virginia  
21 authorities; can't we?

22 Take a look at it, Doctor. Ms. Harper is  
23 putting it right in front of you now. Exhibit 21 will

1 tell you who these members are.

2 A Okay. You tell me.

3 Q If we look, Doctor, these members that are  
4 shown were the original members way back in 1965,  
5 weren't they? These weren't the members -- as you said  
6 earlier in the day when I asked you about these members,  
7 you said over time the membership dramatically expanded.  
8 If you go back and look at these members, there's a  
9 glaring error in here, isn't there, Doctor? I mean  
10 there were first of all -- I'm sorry, Mr. Bono.

11 MR. BONO: Are you going to change your  
12 question now? I'll wait.

13 BY MR. BETTIUS:

14 Q There is a glaring error in these minutes.  
15 There were many more members shown by virtue of your  
16 filing, or directors, shown by your filing in '73; is  
17 that correct?

18 MR. BONO: Your Honor, I object to the  
19 question. It's now incomprehensible. He's referring  
20 the witness to a document that talks about officers and  
21 he blurs it with members. I think --

22 THE COURT: Rephrase that question,  
23 Mr. Bettius. You have about three questions continuing.



1 MR. BETTIUS: I'm sorry. I apologize.

2 BY MR. BETTIUS:

3 Q The directors were members of JMHI, as well,  
4 weren't they? Wasn't that one of the rules, to be a  
5 director you had to be a member?

6 A What is a difference between director and  
7 member?

8 Q Your counsel thinks there is a difference. I  
9 don't. There is no difference, is there?

10 MR. BONO: No, I -- never mind.

11 BY MR. BETTIUS:

12 Q There is no difference, is there?

13 A I don't know. I ask the question.

14 Q Everybody on the list there in 1973 was a  
15 member, isn't that correct, of JMHI?

16 A According to this document, they call it  
17 directors: Tauber, Ware, Burtoff, Scully, Peters,  
18 Feriozi, Hufnagel, Iranyi, Gondor, Dr. Small, Corrado,  
19 McManus, Nicholson, Luccioli, Freedman, Kauffman, Sibay,  
20 Vlahos and Bashir.

21 Q They were all members, weren't they, as well as  
22 directors? They owned a piece of JMHA.

23 A Again, it was --

1 MR. BONO: Objection, Your Honor. The fact  
2 whether they own a piece of JMHA has nothing to do,  
3 nothing at all, as to whether they were members of Inc.

4 MR. BETTIUS: He said, Your Honor, there was an  
5 identity. He said it three or four times in the  
6 financial statements.

7 THE COURT: Let's get to the question. We're  
8 way off the track of the question about who waived  
9 notice of the special meeting that is contained in  
10 Exhibit 137. Let's get back to that.

11 BY MR. BETTIUS:

12 Q I want to show it to you, Doctor. You didn't  
13 have nearly all of the members, did you?

14 A I don't know. I cannot answer to you.

15 Q Dr. Novak, in fact, ceased to be a member many  
16 years before, didn't he, even before it was dissolved?

17 A I can't answer it.

18 Q You don't know?

19 A No. I don't know. If I would know, I would  
20 tell you.

21 Q And one of those who attended, attended by  
22 proxy; is that correct?

23 A Only one was by proxy. Dr. Hufnagel did not

1     come.   Dr. Novak, Iranyi and Scully, they came.

2           Q     And then there was another meeting held that  
3     same night.   That first meeting lasted, where the  
4     insolvency was reported, starting at 7 o'clock; is that  
5     right?

6           A     According to the record, 7 o'clock.

7           Q     Let's look at 136.   At 7:15, you had another  
8     meeting, didn't you?

9           A     According to the record, 7:15 another meeting.

10          Q     Okay.   Now, it reported, did it not, the  
11     indebtedness -- the chairman introduced to the board  
12     Thorpe Richards who discussed with the board posture of  
13     the corporation with regard to its liabilities and the  
14     two major liabilities being the corporation's  
15     indebtedness to its bondholders.   It speaks of the  
16     corporations's indebtedness and its debt to Dr. Palmer.  
17     Is that correct?

18          A     According to the record.

19          Q     Well, didn't we determine way back in October  
20     of 1991 that Dr. Palmer was a debt of JMHC?   '71,  
21     rather?

22          A     No, no.   Dr. Palmer originally severed his  
23     relationship as of March, 1970.   And then at that time

1 it was around \$220,000 debt to him. And the negotiation  
2 was made by representatives of Mr. Richard, and this  
3 liability was corroborated in the --

4 Q Didn't you testify, earlier, Doctor, that you  
5 understood that as of October 19, the debt of Dr. Palmer  
6 was settled by a settlement with JMHC? Isn't that what  
7 the October minutes of JMHC said?

8 A I cannot tell you exactly. But I know it that  
9 March, 1970, after five years working as a pathologist,  
10 his contract was terminated, and there was a \$220,000  
11 pending --

12 Q Now, Mr. Richards also --

13 A Let me finish, sir.

14 Q I'm sorry.

15 A You asked me the question; you did not let me  
16 finish it.

17 Q Go ahead and answer. I'm sorry.

18 A And then Mr. Richards negotiated with  
19 Dr. Palmer and that was at that time \$220,000, I think  
20 that was the amount. And we arranged that we pay  
21 certain amount of cash, I think around \$10,000, and the  
22 rest is paid in installment with around 6 percent  
23 interest. And that obligation, June the 30th, 1971, was

1 transferred to Jefferson Memorial Hospital Corporation.  
2 That was one part of the liabilities that the  
3 corporation assumed from incorporated.

4 Q Now, let's see what happened that night.  
5 Mr. Richards also brought forward to the board the  
6 proposal of Jefferson Memorial Hospital Corporation, a  
7 Delaware corporation, to acquire the real estate of this  
8 corporation in consideration of taking over all of the  
9 liability on \$319,000 worth of bonds to the end that the  
10 corporation would be relieved of liability thereunder  
11 and new bonds issued in the name of the Delaware  
12 corporation.

13 Mr. Richards also brought before the board the  
14 proposal of Jefferson Memorial Hospital to assume the  
15 indebtedness of Dr. Palmer in consideration of the  
16 transfer by this corporation of its title and equipment  
17 to the corporation.

18 Do you recall that happening?

19 A I told to you again. Mr. Richard, after the  
20 1974 corporate meeting, was asked to clarify every  
21 undocumented or unexplained action. But as far as we  
22 concerned, I concerned, I thought it is a long settled  
23 situation. And this is only reconstructing what

1 happened in June, 1971.

2 Q Doctor, I want you to take any part of this  
3 document and show this court where this is a -- I heard  
4 counsel say it in opening statement, too -- show this  
5 court anywhere in that document where it says you're not  
6 acting as if these are present defaults of present  
7 obligations and that you're restructuring anything that  
8 happened in 1971.

9 MR. BONO: Objection, Your Honor. The document  
10 speaks for itself.

11 THE COURT: The document speaks for itself.

12 MR. BETTIUS: Yes, sir, it does.

13 BY MR. BETTIUS:

14 Q And then you held another meeting, did you not?  
15 You had one at 7. You had one at 7:15. And then you  
16 held another one at 7:30; is that right?

17 A According to the record, yes, 7:30.

18 Q Okay. And the same people who sat as the  
19 board, sat as the membership of JMHI, is that correct,  
20 and approved the resolution of the board to implement  
21 this transaction?

22 A According to the record. The record speaks for  
23 itself. I cannot add to it and I cannot deduct anything

1 from it.

2 Q Doctor, you are aware, are you not, that there  
3 were many, many surviving members of JMHI who were not  
4 in attendance at this meeting; isn't that correct?

5 MR. BONO: Objection, Your Honor, no  
6 foundation.

7 THE COURT: Objection overruled. You can  
8 answer.

9 BY MR. BETTIUS:

10 Q You know who the members of JMHI were. We can  
11 go down the list --

12 A I have the list and I read the list and I see  
13 it only just by proxy Dr. Hufnagel was present, and  
14 myself and Dr. Novak and Dr. Iranyi and Dr. Scully.

15 Q There were over 20 members of JMHI when it was  
16 finished; is that correct?

17 A I don't know 20 but a larger number than is  
18 listed on here.

19 Q Thank you.

20 THE COURT: May I ask, Mr. Bettius, how much  
21 longer you'll be?

22 MR. BETTIUS: I'm almost finished, Your Honor.

23 THE COURT: I don't want to cut you off. I

1 want to make that clear. But I just need to know.

2 MR. BETTIUS: I'm just trying to get through  
3 the '75 transaction and we're almost through it. And I  
4 will finish, Your Honor, will attempt to finish by the  
5 end of the day and I think I can. I've gone far longer  
6 with this witness and I apologize.

7 THE COURT: Doctor, do you need a break?

8 THE WITNESS: No.

9 MR. FOX: Your Honor, do you think it's  
10 possible for me to let my next witness go for the day?

11 THE COURT: I said yesterday we were going to  
12 try to do more than one witness today. How long will  
13 the next witness be? Let me ask this, Mr. Bono. Would  
14 you have any questions of Dr. Tauber at this time?

15 MR. BONO: Two minutes.

16 THE COURT: Go ahead, Mr. Bettius. Don't  
17 excuse the witness yet, Mr. Fox.

18 BY MR. BETTIUS:

19 Q Doctor, I'm going to ask you to look at Exhibit  
20 138.

21 A Yes, sir.

22 Q Were you aware of what happened at this  
23 meeting? Was it communicated to you? I don't know if



1 you were there or not.

2 A I was not there. But I am aware what happened.

3 Q And you're aware, then, that the board of JMHC  
4 accepted the proposition that they were going to buy the  
5 assets based on these bond defaults?

6 A Right.

7 Q Doctor, we have the document that memorializes  
8 the sale, do we not?

9 A Would you refer?

10 Q I'm going to ask you to look at 302.

11 A 302?

12 Q Yes. Is this your understanding of the  
13 agreement that was entered into by and between Jefferson  
14 Memorial Hospital, Inc. and Jefferson Memorial Hospital  
15 Corporation?

16 A This is reaffirming the transaction which  
17 occurred in June, 1971.

18 Q Where does it say that?

19 A I'm telling --

20 MR. BONO: Objection, Your Honor, the document  
21 speaks for itself.

22 BY MR. BETTIUS:

23 Q It says, does it not, Doctor, that Jefferson

1 Memorial Hospital, party of the first part, is indebted  
2 to certain bond holders?

3 A Yeah. That's the record.

4 Q He speaks in the present tense, doesn't it,  
5 Doctor?

6 A That's right.

7 Q Do you see any mention in this document  
8 anywhere of 1971 or past defaults or past assumptions?

9 MR. BONO: Objection, Your Honor. The document  
10 speaks for itself.

11 THE COURT: The document speaks for itself.  
12 The doctor could be asked if he knows why it's not in  
13 there?

14 BY MR. BETTIUS:

15 Q Why isn't it in there, Doctor?

16 A I don't know. The way I read it here,  
17 Jefferson Memorial Hospital, Inc. agrees to and does by  
18 these presents sell, convey, and assign unto Jefferson  
19 Memorial Hospital Corporation, all of its right, title  
20 and interest into Jefferson Memorial Hospital  
21 Corporation.

22 But it states the hospital building is  
23 presently owned by Jefferson Memorial Hospital

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2 to certain bond holders?

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5 Doctor?

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8 anywhere of 1971 or past defaults or past assumptions?

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19 Memorial Hospital Corporation, all of its right, title  
20 and interest into Jefferson Memorial Hospital  
21 Corporation.

22 But it states the hospital building is  
23 presently owned by Jefferson Memorial Hospital

1 Corporation.

2 Q Doctor, let me ask you this. And you just hit  
3 right on the crux of it. How could Jefferson Memorial  
4 Hospital Corporation presently own, if it hasn't  
5 acquired it because there was no default in '71? Isn't  
6 there an absurdity in terms of the way you're  
7 discussing. It says you're conveying this to Jefferson  
8 Memorial Hospital Corporation. Who owns the hospital?

9 MR. BONO: Objection, Your Honor,  
10 argumentative.

11 THE COURT: The question is argumentative.

12 BY MR. BETTIUS:

13 Q How did they get the hospital, Doctor?

14 MR. BONO: Your Honor, we have been over this,  
15 over and over now since 9 a.m. this morning.

16 THE COURT: Over and over again, Mr. Bettius.

17 BY MR. BETTIUS:

18 Q They got it by assuming the liabilities, all of  
19 these liabilities in '71, didn't they?

20 A That's correct. And you mentioned it before;  
21 right?

22 Q Yes, I did.

23 A There was a default that --

1 THE COURT: Doctor, wait for the next question.

2 BY MR. BETTIUS:

3 Q Would you look at the letter dated -- it's  
4 referred to in Exhibit 420, Exhibit 420.

5 A 420? Yes. Yes, sir.

6 Q Doesn't this explain the alleged bond default?

7 A I have to read it. But what is the question,  
8 sir?

9 Q Take your time, Doctor.

10 A What is the question?

11 Q Isn't that an explanation for the bond default?

12 A According to this letter that was written by  
13 Mr. Linton of Jefferson Memorial Hospital Corporation  
14 addressed to Dr. Peters that they are discussing  
15 different interest payment, bond and I can't -- the  
16 document speaks for itself. I don't know why you ask  
17 me.

18 Q It says, does it not, the default was brought  
19 about during the period in which the Delaware  
20 corporation -- that's JMHC?

21 A Right.

22 Q -- was legally assuming the assets of the  
23 Maryland incorporation interests. And that's 1974.

1 Isn't that what this letter says that's the default?

2 MR. BONO: Objection, Your Honor, the document  
3 speaks for itself, plus he misread the sentence.

4 MR. BETTIUS: Okay. I'll read it again. The  
5 February interest included interest due as of November  
6 30, 1974, as well as interest for December, 1974, and  
7 January, 1975, which were brought about during the  
8 period in which the Delaware corporation was legally  
9 assuming the assets and liabilities of the Maryland  
10 incorporation. Isn't that what it says?

11 MR. BONO: Objection, Your Honor.

12 THE COURT: It speaks for itself, Mr. Bettius.

13 MR. BETTIUS: Yes, sir.

14 BY MR. BETTIUS:

15 Q Those were the two months, it says, within  
16 which -- well, who is Mr. Linton?

17 A I told to you that's --

18 Q The administrator.

19 A Former administrator of Jefferson.

20 Q Now, Doctor, is a bond default a pretty  
21 significant thing?

22 A What do you mean a default?

23 Q If you don't pay your corporate bonds, is that

1 a significant financial event based on your knowledge?

2 A If Jefferson Memorial Hospital Corporation had  
3 a bond and they don't pay interest, that is a default.

4 Q Are you aware that the financial statements of  
5 JMHI never at any time indicate a bond default except  
6 with regard to sinking funds?

7 A That is a default, technically.

8 Q And JMHC never maintained a sinking fund  
9 either, did it?

10 A I would not say that. Because as far as I  
11 know, they had a sinking fund established.

12 Q You don't find in every financial statement of  
13 JMHC a note that they also failed to maintain the  
14 sinking fund?

15 A Sometime they failed, but certain time I'm sure  
16 that they did it. And that shows again whether it's  
17 Inc. or corporation, they had always financial problems  
18 to meet their obligation.

19 Q Weren't all of your bonds owned by your  
20 doctors?

21 A I don't think that all of them. I think lay  
22 people, too.

23 Q Did anybody that you know of complain that

1 there was a default in these bonds that you know of?

2 A The interest payment, interest payment were  
3 sometimes not paid, but I really cannot tell you whether  
4 it was. I know that they did not have the necessary  
5 sinking fund which was at 5 percent of the outstanding  
6 bond that they had to pay in escrow. They had to give 5  
7 percent.

8 Q In any event, Exhibit 420 details at least what  
9 was a contemporary default which could -- do you find  
10 any other correspondence or can you think of anything  
11 else that could have been the bond default referred to  
12 by Mr. Richards? Can you think of anything else?

13 A Mr. Richards?

14 Q Mr. Richards refers in these meetings to bond  
15 defaults.

16 A The record has to speak for itself. I cannot  
17 tell you what was the time and payment of the interest  
18 of the bonds.

19 Q Doctor, the exhibit that I showed you before,  
20 Exhibit 301, which is the agreement that memorializes  
21 the transaction, is signed -- I'm sorry. Would you look  
22 at Exhibit 301 which is the memorandum of sale and lease  
23 back -- which is a memorandum of sale and lease back?



1 I'm sorry.

2 MR. BONO: Your Honor, I object to the  
3 reference having shown this to the witness before.

4 MR. BETTIUS: I withdraw that. I think you're  
5 right, Mr. Bono. I don't think I did.

6 BY MR. BETTIUS:

7 Q Do you see this document which is a memorandum  
8 of sale and lease back?

9 A Yes, I see it.

10 Q This is the agreement, is it not, whereby the  
11 hospital is being sold to you as a trustee of JMHJV and  
12 leased back?

13 A Reverse the whole situation, right. The  
14 corporation sold --.

15 Q Reverses the situation. And that was the  
16 purpose of all this, wasn't it, to reverse the  
17 situation?

18 A No, it wasn't the purpose. A necessity, was  
19 it.

20 Q It was a necessity?

21 A I think so.

22 Q Necessary to get these people a return on their  
23 money?

1 A No. To keep the hospital alive.

2 Q We'll talk about keeping the hospital alive.  
3 It's signed on the 24th of December, 1974, isn't it?

4 A The record speaks for itself.

5 Q Isn't that what it says, Doctor?

6 A That's correct.

7 Q Well, you didn't have the meetings with JMHI to  
8 acquire the assets that would allow you to effect this  
9 sale until a month later, did you? More than a month  
10 later.

11 MR. BONO: Objection. It calls for a legal  
12 conclusion.

13 THE COURT: Objection overruled.

14 BY MR. BETTIUS:

15 Q You had the meeting on December, I mean January  
16 27th where you got the assets that you were agreeing to  
17 buy to sell on the 24th or a portion of them, isn't that  
18 right?

19 A Well, you refer in here I was a trustee of  
20 Jefferson Memorial Hospital Joint Venture to be formed.  
21 There was no transfer or anything which ever belonged to  
22 the Jefferson Memorial Hospital, Inc. at any time.

23 Q Well, on the 27th, you agreed to convey these

1 pieces of land and equipment. Now, they are part of  
2 this sale on the 24th, aren't they?

3 A I told to you that one again and again. That I  
4 said that the liabilities were transferred already to  
5 the corporation by the incorporated.

6 Q Then why did you have to go through all this  
7 stuff on the 27th?

8 A Which 27th?

9 Q You said you did this to keep the corporation  
10 alive; is that right?

11 Now, you indicated that the cost of servicing  
12 the mortgage was about \$100,000 a year; is that right?

13 A Approximately. No, no, excuse me. That  
14 doesn't include the ground rent.

15 Q Okay. About a hundred and what? 15,000?

16 A 15,000 sounds right.

17 Q All right. 115,000. Okay. And right now, we  
18 have JMHC before -- and it's prior to this deal. It  
19 owns the building; right?

20 A It owns what?

21 Q JMHC owns the building.

22 A That's correct.

23 Q So its total costs of operation are 115,000 a

1 year for the building and the land?

2 A For the building and the land.

3 Q And every month it makes a payment. It owns  
4 it. It's on its balance sheet whether it's worth  
5 something. It's got it; right?

6 A The building, right.

7 Q And right after it signs this lease, it's  
8 become a tenant in its own building and it's increased  
9 its cost of operating by \$100,000; isn't that correct?

10 A Not exactly.

11 Q Well, it says here the annual rent -- sorry.  
12 It's not 100. It's 112,000. It says the annual rent  
13 shall be 112,000 per year. This lease is to be a net  
14 net lease. And therefore, the tenant shall pay when due  
15 as additional rent all taxes, including real estate  
16 charges and charges and costs assessed against the  
17 property being leased or arising out of the lease except  
18 for federal or state income taxes.

19 So the tenant was going to pay for repairs,  
20 maintenance, the whole thing. And it was going to  
21 increase its cost by more than \$100,000 a year; wasn't  
22 it?

23 A At \$200,000, that what was.

1 Q Yes. Okay. Now, how did that improve the  
2 financial condition of this hospital? It's become a  
3 tenant in its own building and is paying 100,000 more.

4 A Again, it was raised because we sold 60,000  
5 shares at \$4 in order to raise \$240,000 cash.

6 Q That's not what they did, is it, Doctor? They  
7 sold those shares in '72, didn't they?

8 A But later on, every single item aimed to raise  
9 cash for the hospital.

10 Q See if you agree with me this is how you  
11 financed this transaction. You agreed to pay, did you  
12 not, JMHC the mortgage, to assume the mortgage; is that  
13 right? You assumed the mortgage; right? And \$240,000;  
14 right? Isn't that what the purchase price of this  
15 building was?

16 A No. \$240,000 equity above the existing  
17 mortgage.

18 Q That's right. That was the deal; right?

19 A Equity.

20 Q I'm going to ask you to tell the Court, the  
21 corporation never saw \$240,000; did it? You didn't give  
22 them 240,000 in cash; did you?

23 A They raised the 240,000 in cash.

1 Q Let me ask you if this isn't what you did.

2 Let me ask you if you didn't restrict this sale  
3 to the people who had bought the 60,000 shares in 1972?  
4 That's what you did, isn't it, Doctor?

5 A We sold 60,000 in order to raise \$240,000 cash  
6 when we needed capital.

7 Q When?

8 A The date what you quoted on.

9 Q No, sir. Let me ask you if this isn't what you  
10 did. You had -- these shares were issued in 1972,  
11 Doctor. This sale is taking place in 1975. Or '74 is  
12 when it's contracted for. In '72, you issued these  
13 shares at \$4 a share; didn't you?

14 A 60,000?

15 Q Yeah, the 60,000.

16 A Right. That was to raise \$240,000.

17 Q That's right. And in 1974 and '75, you had the  
18 corporation agree to buy those shares back at \$6 a share  
19 and on the basis of issuing bonds; didn't you?

20 A We had \$4 what the hospital received and later  
21 bought it for 6. But those years, those people involved  
22 in the stocks, they did not receive a single penny  
23 compensation for that one.

1 Q Doctor, I understand. They are all, as  
2 Mr. Bono said, community spirited doctors. This is a 50  
3 percent dividend on an exchange of stock for bonds;  
4 isn't it? That's a 50 percent dividend in two years, 25  
5 percent a year.

6 A Yes.

7 Q And these bonds are then used, Doctor, are they  
8 not, to pay this \$240,000?

9 A It doesn't make any difference how. But this  
10 is the way it was.

11 Q I'm sorry, sir.

12 A It doesn't make any difference how the money  
13 came. The money came. It was badly needed in the  
14 hospital operation.

15 Q Doctor, if you and I are in a business together  
16 and our business is in trouble, why would we take an  
17 indefinite obligation like a stock and convert it for a  
18 present obligation of a bond at a 50 percent profit to  
19 be used to make us a tenant in our own building at an  
20 increased operating cost of 112,000 a year? Explain to  
21 me how that helped the corporation in trouble, Doctor.

22 A You ask me a general question. I answer to you  
23 many, many times. In any type of business transaction,

1 in order to convert short term obligation, we are paying  
2 more money for the long term obligation. Therefore, it  
3 is absolutely right, when I have a bond issue which I  
4 have to pay on 20 years from now, in order to escape  
5 from the tremendous squeeze what the short term  
6 obligation needs, many, many times, you ask me a general  
7 question --

8 Q Doctor, how --

9 A Many times, short term obligation is converted  
10 to a long term obligation. And that is a very good and  
11 sound all the time practice, business transaction.

12 Q What is the short term obligation? Stock is a  
13 short term obligation?

14 A Short term obligation that this corporation had  
15 no money. And you mentioned it many times. We needed  
16 in this corporation minimum of \$700,000 working capital.

17 Q Doctor, how does --

18 A We didn't have it.

19 MR. BONO: Your Honor, he keeps interrupting.

20 THE COURT: He's finished.

21 BY MR. BETTIUS:

22 Q Doctor, how does it get money by converting a  
23 nonspecific obligation like stock to a specific



1 obligation in the nature of a bond and then turning  
2 around and accepting that for the purchase price? Does  
3 that help the corporation to pay 112,000 more dollars?

4 A That helps because these doctors are willing to  
5 go on the note and guarantee the loan from different  
6 banks.

7 Q What loan?

8 A All the time.

9 Q There is no loan here, is there, Doctor?

10 A You mention it, that credit line. Credit line  
11 is a loan that the corporation had the right to draw  
12 money according to their need.

13 Q Is this exactly, Doctor --

14 A That was all the time.

15 Q Is this how you helped the corporation in 1971?

16 A No. 1971 is a finished business. We talk  
17 about '74, '75. As I told to you, this corporation, as  
18 far as I know, never had any money to distribute to  
19 anybody anything, period.

20 Q Doctor, I want to ask you, you're representing  
21 to the Court as the witness -- who represents that this  
22 was a transaction beneficial to the corporation.

23 A Definitely. It was a necessity.

1 Q All right. Doctor, do you recall how you  
2 described this transaction to your shareholders in a  
3 letter dated April 7, 1976? I'm looking at -- excuse  
4 me. I gave you the wrong date, Doctor. No, I didn't.  
5 It's Exhibit 424, March 9, 1976.

6 Would it be fair, Doctor, to say --

7 A Excuse me, sir. I'm still reading.

8 Q All right.

9 A Yes, sir.

10 Q Doctor, the directors have just given  
11 themselves an 82 and a half percent raise, haven't they?

12 A According to the documents.

13 Q And you said, as I understand the tenor of this  
14 letter, enough is enough. As far as the stockholders  
15 meeting is concerned, please remind each and every  
16 single stockholder, including the members of the board,  
17 that when the building and the land was repurchased by  
18 the stockholders in their proportionate ownership of  
19 stocks, as well as the right to convert 20 percent of  
20 their stock into bonds, it constitutes definite  
21 undeniable dividends on their stock investment.

22 A What is your question?

23 Q This was an undeniable dividend, a dividend to

1 those people who participated; isn't that correct?

2 A As I saw it. Because in the letter, in the  
3 contents, that I was not a member of the board of  
4 directors; I had nothing to do with it. I called their  
5 attention to everybody on the board when we raised the  
6 salary by four and a half percent to the employees.

7 At the same time I saw it that it was 82 and a  
8 half percent raise, compensation of the present, of the  
9 members of the board of directors. I expressed my  
10 opinion about it that it should not happen.

11 However, when I said it this one, and I want to  
12 correct, when I said it, it doesn't mean 100 percent I'm  
13 right. I don't make that representation. Anybody in  
14 this corporation in the later years improved, that they  
15 benefitted much more who did not convert their stock to  
16 bond.

17 That way you can take this one -- if I would be  
18 a prophet, I can tell you. I'm not a prophet. Anybody  
19 who kept the stocks made a much better deal than those  
20 who converted to bond.

21 Q They all kept the stock, didn't they, Doctor?  
22 They only converted 20 percent of their stock and they  
23 kept 80 percent and there was never any additional stock

1 issued, was there, Doctor?

2 A Wait a second. You just told it that they kept  
3 their stock. But conveniently you're telling that 20  
4 percent was converted to bond. Therefore, 20 percent  
5 was converted in the hope that they have a steady income  
6 hoping that the hospital would survive.

7 Q Doctor, you just explained to the judge that  
8 they somehow diluted themselves by giving this 20  
9 percent. They didn't dilute themselves because there  
10 was never any additional stock issued, was there?

11 A No, no. Whenever -- you know it, Mr. Bettius.  
12 Whenever you are in the deed or deed back to the  
13 corporation, 20 percent of the outstanding stocks were  
14 given back to the corporation and they took bonds,  
15 immediately they did not dilute their holding in the  
16 stock. They increased the value because you have less  
17 outstanding stocks.

18 Q Doctor, isn't what happened, that this pie was  
19 cut into 300 slices. Okay? And then everybody gave up,  
20 as I understand it, 60,000 shares, 80 percent -- strike  
21 that. 20 percent of 300 could be exchanged. That's  
22 exactly what -- what is, Doctor, tell me, 20 percent of  
23 300? Isn't it this 60?

1           A       60, yes. 60,000.

2           Q       So this pie then is the same size, is it not,  
3 but now it only has 240 slices and everybody who owned  
4 the 300 still owns the pie. They just got a little  
5 bigger slice. How did they somehow dilute themselves  
6 unless you issue more shares?

7           A       Excuse me, sir. I did not tell it. You said  
8 it. I did not say it. They contemplated because if you  
9 have 300,000 shares that you are diluted if you give  
10 another 100,000, other bond stocks. But just the  
11 opposite happened where you use that holding for 240,000  
12 instead of the 300,000. And then they took and saved  
13 that and guaranteed the bond.

14          Q       Doctor, the whole asset picture didn't change.  
15 Did you ever issue any additional stock, ever?

16          A       I don't recall that there was any, any market  
17 for it that we would have sold any other stocks.  
18 Certainly I have, I tried to because you remember, I had  
19 seven and a half percent kept in escrow in order to  
20 attract other doctors to support the hospital.

21          Q       Doctor, the question is, you never issued  
22 additional stock, did you? Are you going to sit here  
23 and tell the Court --

1 MR. BONO: Your Honor, that is --

2 THE COURT: He hasn't answered it yet. I know  
3 what the answer is because he's answered it before,  
4 but --

5 BY MR. BETTIUS:

6 Q The answer is no, isn't it?

7 A Let me answer it. Don't answer for me. As far  
8 as I know, I do not know. I don't think that it was  
9 issued any more stocks because there was no market for  
10 it. Nobody wanted to buy it.

11 Q Are you going to tell the Court, Doctor, and I  
12 just really want to know, this was good for the  
13 corporation; right?

14 A Yes. It was good for the corporation because  
15 it helped the immediate urgent short term obligation and  
16 converted the short term to long term.

17 Q What short term was converted to a long term?

18 A Mr. Bettius, I told to you that this  
19 corporation, whether incorporation or corporation, never  
20 had a working capital. You have to pay the employees.  
21 You have to advance that money. And we did not have the  
22 working capital. Show it to me where is the working  
23 capital.

1           Q     This dilutes the working capital, doesn't it,  
2     Doctor? What it does is you get no cash here and you  
3     increase your operating expenses 112,000 for rent.  
4     Where does this put money in the corporation, sir?

5           A     No. No. It is absolutely the wrong -- your  
6     assumption that my answer -- you ask my answer; I'm  
7     telling to you. Go to a supermarket. Many of the  
8     supermarket, they don't own the building. They lease it  
9     because their capital is needed only for one purpose, to  
10    run the business.

11               And this position what we put the corporation.  
12    It was a lessor and tenant relationship. We were not --  
13    we the sponsors were running the business. They needed  
14    the, badly needed capital to run the hospital  
15    efficiently. They did not have it.

16           Q     Where did they get capital from this? They  
17    traded a hard asset for their own stock; isn't that what  
18    they have done?

19           A     Whether doctor paid in cash or they put their  
20    signature on any type of a note or to achieve a credit  
21    line for the bank, it was equal to cash. The  
22    corporation did not have a financial statement to  
23    support the ongoing operation. You needed to depend on

1 the doctors who lend their credit and their willingness  
2 to support it. That what we needed.

3 Q Doctor, don't the inconsistencies in your own  
4 thesis destroy it? You're telling me there is no market  
5 for this stock and you're going to go out and give a 50  
6 percent dividend on exchanging stock for bricks and  
7 mortar of a 120 bed hospital and its equipment and  
8 increase its cost by 112,000? This is good?

9 MR. BONO: Objection. Argumentative.

10 THE COURT: Argumentative.

11 MR. BETTIUS: I agree.

12 And in your statement -- and I apologize to the  
13 Court. I sincerely apologize, Your Honor. I know  
14 better and I shouldn't do it.

15 BY MR. BETTIUS:

16 Q On Exhibit 424, the statement you made that  
17 it's an undeniable dividend, then, was a mistake?

18 A Wait a second, let me find it.

19 Q The statement you made this was an undeniable  
20 dividend was a mistake.

21 MR. BONO: This is repetitive. He's already  
22 answered these questions.

23 THE WITNESS: I answered that one, because I



1 said --

2 THE COURT: I don't recall an answer.

3 BY MR. BETTIUS:

4 Q You said it might have been a mistake. Was it  
5 a mistake?

6 A I would not say a mistake or not mistake. I  
7 made a statement. That doesn't mean it's written in the  
8 bible. I characterize it to specify to everybody.

9 Q As you sit here today, and we've just been  
10 through an analysis of this transaction, was this  
11 statement you made in '76 correct or do you not know?

12 A If I would be on the opposite side, I would not  
13 convert to bond. Just the knowledge what I have now,  
14 correct, you want to know --

15 Q I'm not talking about the knowledge you have  
16 now.

17 A My prophecy was, turned to be wrong. I was not  
18 right.

19 MR. BETTIUS: Your Honor, I'm going to move  
20 Exhibit 424 and I'm going to move the previous Peters  
21 Exhibit, 420, which explains the bond default.

22 THE COURT: Objection?

23 MR. BONO: We've noted our objection.

1 THE COURT: They will be admitted. Your  
2 objection is noted.

3 (The documents previously marked  
4 for identification as Complainant's Exhibit  
5 Nos. 420 and 424 were received in evidence.)

6 BY MR. BETTIUS:

7 Q Doctor, if these stocks had no market, will you  
8 explain to me how you donated them to your own charity  
9 in 1975 at a value of \$15 a share?

10 A You started to talk a bond. Bond is not share.

11 Q Did you not donate shares of stock of the  
12 corporation in 1975 to your own charitable foundation  
13 and take a deduction based on a value of \$15 a share?

14 A When I did it, and I valued the bonds \$15 and I  
15 declared it, it was public knowledge, as far as I am  
16 concerned, and the Internal Revenue did not challenge  
17 the price that I put on it, my valuation.

18 Q Who is the trustee of the Tauber Foundation?

19 A I am the trustee.

20 Q And you were the donee; is that correct?

21 A Yes. Almost 98 percent of the donation was  
22 given by me to the Tauber Foundation.

23 Q Now, Doctor, do you feel as the operator or the

1 trustee of that charity you have a duty to appropriately  
2 value, and as the donee, a duty to appropriately value  
3 what you're claiming a tax deduction for?

4 MR. BONO: Objection, Your Honor. Foundation  
5 about value of donations.

6 MR. BETTIUS: Your Honor, I'll leave that as a  
7 question of law to you, Your Honor. But as I understand  
8 it, the Foundation has a deep responsibility in that  
9 respect. Maybe we'll just brief that issue.

10 THE COURT: Overrule the objection. He can  
11 answer the question.

12 A What is your question?

13 BY MR. BETTIUS:

14 Q Don't you as the recipient of charitable  
15 contributions have a responsibility to have the donee  
16 value them? You can't willy nilly just hand out tax  
17 deductions, can you?

18 A Excuse me. The Tauber Foundation, when they  
19 received the stocks for no consideration, would you  
20 point to me out why the Tauber Foundation or any  
21 charitable foundation would be concerned about it what  
22 is the value for that donation? It has nothing to do  
23 with it, Mr. Bettius.

1 Q In fact, you required Goald and others in 1980  
2 to furnish a valuation, did you not, of the previous  
3 donations that were made and a basis for valuation?

4 A Mr. Bettius, Dr. Harold Goald turned to  
5 Mr. Linton, our administrator, not to me, to get a  
6 valuation because he wanted to donate to certain charity  
7 his stocks, what I gave. The charity what Dr. Goald  
8 donated it had no interest, had no reason to inquire  
9 what is the value of the donation.

10 Q Dr. Goald made that donation to you, didn't he,  
11 Doctor, in 1976?

12 A If you say so. I don't know which one.

13 Q And the justification for that valuation is  
14 contained, is it not, in Bates 24323, Exhibit 453, and  
15 it's precisely the same valuation you used; is it not,  
16 Doctor? There's one to Dr. Burtoff and to Dr. Goald.  
17 And I'm going to ask you if both Dr. Burtoff and  
18 Dr. Goald made contributions to you in the '75, '76 time  
19 period which were requiring justification?

20 MR. BONO: I object to the relevance.

21 THE COURT: I must confess, Mr. Bettius, I'm  
22 more lost than usual.

23 MR. BETTIUS: Your Honor, if you look at the

1 valuation, I don't think you will be.

2 THE COURT: What's the purpose of this?

3 MR. BETTIUS: The valuation, Your Honor, is  
4 based on a '72 sale and a '76 sale of contemporaneous  
5 hospitals. And it's our position in this case, rather  
6 than this thing not having value, that it had great  
7 value.

8 There was a transfer of this hospital in 1971  
9 which they say was valueless. And in valuing the stock  
10 based on hospitals like Jefferson -- and he indicates,  
11 Your Honor, they have a minimum value of \$15 a share, a  
12 minimal value of \$15 a share. And these people are here  
13 saying this thing was insolvent.

14 THE COURT: I'm really more confused than ever  
15 with that, quite frankly, Mr. Bettius. Maybe it's me or  
16 maybe it's late in the day. I'm not sure.

17 The question was, did Dr. Tauber make a  
18 donation to his foundation of a number of shares of  
19 stock in the corporation and did he value it? And you  
20 asked him about \$15 a share and I think he said yes.

21 MR. BETTIUS: And he made that in '75.

22 THE COURT: All right.

23 MR. BETTIUS: And others in the '75 time period

1 made similar donations and requested justification for  
2 those valuations in 1980.

3 THE COURT: Justifications from Dr. Tauber?

4 MR. BETTIUS: And from Goald and Burtoff. They  
5 all did.

6 MR. BONO: No justifications from Dr. Tauber.

7 MR. BETTIUS: Dr. Tauber used exactly the same  
8 valuation they used in contemporaneous gifts. And I  
9 think it's relevant. They valued it at 15. He values  
10 it at 15. It's an amazing coincidence in terms of the  
11 receipt of those shares. They show a contemporaneous  
12 value and a basis for valuation, Your Honor. And I  
13 think that basis for valuation is a '72 sale, and a '76  
14 sale of other hospitals. And they are telling you what  
15 the basis for valuation is. And these people are saying  
16 this hospital is worthless?

17 MR. BONO: Your Honor, first of all, the  
18 valuation is as of 1976 and 1977 and nothing to do with  
19 this case. Number two, there is no foundation that says  
20 Dr. Tauber valued the donation at anything but what  
21 Dr. Goald did.

22 In any event, the transaction he's referring  
23 to, these are hospitals that were sold after 1971. All

1 of this is absolutely irrelevant.

2 MR. BETTIUS: Let me tell you why it's  
3 relevant. In 1975, Dr. Tauber values this hospital at  
4 \$15 a share. And Your Honor, we will show you on that  
5 date it didn't own the building. And it's going to  
6 become very, very relevant later what this hospital --  
7 they say it's relevant. I don't think it's relevant at  
8 all. I don't think value has anything to do with this  
9 case.

10 But I will tell you this, Your Honor. After  
11 they conveyed the building out and we're dealing with  
12 the same hospital operation that this doctor says is  
13 insolvent, as it was in 1971, as he says it was in 1971,  
14 he's valuing it at \$15 a share, which puts a value at \$4  
15 million, which is right on the money with the other  
16 appraisals.

17 Now, I don't know how these people can come  
18 into court on one hand and say they have got an  
19 insolvent corporation here in 1975 that they value at \$4  
20 million when they are donating it to their own charity  
21 and they can say that that corporation is absolutely  
22 insolvent.

23 THE COURT: But the problem is, it's not what

1 Dr. -- I don't have a problem so much with Dr. Tauber's  
2 valuation of \$15 a share. But the value of Dr. Goald  
3 and Dr. Burtoff is the problem.

4 MR. BETTIUS: Dr. Goald and Burtoff are  
5 contributing to his charity --

6 THE COURT: I understand that.

7 MR. BETTIUS: -- at the same period of time and  
8 this is the valuation they use.

9 THE COURT: But the document you just handed me  
10 says regarding the value of Jefferson Memorial stock in  
11 1976.

12 MR. BETTIUS: That's correct, sir. There is no  
13 hospital in there in '76. They have conveyed, according  
14 to this, by 1976, this hospital now resides in Jefferson  
15 Memorial Hospital Joint Venture. It doesn't own it.  
16 And they are still saying that while it's insolvent in  
17 1975, they have added \$100,000 a year of extra income  
18 that it has to earn to pay their rent, that it's worth  
19 \$15 a share. And I will show you, Your Honor, that the  
20 profit picture from year-to-year doesn't change much.

21 MR. BONO: Your Honor, the bottom line is the  
22 donation in 1976 has nothing to do with the transfer  
23 that this case has to do with in 1971. And there is no



1 foundation or linkage that Dr. Tauber's donation has  
2 anything to do with this letter. And I -- and the  
3 transactions referred to here postdate the transaction  
4 at issue in this case.

5 MR. BETTIUS: I submit to you, Your Honor --

6 MR. BONO: He can make an argument later on or  
7 he can try to have his valuation people tie it up and  
8 make sense out of it.

9 But the point is, the 1976 donation referred to  
10 in this letter is irrelevant to this lawsuit. You can't  
11 say -- whatever, whatever Dr. Goald did or Dr. Burtoff  
12 did in 1976 has nothing to do, nothing at all to do with  
13 when the assets and liabilities of Inc. were transferred  
14 to Corp. in 1971. You've got to look at the hospital as  
15 it was in 1971. Five years from now, I have no idea  
16 what anything is worth and neither would this Court.

17 This is -- it is improper to take events that  
18 occurred five years after the fact and say that has any  
19 bearing on what the value ought to be back in 1971,  
20 because there were a lot of efforts made, as the  
21 testimony made clear today, this corporation made a lot  
22 of efforts and a lot of work and a lot of changes that  
23 went into this hospital since 1971. They could have

1 done improvements, capital improvements and various  
2 other things to change the picture totally. And the  
3 value of that facility in 1976 has nothing to do with  
4 what happened in 1971.

5 MR. BETTIUS: Your Honor, they --

6 MR. BONO: This is an attempt --

7 THE COURT: One of you has got to finish. Go  
8 ahead.

9 MR. BONO: It's absolutely irrelevant.

10 MR. BETTIUS: They are going to put an expert  
11 on the stand and they are going to tell you they have  
12 three alternate dates for you to pick, one of which is  
13 '75. And in '75 --

14 THE COURT: But the problem is, you're asking  
15 this witness about the value of contributions by two  
16 other people?

17 MR. BETTIUS: He accepted the contributions in  
18 his own charity. He's the acceptor of the contributions  
19 in the Tauber Foundation. He's also a proximate time  
20 donor. I'll ask him this question.

21 BY MR. BETTIUS:

22 Q How did you come to the value of \$15, Doctor?  
23 Doctor, let me, so you'll have a foundation,

1 let me give you -- 12/30/75, Doctor, is the date of  
2 contribution shown on your tax return. So we know as of  
3 12/30/75 the building has been transferred back to  
4 JMHJV; is that correct?

5 A That's correct.

6 Q How do you come to value -- so what you're  
7 valuing, is it not, Doctor, is the operation as of that  
8 date without the hospital building? Tell the Court how  
9 you come to \$15.

10 A Okay. Big difference, what we have here, that  
11 the 1971 --

12 Q '75, Doctor.

13 A '75, right. I tell it to you right there.  
14 1975 as you mention that the building was transferred to  
15 the partnership. Therefore, it is already the same why  
16 Jefferson Memorial Hospital, Inc., 1971, neither of them  
17 had the asset of the building.

18 But you are conveniently overlooking a very  
19 important item. That is, 1971, you want the license.  
20 Only one way. That you have to prove you have enough  
21 parking area. And then we got our increase of the bed  
22 by 24 in 1968. And you pointed it out when you gave me  
23 that report in 1971, and we could expand and get the

1 permit with no problem.

2 Q Doctor, I don't mean to cut you off.

3 A You ask the question, sir.

4 THE COURT: I'm not getting an answer to the  
5 question here, Doctor. How did you arrive in 1975 at a  
6 value of \$15 a share for the stock? It's a simple  
7 question.

8 THE WITNESS: It has an intrinsic value of the  
9 license what the hospital has.

10 THE COURT: All right.

11 BY MR. BETTIUS:

12 Q Doctor, you said at the time of this transfer  
13 in 1975, not ten minutes ago, that this thing was broke  
14 and wasn't worth any money. And how did it suddenly  
15 become worth \$15 in the space of ten minutes?

16 A Don't tell me that, sir. In 1975 this hospital  
17 had a great asset, a license. And in 1971, there was no  
18 value on the license. That what I answer. You asked me  
19 the question. I answer to you.

20 Q The Court will remember your testimony, I  
21 believe. I asked you about this \$4 and \$6 in 1975. You  
22 said you were doing this hospital a favor because it was  
23 broke. When you made this transfer, you said you were

1 doing it a favor because it was broke. Well, it had  
2 that license when you said it was broke in '75, didn't  
3 it?

4 A Yes, because I approached different people and  
5 I was unable to attract any investors. I told to you  
6 how I came to the figure of \$15 because '75 or '76, it  
7 had a tremendous intrinsic value that was the license,  
8 period. That was what the value.

9 Q Doctor, didn't it have the license in '75 when  
10 you just said it wasn't worth anything and there was no  
11 value for the stock?

12 A Let me again tell to you, that was I attracting  
13 the people because they were not willing to pay more.  
14 It was a difficulty to raise money what we needed to run  
15 the hospital. We needed the capital.

16 Q So, Doctor, this transaction was completed --  
17 what's the transaction date for the conversion, sale of  
18 the hospital, the deed. What's the deed?

19 MR. FOX: 6/1/75.

20 BY MR. BETTIUS:

21 Q So between 6/1/75 and the end of the year when  
22 you made this conveyance, this hospital went up in value  
23 from what you said was zero to \$15 a share in six

1 months?

2 A Mr. Bettius, I answered to you that one. I  
3 went to the market and that was a maximum what I  
4 received from the original sponsor that they were  
5 willing to put the money.

6 My own valuation, you're asking how I came up  
7 to the \$15. Because I had valued the license as high  
8 and I justified in my own mind that the \$15 is a proper  
9 price for it.

10 Q Doctor, you'll concede that not maybe 15  
11 minutes ago, you said the stock had no value. You  
12 couldn't sell it to anybody; is that correct?

13 A I wouldn't say no value. I did not find a  
14 market for it. I don't say --

15 Q Now you're telling me that by the end of the  
16 year, it's worth \$15 a share.

17 A No, no, in my own mind, it was \$15. But I  
18 could not succeed. I could not find any willing, any  
19 able buyer who was willing to put any money in this  
20 corporation.

21 Q So you gave it to your charity and took a tax  
22 cut?

23 A Yes, I did it. It is not a secret.

1 Q It's not a secret?

2 A No.

3 Q Do you remember at your deposition, you told me  
4 you contributed it in 1980 at \$6 and it wasn't until  
5 we -- do you know when you gave us -- when did you give  
6 us these documents, Doctor?

7 MR. BONO: Your Honor, this is argumentative.

8 MR. BETTIUS: No, sir. I want to know when you  
9 supplied these documents.

10 THE COURT: Just a minute. If you have an  
11 objection, Mr. Bono, stand up and make it so the doctor  
12 can know you're objecting as well.

13 MR. BONO: It's argumentative, Your Honor.

14 THE COURT: What's the purpose of it,  
15 Mr. Bettius?

16 MR. BETTIUS: Your Honor, I want it to be shown  
17 that this was concealed from us until after discovery  
18 was concluded. And after we showed the receipts, we got  
19 this material -- what? -- Friday night after a motion  
20 had been filed in this court to produce it Monday. The  
21 record stands for what it is.

22 THE COURT: The question is withdrawn.

23 MR. BONO: Nothing was concealed and I --

1 THE COURT: The Court is going to sustain the  
2 objection of the Respondents to valuations of the stock  
3 placed on this particular stock by any other doctor, at  
4 least for the time being. It may well come in under  
5 some, the guise of some expert.

6 MR. BETTIUS: Your Honor, they are all  
7 defendants and on that basis, we move it as an  
8 admission.

9 THE COURT: All right. The objection is  
10 sustained.

11 MR. BONO: They are not all defendants.

12 THE COURT: The objection is sustained.

13 MR. BONO: Thank you, Your Honor.

14 MR. BETTIUS: Your Honor, is it also sustained  
15 with respect to Dr. Burtoff, who is a party to the suit?

16 MR. BONO: Wait. Dr. Burtoff did not make any  
17 donation. It was made by the Burtoff Trust.

18 THE COURT: The objection is sustained.

19 MR. BONO: Thank you, Your Honor.

20 THE COURT: Let me return this to you,  
21 Mr. Bettius.

22 MR. BETTIUS: Your Honor, may it be marked as  
23 an exhibit and -- well, it's marked as an exhibit.



1 THE COURT: It will be made a part of the  
2 record.

3 MR. BETTIUS: Thank you, Your Honor.

4 There are some deeds, Your Honor, that complete  
5 the transaction in June of '75, which have been objected  
6 to. And I can't imagine why. 306 and 307 and 308.  
7 They are deeds from JMHC to Tauber. And we move those.

8 THE COURT: All right. Any other objection  
9 other than the one noted?

10 MR. CHOCKLEY: Just one second. May we have  
11 the exhibit numbers again, Your Honor?

12 THE COURT: 306, 7 and 8.

13 MR. BONO: No other objection.

14 THE COURT: Objection will be overruled. They  
15 will be admitted.

16 (The documents previously marked  
17 for identification as Complainant's Exhibit  
18 Nos. 306, 307 and 308 were received in  
19 evidence.)

20 MR. BETTIUS: May we have just one minute, Your  
21 Honor?

22 THE COURT: All right.

23 MR. BETTIUS: Your Honor, we just got these

1 objections this morning. May we reserve, in order not  
2 to take up the time of the Court, to recall Dr. Tauber?  
3 They are foundation questions with regard to any of the  
4 these other exhibits.

5 THE COURT: All right.

6 MR. BETTIUS: I tender the witness for  
7 cross-examination, Your Honor.

8 THE COURT: Any questions, Mr. Bono, at this  
9 time?

10 MR. BONO: Yes, very few, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. BONO:

13 Q Dr. Tauber, on the 1972 offer of the 60,000  
14 shares, what was the reason for the offer of those  
15 additional shares?

16 MR. BETTIUS: Your Honor, we are going to come  
17 to this objection very early, and we need to find out.  
18 The reason has to be contained within the corporate  
19 minutes. And I think that law is clear in WLR and all  
20 the other cases and one they cite in the brief called --  
21 it's D four -- that the actions of the corporation are  
22 to be judged not by what people say it did now, but by  
23 contemporaneous corporate records appropriately kept in

1 time. There is a resolution of the board and there are  
2 board minutes.

3 And I can understand, Your Honor, you may not  
4 want to cross this issue today. I mean, it is an  
5 evidentiary issue, and perhaps probably somewhat arcane.  
6 But it's kind of like the thing you see in Sterling  
7 Laundry and some of the other cases involving municipal  
8 decisions. Boards and municipalities act on records and  
9 court orders and things such as that. And you don't  
10 come back and supply the rationale for a transaction,  
11 nor do you recite what was the contemporary history by  
12 going back and putting it into the record. We believe  
13 that Dr. Tauber has to tell us based on contemporaneous  
14 minutes exactly what's going on.

15 MR. BONO: Your Honor, the witness was involved  
16 by participating to explain the corporation's action.  
17 You don't have to have everything written on paper to  
18 explain the corporation's actions.

19 MR. BETTIUS: It's not a matter of --

20 MR. BONO: The Commonwealth in this case has  
21 asked in this case various and sundry questions well  
22 beyond anything in the documents. Otherwise we wouldn't  
23 have been here since 9 a.m. this morning.

1 MR. BETTIUS: I asked specific questions to  
2 specific entries to specific minutes. As soon as he  
3 said he didn't understand the minutes or what was  
4 contemporaneously going on in those minutes, I withdrew  
5 from it. And I've been cautious not to do that.

6 It's my view -- and it is a key evidentiary  
7 rule. It's not a matter of his competence. It's a  
8 matter of appropriate relevance and foundation and  
9 materiality. And it's interesting. Always, Your Honor,  
10 after the fact, it's just like the witness says. You  
11 come back and supply rationale and supply motive. It's  
12 our position that that rationale and motive has to  
13 appear on record and the cases which they cite say so.

14 THE COURT: The objection will be overruled and  
15 it will go to the weight to be given to the testimony.

16 MR. BONO: Thank you, Your Honor.

17 BY MR. BONO:

18 Q Dr. Tauber, do you remember the question? What  
19 was the reason why the additional shares of stock were  
20 issued in 1972?

21 A To raise capital for the corporation.

22 Q And that stock was sold for \$4 a share, as I  
23 understand; is that correct?

1           A     That's correct.

2           Q     Now, why did the corporation redeem that stock  
3     at \$6 a share in 1974 and '75?

4           MR. BETTIUS: So I don't keep interrupting --

5           THE COURT: Continuing objection.

6           MR. BETTIUS: -- may I have a continuing  
7     objection on this item?

8           THE COURT: All right.

9           BY MR. BONO:

10          Q     You may answer.

11          A     Why we bought it back?

12          Q     Yes. Let me be more specific. Why was the  
13     price of \$6 a share picked to redeem those shares of  
14     stock?

15          MR. BETTIUS: Your Honor, I'm going to have a  
16     further objection. The witness said he did not attend  
17     the board meetings at that time and was not present.  
18     And when asked about these specific issues, he said he  
19     wasn't there. He only heard about these things later.  
20     Hearsay.

21          THE COURT: Objection overruled.

22          BY MR. BONO:

23          Q     You may answer.

1           A     Again, continuous cash infusion to the  
2 corporation that made all this decision when they made,  
3 that at first they offered at \$4. Many times in any  
4 corporation it occurs it may be an option to buy it for  
5 the existing people at a lower price than they would  
6 offer to the public. That explain the 4.

7                     The \$6 was redeemed again which was converted  
8 to bonds which again the short term obligation, which is  
9 always squeezing any financial institution, was  
10 postponed for the long term obligation, like I said 20  
11 years. That is done every day in any corporation.

12           Q     Earlier in your testimony, you were referred to  
13 the 1969 letter that you received from the IRS  
14 concerning questions about the possible tax revocation.  
15 Do you recall that?

16           A     Right.

17           Q     Did the 1970 subdivision have anything to do  
18 with that notice that you received from the IRS?

19           A     It absolutely nothing to do with it.

20           Q     Now, when the subdivision was done that you  
21 were asked about, could you -- how was that subdivision  
22 accomplished?

23           A     The subdivision came at the request of

1 Dr. Gondor. He had outright ownership on the land and  
2 the only one I could interest in the partnership. Then  
3 I talked to Mr. Richards and asked him how could we  
4 accomplish it.

5 And he said it. It's very simple. Since four  
6 owners -- Dr. Gondor, 50 percent; Jefferson Memorial  
7 Hospital, Inc., 10 percent; Tauber Foundation, 35; and  
8 Dr. Burtoff 5 percent -- that would really buy it, these  
9 lots. And because of the zoning problem of the Hopkins  
10 land, we could not face it to Beauregard. That way we  
11 had to face all the lots on King Street. Otherwise,  
12 cannot have that lot.

13 And then Mr. Richards going to call in  
14 engineering firm, and we call in engineering firm who  
15 allocated each four parcels according to the ownership,  
16 the undivided interest. That means that Dr. Gondor for  
17 his 50 percent undivided interest will have certain size  
18 of the lot. And Jefferson Memorial Hospital, Inc., 20;  
19 Tauber Foundation, 25; Burtoff, 5. And that was very  
20 accurate engineering.

21 And to substantiate this one, we looked it  
22 over, the tax assessment. And the tax assessment, the  
23 years in 1969, 1970, we tracked it exactly the tax

1 assessment, and the Jefferson Memorial Hospital, Inc.  
2 was exactly equal to the 20 percent of the interest of  
3 Jefferson Memorial Hospital, Inc. before the subdivision  
4 took place. That way it was absolutely justified by  
5 engineering and the Alexandria city tax assessor.

6 Q Now, earlier in your testimony, you started to  
7 talk about the Virginia tax return that you filed in  
8 1972. Do you recall that?

9 A Yes.

10 Q Would you -- what were you going to say on that  
11 tax return before you were interrupted?

12 MR. BETTIUS: Objection. We want the return.  
13 We've asked for the return. We've been denied returns.

14 MR. BONO: No, you have the return.

15 THE COURT: Wait just a minute.

16 MR. BETTIUS: His personal '72 return?

17 MR. BONO: No, no, I'm sorry, the corporation  
18 return. I'm sorry. If I conveyed some misstatement, I  
19 apologize. I was talking about the --

20 MR. BETTIUS: What exhibit are you referring  
21 to?

22 MR. FOX: I'm going to let Mr. Wilson go, Your  
23 Honor.



1 THE COURT: Yes, sir.

2 MR. BONO: I don't need the return.

3 MR. BETTIUS: I do.

4 BY MR. BONO:

5 Q The Virginia JMHC income tax return, do you  
6 recall that return, Dr. Tauber?

7 A Yes, I do.

8 Q What did the corporation inform the Virginia  
9 tax authorities on that return?

10 MR. BETTIUS: The best evidence of that is the  
11 return, and I want to see it.

12 The copy you gave us, Mr. Bono, had nothing on  
13 it.

14 MR. BONO: I think it's 754. I apologize for  
15 the delay. I wasn't intending to have to use it. When  
16 Mr. Bettius asked, I believe the exhibit they used --

17 THE COURT: Dr. Tauber says he has it.  
18 Somewhere.

19 MR. BONO: He gave it to me.

20 MR. BETTIUS: The '72 return, Mr. Bono, Exhibit  
21 238.

22 MR. BONO: It's a 1971, it says 1971 on the  
23 top. It's for the fiscal year July 1, '71 to June 30,

1 '72. It's Exhibit 754. Their copy of the return was  
2 what I deem incomplete. And so when we were working on  
3 exhibits, we had designated the complete one. And as I  
4 understand it, there was an agreement to substitute the  
5 complete copy.

6 THE COURT: Show it to Mr. Bettius.

7 MR. BONO: I will certainly do that. 754, you  
8 have it.

9 It's on page TAG 002950.

10 MR. BETTIUS: All right. Go ahead, Mr. Bono.

11 THE COURT: All right. Mr. Bono, go ahead.

12 MR. CHOCKLEY: May I approach the witness, Your  
13 Honor?

14 THE COURT: All right.

15 (Handing to the witness.)

16 BY MR. BONO:

17 Q Dr. Tauber, let me refer you to the Bates  
18 number of Exhibit 754. It's TAG 002950.

19 A 2930?

20 Q 2950.

21 MR. CHOCKLEY: May I, Your Honor?

22 THE COURT: Yes, indeed.

23 THE WITNESS: Yes, sir.

1 BY MR. BONO:

2 Q I believe my question, and I'll just repeat my  
3 question, what did Jefferson Memorial Hospital  
4 Corporation in its 1971 Virginia tax return inform the,  
5 or tell the Virginia tax authority?

6 A In the Jefferson Memorial Hospital Corporation  
7 tax return for 1971, it referred that this is a  
8 corporation first return and it's marked down this is a  
9 corporation.

10 And the next line, Jefferson Memorial Hospital,  
11 Inc., 4600 King Street, Alexandria, Virginia, for the  
12 previous business organization. And the corporation now  
13 is in care of the corporation located 4600 King Street,  
14 Alexandria, Virginia.

15 Q Doctor paraphrasing, does the return state that  
16 Jefferson Memorial Hospital Corporation --

17 MR. BETTIUS: It states what it states.

18 BY MR. BONO:

19 Q Let me complete the question -- was a successor  
20 to a prior corporation and then it gives the name of the  
21 prior corporation to which it is the successor and it  
22 specifically says it is -- the successor was Jefferson  
23 Memorial Hospital, Inc. --

1           A       Corporation.

2           Q       The successor was Jefferson Memorial Hospital  
3 Corporation, and the prior corporation was Jefferson  
4 Memorial Hospital, Inc.; is that correct?

5           A       That's correct.

6           MR. BONO: No further questions.

7           MR. BETTIUS: I have some questions, Doctor.

8           THE COURT: Mr. Bettius, is there anything at  
9 all possible that you didn't cover?

10          MR. BETTIUS: One thing, this exhibit he just  
11 put in.

12          THE COURT: In evidence. Go ahead,  
13 Mr. Bettius.

14                   REDIRECT EXAMINATION

15          BY MR. BETTIUS:

16          Q       When was Jefferson Memorial Hospital  
17 Corporation formed? 1971, isn't that correct, Doctor?

18          A       Yes.

19          Q       Then how could it have, if this return is  
20 accurate in all respects, indicate that you're a foreign  
21 corporation that first qualified to do business in  
22 Virginia in 1965?

23                 I mean, that's the first line. Mr. Bono went

1 past that first line. It says, if a foreign  
2 corporation, enter the date of certificate of authority  
3 to do business. And you put 1965.

4 A No, no, no, I did not say that. In 1965 the  
5 foreign corporation was Jefferson Memorial Hospital,  
6 Inc. of Maryland. That what it writes it. And that  
7 was --

8 Q That's not what this return says, is it,  
9 Doctor? It says, if a foreign corporation, enter the  
10 date of certificate of authority to do business in  
11 Virginia and the number of places in Virginia. And you  
12 do 1965, one.

13 And in this return, Doctor, don't you go to  
14 great lengths to explain in a previous note that JMHC is  
15 JMHI?

16 MR. BONO: Your Honor, this now is absolutely  
17 repetitive for about the dozenth time of this subject.  
18 He is going to a note --

19 THE COURT: Whatever it says, it says,  
20 Mr. Bettius.

21 MR. BETTIUS: But, Your Honor, the point is, he  
22 comes in here and tells the Court that this thing  
23 informs people that JMHI is not the corporation. Here

1 he's got that merger note, and it says --

2 THE COURT: Fine. You can argue that. You're  
3 free to argue that.

4 MR. BETTIUS: All right, sir. Now,  
5 Dr. Tauber -- is this moved in evidence, by the way?

6 MR. BONO: No.

7 MR. BETTIUS: Do you intend to?

8 MR. BONO: I may or may not in our case in  
9 chief.

10 MR. BETTIUS: We'll move it, Your Honor,  
11 Defendants' Exhibit 754.

12 THE COURT: Can we make that Plaintiff's 238 --

13 MR. BETTIUS: Yes, sir.

14 THE COURT: -- which will then be the completed  
15 copy? It will be marked as Plaintiff's 238 and it will  
16 be admitted.

17 (The document was marked  
18 Complainant's Exhibit No. 238 for  
19 identification and received in evidence.)

20 BY MR. BETTIUS:

21 Q You've indicated, Doctor, again, that you  
22 exchanged a short term liability in '75 for a long term  
23 liability. What was the short term liability?

1 THE COURT: Asked 100 times, Mr. Bettius, and  
2 not ever touched on for what you called cross by  
3 Mr. Bono.

4 MR. BETTIUS: He got from the witness, in terms  
5 of that, why he could justify. And he said that, and I  
6 took the note, he said it was the exchange of a long  
7 term, short term --. Okay.

8 Your Honor, I don't have any questions. It's  
9 in evidence. But that's okay. He gave three reasons  
10 for redeeming for \$6, one of which was he exchanged the  
11 short term. And Your Honor, I never heard what the  
12 short term liability was and I still don't understand  
13 it. If Your Honor does, I won't ask.

14 THE COURT: It's been asked and answered many,  
15 many times in your original cross-examination of  
16 Dr. Tauber.

17 MR. BETTIUS: I'm sorry. I just never  
18 understood the answer.

19 BY MR. BETTIUS:

20 Q Now, you indicated that this subdivision that  
21 you accomplished was based on tax records?

22 A No, I didn't say that.

23 Q Tax assessments?

1           A     No, no. I said it very clearly that  
2 Mr. Richards was asked to solve the problem that  
3 Dr. Gondor and each entity would have a separate  
4 ownership rather than an undivided interest in the land.

5           Mr. Richard turned to Mr. Holland, which is  
6 engineering firm in Alexandria, to create a subdivision  
7 and create four lots. That four lots were different  
8 size. Every single lot faced King Street in order to  
9 justify the subdivision because you have to have a  
10 frontage. So --

11          Q     How did you adjust, Doctor, for the fact that  
12 buildings were built all over these lot lines? Did you  
13 adjust the value of the buildings, portions of the  
14 buildings?

15          A     You asked me the question; let me answer. All  
16 right. Mr. Holland got the request from Mr. Richards to  
17 create four separate lots, which one would be equal to  
18 50 percent of the undivided interest --

19          Q     In what? The land and building or just the  
20 land?

21          A     I'm talking about the land, sir. There is no  
22 subdivision of the building; only the land.

23          Q     So you ignored the buildings in this



1 subdivision --

2 A Let me answer, Mr. Bettius.

3 Q -- is that correct?

4 A What happened here, the subdivision was of the  
5 land, and the request was create a size of the lot which  
6 reflects 50, 20, 25 percent and 5 percent ownership and  
7 each of the four entities will have equal lot ownership.

8 And what happened, this was done by Mr. Holland  
9 exactly to take the percentage of the undivided land and  
10 take 20 percent of that one. That was allocated to the  
11 land which was given to Jefferson Memorial Hospital,  
12 Inc.

13 Q And Doctor, the buildings and the value of the  
14 relative buildings constructed on the parcels was  
15 ignored; is that correct?

16 A No, no.

17 Q Wasn't it? Was it considered?

18 A It was not considered. We talk about the land.  
19 We don't talk about the building. The building was  
20 never subdivided. The land was subdivided.

21 Q I understand. And then as I understand it, it  
22 was just then by happenstance that the part of the  
23 project that JMHI got had nothing on it but the parking

1 lot. That was just a coincidence?

2 A No, no. Whatever Jefferson Memorial Hospital,  
3 Inc. had, the underlying land, because the building,  
4 without having no parking area, if you're asking me, is  
5 no value because you never get a permit without the  
6 necessary parking.

7 Q Doctor, I didn't ask you that. I asked you was  
8 it just a coincidence that the land that the hospital  
9 got had nothing on it?

10 MR. BONO: Objection. Asked and answered.

11 THE COURT: I thought you covered this in  
12 direct, Mr. Bettius.

13 MR. BETTIUS: All right. We would also move  
14 pages 132 through 133 of Dr. Tauber's deposition in.  
15 And the specific lines 10 through 22 and 5 through 9.

16 THE COURT: Better give me that again.

17 MR. BERGHOLD: It's listed as Plaintiff's  
18 Exhibit 532. It is excerpts from Dr. Tauber's  
19 deposition. But it's page 132, lines 10 through 22.

20 THE COURT: Okay.

21 MR. BERGHOLD: Page 133, lines 5 through 9.

22 THE COURT: All right.

23 MR. BETTIUS: We understand, Your Honor, there

## DIRECT EXAMINATION

BY MR. BONO:

Q Dr. Tauber, you've already testified extensively in this case. But I just want to ask some questions with regard to certain topics, if I might.

Dr. Tauber, were you the founder of Jefferson Hospital?

A I was the founder along with my colleagues.

Q Why did you decide to build Jefferson Hospital?

A Personally, I wanted when I come to the United States that I would like to build a hospital.

Q Why did you decide to build Jefferson Hospital in Virginia?

A Because most of the doctors who send me surgical patients were in Northern Virginia where they practice medicine.

Q Now, initially you had decided the corporation, JMHI, was going to be a for profit corporation; is that correct?

A That's correct. We had Northern Virginia Doctor's Hospital, which was a profit making hospital. And those doctors who practiced mostly in Arlington Hospital, we wanted to have a private hospital and that

1 was our goal, to have a private hospital.

2 Q And at some point, you decided to change that  
3 to a not-for-profit corporation; is that correct?

4 A That's correct.

5 Q What were the circumstances that led to that  
6 change?

7 A That Alexandria Hospital accused us that we  
8 wanted to come to Northern Virginia in order to get rich  
9 and ruining a charitable or nonprofit hospital in  
10 Alexandria Hospital. And they told to their nursing  
11 staff that if they come here, we will take their  
12 business from them and they are losing their job.

13 Then I changed the approach that we invite all  
14 the employees to participate, that they get shares in  
15 the corporation. And then the organized protest against  
16 us failed and the nurses just approach us that they  
17 wanted to join our hospital.

18 Q And then did you then decide to make the  
19 hospital, in light of that opposition, into a  
20 not-for-profit operation?

21 A The opposition and the accusation was so loud,  
22 that I had a plan and my partners accepted it and we  
23 turned the profit making hospital to a nonprofit

1 charitable hospital.

2 Q Now, when you were applying to open Jefferson,  
3 did you encounter any resistance or opposition?

4 A Yes. That Alexandria Hospital accused us --

5 MR. BETTIUS: Your Honor, I can understand they  
6 want to get into some of this history and I have allowed  
7 it. I just really don't see the relevance of it. The  
8 corporate documents are what they are and they did what  
9 they did. The motivation for that really isn't the  
10 issue here. They formed a charity and they either  
11 operated it as one or they didn't.

12 THE COURT: Objection overruled.

13 A That Alexandria Hospital accused us that we  
14 were forming a nonprofit organization in order to get  
15 federal government and community support and we will  
16 hurt them.

17 So my answer about that, that I made a pledge  
18 and we kept it, that we never applied and we never  
19 received any federal government or community support  
20 during the whole existence of Jefferson Memorial  
21 Hospital, Inc. So we did not ask any money and we never  
22 accepted.

23 Q Now, during the course of Jefferson Hospital,

1 Jefferson Hospital achieved a number of accomplishments;  
2 is that correct?

3 A I think so.

4 Q And if I might, Dr. Tauber --

5 MR. BETTIUS: Tell us what you're referring to.

6 MR. BONO: Exhibit 730.

7 THE WITNESS: It's correct.

8 BY MR. BONO:

9 Q Dr. Tauber, can you just describe to the court  
10 what Jefferson Hospital accomplished?

11 A First in 1965 when Medicare became involved, we  
12 were the first hospital in Northern Virginia which was  
13 approved for Medicare based on the absolute 100 percent  
14 policy no discrimination regardless race, color,  
15 religion or whether the patient can pay or not pay. And  
16 we were awarded and it was published in the newspaper,  
17 too, that we were the first hospital which was approved.

18 Q Now, what about with respect to any intensive  
19 care units?

20 A We were the first hospital, in spite of the  
21 relative small size, which had an intensive care unit.  
22 We were the very first one.

23 Q Now, did you also establish medical offices?

1       A     Yes. As a small hospital, we did not have a  
2 competent resident staff. Therefore, one part of the  
3 hospital which later was used as an administrative  
4 office, we converted that one and others started as  
5 medical offices for different specialists. And the only  
6 goal was to get highly specialized doctors to replace  
7 the competent resident staff that any other hospital  
8 like a teaching hospital would have.

9           Naturally, Alexandria Hospital, through the  
10 Alexandria Medical Society, opposed us and we had to  
11 take off the sign from the building which designated  
12 medical offices because it is not ethical. The irony of  
13 fate, that every single hospital starting with  
14 Alexandria copied me in the later years. And every  
15 single hospital now has a medical office. But when I  
16 pioneered it, I was accused that I'm unethical.

17       Q     Now, what was the policy of Jefferson Hospital  
18 with respect to admitting patients?

19       A     My personal feeling was always that the most  
20 expensive bed is an empty bed. And there is not a such  
21 thing as nonpaying patient.

22           I remember on the 16th of March, 1965, we got  
23 the first patient in the hospital who was scheduled for

1 amputation of the leg in Alexandria Hospital. The  
2 family brought him because I advocated loudly that  
3 whether you have insurance or you don't have insurance,  
4 come in. We take care of you.

5 This patient stayed in the hospital for nine  
6 months and walked out. Some days I spent an hour to  
7 debride the wound. But the diabetic patient walked out,  
8 and on the 16th of March was scheduled for amputation of  
9 the leg. This patient, through her advertisement and  
10 good will, brought us many patients.

11 And that was my policy that there is not a such  
12 thing in the United States of America that you can  
13 deprive anybody for a proper medical care or hospital  
14 care. And that was my policy as long as I was in  
15 charge.

16 Q Now, did you adhere to that policy throughout  
17 the entire time you were medical director of Jefferson?

18 A That was the policy as long as I was the  
19 medical director of the hospital. There was never a  
20 patient ever rejected or not accepted. We had a great  
21 reputation. You don't have insurance? Go to Jefferson.  
22 You have no money to pay the emergency room? Go to  
23 Jefferson. That was our reputation, and I'm extremely



1 proud of that reputation.

2 Q And did -- was that the policy of Jefferson not  
3 only during the time that it operated as the Maryland  
4 corporation as nonprofit, but during the time after the  
5 conversion when it was operated as a for profit  
6 corporation?

7 A The policy never changed whether it is  
8 incorporated or corporated, for nonprofit or profit. It  
9 never changed.

10 Q Now, Dr. Tauber, as a result of that policy,  
11 what in your experience as being the medical director at  
12 Jefferson, how many nonpaying patients did Jefferson  
13 provide medical care to?

14 MR. BETTIUS: Your Honor, I'm going to object.

15 THE COURT: I've admitted a limited amount of  
16 this, Mr. Bono, for background purposes. .

17 MR. BONO: Yes, Your Honor.

18 MR. BETTIUS: The records clearly show the  
19 revenue and recovery, Your Honor, and I -- for whatever  
20 reason.

21 THE COURT: Go ahead, Mr. Bono.

22 MR. BONO: Thank you, Your Honor.

23 THE WITNESS: What is the question? Excuse me.

1 BY MR. BONO:

2 Q In your experience as the medical director of  
3 Jefferson, how many nonpaying patients does Jefferson  
4 provide care to?

5 A I never counted it because I did not want to  
6 know it. It doesn't make any difference. You have the  
7 bed there; we have the personnel. The only thing of  
8 expense is that for food, which is negligible -- usually  
9 patients in the hospital eat very little -- and the  
10 drugs. So therefore, only thing is that later on when I  
11 prepared myself, I saw it that in 1980 to later when the  
12 group health took it over, they had 28 percent less.  
13 Therefore, they made more money than we did.

14 MR. BETTIUS: Your Honor, I object.

15 THE COURT: It's not responsive, number one.  
16 The background is fine, Mr. Bono, if it's limited.

17 MR. BONO: Thank you, Your Honor.

18 BY MR. BONO:

19 Q Turning to the mortality statistics that  
20 Jefferson achieved, what did it achieve in that regard?

21 A The Federal government came out with statistics  
22 which was published in the newspapers, and naturally  
23 they took in consideration what type of patients you

1 treat in a given hospital. And they predicted the  
2 morbidity and the mortality expected. And Jefferson  
3 Memorial Hospital for years ranked as the number one in  
4 Northern Virginia area.

5 I don't want to tell we are a better hospital  
6 than Fairfax. Fairfax is a great hospital. But the  
7 federal government analyzed it, what type of a patient  
8 each hospital took care of, and according to that one,  
9 we were --

10 MR. BETTIUS: That's hearsay, Your Honor.

11 THE COURT: Let's move on, Mr. Bono.

12 BY MR. BONO:

13 Q Now, did Jefferson train medical students?

14 A Yes. I was always a strong belief, America  
15 give democracy for the whole world. Every American  
16 student is entitled to study, and those American  
17 students who were forced to learn off shore, we were the  
18 only hospital which accepted these fine students. And  
19 today I am proud to say that more than 300 American  
20 students who learned off shore got their clinical  
21 training in Jefferson Memorial Hospital.

22 And through my donation to different  
23 universities like Georgetown, Boston University,

1 Columbia Hospital for Women, I gave donation to accept  
2 this student for clinical studies. And I have now  
3 counted over 300 doctors practicing in the United States  
4 because of our effort.

5 MR. BONO: I would move into evidence Exhibit  
6 730.

7 MR. BETTIUS: I have no objection, Your Honor.

8 THE COURT: It's admitted.

9 (The document previously marked  
10 for identification as Respondent's Exhibit  
11 No. 730 was received in evidence.)

12 BY MR. BONO:

13 Q Now, Dr. Tauber, during the time when Jefferson  
14 Hospital was being formed, did you loan or advance any  
15 funds to Jefferson Hospital?

16 A Jefferson Hospital had money, \$88,000 through  
17 the general purchase of Dr. Gondor with 50 percent of  
18 the land. But that was not enough. Therefore, I was  
19 practically the bank to the hospital and advanced money.  
20 Because of our big fight with Alexandria Hospital, it  
21 succeeded that Blue Cross/Blue Shield did not approve  
22 this hospital for one year and six months. And we had  
23 to go to the court.

JAPP 0581

1           And then Blue Cross/Blue Shield hired an  
2 independent health organization who did a health study,  
3 and they came back and they forced Blue Cross/Blue  
4 Shield to give us a grant. But during that time, I  
5 advanced, and I know it, \$1,675,000.

6           MR. BETTIUS: I object, Your Honor, unless they  
7 can produce that on the books and records because the  
8 books and records are devoid of these advances. The  
9 books and records of the corporation don't show  
10 reimbursements. If they are telling me they ran this  
11 hospital off books, because that's essentially what this  
12 testimony is, I'm extremely concerned about the  
13 integrity of every bit of expert testimony they put on  
14 the stand.

15           Now, every one of the financial records --

16           THE COURT: Your objection is that his  
17 testimony cannot be supported by the records?

18           MR. BETTIUS: His testimony isn't supported by  
19 notes. It isn't supported by checks. It isn't  
20 supported by any kind of objective evidence. And we're  
21 in the Massey versus Firmstone situation here, Your  
22 Honor. He can't rise higher than the evidence that he's  
23 put on in this case with reference to what the

J.APP. 0382

1 operations of the hospital are. He's put witnesses on  
2 the stand and said these are fair and accurate  
3 representations. And every witness, expert that's  
4 testified, has testified on the basis that the books and  
5 records of the hospital are absolutely correct.

6 The books and records, I submit to the Court,  
7 do not show these advances, and there's no evidence of  
8 the advances either by notes, checks or any other  
9 objective evidence. And I object to it.

10 THE COURT: All right. Objection overruled.  
11 You can cross-examine him about it.

12 MR. BONO: I apologize, Your Honor. I believe  
13 the objection came up in the middle of the answer and I  
14 don't, quite frankly, remember whether or not --

15 A When we opened the hospital on March 15, 1965,  
16 regardless Blue Cross/Blue Shield did not approve us.  
17 So we had to pay the nurses and other employees, and  
18 everything. There was only \$88,000. Therefore, I  
19 advanced the money and waited until the collection came  
20 in, and I got back my money.

21 Therefore, it is not in the financial  
22 statement. And that period lasted only 15 of March,  
23 1965 until June, 1966 when finally we got the approval.

J.APP. 0383

1 Because normally you wait around 60 to 90 days or longer  
2 to get the receivables. But this opening hospital,  
3 there was no receivables because we opened that one.  
4 But we had to meet the payroll. Somebody had to give  
5 the money. And in my financial statement, which was  
6 produced, it clearly stated that I deposited different  
7 securities with the Public National Bank --

8 MR. BETTIUS: Your Honor, I'm objecting to this  
9 now. Hearsay. His own statements were produced and  
10 literally the statements show contract advances carried  
11 on the books of the corporation. This is truly, and  
12 without foundation, Your Honor, being admitted to  
13 impeach the books of the company.

14 THE COURT: I'll let you argue what the purpose  
15 of it is, Mr. Bettius. I'll let him testify, but the  
16 last part, Mr. Bono, was not responsive to your  
17 question.

18 THE WITNESS: Would you ask the question?  
19 Would you be kind to repeat it?

20 MR. BONO: I apologize, Your Honor.

21 THE COURT: The question, you asked him whether  
22 or not he advanced or loaned money to the hospital and  
23 he said yes, he did. There was an objection. I thought

JAPP. 0384

1 he mentioned an amount when Mr. Bettius was making his  
2 objection. Quite frankly, I didn't hear it.

3 I also understand Dr. Tauber testified that he  
4 advanced money until they were able to secure the Blue  
5 Cross/Blue Shield, and then he said, I think he said he  
6 was repaid from collections and it lasted from 15 March  
7 of 1965, is that it, Doctor, to June of 1966?

8 THE WITNESS: Yes.

9 BY MR. BONO:

10 Q Thank you, Your Honor. In light of Your  
11 Honor's comment, Dr. Tauber, what was the amount of the  
12 money you advanced to the hospital during that 15 month  
13 period of time?

14 A During that time, I advanced \$1,675,000 that I  
15 got repaid with no interest.

16 Q Now, Dr. Tauber, there has been some testimony  
17 in this case concerning during this pre-1971 period of  
18 time that the bonds were -- that the doctors had bonds  
19 at 6 percent and then the hospital provided the doctors  
20 with 8 percent bonds. It's been confusing up until this  
21 point. And I would like at this point for you to  
22 explain to the judge exactly what that transaction was  
23 and why you did it.

J.APP. 0385



1 MR. BETTIUS: Your Honor, again, each one of  
2 these transactions is documented. We're going to be  
3 here a long time today, because it's all over the books  
4 and records of this corporation.

5 THE COURT: That's not a basis to object to the  
6 testimony, Mr. Bettius. It may be a basis to  
7 cross-examine him on. I'm going to be here as long as  
8 it takes. I mean, you all are fixated on the idea of  
9 time. And quite frankly, time is not a factor.

10 MR. BETTIUS: The objection, then, Your Honor,  
11 is foundation in terms of the bonds, the documents and  
12 the notes. We're talking now about transactions that  
13 deal with documents and the exchange of documents and  
14 notes and bonds. There is absolutely no foundation for  
15 this testimony in operative contemporaneous instruments,  
16 and I object to it.

17 THE COURT: Objection is noted. Go ahead.

18 MR. BONO: I must say, Mr. Bettius has this  
19 theme. Everything in life isn't written down on a piece  
20 of paper.

21 THE COURT: Just move on, Mr. Bono. I overrule  
22 the objection.

23 BY MR. BONO:

1           Q     The question is, Dr. Tauber, can you explain to  
2 the Court what that transaction was and why it was  
3 entered into?

4           A     We needed cash at the present time. And we  
5 issued bonds and it has two ways to do it. The security  
6 of the bonds is just as strong as the support of the  
7 hospital. Therefore we tried to sell these bonds to  
8 those doctors who were willing to join our staff and  
9 wanted to keep the hospital alive. Eight percent --  
10 because this issue came up as a Blue Cross/Blue Shield  
11 issue. Eight percent did not take any commission  
12 anywhere.

13                     And at that time, and the financial statement  
14 produced clearly stated that the bank loan what we  
15 received varied between 5 and a half percent, 6 percent,  
16 and in one instance, 8 percent. What happened, that  
17 this hospital never owned the building, never owned the  
18 land. Therefore it did not have an asset, only a future  
19 operation in an overcrowded area. Therefore, we had to  
20 secure it.

21                     If a doctor bought the bond for 8 percent and  
22 then we charged 6 percent, what did it mean? We did not  
23 charge 6 percent because we did not have the money. We

JAPP.0387

1 got that loan from the bank. And the bank, on the  
2 strength of the individual doctor, lent the money.

3 Therefore, we ended with the cash what we  
4 needed. Therefore, we still can't get a mortgage which  
5 would have been absolutely impossible to get, absolutely  
6 impossible that any financial institution would give in  
7 this overcrowded area the money. Therefore, I needed  
8 some instrument to raise cash to run the hospital. And  
9 that was the reason why we did it.

10 Q At that time, was Jefferson Memorial Hospital  
11 Inc. able to go directly to the bank to borrow the money  
12 for the capital it needed?

13 A I told you that one, that Jefferson Memorial  
14 Hospital Inc. did not have the strength to get any loan.  
15 We went to the doctors. We went to one doctor for the  
16 bond and he signed a note. We took the note for  
17 collection. We picked up the money what we needed. And  
18 then the bank looked at the doctor and his financial  
19 strengths, not the Jefferson Memorial Hospital, Inc.  
20 strengths. Because there was no strength, only  
21 weakness.

22 Q Did the individual doctors personally sign  
23 notes payable to the bank in that instance?

J.APP. 0388

1 A It doesn't make a difference whether to us --

2 MR. BETTIUS: Not responsive, Your Honor.

3 A All right. To the bank and to the hospital.

4 BY MR. BONO:

5 Q And so when the doctors signed their personal  
6 notes to the bank, they were putting their own financial  
7 credit at risk; is that correct?

8 A Yes, that's correct. They were at risk.

9 Q And then they took the money that they borrowed  
10 from the bank and gave it to the hospital; isn't that  
11 correct?

12 A Either directly or we took that note and  
13 deposited it to the bank as a security for that money to  
14 be given to Jefferson.

15 MR. BETTIUS: Not responsive. He asked him,  
16 Your Honor --

17 MR. BONO: It's directly responsive.

18 THE COURT: I thought he responded.

19 MR. BETTIUS: Did he give the money to the  
20 hospital, he said?

21 MR. BONO: Mr. Bettius, you can cross-examine.

22 MR. BETTIUS: Your Honor, would you ask counsel  
23 not to admonish me?

1 THE COURT: Don't start. We've been doing real  
2 good. If he has an objection, he can make it and I'll  
3 rule on it, Mr. Bono.

4 BY MR. BONO:

5 Q Now, Dr. Tauber, were there times when you were  
6 in a situation where you needed -- you couldn't get cash  
7 and you had to go get guarantees from these doctors as  
8 well in order to get credit lines with the banks?

9 A Yes. Definitely.

10 Q When did that occur and how did you --

11 A All the time. All the time. And I told it  
12 when the bond was issued, that we use their credit. And  
13 later on, when -- and after '71 when we convert the Inc.  
14 to corporation, that was the whole issue, that we will  
15 get the doctors' credit line and receive some additional  
16 money. Because we were always short.

17 Q In 1968, as I understand, you built a 24-bed  
18 addition to the hospital; is that correct?

19 A Yes. 1968 we build west wing to the hospital,  
20 which we added 24 beds.

21 Q And what was -- which entity built that  
22 addition?

23 A The partnership.

J.APP. 0390

1 Q How much did that addition cost to build?

2 A If I'm correct \$110,400.

3 Q And did the partnership collect any rent from  
4 JMHI for that addition?

5 A We charged rent on the 10 percent  
6 capitalization, which converted to \$2.15 cents per  
7 square foot triple net. Hardly that you can rent a  
8 storage area what we charged to the hospital.

9 Q And notwithstanding the low rent that you  
10 charged, did JMHI pay the rent to the partnership at any  
11 time?

12 A What we charged, this was discussed quite  
13 often. What we charged, \$80,800, if I'm correct was the  
14 figures, and we had 38,000 square feet building. And if  
15 you divide that one, you get \$2.15 per square foot.

16 However, the hospital, as a tenant, subleased  
17 to the radiology for \$20,000, to my office \$3,600, to  
18 the pediatric dentist, \$3,760 and the florist for  
19 \$1,000. So you take off from this amount of money, then  
20 the hospital paid \$1.57 a square foot. And it hardly  
21 can be called overcharging because that amount of money  
22 hardly enough to rent storage space.

23 Q Was there any time where the partnership

J.APP.0391

1 charged JMHI a rent for the building that was over and  
2 above the mortgage payment?

3 A I told you just now, I answered to you that it  
4 was the direct --

5 MR. BETTIUS: Your Honor, he's impeaching the  
6 witness's former testimony.

7 MR. BONO: No, I'm not, Your Honor.

8 THE COURT: Let him finish.

9 MR. BETTIUS: The witness's former testimony  
10 was they took \$39,000 worth of bonds for deferred rents,  
11 and I'll turn right to the page if Your Honor --

12 THE COURT: You're free to cross-examine,  
13 Mr. Bettius. But is there some objection?

14 MR. BETTIUS: Yes. He is now impeaching his  
15 own client's former testimony in the same trial.

16 THE COURT: Objection overruled.

17 BY MR. BONO:

18 Q Do you remember the question?

19 A No. Would you repeat it because I don't know  
20 whether I answered the question.

21 Q Was there ever a time when the partnership  
22 charged rent to JMHI above the amount of the mortgage  
23 payment?

J.APP. 0392

1           A     No. But the partnership tried to accommodate  
2     Jefferson Memorial Hospital, Inc. in many ways. And the  
3     doctors, too. Like the mention that \$39,000 bond --

4           THE COURT: Sir, you've answered the question.  
5     Ask another question, Mr. Bono.

6           BY MR. BONO:

7           Q     Now, Dr. Tauber, there's been testimony in this  
8     case concerning 60,000 shares of stock that were sold in  
9     1962 in respect to Jefferson Memorial Hospital  
10    Corporation.

11          A     The date is not right. You told 1962? It  
12    wasn't in existence. 1972.

13          Q     I apologize. 1972. Thank you.

14          A     Would you repeat the question?

15          Q     Yes. What were the reasons why Jefferson  
16    Memorial Hospital Corporation sold those additional  
17    shares of stock in 1972?

18          A     We needed money.

19          Q     What was the financial condition of the  
20    hospital at that time?

21          A     We lived from day-to-day. We had no money.

22          Q     And who bought those additional shares of  
23    stock?

J.APP. 0393



1           A     The records shows it.  We --

2                   MR. BETTIUS:  I'm sorry.

3                   THE WITNESS:  The record will show it.

4                   BY MR. BONO:

5           Q     And did the stockholders -- some of the  
6 original stockholders and directors were the people who  
7 bought those additional shares?

8           A     We tried to get new doctors.  I cannot tell you  
9 exactly who bought it but the record will show it,  
10 clearly.  But the aim was to raise at \$4 value and the  
11 amount around \$240,000 what we tried to raise.  Whether  
12 old doctors, new doctors, we tried everything only to  
13 get money to continue the hospital.

14          Q     Now, at some point in time, did you hold back  
15 some shares of stock that had been issued?

16          A     Yes.  Seven and a half percent of the original,  
17 I kept it in escrow for future distribution to new  
18 doctors because at that time, I did not want to give to  
19 the existing doctors who supported the hospital.  I  
20 wanted to induce other, because the whole answer to  
21 survival was new support.  And therefore, I did not give  
22 to anybody.  Only to new doctors to attract them to come  
23 to the hospital.

J.APP. 0394

1 Q And with respect to those shares that you held  
2 in escrow, were you successful or not successful in  
3 convincing other doctors to buy the stock?

4 A No; I had very poor result. I could not sell  
5 anything.

6 Q Let me show you, Dr. Tauber, Exhibit 126.

7 THE COURT: Give Mr. Bettius a chance to find  
8 it.

9 MR. BETTIUS: I have the document.

10 THE COURT: All right.

11 BY MR. BONO:

12 Q Dr. Tauber, that is the minutes of the board of  
13 directors meeting of Jefferson Memorial Hospital  
14 Corporation on September 4, 1974. And I want to  
15 specifically direct your attention to paragraph H.

16 A Yes. What is the question, sir?

17 Q I just was directing your attention to  
18 paragraph H. Have you read that?

19 A Yes.

20 Q Now, does that paragraph, is that referring to  
21 the 60,000 shares, additional shares that were sold in  
22 1972?

23 MR. BETTIUS: It's stipulated.

J.APP.0395

1           A       Did you say 16? It was not 16. It was 60.

2                   MR. BETTIUS: 60,000. It's stipulated.

3                   THE WITNESS: The only comment I have is that  
4 it says here, two years ago when the hospital was in  
5 dire financial straits. I don't remember a day when the  
6 hospital was not in dire financial straits. So why they  
7 point to two years, I don't know.

8                   Anyhow, we needed the money. I did not succeed  
9 to get the 7 and a half percent of the total stocks.  
10 Therefore, I had to turn again to the doctors: Please,  
11 will you do it? But that is 1974 when we were already a  
12 profit organization and still the magical transformation  
13 from the nonprofit to the profit did not result in any  
14 improvement in the hospital financial situation.

15                   BY MR. BONO:

16           Q       Now, there's been some testimony in this case  
17 concerning the conversion of those stocks in 19 -- those  
18 shares in 1974 to bonds. My question is, does this  
19 paragraph describe the basis upon which those, some of  
20 those shares of stock were then converted to bonds in  
21 1974?

22           A       What happened in this case, why it was  
23 originated, that the doctors who bought the stocks, they

J.APP. 0396

1 wanted to put up as a collateral to the bank the stocks,  
2 and the bank turned them down, no money. However, if  
3 you have a bond -- at that time, the hospital owned the  
4 hospital building, the brick and mortar and the land.

5 So therefore, they came back; if you can  
6 convert our stocks to bonds, we can take the bond and  
7 then bank would accept as collateral. But as far as  
8 stock, they would not give any money.

9 Therefore, I came up with this financial  
10 innovation and asked it, let me do this one. Let me  
11 transfer it and give them. They deserve it. They did  
12 not have the money. They were at risk. And when the  
13 bank called them to pay it, they did not have it. They  
14 do not have the collateral.

15 I never saw the financial statement of the  
16 different doctors. I don't know what they did with  
17 their money. But they were coming back and told it,  
18 help us. So then I came up with this idea. If the bond  
19 is acceptable, fine. Let me give the bond, because we  
20 had faith in the hospital future. That's what I tried  
21 to radiate to everybody.

22 Q And after this conversion of some of these  
23 shares to bonds, did the doctors personally guarantee

J.APP. 0397

1 the credit line of the bank?

2 MR. BETTIUS: I object, Your Honor.

3 MR. BONO: Of the hospital?

4 MR. BETTIUS: How does he know what the doctors  
5 did?

6 MR. BONO: If it was related to the hospital --

7 THE COURT: If he knows, he can answer.

8 A What I was told by these doctors at that time I  
9 initiated the whole thing --

10 MR. BETTIUS: Hearsay.

11 THE WITNESS: Not hearsay. They said it to me  
12 and I'm telling it now here in the court under oath.

13 THE COURT: Overruled.

14 A What happened this one here, is that these  
15 doctors had money and they had security. Because when  
16 the bank felt the doctor did not have enough security,  
17 they wanted additional security. The bank wants to have  
18 everything, naturally. So that's when they handed in  
19 their stocks. They said I don't believe in the future,  
20 as the financial officer, but if you give me the bond,  
21 that's different. I mean it. And they deposit the  
22 bond. Because then they own only the bond and they give  
23 up the stocks. And I didn't convert everything, only

J.APP.0398

1 one out of four stocks.

2 MR. BETTIUS: Not responsive.

3 THE COURT: That's not responsive.

4 BY MR. BONO:

5 Q Let me ask you then, of the 60,000 original  
6 additional shares that were issued in 1972, how many  
7 were authorized to be converted to bonds in 1974?

8 A 25 percent.

9 Q Now, Dr. Tauber, did there come a time after  
10 1971 in which there was ever discussed returning to  
11 nonprofit status in the board?

12 A Yes. In the board of directors meetings, I  
13 expressed my opinion and I told to my partners we are  
14 now profit making hospital. We start profit; we pay  
15 higher amount for the drugs. We had to pay income  
16 taxes, and we still don't have any money.

17 Therefore, I asked them -- because originally I  
18 never believed that any doctor should make any money in  
19 any hospital operation. But the majority felt  
20 differently. And then I asked again, let's go back to  
21 nonprofit again because when we lost our tax exempt  
22 status, it is not written in the Bible that you cannot  
23 go back and ask it. There are certain criteria that

J.APP. 0399

1 Internal Revenue Service, I felt, that I can go back and  
2 I can reinstate the charitable nonprofit organization  
3 which I always wanted personally. But when I say I  
4 wanted --

5 MR. BETTIUS: I'm going to ask the relevance of  
6 his personal opinion with respect to these issues?

7 BY MR. BONO:

8 Q Dr. Tauber, let me ask another question. At  
9 that point in time, did you, did the board discuss the  
10 subject of trying to have another hospital operate  
11 Jefferson at that time? Was that discussed?

12 A Yes. As long as, personally, as long as the  
13 hospital alive, I do everything I can personally to go  
14 back to nonprofit hospital. The record shows that I  
15 went to Georgetown --

16 MR. BETTIUS: Your Honor, may we have a  
17 foundation in time?

18 BY MR. BONO:

19 Q Was this about 1970 --

20 A '70, '72, and before that one. Originally when  
21 we recruited the staff, as Mr. Richards' testimony  
22 showed it, it was not always fit for graduates as we  
23 characterized, but we had fine doctors, American

J.APP. 0400

1 graduated, international recognition, Dr. Hufnagel,  
2 Dr. Scully, Dr. Burtoff, Dr. Ware.

3 And my contacts, since I was in the faculty of  
4 Georgetown University, clinical professor of surgery  
5 there, I went to them and asked them, here is a  
6 hospital. Take it over. And I wanted to donate it.  
7 And later on, it's on the record, they had a good faith  
8 about it that I will succeed. And I'm sorry to say they  
9 did not want to have it even for nothing.

10 MR. BETTIUS: I'm going to object as to what  
11 their reasons were.

12 THE COURT: Objection sustained.

13 THE WITNESS: I tried --

14 THE COURT: Wait for the next question, Doctor.

15 BY MR. BONO:

16 Q What efforts did you make to interest  
17 Georgetown to operate Jefferson?

18 A To give them for nothing, come over, take it  
19 over, run the hospital, put your medical staff, surgical  
20 staff and be in charge of the whole hospital. Take it.  
21 No; overcrowded area. If you would be in a different  
22 place, it's different thing. This is not.

23 Q Now, Dr. Tauber, let me direct your attention

JAPP.0401



1 to Exhibit 785. Dr. Tauber, did you receive this  
2 memorandum from Mr. Linton?

3 A Yes, I did.

4 Q And what was the circumstances under which you  
5 received this memorandum from Mr. Linton?

6 A The reference of this memo, Mr. Linton wrote to  
7 me and raised an action I think what was started by  
8 Dr. Peters who went to his stock broker, Edgar Parrish,  
9 who worked at Wheat Securities, and to try to approach  
10 Wall Street; what can we do with this hospital? And  
11 then like the letter said --

12 MR. BETTIUS: I'm going to object to what the  
13 letter stated. And Dr. Peters, if he wants to testify  
14 to his dealings, he can take the stand.

15 THE COURT: If it's not offered for the truth,  
16 Mr. Bono, what's it offered for?

17 MR. BONO: I was just asking for the  
18 circumstances under which Dr. Tauber received this  
19 memorandum from Mr. Linton.

20 THE COURT: He can't then testify as to what  
21 others told him.

22 MR. BONO: I understand.

23 BY MR. BONO:

J.APP. 0402

1           Q     Dr. Tauber, without saying what others told  
2     you, would you just describe the circumstances under  
3     which Mr. Linton sent you this memorandum?

4           A     This memorandum is based on a letter that I  
5     received from Wheat Securities what it stated for many  
6     months --

7                     MR. BETTIUS: I'm going to have --

8                     BY MR. BONO:

9           Q     Don't state what was in the letter.

10          A     Don't state what was in the letter. Okay. And  
11     on that basis, on that letter, which I won't tell the  
12     contents of the letter, that was the result, the  
13     negative response.

14                     And then Mr. Linton wrote this letter, which I  
15     read it. I am concerned of the gossip which two or  
16     three of the community members might start about the  
17     inability of me to sell the hospital. It states it.  
18     And I wrote it down it is okay with me. Do whatever you  
19     want.

20                     BY MR. BONO:

21          Q     Now, did the board at that time approach Wheat  
22     Securities?

23          A     We approached.

J.APP. 0403

1 Q And what was the purpose of the board  
2 approaching Wheat Securities?

3 A To sell the hospital.

4 Q Now, let me show you what's been marked Exhibit  
5 784.

6 MR. BETTIUS: It's the same attempt at the same  
7 letter.

8 THE COURT: He's showing it to him. Give me  
9 your next question.

10 THE WITNESS: This is the letter.

11 BY MR. BONO:

12 Q Did you receive this letter from Wheat  
13 Securities?

14 A Yes. 19th of March, 1973.

15 Q And prior to receiving this letter, had you  
16 been in contact with Wheat Securities?

17 A Yes. But the first sentence clearly state --

18 MR. BETTIUS: I would like it to be responsive  
19 as to whether he was in contact.

20 MR. BONO: I understand, Mr. Bettius. I will  
21 do that for you.

22 A Yes. Yes.

23 BY MR. BONO:

J.APP. 0404

1 Q Okay. And what did you discuss with Wheat  
2 Securities?

3 A To try to sell the hospital.

4 Q And did you provide Wheat Securities with any  
5 documents?

6 A Financial statements.

7 Q And was this Wheat Securities' response after  
8 you had talked to them and provided the documents?

9 MR. BETTIUS: Your Honor, counsel knows there  
10 have been four or five times this letter has been  
11 tried --

12 THE COURT: He's just trying to lay a  
13 foundation, Mr. Bettius. I'll see if he can do it.

14 A Excuse me. What was the question?

15 BY MR. BONO:

16 Q Was this Wheat Securities' response to your  
17 discussions to them and your giving them financial  
18 statements?

19 A That's correct.

20 Q Prior to receiving this letter, had you  
21 directed Wheat Securities to try to sell the hospital?

22 A Yes, I did.

23 Q And did you provide them with any other

J.APP. 0405

1 information as to where or how they should do that?

2 A It happened 24 years ago, 25 years ago, almost.  
3 But usually, yeah, I can answer --

4 MR. BETTIUS: Object to usually.

5 THE WITNESS: Financial statement.

6 MR. BETTIUS: Objection.

7 THE COURT: If you recall, Doctor, what you  
8 sent them.

9 THE WITNESS: Financial statements.

10 BY MR. BONO:

11 Q Did you have discussions with anyone at Wheat  
12 Securities after you sent them the financial statements?

13 A Yes.

14 Q And what did you discuss with Wheat Securities  
15 after you had sent them financial statements?

16 A To sell it. And then when I got this letter,  
17 afterwards I talked to Edgar Parrish or a broker, tried  
18 to go back. So I did not take an answer of no very  
19 easily. So I went back and tried.

20 Q Was Wheat Securities, did they have any success  
21 in trying to sell Jefferson Hospital?

22 A No success.

23 Q Did they -- did you receive any information

J.APP.0406

1 from Wheat Securities that any parties had any interest  
2 in buying Jefferson?

3 A I know what the letter stated. I got  
4 information that nobody is interested in buying.

5 MR. BETTIUS: Object to what information he  
6 got.

7 THE COURT: Objection sustained.

8 BY MR. BONO:

9 Q As I result of these efforts and your going to  
10 Wheat Securities, were you able to find any parties that  
11 were interested in purchasing Jefferson Hospital?

12 A Nobody was interested.

13 Q Am I correct, Dr. Tauber, that after you  
14 received this letter, you went back to Wheat Securities  
15 and asked them to try again?

16 A Yes.

17 Q And you spoke to Mr. Parrish?

18 A Edgar Parrish.

19 Q And what happened at that point?

20 A Nothing.

21 Q Did they -- were you informed at a later point  
22 that they had tried again?

23 MR. BETTIUS: Object what he was informed.

J.APP. 0407

1 THE COURT: What is that offered for, Mr. Bono?

2 MR. BONO: Okay.

3 BY MR. BONO:

4 Q After you told Wheat Securities to go back and  
5 try again to sell the hospital, were there any parties  
6 that were interested in possibly purchasing Jefferson?

7 A They said to me if there is any change and if  
8 there is any buyer --

9 MR. BETTIUS: Object to what they said.

10 THE COURT: Can't you phrase it, did they  
11 respond -- I guess the question is, as a result of all  
12 of his efforts with Wheat Securities, did he ever find  
13 anybody with whom he conferred, any prospective buyer  
14 with whom he conferred about selling the hospital?  
15 That's the question. I assume the answer is no. But  
16 you can ask it that way.

17 THE WITNESS: I never went to meet a third  
18 party who was interested. I never saw anybody.

19 BY MR. BONO:

20 Q Now, did you make any attempts to interest  
21 Northern Virginia Doctor's Hospital in perhaps  
22 purchasing Jefferson Hospital?

23 A Yes. Through Mr. Linton, the administrator.

J.APP. 0408

1 Q And what did you do with respect to Mr. Linton?

2 A He was a very kind person, and I asked him that  
3 he be the one to approach Northern Virginia, whether  
4 they are interested in buying us.

5 Q Did you direct him to do that?

6 A Yes, I did. Not only I did it; the whole board  
7 did it.

8 Q Did Mr. Linton report back to you and the  
9 board?

10 A Yes.

11 Q And what did he report to the board?

12 A They are not interested.

13 MR. BONO: Your Honor, I offer into evidence  
14 Exhibit 74.

15 MR. BETTIUS: Same objection.

16 THE COURT: The objection is still sustained,  
17 Mr. Bono.

18 BY MR. BONO:

19 Q Dr. Tauber, there was some evidence in this  
20 case that the charter --

21 MR. BETTIUS: I object to counsel telling him  
22 what the evidence is.

23 THE COURT: I'll let him frame the question.

JAPP.0409



1 BY MR. BONO:

2 Q Am I correct, Dr. Tauber, that in April of  
3 1973, the State of Maryland revoked the charter of the  
4 Maryland corporation of JMHI?

5 A If you state the date. I don't have the record  
6 in front of me, but that appears to be right.

7 Q All right. Now, what were the circumstances  
8 under which the Maryland charter was allowed to be  
9 revoked?

10 MR. BETTIUS: The document speaks for itself,  
11 Your Honor.

12 THE COURT: Objection overruled.

13 THE WITNESS: What is the question, please?

14 BY MR. BONO:

15 Q What were the circumstances under which the  
16 board permitted the charter of the Maryland corporation  
17 to be revoked?

18 A We did not pay the registration fee.

19 Q And did you have -- did the board seek the  
20 advice of anyone with respect to letting the franchise  
21 fees not be paid?

22 A Yeah, that was a recommendation of our tax  
23 lawyer, the late Mr. Bernard Krakow.

J.APP.0410

1 Q Now, Jefferson Hospital had an emergency room;  
2 correct?

3 A Yes, we had.

4 Q Was Jefferson required by the City of  
5 Alexandria to maintain an emergency room?

6 A Right.

7 Q Now, did Jefferson encounter any problems in  
8 operating its emergency room in Alexandria?

9 A To have an emergency room is always a losing  
10 proposition. Therefore, we were accused by Alexandria  
11 Hospital that we don't have an ER because we don't want  
12 to accept --

13 THE COURT: Can I get some time frame?

14 THE WITNESS: Yeah, 1965. 1965, March the  
15 15th. And they said it, we don't want to have an ER  
16 because it's a money losing proposition.

17 Therefore, we got the license, and it is stated  
18 in the City of Alexandria that this license is subject  
19 to having an ER. And it is on the record of the City  
20 Hall that we had to have it. And now we had the ER.  
21 And we were avoided by the Alexandria Rescue Squad,  
22 through the lobbying opposition of Alexandria Hospital.

23 MR. BETTIUS: Your Honor, I object to that.

J.APP.0411

1 THE COURT: Just a minute.

2 MR. BETTIUS: He's concluding about the  
3 lobbying efforts of the Alexandria Hospital?

4 THE COURT: There wasn't any question pending  
5 anyway, Mr. Bono. You just asked him if he was required  
6 by the City to have an emergency room and the answer to  
7 that was yes, we were.

8 BY MR. BONO:

9 Q After you were required by the City to have an  
10 emergency room, what problems did Jefferson encounter in  
11 operating its emergency room?

12 A The Alexandria Rescue Squad got orders not to  
13 bring patients --

14 MR. BETTIUS: I'm going to object to that, Your  
15 Honor.

16 THE WITNESS: You asked me, I answered.

17 THE COURT: Just a minute, Doctor, please.

18 MR. BETTIUS: That's hearsay about what orders  
19 the Alexandria Rescue Squad got. How does he know it?  
20 There's no foundation.

21 THE COURT: What does this have to do with the  
22 case, Mr. Bono? Tell me that.

23 MR. BONO: It demonstrates, Your Honor, the

J.APP.0412

1 difficulty that JMHI was in. And it goes directly to  
2 whether there was, was there any value in the hospital  
3 and the problems that it encountered and what its  
4 operations were during this very period.

5 THE COURT: I'll permit him to testify about it  
6 as to his understanding of why they were having problems  
7 with the emergency room. But it's not admitted for the  
8 truth of those statements.

9 MR. BONO: I understand.

10 BY MR. BONO:

11 Q What was your understanding --

12 A I wanted to clarify. This fact of Alexandria  
13 Hospital was not done behind the scene. They came out  
14 openly. They opposed it. And they said constant --

15 MR. BETTIUS: The best evidence is the record.

16 THE COURT: Doctor, it would help immensely if  
17 you would simply answer Mr. Bono's question and not go  
18 on to expound. That's when we've created the problems,  
19 when you've gone beyond the answer and tried to expound  
20 on it. So just try to answer his questions.

21 BY MR. BONO:

22 Q Dr. Tauber, what was your understanding about  
23 the emergency room?

J.APP.0413

1           A       It was difficult because we did not get any  
2 patients from Alexandria Rescue Squad.

3           Q       Now, Dr. Tauber, the board of JMHI, that was  
4 composed of -- and JMHC, was composed of only doctors;  
5 is that correct?

6           A       That's correct.

7           Q       And what was the reason for that?

8           A       We wanted to have a board, which I think was  
9 the same in Northern Virginia, too, which consist of  
10 doctors who knows the medical profession and the problem  
11 with the hospital and no laymen. That was our opinion.

12          Q       And did the board make a determination as to  
13 whether laymen should serve on the board of Jefferson?

14          A       The only layman who served, that was  
15 Mrs. Scully, because Dr. Scully was almost the busiest  
16 practitioner in the Washington area. Many times he  
17 could not attend the board meeting and that's when we  
18 decided that the Scully family will be represented by  
19 his wife. Otherwise, only medical doctors or other  
20 health professional became a member of the board.

21          Q       What was the reason the board made that  
22 judgment?

23               MR. BETTIUS: Your Honor, I'm going to object.

J.APP. 0414

1 I don't know the materiality to the case.

2 THE COURT: Objection overruled.

3 A The reason was that usually in a hospital board  
4 when laymen is there to get the community contribution  
5 to the hospital. But since we never accepted, never  
6 solicited any contribution from the community, it would  
7 not make sense to put someone on the board who has no  
8 knowledge to serve on the board.

9 Q Dr. Tauber, as a result of the conversion from  
10 nonprofit to for profit in the period of time in the  
11 1970s, was any money distributed to any of the directors  
12 or shareholders?

13 A Not a single penny.

14 Q Now, Dr. Tauber, throughout your lifetime you  
15 made charitable donations?

16 MR. BETTIUS: Your Honor, I don't want to seem  
17 cold, and I will acknowledge that Dr. Tauber has made  
18 charitable donations. If he made any here, I think  
19 those would be potentially relevant. And I don't want  
20 to seem cold by not letting the man talk about his  
21 charitable donations, but I think they are entirely  
22 collateral. And while they may be laudable, they have  
23 no real relevance in this proceeding.

J.APP. 0415

1 THE COURT: What's the purpose?

2 MR. BONO: Your Honor, they are directly  
3 relevant in this case. From day one in this case, the  
4 Attorney General has come into this court and said point  
5 blank that Dr. Tauber has stolen money from a charity,  
6 abused a charity, has misappropriated funds, has ripped  
7 off a charity. These accusations go directly to the  
8 integrity and character of Dr. Tauber. And when they  
9 come into this court and make these accusations, this  
10 court is entitled to know the integrity and the  
11 character of Dr. Tauber.

12 And it is -- and I am entitled to put in  
13 evidence of Dr. Tauber's history of charitable donations  
14 because it directly goes to the point of the accusations  
15 made by the Attorney General in this case. They can't  
16 come in and say he steals money from a charity and then  
17 tell me I cannot put in evidence, evidence that he is  
18 not that person, that he does the opposite, and the  
19 facts show that he contributes money to an extent that  
20 shows that he couldn't possibly engage in the motivation  
21 that they're accusing him of.

22 MR. BETTIUS: May I be heard?

23 THE COURT: Yes, sir.

J.APP.0416

1 MR. BETTIUS: The issue here isn't what the  
2 respondent did in his personal life. For instance, John  
3 D. Rockefeller left millions to charity. In his own  
4 personal dealings, he was not necessarily a charitable  
5 person.

6 This hospital was featured by strife and  
7 fighting between Dr. Tauber and his associates from day  
8 one. If he -- it's not what Dr. Tauber did. It's what  
9 the board did. It's what the hospital did.

10 He happens to be a respondent because he has  
11 either received or has been the beneficiary of the  
12 board's action. These aren't individual suits against  
13 Dr. Tauber personally. These are suits against the  
14 board in connection with the assets. If he had  
15 contributed to the assets by charitable donation, that  
16 might have some relevancy. If the other doctors  
17 contributed by charitable donation, this is entirely  
18 collateral. It may deal with his personal dealings.

19 We do know in connection with charity that he  
20 did take a \$15 a share deduction for shares that he had  
21 paid \$4 for in his own charitable foundation. And Your  
22 Honor, it's opening up a whole series -- and that's  
23 material. That is material. What he did within

J.APP. 0417



1 transactions to this hospital is material.

2 But this is not a suit that says that  
3 Dr. Tauber did anything. It says Jefferson Memorial  
4 Hospital Corporation board of directors did things. He  
5 says he may have been personally opposed to them. But  
6 his own testimony has been once they voted to do this, I  
7 supported them 100 percent.

8 Now, he may have been against it. And he says  
9 he was against it. But he said once they decided to do  
10 it -- and I have the letters and we have it in  
11 evidence -- I supported them 100 percent. It's  
12 collateral, and I object.

13 THE COURT: I'll permit it, Mr. Bono, in view  
14 of the nature of the claims by the plaintiff. It's a  
15 little unusual to get into character evidence in a civil  
16 case unless it directly relates. I suppose in view of  
17 the nature of the accusations, I'll do that. But I'm  
18 not suggesting that it opens up any other doors. But if  
19 you put Dr. Tauber's character in issue, then it becomes  
20 an issue in the case. It's up to you to do it or not.  
21 All right. Go ahead.

22 MR. BONO: Your Honor, I will proceed quickly.

23 THE COURT: All right. Go ahead.

J.APP.0418

1 BY MR. BONO:

2 Q Dr. Tauber, over your lifetime, what charitable  
3 donations have you made and to what organizations?

4 MR. BETTIUS: Did you hand him a paper?

5 MR. BONO: Yes, for him to use.

6 MR. BETTIUS: You did?

7 MR. BONO: Yes, I did.

8 MR. BETTIUS: When?

9 MR. BONO: Just now.

10 MR. BETTIUS: We would like to know what the  
11 exhibit is.

12 THE COURT: Is it an exhibit in this case?

13 MR. BONO: No, Your Honor, it's just used to  
14 reference --

15 MR. BETTIUS: May we see it?

16 THE COURT: You can see it before  
17 cross-examination, Mr. Bettius. I am assuming you're  
18 using this to refresh the doctor's recollection?

19 MR. BONO: Yes, Your Honor.

20 THE COURT: All right.

21 THE WITNESS: I don't understand it. Is the  
22 issue my donation or not. Because --

23 BY MR. BONO:

J.APP.0419

1 Q Yes, you may testify, Dr. Tauber. My question  
2 is --

3 A I be happy to testify, but whatever I do in  
4 charity is my private. That's how I feel about it. But  
5 I'm accused of something and I want to use it.

6 MR. BETTIUS: Your Honor, I'm sorry. I didn't  
7 understand what the witness said.

8 THE COURT: He's not responding. He indicated  
9 he's not happy about testifying about these matters  
10 because his charitable activities are his private  
11 business.

12 MR. BETTIUS: Do I understand he's going to  
13 testify or not?

14 THE COURT: I don't know. Mr. Bono needs to  
15 follow that up with another question.

16 THE WITNESS: I will answer, but I would like  
17 to ask the Court, Your Honor --

18 MR. BETTIUS: I object.

19 THE COURT: Wait for the question. Let's see  
20 if Mr. Bono has another question.

21 BY MR. BONO:

22 Q Dr. Tauber, to what organizations have you made  
23 charitable donations?

J.APP. 0420

1           A     Georgetown University Medical School; Mayo  
2     Foundation; Texas Heart Institute.

3           MR. BETTIUS: Your Honor, I have no objection  
4     to this list being made an exhibit. I object to it but  
5     Your Honor can take it and we don't have to go through  
6     this.

7           THE COURT: I'll let him put on whatever he  
8     wants.

9           A     Touro College; Tauber Institute for Holocaust  
10    at Brandeis University; Boston University; Holocaust  
11    Center of Northern California; Neutrophil Research Fund  
12    of Boston; Howard University, College of Medicine; Bar  
13    Ilan University; University of Maryland; American  
14    University; Holocaust Memorial Museum; District of  
15    Columbia Jewish Community Center; George Washington  
16    University; Bonaventure University; Sibley Memorial  
17    Hospital; Jewish Day School in Montgomery County,  
18    established a gymnasium; Montifore Hospital in New York;  
19    Archdiocese of Washington; Treatment and Learning Center  
20    in Montgomery County; Washington Hebrew Congregation  
21    Library; Jewish Heritage Museum in New York; Laszlo N.  
22    Tauber Charitable Foundation; Israel Academy of Sciences  
23    and Humanities; Ben Gurion University; University of

J.APP.0421

1 Washington, Seattle; Yeshiva University; Kiryat Ungavar,  
2 Jerusalem and Lubavitch.

3 THE COURT: Show that to Mr. Bettius.

4 MR. BONO: Your Honor, may I ask that I not be  
5 forced to show this to Mr. Bettius? I'm not getting  
6 into the amounts of the donations, and the list is what  
7 he read, is just a list --

8 THE COURT: Do you really need that,  
9 Mr. Bettius?

10 MR. BETTIUS: No, Your Honor.

11 MR. BONO: Thank you, Mr. Bettius.

12 MR. BETTIUS: I would like to continue my  
13 entire objection.

14 THE COURT: I understand.

15 BY MR. BONO:

16 Q Now, finally, Dr. Tauber, was there a point in  
17 time when the hospital sought to increase the number of  
18 licenses, the license for the number of beds at the  
19 facility?

20 A Right, it was.

21 Q And when did that occur?

22 A I think April, 1970.

23 Q What were the circumstances under which the

J.APP. 0422

1 hospital sought an increase in the number of licensed  
2 beds?

3 A Alexandria Hospital had 165 beds and made an  
4 application to increase it to 350 beds. That was our  
5 calculated business decision; that is a point in time  
6 that Alexandria Hospital will not be able to oppose us,  
7 I just felt, if we apply because we have enough parking  
8 space and to increase the licensed beds to 275. And it  
9 was correct. And we received a 275 bed license.

10 Q And at that point, what was -- what did you  
11 show in order to get the license?

12 A The only requirement was to show that we have  
13 enough parking space to justify the number of beds.

14 Q Did the hospital, was the hospital ever in a  
15 position to physically go forward after that and expand  
16 that number of beds?

17 A No, that was the maximum that we could have  
18 gotten. But at that time, we had a license for 150  
19 beds. But we had problem, too; we had patient for 120  
20 beds. And that was exactly nothing else than a business  
21 decision that we did not want to miss the opportunity  
22 that Alexandria Hospital cannot oppose us. So we went  
23 in and we got it.

J.APP. 0423

1 Q Dr. Tauber, if I might go back for a moment to  
2 Exhibit 784. After you received the Wheat Securities  
3 letter, what conclusions did you draw?

4 MR. BETTIUS: I'm going to object to what  
5 conclusions he drew.

6 MR. BONO: As chairman of the board.

7 MR. BETTIUS: I don't care as chairman of the  
8 board. It's what did the corporation do.

9 THE COURT: I assume the answer you anticipate  
10 is that they couldn't find a buyer for the hospital.  
11 Hasn't that already been covered?

12 MR. BONO: Well, Your Honor, I'm going to try  
13 to lay a foundation for the admissibility.

14 THE COURT: All right. Go ahead.

15 MR. BETTIUS: I have another problem with it,  
16 Your Honor. It comes to an issue that I think the Court  
17 has to decide on relevance and materiality.

18 When did the hospital allegedly convert? And I  
19 think this is as good a time to bring this issue up  
20 because, Your Honor, it allegedly converted in '71. It  
21 doesn't matter what they did in '73 or '74 or '75. And  
22 it comes to an issue of relevance.

23 I don't think the Commonwealth in this case has

J.APP.0424

1 to defend in this part of the case a moving target. And  
2 as I understood Mr. Bono's statement in opening, the  
3 hospital converted and assumed all the assets and all  
4 the liabilities in 1971. So this testimony, if that's  
5 true, has no relevance.

6 THE COURT: Objection overruled.

7 BY MR. BONO:

8 Q May I reask the question? What conclusions did  
9 you as chairman of the board draw after receiving the  
10 Wheat Securities letter, which is Exhibit 784?

11 A As the letter said, and we don't fight about  
12 it, it's not a marketable hospital and they could not do  
13 anything.

14 Q What did the board -- how did that conclusion  
15 you drew after receiving that letter affect the actions  
16 of you and the board?

17 A The letter speaks for itself. Accept it, what  
18 the letter stated, that they could not find a buyer.

19 MR. BONO: Your Honor, I will again offer the  
20 letter to show the state of mind of the board of  
21 directors that the hospital --

22 THE COURT: The problem with the letter,  
23 Mr. Bono, is that there are assertions of reasons given

J.APP. 0425



1 by someone outside of this court as -- my recollection  
2 is, and it's a little bit blurred, quite frankly, at  
3 this stage as to whether it was in this session or the  
4 last session, but somebody in this case has already  
5 testified as to what the problems were in selling the  
6 hospital about this time period, anyway. So it may well  
7 be in the record.

8 But the letter still contains hearsay  
9 statements from someone out of court that you're  
10 offering because you want me to believe them.

11 MR. BONO: No, Your Honor. I've offered the  
12 letter to show a state of mind of the board of  
13 directors. The state of mind of the board of directors  
14 was the hospital was not marketable. And that is a key  
15 statement --

16 THE COURT: Dr. Tauber has already testified to  
17 that. And I assume the answer was after they got the  
18 letter, they made no further effort to sell the  
19 hospital.

20 MR. BONO: In fact, he testified that he went  
21 back --

22 THE COURT: Well, he went back. But I mean  
23 after those efforts.

J.APP. 0426

1 I'll sustain the objection to the letter,  
2 Mr. Bono, because it contains factual assertions made by  
3 an out-of-court declarant that you are asking me to  
4 accept as true.

5 MR. BONO: One moment, Your Honor.

6 THE COURT: All right.

7 MR. BONO: I have no further questions.

8 THE COURT: Take a short recess, Mr. Bettius,  
9 before you cross-examine.

10 (A brief recess was taken.)

11 THE COURT: Doctor, if you'll resume the stand,  
12 please.

13 CROSS-EXAMINATION

14 BY MR. BETTIUS:

15 Q Doctor, I would like to discuss with you this  
16 1972 stock issue. Do you recall the board meeting at  
17 which this issue was authorized?

18 A Would you give me that?

19 Q I ask you, do you remember the board meeting at  
20 which the 1972, 60,000 share stock issue was authorized?

21 A Yes, I do.

22 Q And will you tell me who moved that that stock  
23 be issued?

J.APP. 0427

1 A I don't remember who.

2 Q It was you, wasn't it, Doctor?

3 A The record speaks for itself. If I was the  
4 one, then I remember that 60,000 shares was --

5 Q And you indicated, did you not, that you tried  
6 to sell it to other people and no one wanted it?

7 A That's correct.

8 Q Isn't it true, Doctor, in making the motion,  
9 you limited the people who could buy it to the doctors  
10 who had purchased shares or had exchanged shares in JMHA  
11 in 1971? Do you remember that?

12 A Would you be kind to ask the question again?

13 Q In the very motion that you made that  
14 authorized that stock, you limited it, its sale, to the  
15 doctors who were already a part of JMHC; do you remember  
16 that?

17 A I don't remember that.

18 Q Do you also -- all right. I'll come back to  
19 that, Doctor.

20 Would that meeting have occurred about May, the  
21 end of May of 1972? That's your recollection?

22 A Without seeing accurately the date, I can't  
23 tell. It was approximately that time.

J.APP. 0428

1           Q     Okay. And is it not true, Doctor, that just a  
2     few weeks before that, both JMHI and JMHA had been  
3     advised that their consequences, the consequences of the  
4     revocation of tax exempt status and the amounts were  
5     made known? Just a few weeks before that stock issue,  
6     hadn't the IRS made known the consequences of the  
7     revocation of charitable status?

8           A     I don't know. You have to show me the  
9     document.

10          Q     I'm going to put all this together, Doctor, and  
11     I promised Mr. Bono yesterday and he said I didn't do  
12     it, but I'll get it done today.

13                 Did you have another problem that you needed to  
14     solve with those shares? Or can you tell us if you had  
15     a problem with Dr. Small that you needed to solve with  
16     the issuance of those 60,000 shares?

17          A     I think that was a problem that some of the  
18     doctors, I think Dr. Small, needed to pay for the share.  
19     And therefore, I insisted that they have to pay it.

20          Q     Doctor, I think you're talking about 1971. And  
21     I think I understand. But in 1972 with this 60,000  
22     share issue, did you specifically make any provision for  
23     Dr. Small? Do you remember?

J.APP. 0429

1 A No. Show me the documents and I can respond.

2 Q Dr. Tauber, you have stated that you personally  
3 opposed the transaction that occurred in 1971 proposed  
4 by Mr. Reeves?

5 A Personally, yes.

6 Q Personally you opposed it. It was undertaken  
7 for only one reason, wasn't it, the transaction? Let me  
8 back up a second and be even more specific than that.

9 There was only one reason, was there not, in  
10 1971, and no other, to convey the assets, whatever they  
11 were, of JMHI to JMHC, only one reason?

12 MR. BONO: Your Honor, I object. This is  
13 completely repetitious --

14 THE COURT: We've been through this. It's in  
15 the transcript. I've read it, Mr. Bettius.

16 MR. BETTIUS: Your Honor, the other part that I  
17 want from it is --

18 THE COURT: All right.

19 BY MR. BETTIUS:

20 Q They did it because they thought they were  
21 going to make a fortune, didn't they?

22 MR. BONO: Your Honor, this was not the subject  
23 of any part of my direct testimony with Dr. Tauber this

J.APP. 0430

1 morning because Dr. Tauber was called in their case in  
2 chief by Mr. Bettius in the trial. He has already gone  
3 through the 1970, '71 transaction at length. This is  
4 well beyond any area that I ever touched on.

5 THE COURT: I don't think it was covered in  
6 direct, was it, Mr. Bettius?

7 MR. BETTIUS: Your Honor, they are talking  
8 about the necessity of this conversion because they  
9 don't have any money and it's a desperate situation and  
10 they have no assets.

11 THE COURT: Dr. Tauber wasn't asked about that  
12 on direct. He was asked about the conversion from  
13 profit to nonprofit. He was asked about his loans.

14 MR. BETTIUS: That's what this is. Your Honor,  
15 that's what --

16 THE COURT: The first one, profit to nonprofit.  
17 He was asked about that. And he was asked about  
18 advances that he made. He was asked about the bonds  
19 that were used. He was asked about rent. He was asked  
20 whether the 60,000 shares. I can't find anything in  
21 here where Mr. Bono asked him about the '70 or '71  
22 transactions, and they have been covered in his prior  
23 testimony.

J.APP. 0431

1 MR. BETTIUS: All right. Let's turn to the  
2 minutes, and Ms. Harper, will you give Dr. Tauber the  
3 minutes of -- Exhibit 93?

4 BY MR. BETTIUS:

5 Q Would you look at page 00528, item D?  
6 Dr. Tauber recommended an additional 60,000 shares of  
7 Jefferson Memorial Corporation stock be sold at \$4 per  
8 share. He further recommended the present stockholders  
9 be given a right to subscribe to the aforementioned  
10 shares at a 4 to 1 ratio. If all the shares are not  
11 subscribed to, 10,000 shares to be sold to Dr. Small.

12 A Yes, the record states that exactly what you  
13 said.

14 Q Do you think that's correct?

15 A Yes, it should be.

16 Q And in fact, before that issue had even been  
17 sold, you had arranged, had you not, for 100 percent  
18 financing of the stock with a Mr. McDonald at a local  
19 bank. Do you remember that? Had you not arranged that  
20 there be financing for 24 doctors for the entire amount  
21 of the stock issue?

22 A You mentioned Mr. McDonald who is now president  
23 and chairman of the Signet Bank?

J.APP. 0432

1 Q I'm just asking you --

2 A I'm asking you if that McDonald -- which bank?  
3 Bank of Virginia?

4 Q Yes.

5 A Yes.

6 Q You had even before the issue was -- the  
7 resolution for the issue, had already talked to the bank  
8 and had arranged for the entire 240,000 to be financed  
9 by a bank for these doctors?

10 A 240,000.

11 Q 240; isn't that correct?

12 A That's correct.

13 Q You held their hand every day of the week,  
14 didn't you, Doctor?

15 A What are you asking?

16 MR. BONO: Objection.

17 MR. BETTIUS: I withdraw the question.

18 BY MR. BETTIUS:

19 Q And Doctor, do you remember what the interest  
20 rate was that you had arranged for that stock?

21 A Really not.

22 Q Financing?

23 A No.

J.APP. 0433



1           Q     Isn't it true, Doctor, that the bank itself at  
2 this time, or near this time, was able to go out and  
3 procure financing in amounts approximating \$200,000 at  
4 one and a half over prime if they kept compensating  
5 balances, and two percent if they did not keep  
6 compensating balances at the Bank of Virginia?

7           A     I cannot answer to you now unless you show me  
8 the record. But it sounds correct.

9           Q     Well, I'm talking about the bank's ability.  
10 You were aware that the hospital was able to procure  
11 bank financing, were you not, at 2 percent over prime at  
12 the Bank of Virginia for \$200,000?

13          A     I don't know. I cannot answer to you.

14          Q     I'm just going to ask you if you remember that.

15          A     I don't remember.

16          Q     All right. Do you recall that you and  
17 Dr. Small had had a dispute where legal action was  
18 threatened?

19          A     I had so many legal actions that I don't  
20 remember specifically. But if you show the document  
21 that it is, I will tell you.

22          Q     Well, Doctor, I'll do that. But I just  
23 really -- you testified a lot from memory this morning.

J.APP. 0434

1 And I want to see how good your memory is about some of  
2 these things. I won't trick you and I'll give you the  
3 document.

4 A Give me the document and then I'll answer.

5 Q I don't want to get into an argument with you,  
6 Doctor. I'll conduct the examination and everybody will  
7 take care of you, I promise.

8 MR. BONO: Your Honor, I --

9 THE COURT: Just ask the question.

10 BY MR. BETTIUS:

11 Q Yes, sir. Doctor, in connection with the  
12 transaction in 1971, Dr. Small became displeased with  
13 certain actions you took, did he not?

14 A Show me the documents. There were so many  
15 disputes, I cannot report which one.

16 Q Do you remember Dr. Small being upset about the  
17 stock he got as a result of the '71 transaction?

18 A Show me the documents and I will tell it. It  
19 speaks for itself.

20 Q Do you remember telling me just a few minutes  
21 ago that he was upset about the percentage that he got?

22 A I can't answer. Show me the documents and I  
23 will do it.

J.APP. 0435

1 Q All right. Doctor -- and I don't want to open  
2 an embarrassing subject, but in terms of your charitable  
3 contributions on that list, none of them are to JMHI,  
4 are they?

5 A It is not included because that list, as far as  
6 I included on it was the last ten years.

7 Q Doctor, you never made a charitable  
8 contribution of donated capital to JMHI, did you?

9 A That's not true.

10 Q Can you tell me when you donated a -- made a  
11 charitable donation to JMHI?

12 A Yes. In 19 -- I think in December, 1964 and  
13 '65, I donated land to the Jefferson Memorial Hospital,  
14 Inc.. And then I donated to the Jefferson Memorial  
15 Hospital, Inc. from the Tauber Foundation 5 percent  
16 land.

17 Q It wasn't a charity then, was it, Doctor?

18 A Which one?

19 Q When you made those donations, it was a for  
20 profit hospital, wasn't it?

21 A No, sir.

22 Q Do you remember when those conveyances took  
23 place?

J.APP.0436

1       A     Yes. It was, I think, if I'm correct, it was  
2     December 31st, 1964 and January 2nd, 1965.

3       Q     Do you know when you initiated the process to  
4     become a charity?

5       A     Before we opened the hospital.

6       Q     No, sir. You amended -- do you remember when  
7     you first amended your articles to become  
8     not-for-profit?

9       A     I don't know what -- I think around '64.

10      Q     The first time that the amendment occurred,  
11     you're correct, was August 10, 1964; is that correct?

12      A     That's correct.

13      Q     Do you remember when you applied to the federal  
14     government for charitable exempt status?

15      A     I can tell you only just before we opened the  
16     hospital.

17      Q     The application to become a charity was still  
18     in the application phase in 1965; was it not?

19      A     I cannot answer.

20      Q     Show the witness Exhibit 593.

21      A     Yes, I have the record here.

22      Q     And it indicates that you're in the process of  
23     making application, does it not?

J.APP. 0437

1           A       The letter states here that application will be  
2     made for exemption, that's right, dated on the 20th of  
3     May, 1965.

4           Q       Okay. Now, would you show the witness Exhibit  
5     603?

6           A       Yes, sir.

7           Q       In August of 1966, you're still making  
8     application, aren't you, Doctor?

9           A       No. This letter says, which I wrote August 8,  
10    1966 to Mr. Bernard Krakow, our tax lawyer, in regard to  
11    Jefferson Memorial Hospital application for the  
12    exemption, I submit the following. As you know, this  
13    corporation was formed as a profit --

14          Q       I'm asking you, it says in connection with  
15    Jefferson Memorial Hospital's application for tax  
16    exemption. You're still applying, aren't you, Doctor?

17          A       No. I wrote in that one that the reason that  
18    this hospital, from the very beginning, the 15th of  
19    March, 1965, worked as a nonprofit organization. But  
20    the Internal Revenue Service consider it during the time  
21    that we operate as a nonprofit.

22          Q       Doctor, it wasn't until, I think, 1967, was it,  
23    that the Service finally granted you tax exempt status?

J.APP. 0438

1       A     Yes. But that doesn't mean that we did not  
2     operate as a nonprofit organization. Official approval  
3     comes usually at a later date, because they accepted  
4     what we did. And that's what we did, as I stated --

5       Q     Doctor, did I understand you to say that in  
6     1974, the hospital was in bad shape, in trouble; right?

7       A     No, I said that the hospital was in bad shape  
8     all the time.

9       Q     But in 1974, then, it was in bad shape, too?

10      A     Bad shape all the time.

11      Q     Do you remember purchasing the stock of a  
12     Dr. Sibay?

13      A     Dr. Sibay.

14      Q     Sibay. I'm sorry. And do you remember some  
15     discussion about whether you had the authority to do  
16     that.

17      A     I remember. With Dr. Sibay, I wanted to  
18     purchase because he was dissatisfied and he wanted to  
19     get out.

20      Q     Did you believe the stock of the corporation to  
21     be valuable in 1974?

22      A     Since it was not on the open market,  
23     everybody's judgment is -- everybody has to make that

J.APP. 0439

1       A     Yes. But that doesn't mean that we did not  
2 operate as a nonprofit organization. Official approval  
3 comes usually at a later date, because they accepted  
4 what we did. And that's what we did, as I stated --

5       Q     Doctor, did I understand you to say that in  
6 1974, the hospital was in bad shape, in trouble; right?

7       A     No, I said that the hospital was in bad shape  
8 all the time.

9       Q     But in 1974, then, it was in bad shape, too?

10      A     Bad shape all the time.

11      Q     Do you remember purchasing the stock of a  
12 Dr. Sibay?

13      A     Dr. Sibay.

14      Q     Sibay. I'm sorry. And do you remember some  
15 discussion about whether you had the authority to do  
16 that.

17      A     I remember. With Dr. Sibay, I wanted to  
18 purchase because he was dissatisfied and he wanted to  
19 get out.

20      Q     Did you believe the stock of the corporation to  
21 be valuable in 1974?

22      A     Since it was not on the open market,  
23 everybody's judgment is -- everybody has to make that

J.APP. 0439

1 definition of what is value. And I say \$4. It meant  
2 that I'm willing to buy it back at \$4. And if he sold  
3 it for \$4, he believed that \$4 is a fair market price.

4 Q So if it sold at \$4, that was the fair market  
5 price; right?

6 A I would not say that. It was a price that we  
7 were willing to pay to Dr. Sibay \$4 because we had other  
8 controversy with him. Therefore, we made a business  
9 judgment that we are willing to pay \$4.

10 Q Doctor, would you just --

11 MR. BONO: Would you let him answer?

12 THE COURT: Let him finish. You have to let  
13 him finish.

14 MR. BETTIUS: He's not being responsive, Your  
15 Honor. I asked him the question, was it worth \$4 or  
16 less than \$4?

17 MR. BONO: He's arguing now.

18 THE COURT: I think he answered it,  
19 Mr. Bettius.

20 MR. BETTIUS: I'm sorry. I didn't hear the  
21 answer.

22 THE COURT: He indicated that you set your own  
23 price between the buyer and the seller.

J.APP.0440



1 THE WITNESS: It doesn't reflect the market.

2 BY MR. BETTIUS:

3 Q Would you show the witness Exhibit 124?

4 A Yes, sir.

5 Q I want you to read it and see if that refreshes  
6 your recollection what occurred, Doctor.

7 A Should I read the whole thing?

8 Q Let me see if I can speed that process up for  
9 you. I want you to read those portions that deal with  
10 the purchase of Dr. Sibay's stock?

11 A Sibay.

12 Q Sibay. I'm sorry.

13 A Will you be kind to show me where Dr. Sibay is?

14 Q It's on the first page. And the part I refer  
15 to is, Mr. Linton stated that he would like to get a  
16 policy position by the board relative to the authority  
17 of the hospital board president to take action prior to  
18 board approval. The specific question is whether  
19 Dr. Tauber, the president of the corporation had  
20 authority to authorize to direct the hospital  
21 administrator to redeem Dr. Sibay's stock without the  
22 matter first having been presented to the board of  
23 directors for approval or disapproval. This problem

J.APP.0441

1 arises because a member of the board objected to the  
2 hospital corporation redeeming the stock and indicated  
3 his doubt that anyone has the authority to take such  
4 action of this kind without the approval of the board.

5 Dr. Tauber explained as he directed the  
6 administrator to redeem that he -- I think it's that he  
7 had directed the administrator to redeem the stock.  
8 Primarily he felt the -- something agreed price of \$4  
9 was well below the market price.

10 MR. BONO: Your Honor, I object. He's misread  
11 the document. It doesn't say well below.

12 MR. BETTIUS: What does it say, Mr. Bono? It  
13 says it was below a fair market price.

14 MR. BONO: That doesn't say well below.

15 MR. BETTIUS: We'll let the Court draw the  
16 conclusion from the next line. Was below the market  
17 price and the hospital could sell the stock for a  
18 \$20,000 profit.

19 THE WITNESS: What is the question?

20 BY MR. BETTIUS:

21 Q You felt that 4,000 -- \$4 a share was below  
22 market value for the stock, and that you had achieved  
23 for the hospital a purchase of its stock at \$4 and it

J.APP. 0442

1 was worth more than \$4. It was worth \$20,000 more.

2 A No. You asked me to answer this question. I  
3 told you that Dr. Sibay asked to redeem his stocks. He  
4 wanted to get out. And there was a good consideration  
5 to do that. Therefore I advised, let me buy it back for  
6 \$4, regardless that in the future we can sell it later  
7 for a higher amount or not. But that was money. And  
8 then you read it very carefully. They wanted to give me  
9 the authority to do this one in the future and I  
10 declined. I didn't want to --

11 Q Doctor, did you not say that the stock was  
12 worth more than \$4 a share? And I'll tell you the  
13 number of shares we're dealing with. The value you  
14 placed on the stock at that time was \$6 a share, was it  
15 not?

16 MR. BONO: Your Honor, the document speaks for  
17 itself.

18 THE COURT: There are three questions in there,  
19 Mr. Bettius. Ask one.

20 BY MR. BETTIUS:

21 Q Doctor, you valued the stock, did you not, at  
22 \$6 a share at this time?

23 A Mr. Bettius, when I set it at \$6, then if

J.APP. 0443

1 somebody were to come up to me and ask how much do you  
2 think my personal opinion you can sell it, I would tell  
3 it \$6. And we have other problems with Dr. Sibay, and I  
4 told it just go ahead and let me buy it for \$4 back.

5 Q You fixed it, did you not, Doctor, it was below  
6 a fair market price for the stock. That's the way you  
7 described it, below -- the \$4 was below a fair market  
8 price for the stock?

9 A The characterization of fair market, it was not  
10 correct because there was no market. Only we among  
11 ourselves and our very committed future participant, I  
12 felt it, considering the future, that \$6 would be right.  
13 If I buy it back for \$4, it's a good business decision  
14 for the corporation to buy it back.

15 Q Doctor, you had already at that time, as a  
16 board, authorized other doctors to convert their stock  
17 to bonds at \$6, had you not?

18 A In 1974, yes.

19 Q So Dr. Sibay's --

20 A Sibay.

21 Q Sibay. And that value was a fair value, at  
22 least the board considered it a fair value, did they  
23 not, \$6 a share?

J.APP. 0444

1           A       This was to be determined that \$6 value will  
2 transfer the bond.

3           Q       Whatever the facts are, the evidence would  
4 establish or the written evidence or the written minutes  
5 would establish, would they not, that the chairman of  
6 the board was telling the board that the stock had a --  
7 in the words -- and I want to use the exact words, a  
8 fair market price of \$6. That's what's said here, isn't  
9 it?

10           MR. BONO: Objection, Your Honor.

11           A       My personal --

12           THE COURT: Just a minute, Doctor.

13           MR. BONO: The number \$6 a share nowhere  
14 appears in this document.

15           MR. BETTIUS: Let me tie that up.

16           MR. BONO: The document speaks for itself.

17           THE COURT: Let's move on, Mr. Bettius.

18           BY MR. BETTIUS:

19           Q       We can fix the number of shares, can't we,  
20 Doctor, exactly?

21           A       What do you mean fix the shares?

22           Q       Didn't Dr. Sibay's attorney later write a  
23 letter that described exactly the nature of his

J.APP. 0445

1 complaint?

2 A Would you be kind to show me the letter?

3 Q Yes, sir. Would you show the witness the  
4 minutes of the board of directors meeting of 4/16/1975?  
5 And that's Exhibit 141.

6 MR. BETTIUS: I may have miscalled the exhibit.  
7 I'm sorry.

8 MR. FOX: 141 is correct.

9 MR. BETTIUS: All right.

10 BY MR. BETTIUS:

11 Q Would you look at new business?

12 A Yeah, I'm reading. Yes, sir. What is the  
13 question?

14 Q Wasn't Dr. Sibay's complaint that immediately  
15 upon reacquiring his shares for \$4, you sold them for  
16 \$6?

17 A No.

18 Q Does it not say after the stock was in the  
19 hospital's hands, the hospital released and redeemed the  
20 stock to several other doctors who practice at the  
21 hospital and who had previously indicated their desire  
22 to purchase stock whenever such stock should be  
23 available. The hospital offered the stock at \$6 a

J.APP.0446

1 share.

2 MR. BONO: Your Honor, I object because he's  
3 dropped a sentence in the middle of the sentence. I'd  
4 ask Mr. Bettius to read the whole thing.

5 MR. BETTIUS: Please correct me.

6 MR. BONO: The document speaks for itself.

7 THE WITNESS: I answer if you want me to.

8 BY MR. BETTIUS:

9 Q Did you not -- I'll read the whole share. The  
10 hospital released and redeemed the stocks to doctors who  
11 practice at the hospital and who had previously  
12 indicated their desire to purchase stock whenever such  
13 stock would be available. The hospital offered the  
14 stock at \$6 a share to be paid for over a period not to  
15 exceed one year. Is that what happened?

16 A You ask me, I answer you.

17 Q Yes, please.

18 A Dr. Sibay received \$4 because he, at the board  
19 meeting, he requested give me back \$4 and I'm getting  
20 out, which cost him originally \$2.50. And he sold it.  
21 And --

22 Q Doctor, that's not the question I asked you.

23 A You asked me the question --

J.APP. 0447

1 Q Did you not resell the stock --

2 MR. BONO: Your Honor --

3 THE COURT: He's not answered the question,  
4 Mr. Bono. We spent an awful lot of time on this,  
5 Mr. Bettius. And I'm not sure to what avail. But the  
6 question, Doctor, is was this stock acquired back from  
7 this doctor by the hospital later sold to the other  
8 doctors for \$6 a share or offered to them for \$6 a  
9 share?

10 THE WITNESS: Yes, that's correct.

11 THE COURT: All right. The answer is yes.

12 MR. BETTIUS: Your Honor, a comment that the  
13 Court makes troubles me and I would like to explain why  
14 I think it's vitally important.

15 MR. BONO: I object.

16 THE COURT: Just ask your next question,  
17 Mr. Bettius. Go ahead.

18 BY MR. BETTIUS:

19 Q Was there not a ready and active market among  
20 doctors practicing in the hospital in 1974 to purchase  
21 any shares of stock that became available for \$6 a  
22 share.

23 A That's the question? There was not a market,

J.APP. 0448



1 but some doctors indicated that they wanted to pay \$6 if  
2 we have available shares. That's correct, as it's  
3 stated.

4 Q Doctor, is it not true that all shares of the  
5 hospital that became available in 1974 could and were  
6 sold at \$6 a share and that there were doctors waiting  
7 to buy them?

8 A The record shows it, what it states, yes.  
9 And --

10 Q Thank you. Now, Doctor, you indicated that it  
11 was necessary to issue bonds in the 1960s to get cash;  
12 is that correct?

13 A That's correct.

14 Q Would you tell the Court what you did with the  
15 first \$150,000 worth of bonds that were issued?

16 A I don't remember.

17 Q They were used to buy equipment, were they  
18 not --

19 A Show me --

20 Q -- from a related entity, JMHA?

21 MR. BONO: Objection, Your Honor. This is  
22 not -- this is well beyond direct. Now he's getting  
23 into areas where he's already inquired into in his --

J.APP. 0449

1 when he had Dr. Tauber as his own witness.

2 THE COURT: Objection's overruled.

3 BY MR. BETTIUS:

4 Q The bonds were used to purchase equipment, were  
5 they not, from -- and let me give you the sequence of  
6 events. A group was formed that bought equipment,  
7 contributed to JMHA for their membership, and this  
8 equipment was being bought by the hospital for \$150,000  
9 worth of bonds and the assumption of debt; isn't that  
10 true?

11 A You have to show me the document to --

12 Q I'm asking you, do you remember?

13 A I don't remember. You show me the document, I  
14 will answer you.

15 Q All right. Do you remember that you were  
16 represented in connection with the bonds by a firm that  
17 was known as Adams, Porter and Radigan? Do you remember  
18 Mr. Porter?

19 A What firm was that law firm?

20 Q Adams, Porter and Radigan.

21 A I think that was the law firm --

22 Q That's correct.

23 A That's correct.

J.APP. 0450

1 MR. BETTIUS: Would you show the witness  
2 Exhibit 368? And I apologize, Doctor, it's the first  
3 \$40,000 worth of bonds.

4 THE COURT: Doctor, do you understand the  
5 question?

6 THE WITNESS: What was the question, sir?

7 BY MR. BETTIUS:

8 Q In 1966, \$45,000 worth of the bonds were used  
9 to purchase equipment from a related entity; is that not  
10 correct?

11 A Not exactly.

12 Q Tell the Court exactly what happened.

13 A That according to the record, the hospital  
14 corporation buys equipment from Investment Finance  
15 Company, paid \$25,000 in cash and \$45,000 in Jefferson  
16 Memorial Hospital, Incorporated bonds and interest at 6  
17 percent per annum and assumed \$400,000 bank note. That  
18 was not \$150,000. That was 45,000.

19 Q I corrected that, Doctor. Now, do you recall  
20 what you did with the rest of the bonds?

21 A We tried to sell to different people.

22 Q They were sold to the current people; weren't  
23 they?

J.APP.0451

1 A What do you call current people?

2 Q The doctors.

3 A Doctors. And whether the doctors sold them to  
4 someone else, I don't know. But it was sold in order to  
5 receive some cash.

6 Q And wasn't the cash then used to pay off  
7 advances and notes made by doctors to the hospital?

8 A I don't know about that. Just show it to me.

9 Q You don't know.

10 A No, but show me and I answer.

11 Q Doctor, you indicated, did you not, that you  
12 never sought community support for your hospital?

13 A Yes, I stated it; correct.

14 Q You did not view the tax exempt status that you  
15 had to be a support not only from the community, but in  
16 general?

17 A Will you be kind to ask it again?

18 Q You all, you as a hospital, people as a  
19 hospital, received tax exemption throughout 1970. And  
20 do you not consider that support for the hospital?

21 A This is a tax issue and indirectly is affected.  
22 But I don't see any type of a community contribution in  
23 this, no, sir.

J.APP.0452

1           Q     Did you understand that the revenues from this  
2 hospital were coming from people who lived in the  
3 community?

4           A     Comes from everybody.

5           Q     Well, why weren't you -- why was the decision  
6 purposefully made not to put any community people on the  
7 board?

8           A     Because we did not -- because the community  
9 contribution is to approach the community through  
10 different prominent people who would be on the board, to  
11 you approach them for private donation. And it has  
12 never been done. We never received a single penny from  
13 anybody in the community.

14          Q     Wasn't one of the main problems that you had,  
15 you said, the fact that you had no assets to go out and  
16 borrow money?

17          A     That's correct.

18          Q     Well, that was a conscious decision that you  
19 all made to put the assets in your own names; wasn't it?

20          A     What you call asset?

21          Q     I'm sorry, sir?

22          A     Would you specify what you call asset? And  
23 then I answer you, when you put it -- what is asset?

J.APP. 0453

1 What are you referring?

2 Q I'm sorry, sir.

3 THE COURT: He wants to know what you mean by  
4 asset.

5 BY MR. BETTIUS:

6 Q The building was not put in the charity's name,  
7 was it?

8 A No. It was clearly outlined the reason why we  
9 did not. I answered I don't know how many times.

10 Q And, Doctor, what about the equipment?

11 A As I recall, the equipment was owned by a group  
12 of investors, which is a common practice, and through a  
13 finance company, they called an investment financing  
14 company, and they leased the hospital for exactly the  
15 same amount for whatever they paid. They didn't make  
16 any money on it.

17 Q The lease for that equipment was for \$1 a year,  
18 wasn't it?

19 A I don't know. Show me the document.

20 Q Let me show you this.

21 MR. BONO: Your Honor, I object to this line of  
22 questioning. It's beyond the scope of direct.

23 MR. BETTIUS: Your Honor, the witness said the

J.APP.0454

1 hospital was constantly in trouble because it had no  
2 assets. And I'm entitled to inquire into what its  
3 assets really were.

4 THE COURT: I thought we've been through this  
5 the last time he testified, Mr. Bettius. I recall some  
6 of this testimony.

7 MR. BETTIUS: The testimony this morning is  
8 that --

9 THE COURT: About the leases and the equipment  
10 and the building. Are we going through it again?

11 MR. BETTIUS: Well, Your Honor, he said the  
12 hospital didn't own the equipment. And I want to show  
13 the witness where that situation is. What was  
14 represented publicly was --

15 THE COURT: All right; go ahead. I thought we  
16 covered it before but I may be wrong.

17 MR. BETTIUS: The testimony was the doctor  
18 didn't remember if the leases were canceled, the best I  
19 remember.

20 THE COURT: The question pending is, was there  
21 a lease for a dollar a year, as I recall the question.

22 BY MR. BETTIUS:

23 Q Was this lease for a dollar a year, Doctor?

J.APP. 0455

1 A Can you please help me --

2 Q Please take your time.

3 A I'm sorry. I don't find it.

4 Q Well, the document -- you don't see that it was  
5 for a dollar?

6 A No. You show it to me, please.

7 MR. BETTIUS: All right. The Court will read  
8 it and come to that conclusion.

9 BY MR. BETTIUS:

10 Q Doctor, in 1975 --

11 A It is a new question now?

12 Q Yes. In 1975, the hospital, you indicate, was  
13 in good financial condition or bad financial condition?

14 A I don't remember any good financial condition.

15 Q Do you remember donating stock that you had to  
16 the Tauber Foundation and taking a \$15 deduction?

17 THE COURT: It's right here in the transcript,  
18 Mr. Bettius. I read it and marked it with a yellow tab.

19 MR. BETTIUS: And that's right.

20 BY MR. BETTIUS:

21 Q And I want to ask him if the hospital, Doctor,  
22 is in bad financial condition, haven't you testified --  
23 because today you said, Doctor --

J.APP. 0456



1 THE COURT: Go ahead and ask the question.  
2 Mr. Bono is on his feet. And I'll hear it and then if  
3 he has an objection --

4 BY MR. BETTIUS:

5 Q Didn't the hospital have great value in 1975?

6 A Great value to who?

7 Q To anyone who wanted a facility with a COPN,  
8 Doctor.

9 A In '75?

10 Q Yes.

11 A I think it had a value.

12 Q And isn't it true that on every occasion when  
13 there was an attempt to diminish a participating  
14 investor's interest by you or anyone else or what he  
15 thought was his right to an interest, they threatened  
16 you with lawsuits, your own physicians?

17 A Show me the documents. I don't know what you  
18 refer to.

19 MR. BETTIUS: Show the exhibit --

20 MR. BONO: Your Honor, if this is the line of  
21 questioning where the physicians threatened litigation,  
22 this is well beyond direct into an area where I have no  
23 idea how it relates to the direct testimony at all.

J.APP.0457

1 MR. BETTIUS: Your Honor, part of my problem  
2 with this entire case is people coming in here and  
3 saying how worthless this hospital was. It was run by  
4 insiders who had every reason to know what it was worth.  
5 And if anyone tried to take one smidgen of their  
6 ownership away, they rushed to threaten lawsuit. Why  
7 would anyone do that if they believed that this hospital  
8 had no value?

9 THE COURT: The question is how does this  
10 relate to the direct examination of Dr. Tauber on this  
11 occasion, today?

12 MR. BETTIUS: The issue is that they are saying  
13 they are in distressed circumstances; they have no  
14 money --

15 THE COURT: Under that rubric, we would reopen  
16 everything you ever went through before with Dr. Tauber  
17 on the rubric that it relates to the direct examination  
18 because he felt they were having financial problems the  
19 entire history of the hospital. We're not going back  
20 through it all again today, Mr. Bettius.

21 MR. BETTIUS: They have today, Your Honor, time  
22 and time again indicated that no one would buy the stock  
23 in this hospital. They tried to go to Wheat Securities.

J.APP. 0458

1 No one would have it. And one of the reasons no one  
2 would have it, is they all wanted it themselves. And I  
3 think, Your Honor, that's --

4 THE COURT: All right. You can inquire along  
5 those lines. Go ahead.

6 BY MR. BETTIUS:

7 Q All right. Would you look, Dr. Tauber, at 376?

8 A A letter from Dr. Small.

9 Q Yes. And he indicated very clearly to you in  
10 this conversion of assets from partnership to a  
11 corporation, that if you attempted to diminish his  
12 share, that he was not having any part of it; isn't that  
13 correct?

14 A The letter speaks for itself.

15 Q Yes, it does. And some few months later, when  
16 you were issuing shares of stock in 1972, you made sure  
17 that there was a provision for Dr. Small to get 10,000  
18 shares; didn't you?

19 A Would you ask the question again?

20 Q This letter is written June 25th, 1971; is it  
21 not?

22 A Correct. And I answered it on the 28th of  
23 June.

J.APP.0459

1           Q     And when you had this dispute with Dr. Small,  
2     that went on for some considerable period of time, did  
3     it not?

4           A     I don't know about considerable time. But I  
5     answered it three days after on the 28th of June, which  
6     is Exhibit 378.

7           Q     And you answered it again when you issued the  
8     60,000 shares of stock by providing for Dr. Small to get  
9     10,000 shares. We've already been through that, haven't  
10    we?

11          A     What I said, that anybody who claims any other  
12    share has to be current. And he did not pay for his  
13    share. He had the shares in our agreement. But he  
14    failed to acquire; he did not pay it. He asked more and  
15    I told him under no condition, unless you pay up your  
16    obligation. We don't owe for more credit. I need money  
17    in the hospital. I am not a bank financing solution.

18                 And that was the controversy. He claimed it  
19    and I denied it and I answered the letter three days  
20    afterwards. If he pays up, you can get it. But you  
21    cannot get for credit anymore.

22                 I answered.

23          Q     Doctor, your lawyer contacted his lawyer. His

J.APP.0460

1 lawyer contacted your lawyer; is that correct? You  
2 offered to buy his share?

3 MR. BONO: This has nothing to do with --

4 THE COURT: Nothing to do with direct  
5 examination, Mr. Bettius. Am I going to try every one  
6 of those disputes now?

7 MR. BETTIUS: Your Honor, I will show the Court  
8 that every time there was an available share of stock  
9 and no matter what price it was offered -- and here  
10 we're here talking about -- and the relationship of  
11 this, Your Honor, is they valued --

12 THE COURT: The question you just asked him was  
13 whether his lawyer talked to Dr. Small's lawyer, whether  
14 Dr. Small's lawyer -- get to the point.

15 BY MR. BETTIUS:

16 Q The point is that the hospital itself, doctors  
17 in the hospital itself right at the time of conversion,  
18 Doctor, were valuing these shares at \$10 a share, were  
19 they not?

20 A No way.

21 Q Were you in attendance at the board meeting of  
22 May 19th, 1971 when Mr. Reeves discussed his plan?

23 A Yes, I was there.

J.APP. 0461

1 Q The doctors at that meeting valued their shares  
2 at \$10 a share; is that correct?

3 A It was wishful thinking. It was what they  
4 asked to go public. How many shares were sold?

5 Q And these were the very shares, are they not,  
6 that Dr. Small is after in this letter; is that correct?

7 A I don't know what he wants. The only answer  
8 what I have, it was wishful thinking on the part of the  
9 doctors who wanted to put it in \$10 as an initial  
10 offering. That doesn't mean that they get the \$10.

11 Q It is those very shares, is it not, Doctor,  
12 which are the subject of this dispute and the issuance  
13 of those shares that's characterized in this letter?

14 MR. BONO: Objection. Asked and answered.

15 THE COURT: He said he didn't know.

16 A Yeah. I don't know. There was only one class  
17 of stocks. Whether you're talking the very same stock  
18 or --

19 BY MR. BETTIUS:

20 Q Doctor --

21 A You asked me the question; let me finish.

22 THE COURT: You answered the question. Go  
23 ahead, Mr. Bettius. Ask him the next question.

J.APP. 0462

1 BY MR. BETTIUS:

2 Q Are you saying you don't know if these were the  
3 same shares?

4 MR. BONO: Your Honor, he just said -- now is  
5 the third time.

6 MR. BETTIUS: I didn't hear him, Your Honor. I  
7 apologize.

8 A There was only one type of a share, nothing  
9 else.

10 BY MR. BETTIUS:

11 Q So these are the shares; is that what I'm to  
12 understand?

13 A Whether I did that share, I don't know. But  
14 there was only one class of shares.

15 Q Now, in 1975, when the conversion was to take  
16 place again --

17 A 1971.

18 Q When you were going to sell the assets back to  
19 a partnership, do you recall that?

20 MR. BONO: Your Honor --

21 A Mr. Bettius --

22 THE COURT: Just a minute, Doctor.

23 MR. BONO: I really object because this is --

J.APP. 0463

1 could we scale down? This is getting into an  
2 argumentative tone.

3 THE COURT: I think part of the problem is that  
4 Mr. Bettius is having a problem hearing the doctor.  
5 We're not going to be arguing. I'll take care of that;  
6 I can assure you.

7 MR. BETTIUS: If it sounds that way, I  
8 apologize.

9 THE COURT: Go ahead, Mr. Bettius.

10 BY MR. BETTIUS:

11 Q Dr. Tauber, in 1975 --

12 A '75 or '71?

13 Q We're now in '75.

14 A You are now in '75. This is '71.

15 Q In 1975 --

16 A Yes.

17 Q -- the proposal that was made, was it not,  
18 valued the shares at \$6 a share, and they would be  
19 converted for the hospital's -- acquisition of the  
20 hospital and the partnership; is that correct?

21 A Show me the document, sir. I will not answer  
22 you until --

23 Q Do you remember, Doctor, that the plan was that

J.APP.0464



1 those individuals who had bought the 60,000 shares of  
2 stock would be allowed to redeem that stock at \$6 a  
3 share?

4 A In '75, I remember that.

5 Q Yes. Now, at this time, you asked the board,  
6 did you not, for authority to distribute any unsolicited  
7 shares?

8 A What do you mean unsolicited shares?

9 Q If anybody in that 60,000 group didn't  
10 subscribe, that you asked to have the authority to  
11 decide who would get the unsubscribed shares?

12 A I would like to answer, but I would like to ask  
13 that I understand the question. The question was that  
14 the 60,000 shares owned by certain doctors, and these  
15 doctors were entitled for each full share to convert to  
16 bond one share; right? And if these doctors who owned  
17 those shares are not willing to convert into bond,  
18 whether I could get the authorization to offer to  
19 somebody else? That is the question?

20 Q Yes.

21 A Yes, I remember when that was.

22 Q And there were a small group of doctors who  
23 didn't exercise those rights; is that correct?

J.APP. 0465

1           A     I don't know now, but small is relative. I  
2 don't know. But if you show the document, I can answer.  
3 But the document speaks for itself. I'm not sure who  
4 did not exercise and who exercised that right.

5           Q     When you at that time indicated how you were  
6 going to exercise those shares, again, you were  
7 threatened with a lawsuit, were you not, if they didn't  
8 get distributed among the existing doctors in proportion  
9 to their share?

10          A     Which lawsuit? I told you, I had so many  
11 lawsuits. Specify. Show me the document and I will  
12 tell you. Identify it.

13          Q     Do you remember a dispute with Dr. Corrado?

14          A     For a change we seem to, yes.

15          Q     Dr. Corrado said that if he didn't get  
16 precisely his percentage, he was going to sue; isn't  
17 that correct?

18          A     I don't remember, but if you show me the  
19 document --

20          Q     Let me show it to you. Show the witness 402.

21          A     Excuse, sir. Which part of the --

22          Q     Pardon me, sir?

23          A     This letter or --

J.APP. 0466

1 Q Is it not true -- do you have the letter there  
2 from Dr. Corrado?

3 A No, sir.

4 Q It's not from Dr. Corrado. I'm sorry. Exhibit  
5 402? From Michael A. Corrado, M.D.? I may have a  
6 Mr. Chockley problem.

7 MR. BERGHOLD: It is 402. There is a 402 and  
8 402A.

9 BY MR. BETTIUS:

10 Q Would you look at that? I'm sorry. It flipped  
11 over to 402A.

12 A Yes, sir, I read it. What is the question?

13 Q Dr. Corrado took the position, did he not, I  
14 hereby wish to serve you with notice that according to  
15 our agreement, the Jefferson Memorial Hospital building  
16 and land must be distributed proportionately according  
17 to stock ownership. Furthermore, it was decided by the  
18 stockholders and reaffirmed by the new board members  
19 that the subscribers in the secondary offering of  
20 \$240,000 will be able to convert to bonds which this  
21 represents to purchase their shares of the hospital  
22 building and land. If a larger percentage would become  
23 available due to some members not exercising their

J.APP. 0467

1 option, then the unsold portion would again be purchased  
2 by the stockholders again according to the percentage of  
3 stocks they held in the corporation. Any alteration  
4 from this arrangement I will find unacceptable and will  
5 oppose in every available legal means.

6 Do you remember that?

7 A I read it now and I remember. And that -- do  
8 you want to get my answer? My answer, yes, I remember.  
9 And I know all the details.

10 Q And this actually occurred, did it not, Doctor?  
11 And in describing this 1975 transaction in a letter to  
12 your own stockholders a year later, you indicated that  
13 this transaction was an undeniable dividend to everyone  
14 who participated, didn't you?

15 A No.

16 MR. BETTIUS: Your Honor, has that been covered  
17 before?

18 THE COURT: I think so.

19 MR. BETTIUS: Withdraw it. I'm having a little  
20 memory -- I don't want to assert things that Your Honor  
21 has already seen. And I apologize if I'm doing that.  
22 I'm just trying to follow it. And I will try not to do  
23 that.

J APP 0468

1 THE COURT: All right.

2 MR. BETTIUS: My fear is that I'll leave  
3 something uncovered that I should have covered.

4 BY MR. BETTIUS:

5 Q Doctor, from 1973, mid 1973 on, the entire  
6 character and value of the investment of this hospital  
7 changed dramatically; didn't it?

8 A I don't know what you mean dramatically.

9 Q The General Assembly of Virginia in January of  
10 1973 required that any new facility would have to have a  
11 certificate of public need; did it not?

12 MR. BONO: Objection, Your Honor. This is  
13 beyond the scope of direct.

14 MR. BETTIUS: No, Your Honor --

15 THE COURT: My problem is, I believe you  
16 covered that.

17 MR. BETTIUS: I'm sorry. Then I'll go on.

18 THE COURT: Let me make sure. I think there's  
19 been a number of times Dr. Tauber testified, in fact in  
20 your cross, he already said the change in the law  
21 required the certificate and made the hospital valuable.

22 MR. BETTIUS: The point was, we had fixed his  
23 value of it in '75. I'm now going back to '73 when the

J.APP. 0469

1 law was passed. And I'm just going to briefly --

2 THE COURT: That's beyond the scope of direct.

3 MR. BETTIUS: All right, sir.

4 BY MR. BETTIUS:

5 Q I'm going to ask you this, Doctor. Every  
6 action that the board took from 1974 on in connection  
7 with transactions concerning the hospital in a sale and  
8 lease back were motivated by a desire of the members who  
9 owned the hospital for a profit; isn't that correct?

10 MR. BONO: Objection, Your Honor, this was gone  
11 over in his direct in the last --

12 MR. BETTIUS: If that's understood, that's  
13 fine.

14 MR. BONO: I don't know what was understood.  
15 But it certainly wasn't the subject of my direct this  
16 morning.

17 THE COURT: That objection is sustained.

18 MR. BETTIUS: All right.

19 BY MR. BETTIUS:

20 Q If, indeed, Doctor, this hospital functioned at  
21 a level of distress at every time in its life, there  
22 were always ready, willing participants to own a piece  
23 of it; isn't that correct? In fact, demanding that.

J.APP. 0470

1           A       Some of them, yes. And some of them, no.

2           Q       Doctor, isn't it true that there was never a  
3 period of time when any interest in this hospital was  
4 available that someone wasn't insisting that they have  
5 it, or if there was any left, that they get a piece of  
6 what was left?

7           MR. BONO: Objection, Your Honor.

8           THE COURT: Just a minute, Doctor.

9           MR. BONO: This has been asked and answered and  
10 he's being repetitive.

11           THE COURT: I thought it had been covered but  
12 I'll let him answer it, if he knows.

13           A       Yes, I know. Because I answered it many times,  
14 that 7 and a half percent of the stock were kept in  
15 escrow with me acting as trustee to attract other  
16 people. And I was not able to sell a single one. My  
17 aim was to get new doctors, but nobody bought the 7 and  
18 a half percent. Therefore, I give back into the  
19 corporation or I give some existing members if they want  
20 it.

21           BY MR. BETTIUS:

22           Q       Doctor, you reissued that stock, did you not,  
23 and you reissued the interest with a proviso: that you

JAPP 0471

1 could not have the stock unless you supported the  
2 hospital for the next five years. And if you did not  
3 support the hospital, you could take the stock back.  
4 Isn't that true? And all 7 and a half percent went like  
5 that (indicating); didn't it?

6 A Show me the document and I answer you.

7 Q Yes, sir. You do not recall, Doctor,  
8 reallocating the stock on condition that you couldn't  
9 have it unless you agreed to support the hospital for  
10 five years? And if you didn't support it, you were  
11 going to take the stock back?

12 A Show me the document and I answer.

13 Q Yes, sir.

14 Would you show the witness Exhibit 404?

15 A Yes, sir, I read it.

16 Q You conditioned the receipt of these shares of  
17 stock on people supporting the hospital for the next  
18 five years. And if they didn't, you could take them  
19 back; isn't that right?

20 MR. BONO: Objection. May I be heard? This  
21 document doesn't talk about stock. It's talking about  
22 interest in a partnership in 1975. It's not talking  
23 about increasing any stock ownership in any

J.APP 0472



1 corporations.

2 THE COURT: The doctor can answer the question,  
3 if he knows, if the document refreshes his recollection  
4 that that's what was done with the stock.

5 A The partnership interest in the Jefferson  
6 Memorial Hospital Joint Venture depended on the existing  
7 stock ownership in the corporation. And I see it that  
8 proportionately, I will allocate percentagewise the same  
9 interest in the partnership that they had in the  
10 corporation. And if some doctors would not like to  
11 transfer their interest in the joint venture, then we  
12 will have a surplus. And the surplus was available.

13 Therefore, I have this from Dr. Peters. So his  
14 share was 6.1 percent interest in the partnership. And  
15 I had a surplus. And I allocated to Dr. Peters an  
16 additional 1.9 percent addition to make his interest up  
17 to 8 percent because of his devoted support of the  
18 hospital.

19 Q You were doing him a favor, weren't you?

20 A Excuse me, sir. You asked me to answer.

21 Q I'm sorry. I didn't mean to interrupt you.

22 A I didn't finish. So I allocated that 1.9  
23 percent additional share based on the past support of

J.APP.0473

1 the hospital. And I inserted another paragraph and  
2 stated the following, which I am telling to you today,  
3 too, if you continue to support the hospital or if you  
4 retire, you relocate yourself and go to Florida, or you  
5 get sick or anything happens to you, your family will  
6 enjoy this 8 percent, the surplus 1.9 percent.

7 But if you take this advantage of 1.9 percent  
8 and you turn your back and you don't send any patient to  
9 us and support another hospital, I feel that you don't  
10 deserve this surplus. Therefore, I want to have the  
11 privilege and the right to purchase back for exactly the  
12 same amount what you paid for it. That's correct; that  
13 is the document and that was my feeling about it.

14 Q The point is, is it not, Doctor, that all of  
15 those people who participated in this venture from the  
16 beginning to the end, they all believed they were  
17 dealing in something that was intrinsically valuable;  
18 isn't that correct?

19 A In their own mind, everybody made up their  
20 mind. Somebody could walk up and tell it, I don't want  
21 to have it. I don't believe in the future. Somebody  
22 said yes, I believe in the future. That's independently  
23 made. Everybody made their own decision independent

J.APP. 0474

1 from me.

2 Q And would you not agree with me that the major  
3 beneficiaries of the 1975 transaction were the people  
4 who joined the partnership? Didn't you just say that?

5 A The first transfer, the ownership of the  
6 building and the land, I mean the land except that which  
7 belonged to the other.

8 Then here is one who dedicated their work to  
9 the hospital and they wanted to see that it survives and  
10 prosper ultimately. It may take 10 years, 15 years, 20  
11 years; I don't know. That was a business call and  
12 calculated risk that everybody took.

13 Q And haven't you testified throughout the day  
14 that one of the problems of the hospital was -- and your  
15 experts, you've heard them testify -- was it didn't own  
16 its assets; isn't that correct?

17 A Right.

18 Q And if you --

19 A In 1971. The recordation of Mr. Aims.

20 Q In 1975, you're taking the major assets back  
21 away from the hospital, aren't you, its building?

22 MR. BONO: Objection.

23 THE COURT: Just a minute, Doctor.

J.APP.0475

1 MR. BONO: This was gone over.

2 THE COURT: We've been through this.

3 There's no question pending. The last question  
4 I sustained the objection to.

5 MR. BETTIUS: All right.

6 MR. FOX: We're looking for an exhibit.

7 THE COURT: All right.

8 MR. BETTIUS: Off the record, Your Honor.

9 BY MR. BETTIUS:

10 Q Doctor, the -- do we have another copy of this?

11 MR. BONO: Do I have a copy?

12 MR. BETTIUS: I'm going to make sure you do  
13 before I do anything, Mr. Bono.

14 THE COURT: Do you have a number on that?

15 MR. BETTIUS: No, Your Honor. It occurred to  
16 me that during his direct examination -- do you have it?  
17 Give that to the witness.

18 THE COURT: Not until you show it to Mr. Bono.

19 MR. BETTIUS: I'm not going to ask a question  
20 until Mr. Bono has looked at it. Why don't you be  
21 reading it at the same time.

22 THE COURT: No, not yet.

23 MR. BETTIUS: All right.

J.APP. 0476

1 MR. BONO: Your Honor, I object for several  
2 reasons. One, he never designated this document as an  
3 exhibit. This is now the second trial. Number two,  
4 it's an incomplete document on its face. Number three,  
5 I've read it over and I fail to see, if he's going to  
6 use it for impeachment, what possible impeachment it  
7 goes to. It covers an area that he's covered well  
8 before. And again, I don't see what impeachment he's  
9 offering it for, even if the document were permitted to  
10 be used.

11 THE COURT: Tell me about that, why the exhibit  
12 wasn't marked or identified.

13 MR. BETTIUS: It's the way it was delivered.  
14 Two, it is -- as I understand it, Dr. Tauber testified  
15 today that all of the actions in '75 were taken for the  
16 benefit of the hospital and at all times he acted for  
17 the benefit of the hospital. And this is a document  
18 that -- where the administrator of the hospital  
19 describes the impact on the hospital of the 1975  
20 transaction. And it's a document that they produced.  
21 And it's a document that I want to show the witness to  
22 show what the impact of the sale and lease back was.

23 The testimony here today, it was all done for

J.APP. 0477

1 the hospital. And I want to show, based on a memorandum  
2 done by the administrator contemporaneous with the sale,  
3 what the net operating impact on the hospital of the  
4 sale was. And that's what's discussed here.

5 MR. BONO: Your Honor, first of all, that has  
6 nothing to do with impeachment. Number two, this is not  
7 a contemporaneous document. This is a document from  
8 1976. And it was a document produced a year ago, if not  
9 longer. He never designated it as an exhibit. It's a  
10 1976 document and it does not go to impeachment.

11 THE COURT: The objection will be sustained.  
12 You can have it marked and made a part of the record.

13 MR. BETTIUS: Yes, I would like to do that,  
14 Your Honor. Your Honor, I think it's impeachment. And  
15 I don't think I have to designate my document for  
16 impeachment purposes. But if that's the Court's  
17 ruling --

18 THE COURT: Whatever the last -- what's your  
19 last number, plaintiff's documents?

20 MR. FOX: 616, I believe.

21 THE COURT: We'll make that Plaintiff's 617 and  
22 the objection will be sustained.

23 (The document was marked Complainant's

1 Exhibit No. 617 for identification.)

2 BY MR. BETTIUS:

3 Q Doctor, so I will understand, when do you  
4 consider as -- you're testifying today as a  
5 representative of the hospital; is that correct?

6 A What am I?

7 Q You're testifying as a director and former  
8 chairman of the board of the hospital; is that correct?

9 A Of the hospital.

10 Q Of the hospital.

11 A Which hospital?

12 Q Jefferson Memorial Hospital.

13 A Which corporation?

14 Q I don't know. How many hospitals were there,  
15 Doctor?

16 A Presently nothing.

17 Q Pardon?

18 A Presently no hospital.

19 Q In the period from 1965 to 1975, how many  
20 hospitals were there?

21 A Designated the name Jefferson Memorial  
22 Hospital, Inc., and Jefferson Memorial Hospital  
23 Corporation.

J.APP. 0479

1 Q Is it your testimony that they were different?

2 MR. BONO: Objection, Your Honor. We've been  
3 through this.

4 THE COURT: It wasn't covered on direct,  
5 Mr. Bettius.

6 MR. BETTIUS: Your Honor, I'm trying to give  
7 some focus to his direct. I want to know when the  
8 hospital was Jefferson Memorial, Inc. and when it was  
9 Jefferson Memorial Hospital Corporation. Because how  
10 can we tell what his testimony relates to unless we know  
11 what hospital we're talking about.

12 THE COURT: Well, the hospital -- a lot of  
13 people have done it in this case, referred to it sort as  
14 a generic. One of the experts referred to it as  
15 operation rather than trying to identify it particularly  
16 by corporation.

17 MR. BETTIUS: Well, Your Honor, that is what  
18 this case is about. And at the end of the case, the  
19 Commonwealth, I think, has a right to know what was  
20 transferred, when it was asserted it was transferred,  
21 and how it was transferred. And this is their case.  
22 And I have yet to hear any decision being made on this  
23 point about when the hospital was I and when it was C.

J.APP. 0480



1           THE COURT: That's one of the things I have to  
2 resolve, not Dr. Tauber.

3           MR. BETTIUS: I always thought, Your Honor, and  
4 most respectfully, that the representative of the  
5 corporate owner has to take a position with respect to  
6 where the assets are at any one time. And I think we  
7 have a right to ask this witness, having testified about  
8 the hospital, who exactly he was representing at what  
9 time and who was operating the hospital at what time. I  
10 mean, his whole testimony has no cogent frame of  
11 reference in the absence of a decision in this issue.

12           THE COURT: That would be beyond the scope of  
13 direct, Mr. Bettius, and I'll sustain that objection.

14           MR. BETTIUS: All right.

15           BY MR. BETTIUS:

16           Q     Doctor, was the profitability of the hospital  
17 affected by your decisions with reference to who you  
18 admitted and who you didn't admit?

19           A     I don't understand the question.

20           Q     Well, if you were admitting all these charity  
21 patients, as you say you were, you were making a  
22 conscious decision to be charitable and not make profit;  
23 is that correct?

J.APP. 0481

1           A       I made my testimony many times that my goal was  
2 always to keep the rooms full, regardless -- excuse me.  
3 My goal was always to keep the hospital full whether  
4 they paid or they did not pay. I told it many times  
5 already that I don't regard any nonpaying patient or  
6 paying patient. Because some indirect effect, they will  
7 recommend us, the goodwill will spread and we will  
8 benefit from it. That was my philosophy, regardless.

9           Q       The reason I ask is, the witness who is going  
10 to testify about value in this case has made certain  
11 conclusions about profitability in the hospital. And  
12 I'm going to ask him, do the -- did you treat these  
13 charitable patients off the books or were they carried  
14 on the books?

15          A       I never was a bookkeeper. And at the time, I  
16 was not administrator and I could not care less. I was  
17 busy in my practice and I did not know how they handled  
18 it. The only one thing I handled the patient,  
19 regardless whether they paid or not.

20          Q       Well, would it come as a surprise to you,  
21 taking the charts of your own experts, that you were  
22 recovering about 97 percent of everything that you  
23 billed?

J.APP.0482

1 MR. BONO: Objection, Your Honor. This is  
2 beyond the scope.

3 THE COURT: I don't believe that is. He can  
4 answer if he knows.

5 A I have no idea.

6 BY MR. BETTIUS:

7 Q So if that -- how does that affect your  
8 recollection, Doctor, that you were treating -- is it  
9 your recollection you were treating a third of the  
10 patients free? Is that what I heard from Mr. Bono?

11 A You're asking me personally. I gave much more  
12 than that.

13 Q I'm talking about the hospital as a whole.

14 A You asked me. The hospital, I don't know. I  
15 know it that there was a steady policy to admit the  
16 patient regardless whether they have ability to pay or  
17 not. What the percentage was, I had no idea.

18 If I had known it and I would sit here in this  
19 court to answer your question, certainly I would mention  
20 the statistics.

21 Q But you don't know what the rest of the doctors  
22 were doing?

23 A I didn't check anybody.

J.APP.0483

1           Q     Doctor, isn't it true that in 1973, the  
2 hospital started to track doctors for whether or not  
3 they were admitting Medicaid or Medicare patients, and  
4 they decided to keep a record of doctors and how many  
5 Medicaid and Medicare patients they were admitting?

6           MR. BONO:  Objection, Your Honor.  Beyond the  
7 scope of direct.

8           THE COURT:  It leads to the testimony of  
9 Dr. Tauber on direct about the treatment of the  
10 nonpaying patients.  I think it's covered.

11          A     If I recall it, I tried to answer the best way  
12 that some of the doctors did not respond if the patient  
13 did not have any insurance.

14          BY MR. BETTIUS:

15          Q     That's true.  But are you aware --

16          A     I know that because they got me out at 2  
17 o'clock in the morning to come in and treat the patient  
18 because they did not come in.  Nobody did.  And I said  
19 this in the record.  And that was the reason this --

20          THE COURT:  Doctor, the question, as I  
21 understand it from Mr. Bettius, were you aware in 1973  
22 the hospital began to track which doctors were bringing  
23 in --

J.APP. 0484

1 BY MR. BETTIUS:

2 Q The board stated to track which members were --  
3 which doctors in the hospital were admitting and the  
4 percentage of Medicaid and Medicare patients they were  
5 admitting. Were you aware of that?

6 A I have no idea.

7 Q And if that's in the minutes, Doctor -- I'm  
8 going to tell you in fairness to you --

9 A I have no idea.

10 Q -- you were not the chairman at that time. And  
11 I'm just asking you if you were aware. We'll take care  
12 of it in terms of later exhibits that come in and have  
13 already been admitted.

14 MR. BONO: Your Honor, he already answered the  
15 question.

16 A I don't know.

17 BY MR. BETTIUS:

18 Q You do know, do you not, that many of the  
19 physicians wouldn't respond until they found out if a  
20 patient had insurance?

21 A Unfortunately, yes, that is true.

22 Q And that in terms of where admissions to the  
23 hospital were, that some doctors were criticized on a

J.APP.0485

1 regular basis for admitting a high level of Medicaid,  
2 Medicare patients. Were you aware of that?

3 A No.

4 Q Doctor, you were performing, in terms of  
5 training doctors, you were performing most of the major  
6 procedures at Jefferson; isn't that correct?

7 A A lot of them, yes.

8 Q And the hospital, in terms of training  
9 physicians, wouldn't even pay for you in major  
10 procedures to have a surgical assistant, would they? Do  
11 you remember Dr. Alfori?

12 A Alfori, yes.

13 Q Notwithstanding that you were operating on most  
14 of the hospital's major patients, they refused to allow  
15 you to pay out of hospital expenses for a surgical  
16 assistant; isn't this correct?

17 A Yes, they did.

18 Q The situation relative to their treatment of  
19 patients caused you to resign, didn't it, in 1974 from  
20 the board, in October?

21 A Oh, that was not the reason. The reason why I  
22 resigned was entirely -- had nothing to do with my  
23 medical activity, no.

J.APP. 0486

1 Q Because they were fighting over money; isn't  
2 it, Doctor?

3 A Yes. They had a fight.

4 Q They were fighting amongst themselves over  
5 dividing up the hospital's revenues, weren't they?

6 A No. They were fighting.

7 Q They had awarded themselves salaries, had they  
8 not, Doctor?

9 A They wanted to have some salaries, yes.

10 Q And you were always against that kind of thing,  
11 were you not?

12 A Absolutely.

13 Q And Doctor, there were really, in this  
14 hospital, two schools of thought; were there not?  
15 You --

16 A I don't know two schools of thought.

17 Q There were two divisions that existed, weren't  
18 there? There was always this dispute that it was a  
19 surgical hospital and the medical doctors were being  
20 slighted. That was one of the disputes, wasn't it?

21 A No, I don't remember that.

22 Q Really? You don't remember Dr. Sappington  
23 constantly in meetings saying that the surgical portion

J.APP. 0487

1 of the hospital wasn't paying for itself and it was the  
2 medical people who were running the hospital?

3 A Which year was that, sir?

4 MR. BONO: Objection, Your Honor. This is  
5 beyond the scope of direct.

6 THE COURT: Just a minute, Doctor.

7 MR. BONO: This is totally beyond the scope of  
8 direct.

9 MR. BETTIUS: Your Honor, I'm talking about the  
10 illeomosinary nature of this hospital, which has been  
11 put in front of this court time after time after time.

12 THE COURT: Objection overruled.

13 BY MR. BETTIUS:

14 Q Do you remember prior to the board of directors  
15 meeting in April of 1973 telling this group of  
16 physicians exactly what you thought about their  
17 conversion to for profit status?

18 A I don't even remember Dr. Sappington was a  
19 member of the staff that year.

20 Q Let me show you your letter.

21 A Yes, show it to me.

22 MR. BETTIUS: 384.

23 MR. BONO: Your Honor, I object to this. This

J.APP. 0488



1 is directly -- was directly covered in the testimony by  
2 Dr. Tauber seven months ago.

3 MR. BETTIUS: If the Court remembers that,  
4 that's fine.

5 THE COURT: Let me look.

6 THE WITNESS: Yes, sir, what was the question?

7 THE COURT: Just a minute, Doctor.

8 I thought this was covered, Mr. Bettius.

9 MR. BETTIUS: Fine, Your Honor.

10 BY MR. BETTIUS:

11 Q Doctor, the offer that you made to Georgetown  
12 Hospital was --

13 A Finished with this?

14 Q Your Honor said that you had already done that.

15 The offer you made to Georgetown Hospital had  
16 nothing to do with giving the hospital to Georgetown;  
17 did it? It was, in fact, a proposal to lease them the  
18 building for \$200,000 a year; isn't that correct?

19 MR. BONO: I object, Your Honor. This is not  
20 the subject of Dr. Tauber's direct testimony.

21 THE COURT: He testified differently today. At  
22 least -- that's a little bit rash. But what he said  
23 today suggested that either there was another

J.APP. 0489

1 transaction involving Georgetown Hospital or it's  
2 different. I'll allow Mr. Bettius to inquire.

3 BY MR. BETTIUS:

4 Q Doctor, the proposal to Georgetown was that you  
5 lease them the hospital for \$200,000 a year; isn't that  
6 correct?

7 A Yes.

8 Q And the reason it broke down was not a lack of  
9 interest on the part of Georgetown. It was because  
10 members of your own board didn't agree as to the  
11 adequacy of that amount; isn't that true? It had  
12 nothing to do with Georgetown.

13 A I don't know. But if I would have given to  
14 Georgetown -- I don't want to speculate. It was  
15 rejected by Georgetown. Whether the board rejected it,  
16 I could not approach Georgetown University Medical  
17 Center if I could not have authorization by the board.

18 Q You had the authorization. And I don't doubt  
19 that, Doctor. Isn't it true that the \$200,000 a year  
20 proposal was rejected not because Georgetown rejected  
21 it, but because of disagreement among your own board  
22 members?

23 A No, sir.

J.APP. 0490

1 Q Let me show you the minutes, Doctor.

2 A Show me.

3 Q 119. Would you look at 00632?

4 THE COURT: Which exhibit?

5 MR. BETTIUS: I'm sorry. Exhibit 119.

6 THE WITNESS: What's the question, sir?

7 BY MR. BETTIUS:

8 Q Doesn't it say Dr. Tauber reported that the  
9 negotiations with Georgetown Medical School for  
10 affiliation would not take place since the entire board  
11 of directors did not agree with the proposal?

12 MR. BONO: Objection, Your Honor. This is  
13 directly in the transcript of the trial testimony.

14 THE COURT: I'll let him explore it, Mr. Bono,  
15 in view of the testimony today.

16 A Yes, sir.

17 MR. BETTIUS: Your Honor, that's all.

18 THE COURT: Any redirect, Mr. Chockley,  
19 Mr. Bono?

20 MR. BONO: Not so far. I'm sorry. I didn't  
21 hear him. The answer was no.

22 THE COURT: You were shocked by that?

23 MR. BETTIUS: Maybe I can go a little longer,

J.APP.0491

1 Your Honor.

2 MR. BONO: I already said no.

3 THE COURT: Any redirect?

4 MR. BONO: No.

5 THE COURT: Thank you, Dr. Tauber. You may  
6 return to your seat.

7 (Witness excused.)

8 (A luncheon recess was taken.)

9 MR. BONO: The Respondents call Mr. Arthur  
10 Cobb.

11 MR. BERGHOLD: Your Honor, just one matter. We  
12 were wondering when we would have an opportunity to look  
13 at the privileged documents.

14 THE COURT: My fault. You're not the only one,  
15 Mr. Bettius, with the problem, I guess. Let me take a  
16 short recess and I'll get those for you right now.

17 MR. BERGHOLD: Thank you, Your Honor.

18 (A brief recess was taken.)

19 THE COURT: All right. Mr. Berghold, I have  
20 the set of documents that I referred to.

21 (Handing to Mr. Berghold.)

22 MR. BERGHOLD: Thank you, Your Honor.

23 MR. BETTIUS: Your Honor, in the interest of

J.APP.0492