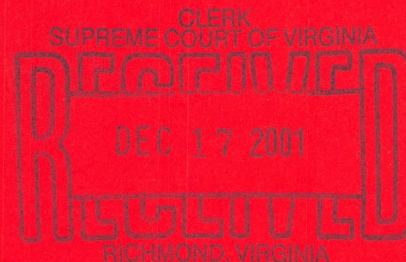


263 Va 528

COPY



IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

RECORD NO. 011150

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.

JOINT APPENDIX

VOLUME II

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

	<u>PAGE</u>
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

	<u>PAGE</u>
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

	<u>PAGE</u>
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

	<u>PAGE</u>
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

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

	<u>PAGE</u>
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

	<u>PAGE</u>
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

	<u>PAGE</u>
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

	<u>PAGE</u>
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

	<u>PAGE</u>
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

	<u>PAGE</u>
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
ExhibitT8	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

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

1 time -- and, again, I understand Mr. Bono may well want
2 to go into some of Mr. Cobb's curriculum vitae. I have
3 some problems with his testimony, but not with his
4 expertise.

5 THE COURT: All right. That's fine. Mr. Cobb,
6 please come forward.

7 Whereupon,

8 ARTHUR H. COBB,
9 was called as a witness by and on behalf of the
10 Respondents and after having been first duly sworn, was
11 examined and testified as follows:

12 MR. BONO: Your Honor, in light of
13 Mr. Bettius's no objection to his qualifications, I'll
14 keep my questions as brief as possible relating to that
15 area.

16 THE COURT: All right.

17 MR. BETTIUS: One objection, Your Honor. The
18 Attorney General's representative of the Commonwealth
19 has requested that I make the objection, and I think it
20 is appropriate, that this testimony is cumulative.

21 THE COURT: All right. Objection is noted.

22 DIRECT EXAMINATION

23 BY MR. BONO:

J.APP. 0493

1 Q Would you please state your full name and
2 business address?

3 A Arthur H. Cobb, C-O-B-B, 4010 IDS Center,
4 Minneapolis, Minnesota 55402.

5 Q Mr. Cobb, by whom are you employed?

6 A I'm employed by Cobb & Associates, Limited.

7 Q What type of work does that firm perform?

8 A We have two practice areas: One is litigation
9 support; the other is capital finance. Litigation
10 support is the vast majority of the work we do.

11 Q When did that firm start its business?

12 A I guess indirectly when I resigned the
13 partnership of Peat, Marwick in 1985 there have been
14 different forms. And for a while there was an
15 affiliation with a small investment banking firm
16 directly or indirectly.

17 Q Now, prior to your working for your present
18 firm by whom were you employed?

19 A Starting from college, I was initially employed
20 for about two and a half, three years by Price
21 Waterhouse initially in their audit department and then
22 their consulting department.

23 I was then employed for about three years by

J.APP. 0494

1 Touche Ross in their consulting department. I then
2 spent five and a half, six years with Peat, Marwick,
3 Mitchell and was a partner. As a partner, I oversaw
4 what at least for Peat, Marwick was a fairly large
5 capital finance practice.

6 Q And could you outline what type of work you
7 have performed at those three accounting firms?

8 A Yes. Some cost accounting as a stand-alone
9 practice, but mostly, the largest part of the practice
10 was related to the development of underlying
11 assumptions, the development of financial forecasts,
12 utilization demand forecasts for various businesses for
13 the purpose of assisting financial planning, merger
14 acquisition, evaluation of different business
15 opportunities, the issuance especially of bonds, but
16 also the issuance of limited partnership units,
17 cooperative units which is the same as stock, in effect,
18 for a cooperative.

19 I was also involved in providing litigation
20 services. Those services included cases where I was
21 retained by litigating attorneys, about 50/50
22 plaintiffs/defendants. Most of the work was and still
23 is -- I don't know if it's most but the largest portion

J.APP. 0495

1 is lost profits. The next is valuation of businesses.
2 And after that, it's various topics: piercing the
3 corporate veil, business meaning of a contract, role
4 responsibility of various professionals, investment
5 bankers and due diligence for example, certified public
6 accountants, board of directors.

7 Q Now, during the years you were with the
8 accounting firms, could you outline your health care
9 experience in the work you performed?

10 A Certainly. Starting in 1974, I did a fair
11 amount of health care work. For example, the practice
12 at Peat, Marwick was Peat, Marwick's fourth or fifth
13 largest health care consulting practice. And I was
14 involved in the design, the initial design and
15 conception of the Minnesota Hospital Rate Review
16 Program, which is how all Minnesota hospitals set prices
17 for a considerable length of time.

18 I've been involved in merger studies,
19 acquisition studies, corporate reorganization,
20 establishment of subsidiaries and new businesses,
21 strategic planning, issuance of long term bonds, joint
22 ventures, a variety of types of projects having to do
23 largely with what I would characterize collectively as

J.APP. 0496

1 capital finance.

2 Q And were those engagements you were just
3 mentioning in the health care field?

4 A Yes. Mostly for hospitals, but also for
5 nursing homes, but mostly hospitals or hospital systems
6 literally, almost literally from coast to coast, from
7 California to Maine, from Texas to North Dakota.

8 Q Now, in your experience, have you had
9 experience with respect to not-for-profit hospitals?

10 A Yes. As a matter of fact, most of the hospital
11 work that I've done has been in the not-for-profit
12 sphere. Nursing home work has tended to be more for
13 profit than, say, the hospital work.

14 Q And Mr. Cobb, have you had experience in the
15 valuation of hospitals?

16 A I have.

17 Q And could you outline for the Court your
18 experience in valuation of hospitals?

19 A There have been several instances. I use
20 Fairview Community Hospitals as an example. Fairview
21 was one of the first not-for-profit systems established
22 in the United States. And Fairview -- I've conducted
23 various engagements for Fairview. One had to do with

J.APP. 0497

1 their acquisition of the Indianhead Memorial Hospital in
2 Shelley, Wisconsin. One was a merger between Fairview
3 Community Hospital and Iowa Lutheran Hospital.

4 I also looked at Fairview's joint venturing
5 participation in a hospital plan to be constructed in
6 the Republic of Ireland and a similar analysis for a
7 hospital plan to be constructed in England.

8 I also worked with Fairview in evaluating other
9 acquisitions, for example, of a large for profit nursing
10 home group that also had, as I recall, one extended care
11 hospital in its asset base.

12 I conducted an engagement on behalf of Iowa
13 Methodist Hospital in Des Moines, Iowa, the largest of
14 three major hospitals in Des Moines, where their board
15 of directors became increasingly aware of the phenomena
16 of acquisition of large teaching hospitals by for profit
17 chains. And the board sought to make determinations as
18 to how they could best fulfill their corporate purpose,
19 the 501(c)(3), whether it would be to continue operating
20 the hospital in a time of increasingly confiscatory
21 reimbursement practices, changing health care delivery
22 patterns, increasing competition, whether they would be
23 better to continue to operate the hospital or if they

J.APP. 0498

1 would be better to sell the hospital and then use the
2 proceeds in other forms, other fashions to meet their
3 charitable purpose.

4 Those are some examples.

5 Q And just by way of example, briefly, what other
6 hospitals have you done work for?

7 A That's a long list. For example, Baylor
8 Medical Center in Dallas, Texas. I did a very extended
9 engagement on behalf of Saint Mary's Hospital in
10 Rochester, Minnesota, which is one of the two major
11 clinic hospitals.

12 I had a joint client relationship with the Mayo
13 Clinic in that Mayo Clinic had guaranteed a portion of
14 \$50 million worth of bonds that were ultimately issued.

15 Allegheny Health Education Research
16 Corporation, which owns and operates among other things
17 approximately a 670 bed hospital in Pittsburgh,
18 Pennsylvania, I've done acquisition work for them. I've
19 done strategic capital financing work. I've done
20 feasibility study work for the issuance of tax exempt
21 bonds of a number of hospitals, because it's where I
22 live, in and around Minnesota. Minnesota, North Dakota,
23 Iowa, Kansas, Nebraska, Montana and Wisconsin.

J.APP. 0499

1 Q Now, Mr. Cobb, have you been engaged by any
2 Attorneys General previously?

3 A I was, quite a while ago.

4 Q And what was that engagement?

5 A When I was at Touche Ross, I had two
6 engagements with the Attorney General's office of the
7 State of Minnesota. Each were to assist the Attorney
8 General's office in evaluating claims regarding
9 reimbursement under the Medicaid program of, in one
10 instance, a nursing home and in the instance a
11 children's home.

12 Q Mr. Cobb, what is your educational background?

13 A I have an undergraduate degree from the
14 University of Iowa with a major in accounting and minor
15 in quantitative methods. It included various course
16 work regarding accounting, economics, business, finance,
17 valuation of equity interest, valuation of businesses.

18 I also have a master of arts degree from the
19 University of Iowa that carries the same major, same
20 minor, had similar course work, accounting, finance,
21 investment.

22 And since 1974, in accordance with the
23 guidelines of the American Institute of Certified Public

J.APP. 0500

1 Accountants and various other bodies, I've completed on
2 average in excess of 40 hours of formal continuing
3 education each year. The education has been
4 functionally related to hospitals, health care, other
5 industries as well, and also regarding accounting
6 topics, valuation of business, finance types of issues.

7 Q Now, what professional associations are you a
8 member of?

9 A I'm a member of the American Institute of
10 Certified Public Accountants. I'm also a member of the
11 Minnesota Society of Certified Public Accountants. I'm
12 a past member or past advanced member of Health Care
13 Financial Managers Association.

14 I've also sat on a number of task force
15 advisory committees to evaluate, consider, encourage
16 various health care costs, primarily health care capital
17 types of decisions and costs. My participation in those
18 groups really was from the middle 1970s, through, say,
19 the middle or late 1980s.

20 Q Mr. Cobb, let me refer you to Exhibit 712. Do
21 you have that in front of you?

22 A I don't know what Exhibit 712 is.

23 Q It's your resume.

J.APP.0501

1 A All right. Yes.

2 Q And does that list provide a listing of cases
3 in which you have provided trial testimony over the last
4 four years?

5 A Not only trial; it also includes arbitrations,
6 but, yes, that's correct, at least as of the date of
7 this.

8 MR. BONO: Your Honor, we offer Mr. Cobb as an
9 expert.

10 THE COURT: It's been stipulated.

11 MR. BETTIUS: It is stipulated.

12 MR. BONO: All right.

13 BY MR. BONO:

14 Q Mr. Cobb, what was your assignment in this
15 matter?

16 A I was asked to undertake a valuation that
17 resulted in my forming opinions regarding the fair
18 market value of JMHI as of June 30th, 1971, as of April
19 13th, 1973, and as of January 29th, 1975.

20 Q And did you prepare a written report?

21 A I did.

22 Q Directing your attention to Exhibit 710, is
23 that the report that you prepared?

J.APP. 0502

1 A I don't have one that says 710.

2 MR. BETTIUS: 710 is his report, Mr. Bono.

3 BY MR. BONO:

4 Q All right. Now, Mr. Cobb, did you sign this
5 report on June 18, 1996 --

6 A I did.

7 Q -- as shown on the report?

8 A Yes, it's on page 37.

9 Q Now, did this report contain the conclusions
10 which you have reached in this matter?

11 A It contains a summary of the conclusions, yes.

12 Q Now, have you, since June of 1996, have you
13 changed any of your conclusions which you have reached
14 in this matter?

15 A I don't believe so.

16 Q Now, have the conclusions which you've
17 expressed in your report, have you reached those
18 conclusions within a reasonable degree of certainty?

19 A Yes.

20 Q Now, would you tell the Court what materials
21 you reviewed in forming your opinions?

22 A I had certain of the legal information, the
23 complaint, some interrogatory answers, things of that

J.APP.0503

1 nature. I also had regarding Jefferson Memorial
2 Hospital, Inc. financial statements, federal tax
3 returns, the auditor's reports on the various financial
4 statements. I had regarding Jefferson Memorial Hospital
5 Corporation annual statements, audit reports, tax
6 returns.

7 Those together span the time period from 1967
8 through 1975. I had articles of amendment, articles of
9 incorporation -- not reading, as I recall -- regarding
10 Jefferson Memorial Hospital, Inc., and Jefferson
11 Memorial Hospital Corporation.

12 I had various correspondence regarding
13 Jefferson Memorial Hospital, Inc.; letter to the board
14 of directors; letter from Mr. Reeves, for example. I
15 had a copy of the plan and agreement of reorganization
16 for merger of Jefferson Memorial Hospital, Inc. into
17 Jefferson Memorial Hospital Corporation.

18 I had at least certain of the minutes of
19 Jefferson Memorial Hospital Corporation stockholders,
20 finance committee and board of directors. I had a
21 certain document identified as Jefferson Memorial
22 Hospital, Inc. minutes of the annual meeting of
23 membership, January 27, 1995.

J.APP.0504

1 I had memorandum agreements, sale lease back
2 agreement purchase by Dr. Tauber. I had various
3 correspondence from Dr. Tauber, Irwin S. Freedman,
4 Leslie L. Peters. I had some correspondence from the
5 Internal Revenue Service dated April 4, 1969 and January
6 of 1972.

7 And I had various financial information, 10-Ks,
8 annual reports, of companies that had as a part of their
9 line of business operations in general acute hospitals
10 for various companies, generally for time periods in or
11 around 1971, 1973 and 1975.

12 I also made reference to the American Hospital
13 Association Guide which includes information, certain
14 information regarding hospitals in the United States for
15 various years. I also had some U.S. Census Data and
16 some Department of Commerce, Bureau of Economic Analysis
17 information regarding personal capital expenditures,
18 consumer price index, things of that nature.

19 I also made reference to the Internal Revenue
20 Code. And I also read a number of periodicals, for
21 example, Barrons, regarding the health care industry in
22 the early and mid 1970s and various companies involved
23 in the health care industry in the early and mid 1970s.

J.APP.0505

1 Q And did you reach some overall conclusions?

2 A I did.

3 Q And what conclusions did you reach, Mr. Cobb?

4 A Reading from the report, as of June 30, 1971,
5 JMHI had no acquisition value. The plan and agreement
6 of reorganization for merger with JMHC whereby all of
7 the net assets, both the assets and the liabilities of
8 JMHI as of June 30, 1971 would be exchanged for 5,000
9 shares of JMHC was reasonable. That after discounts --

10 MR. BETTIUS: I object, Your Honor. He's
11 described a transaction not described by the parties.

12 THE COURT: Objection is noted, Mr. Bettius.
13 You can cross-examine him on it.

14 MR. BETTIUS: Continuing objection, Your Honor.

15 A That after discounts for illiquidity and a
16 position as a minority shareholder, 5,000 shares of JMHC
17 stock would not have had acquisition value as of April
18 18th, 1973 or as of January 29th, 1975.

19 MR. BETTIUS: So as not to continually object,
20 Your Honor, I would just like a continuing objection to
21 the '73 and '75 opinions as well.

22 THE COURT: All right. So noted.

23 A And that the value of JMHC as of April 18, 1973

J.APP.0506

1 and as of January 29th, 1975 arose from the building
2 which had been owned by JMHA prior to June 30, 1971 and
3 from the land which had been owned by others and a
4 portion by JMHI prior to June 30, 1971.

5 BY MR. BONO:

6 Q And what further conclusion did you reach?

7 A From my findings that JMHC had established and
8 maintained a hospital and adjuncts convenient and
9 necessary for its administration and it received funds
10 for the public welfare, and that as of June 30, 1975 no
11 part of JMHI's net income inured to the private benefit
12 of the physician members of JMHI, the shareholders of
13 JMHC are the partners of KSJV, which is King Street
14 Joint Venture or JMHA; that upon dissolution, whether
15 June 30, '71, April 18, '73, or January 29, '75, net
16 assets of JMHI were not distributed to the members of
17 JMHI.

18 Q Now, Mr. Cobb, would you explain when one is
19 approaching the valuation of a hospital, what are the
20 factors that you would look at?

21 A The first factor is to really understand the
22 hospital, to understand its primary asset, the medical
23 staff, people that provide the service within the

J.APP. 0507

1 hospital, the people that are the drive, that bring to
2 the hospital, in effect, its patients; to understand the
3 facilities; to understand its marketplace, the
4 demographics and the competition; and to understand the
5 changing environment in the marketplace in which the
6 hospital is operating.

7 Q And when you undertook your engagement here,
8 what did you do when you started your examination of
9 JMHI in this particular matter?

10 A It's a little bit in chronological order. I
11 started by reading financial statement information to
12 get a financial picture. And then I started to pay
13 attention to the medical staff.

14 We had discussions with Dr. Tauber regarding
15 the medical staff, and in the information that I read
16 there were indicators of disharmony within the medical
17 staff, that they were often at odds with each other.

18 I also identified that the medical staff was
19 not part of the traditional local medical community.
20 They were considered outsiders for a variety of reasons,
21 including that many of them were foreign trained, many
22 of them were foreign nationals, and they were or had not
23 yet become really members of the more traditional

J.APP. 0508

1 medical community; that in some ways, measured against
2 the rest of the medical community, the physicians
3 believed themselves to be seen as misfits to the medical
4 community in total.

5 I didn't find any problems or concerns with the
6 quality of their practice, the quality of the care that
7 they delivered, but -- I wasn't made aware of any -- but
8 rather, of a perception in the community in the
9 differences in their practice. So I understood the
10 medical community.

11 I also wanted to identify measures in the
12 medical community at other hospitals. And I found, for
13 example, that as of 1975, Fairfax Hospital had 450
14 active and associate physicians. Those would be
15 physicians that are using the hospital, bringing
16 patients to the hospital on a more regular basis. And
17 that Fairfax had 306 consulting and courtesy physicians.
18 Those would be physicians that use the hospital only
19 from time to time on a less regular basis. So that
20 Fairfax had a total of 756 physicians on its staff.

21 Commonwealth had 146 active and associate, and
22 104 consulting and courtesy for a total of 250. And
23 that Mt. Vernon was anticipated or had already had

J.APP. 0509

1 assignments -- couldn't tell from the official statement
2 of Fairfax, which was the source of the information --
3 had 52 active or associate and 3 consulting or courtesy
4 for a total of 55.

5 I identified in discussion with Dr. Tauber that
6 Jefferson had in total active, associates, consulting,
7 courtesy, approximately 100 physicians, and that there
8 was a small core of those physicians that really were
9 the ones that were most actively practicing at the
10 hospital.

11 So I found consistent with the size of the
12 operations of some of the other hospitals in the
13 community that Jefferson's physician complement was
14 relatively small and was a physician complement that was
15 seen as different and not part of the traditional
16 medical community.

17 Q And how did that impact your analysis?

18 A Of extraordinary importance in evaluating a
19 hospital and valuing a hospital and making a decision
20 whether to buy a hospital or not is the physicians.
21 Because the physicians not only run the day-to-day
22 operations and are responsible for the quality of care,
23 which is the most important thing that goes on in the

J.APP.0510

1 building, but they are also the source of patients,
2 especially in 1975, '73, '71 before preferred provider
3 organizations and HMOs. The physician was the
4 determinant, the primary determinant in where a patient
5 would go for their care. So the physicians are
6 extremely important.

7 They are all of the marketing and all of the
8 operations. They are the key employees. And it's
9 extremely important, I think, to understand the
10 physicians and, in an acquisition, to understand that
11 the physicians would stay in place at the hospital are
12 the kinds of physicians that you can, as the acquirer,
13 count on to further build and expand not only the
14 existing facilities but any future expansion of the
15 facilities or utilization that you have. Physicians
16 drive the hospital.

17 Q Now, did you also look at the service area of
18 the hospital?

19 A I did.

20 Q And what did you do in that regard?

21 A I looked at 1970 and 1980 census data. I
22 didn't have any projections of population current to
23 1970.

J.APP.0511

1 Q May I direct your attention, if I could, to
2 Exhibit 708A?

3 A All right.

4 Q Is that the data that you looked at in terms of
5 the service area?

6 A It's a summary of the data, yes.

7 Q And what did you look at and find out with
8 respect to the service area?

9 A I determined first the primary and secondary
10 service area. The primary service area is that area
11 that is contributing the greatest number of percent of
12 patients to a hospital; it's its core market, in effect.

13 The secondary service area is an area that the
14 hospital also draws from significantly and experiences
15 competition with hospitals in the secondary service
16 area, drawing from its base.

17 So I looked at population and found that the
18 population in the total primary service area of the city
19 of Alexandria and Arlington County had dropped,
20 together, 10.3 percent from 1970 to 1980, while
21 population in the secondary service area, Fairfax
22 County, had increased 31.2 percent. That confirms my
23 knowledge that there was some population shifting to the

J.APP.0512

1 western portion of Northern Virginia; that there were --
2 there was development in the suburban areas.

3 Q And what did this information tell you about
4 Jefferson's location in the marketplace?

5 A It showed that there was a population shift
6 away from Jefferson's primary service area.

7 Q And in your analysis and investigation, did you
8 look at competitive marketplace and other hospitals?

9 A I did.

10 Q What did you do in that regard?

11 A I gathered various pieces of information. For
12 example, I had available an official statement related
13 to Fairfax offering a little over ten million dollars of
14 tax exempt bonds at the end of 1975, the net proceeds of
15 which were planned to be used for Fairview's acquisition
16 of Commonwealth Doctor's Hospital. And that --

17 Q You said Fairview's.

18 A I'm sorry. Fairfax.

19 Q Did you mean Fairfax?

20 A Yes.

21 Q Mr. Cobb, let me direct your attention to
22 Exhibit 708B.

23 A All right.

J.APP.0513

1 Q And what did you look at and what did you study
2 with respect to this information in the competitive
3 marketplace?

4 A This is from a different source. I also went
5 to the American Hospital Association Guide that's
6 published annually, and that provided information, for
7 example, regarding beds, admissions, ability to
8 calculate or show a percent occupancy. It also shows
9 various services offered by the hospitals.

10 So I made an evaluation of that information. I
11 identified, for example, that Jefferson didn't offer
12 services that were offered at other hospitals.
13 Jefferson did have certainly an appropriate and
14 generally speaking competitive range of services with
15 the other hospitals that I looked at, which were
16 Alexandria, Circle Terrace, Arlington Hospital, Northern
17 Virginia Hospital, Commonwealth Doctor's Hospital and
18 Fairfax. But I analyzed the occupancy to see how the
19 hospital was operating over time measured against its
20 competitors.

21 I also measured admissions. And, for example,
22 in 1971, Jefferson had 5,065 admissions. And that's 7.5
23 percent of the total admissions to these hospitals of

J.APP.0514

1 67,518. So a measure of its market share, admissions,
2 if you will, is 7.5 percent in 1971.

3 In 1972, that amount had dropped to 7.2. In
4 1973, to 6.7. In 1974, to 6.5. And in 1975, to 6.1.
5 So it showed that Jefferson was losing market share, in
6 effect, measured against the other hospitals listed
7 here.

8 I also noted that Jefferson's admissions
9 increased to 5,216 as reported by the American Hospital
10 Association in 1972. And that was the end of a fairly
11 steady and significant increase; for example, coming up
12 from 4,164 in 1968, but that from 1972 to 1973,
13 admissions had declined from the 5,065 -- I'm sorry,
14 from the 5,216 level to 5,092, and then to 4,991, and
15 then to 4,819.

16 I also noted regarding number of beds because I
17 wanted to find out what was happening in the competitive
18 environment, what was going on in the marketplace. And
19 I identified that in March of 1972 Commonwealth expanded
20 its bed compliment from 80 to 160. And you can see to
21 some extent that reflected here as their beds are
22 reported to go from 80 to 131, the measure of operating
23 beds. So there's an expansion occurring at

J.APP.0515

1 Commonwealth.

2 There also were changes in the bed capacity at
3 a number of the other hospitals. For example, as
4 reported, Alexandria Hospital, Arlington Hospital and
5 Fairfax Hospital added 195 beds, 1459 and 122
6 respectively from 1971 to 1975. There was an expansion
7 of the bed complement that was going on around
8 Jefferson.

9 There also was construction in Reston of a
10 facility called Access which was an ambulatory care
11 facility, a much more common type of facility across the
12 country today than it was in the 1970s, a new facility.
13 There also had been planned, at least from 1973,
14 construction of Mt. Vernon Hospital, as I recall
15 approximately 230 beds or so, with the plan to open 53,
16 54, 55 of those beds in early 1976.

17 So Jefferson Hospital, regarding its
18 competition, had some decline in market share, some
19 decline in admissions, and faced increasing competition
20 if for no other reason than the number of beds being
21 operated by the hospitals listed here, a new hospital in
22 Mt. Vernon, and other changes in the competitive market.

23 Q Now, did you also look at insurance and

J.APP. 0516

1 Medicare?

2 A I did.

3 Q And what did you examine with respect to those
4 items?

5 A There was a continuing change in environment in
6 health care reimbursement. There were plan changes and
7 Medicare reimbursement. It was a dynamic area.
8 Medicare sought to further reduce the costs to the
9 government of health care. There were bills regarding
10 changing reimbursable amounts. There were different
11 treatments in that regard.

12 Insurance companies, private insurance
13 companies also were becoming increasingly concerned
14 regarding health care reimbursement and health care
15 costs. So it was part of a changing market.

16 In addition, under the Ford administration,
17 there finally was a WIN program, whip inflation now,
18 that included some cost controls. And that came in, as
19 I recall, in 1975. There was a general sentiment and
20 concern regarding health care costs. Health care costs,
21 the increase in health care costs had accelerated in the
22 early 1970s and was becoming an increasingly important
23 topic in reimbursement circles.

J.APP. 0517

1 Q And how did that impact your analysis?

2 A It provided the awareness that reimbursement
3 for hospitals was changing. It's a level of uncertainty
4 to an acquirer. I don't think it was, certainly wasn't
5 an uncertainty that precluded activity in the market.
6 In fact, in this time period, there were many, many,
7 many acquisitions of hospitals. But it was a factor
8 that I thought was important to know that it was there.

9 Q Now, have you had any experience with
10 hospitals, either applying for or not applying for
11 Hill-Burton funds?

12 A Yes.

13 Q And there's been testimony in this case
14 about --

15 MR. BETTIUS: He's never been offered for that,
16 Your Honor. It's outside the scope of his designation.

17 THE COURT: Let me hear the question.

18 MR. BETTIUS: Sorry. I didn't mean to
19 interrupt.

20 BY MR. BONO:

21 Q Did you examine in your analysis the
22 Hill-Burton funds?

23 A No.

J.APP.0518

1 Q In your experience, you're familiar with the
2 application for Hill-Burton funds; is that correct?

3 A Yes.

4 Q And based on your experience, do nonprofits --
5 what do nonprofits do with expect to the application or
6 not the application of Hill-Burton funds?

7 MR. BETTIUS: I object. That is not part of
8 his opinion.

9 THE COURT: Does it go to a question of value?

10 MR. BONO: Well, it may, Your Honor, in terms
11 of --

12 MR. BETTIUS: Your Honor, I'm going to withdraw
13 it. I withdraw my objection. But I want you to
14 remember who opened the door.

15 THE COURT: All right.

16 MR. BONO: Thank you.

17 THE COURT: Objection withdrawn. Do you recall
18 the question?

19 THE WITNESS: I do not.

20 BY MR. BONO:

21 Q What familiarity, and from your experience,
22 have you had with respect to not-for-profits either
23 seeking or not seeking Hill-Burton funding?

1 A I've been an adviser to hospitals going through
2 that process as to whether they should seek Hill-Burton
3 or not for construction of additions and replacement
4 facilities.

5 Q In your experience, do not-for-profits
6 sometimes decide not to seek Hill-Burton funds?

7 A Absolutely.

8 Q What are the reasons why not-for-profits choose
9 not to --

10 MR. BETTIUS: I object to that. I don't think
11 that has anything to do with the case and that wasn't
12 part of this case, either. Either they sought it or
13 they didn't seek it.

14 THE COURT: Objection is overruled.

15 MR. BETTIUS: He did not advise them at that
16 time. If he can tie that -- I can't see what the
17 possible relevance of what some other hospital --

18 THE COURT: I asked the question earlier if
19 that had something to do with this witness's testimony
20 about the value of the hospital, and that's when you
21 withdrew your objection.

22 MR. BETTIUS: Now I see where he's going with
23 it, to talk about generalities of other hospitals.

J.APP.0520

1 THE COURT: A little late at that point, I
2 suspect.

3 MR. BETTIUS: My objection is, unless he can
4 tie it to this hospital, that particular question, why
5 they do or don't apply --

6 THE COURT: I'll have to hear the answer, I
7 guess, in order to determine whether or not it's tied
8 in.

9 THE WITNESS: I don't remember the question.

10 BY MR. BONO:

11 Q Mr. Cobb, what are the reasons why
12 not-for-profits choose not to seek Hill-Burton funds?

13 A There are several. The first is the acceptance
14 of Hill-Burton funds created a 20-year exposure to free
15 care that hospitals in that time period didn't believe
16 they could estimate or control. And that was a problem,
17 an increasing problem with increasing competition and
18 rate competition.

19 There also in that time period was a different
20 source of capital. The Hill-Burton program, without
21 hindsight, back then worked very well. It caused and
22 supported the construction of a number of smaller
23 community hospitals. And now in the 1990s don't work

J.APP.0521

1 anymore and have created problems.

2 MR. BETTIUS: I going to object to that, Your
3 Honor.

4 THE COURT: That's not responsive, is it,
5 Mr. Bono, to the question of why they would seek them or
6 why they wouldn't?

7 MR. BONO: I was just asking the question for
8 the reasons. I thought the witness was responding.

9 THE WITNESS: The second thing that happened
10 was, there became an alternative source of sufficient
11 capital to construct hospitals. And that was access to
12 tax exempt bonds, which in the early, mid 1970s, changed
13 fundamentally how hospitals and especially
14 not-for-profit hospitals were financed. So that was a
15 key factor in moving away from Hill-Burton moneys.

16 BY MR. BONO:

17 Q Now, in your examination of Jefferson Hospital,
18 did you look, did you examine its physical plant?

19 A I did.

20 Q And in particular, the physical plant that
21 existed as of June 30, 1971?

22 A I don't know how to answer that. As of June
23 30, 1971, I had not, to my recollection, I hadn't seen

J.APP.0522

1 the hospital.

2 Q Let me change that. Did you analyze what the
3 physical plant was of Jefferson?

4 A Yes.

5 Q And what did you do in that regard and what did
6 you determine?

7 A I received a series of photographs of the
8 hospital that were taken in June of 1996, early June,
9 maybe even May, and I discussed at some length with
10 Dr. Tauber --

11 MR. BETTIUS: I'm going to object. We haven't
12 seen those photographs. They have never been exhibited
13 to us. We don't know what they are. And we've asked
14 this witness for -- we've examined his work papers.
15 They weren't produced within the work papers. And he's
16 now going to opine based on some photographs that we
17 haven't seen nor were we ever advised of.

18 THE COURT: Objection overruled.

19 THE WITNESS: I discussed the hospital's layout
20 and history of development of the hospital, bricks and
21 mortar, size, scale, site, location with Dr. Tauber.
22 Then after the date of my report but before the date of
23 my deposition, I visited the hospital and the discussion

J.APP.0523

1 with Dr. Tauber gave me an understanding of the
2 location, the layout, the facility.

3 I've also read information regarding an
4 architectural engineering firm's evaluation of the
5 facility and the health care consulting firm's
6 evaluation of the facilities done on behalf of, as I
7 recall, INOVA. And I think in the 1980s.

8 MR. BETTIUS: Your Honor, again, not produced.
9 1980. They have insisted on cutoffs after 1975. And
10 this material has never been produced.

11 THE COURT: This is just information that went
12 into his formulation of his opinion as to the physical
13 plant, Mr. Bettius. Overrule the objection.

14 MR. BETTIUS: Okay.

15 THE WITNESS: That information corroborated
16 even over the distance of time my beliefs and
17 understandings of the building from looking at the
18 pictures and the lengthy discussion with Dr. Tauber.

19 BY MR. BONO:

20 Q And what understanding did you come to with
21 respect to the physical building and the layout of the
22 land and the building?

23 A The building had some significant constraints.

J.APP. 0524

1 It did not have a large parcel of land that would
2 support over time development of a medical complex. And
3 in the 1970s, that's what development was looking for.
4 That is, the sites that I helped select and I helped to
5 develop for new hospitals in the 1970s, were a
6 completely different scale than this site.

7 The same for the location. Locations were
8 moving away from downtown inner-city hospitals to more
9 suburban hospitals where the population was moving
10 towards and where there was more land available.

11 The building itself has odd or different street
12 access and visibility. The front entrance is not square
13 to King Street.

14 The scale of the building I believe was
15 relatively small, including the bay sizes. So there
16 were limitations from my experience in the site,
17 location, and in the building itself.

18 Q Now, when you visited the building personally
19 last June, did you become aware that at the present
20 time, there is a medical building there as well; is that
21 correct?

22 A I was aware of that before from talking to
23 Dr. Tauber. Dr. Tauber had explained to me the original

J.APP. 0525

1 building from 1964-65, the 24-bed addition, the medical
2 building. There was an addition for an intensive care
3 unit and ultimately a second floor over the bed wing.

4 Q Now, we spoke a moment ago about, in your
5 analysis, there was no room for, I think you described
6 it as, a medical complex expansion.

7 A Yes.

8 Q Can you explain the difference between what you
9 meant by that and by what you know to be there today for
10 the medical building?

11 A All right. Including in the 1970s, the
12 development of hospitals has changed. To go back, it
13 started as kind of downtown smaller buildings and they
14 evolved into a complex, a little bit of a sprawl.

15 And the common configuration that started in
16 the 1960s was to have an ancillary core building.
17 Ancillary includes surgery, laboratories, radiology, so
18 that all of the concentrated service elements are in one
19 place. They are convenient to each other. In a
20 surgical suite -- or in emergency, I wanted to be near
21 surgery. I wanted to have rapid access to x-ray. So my
22 core services are in an ancillary building or ancillary
23 tower.

J.APP. 0526

1 And adjacent to that, it became a bed wing, bed
2 floors. Those were usually configured so they could be
3 expanded. They could be expanded at the same time or
4 separately as the hospital grew.

5 It also became very common practice to have the
6 medical office building on the same site. Depending on
7 the location, the size of the hospital would change the
8 size of that.

9 There also started to be concerns about
10 conducting medical research, medical research types of
11 facilities, related types of retail. For example, there
12 might be a retail pharmacy on the medical campus. There
13 might be the retail of medical products, orthopedic
14 products, for example.

15 But hospital campuses, complex became the norm
16 rather than going back in time to small, single, more
17 narrowly focused facility.

18 Q And when you -- based on that information, how
19 did that affect your analysis?

20 A Jefferson, I saw a relatively small site that
21 was landlocked. It didn't have access to the corner.
22 So it was in effect in the middle of a block. It was a
23 retail strip, or at least now. And then behind the

J.APP.0527

1 hospital going away from King Street and to the left,
2 there are highrise multi-family apartments.

3 So the site is relatively landlocked. There
4 wasn't an ability to start to buy a row of houses or
5 adjacent land. The facility was landlocked and
6 therefore under some constraint.

7 The facility was not, or the site was not
8 particularly large. It would be difficult to have
9 surface parking, large scale parking. You'd need a
10 parking ramp, which costs considerably more than surface
11 parking, for example.

12 So I found the site to be not where, in the
13 middle 1970s, not where someone would go looking to
14 place, or where somebody would see strong potentials for
15 a general acute hospital.

16 Q Now, in your work, you examined the financial
17 operations of JMHI?

18 A I did.

19 Q And what did you do with respect to that
20 examination?

21 A I read financial statements from 1976 -- I'm
22 sorry, from 1967, 1968, 1969 and 1970 and for the eight
23 month period ending June 30, 1971. And I made

J.APP.0528

1 considerations of the growth in revenues. And there
2 were increases in revenues year-to-year to year-to-year
3 throughout that time period.

4 I also looked at the deductions from revenue.
5 And the deductions from revenue include, in effect,
6 discounts given to insurers, Medicare included, free
7 care, courtesy care, things of that nature. Deductions
8 of revenue can become increasingly important to
9 hospitals where they start in the middle of the 1960s
10 with Medicare coming in.

11 And I wanted to make considerations of the
12 difference between the top line revenue number and a net
13 revenue number. At the net revenue number, I also found
14 that Jefferson's net operating revenues increased each
15 year from '67 through 1970 and on an annualized basis,
16 taking the eight months ending June 30, 1971, dividing
17 by 8 multiplying by 12, increased again. So there was a
18 steady increase in revenues.

19 Q Did you prepare a chart summarizing this
20 analysis? I direct your attention to Exhibit 708C.

21 A I don't know that it summarizes the analysis.
22 It sets forth the numbers. And I think it shows, for
23 example, that the top line shows revenues increasing

J.APP. 0529

1 from 2,091,000 in 1968 up to 3 million 707 rounding in
2 1970. And you can also see the deductions of revenue
3 increasing. The total net operating revenues also
4 increased year to year to year.

5 Q What else did you examine with respect to the
6 revenues?

7 A Well, very importantly, not to just look at
8 revenue, because revenue is not what's left over at the
9 end of the year, I wanted to look at the earnings. And
10 I looked at the income and I found that there was an
11 inconsistent pattern of earnings.

12 The hospital from inception had accumulated
13 deficits but the hospital had generated profits. As
14 reflected here it had a net income of \$15,359 in 1968,
15 but reported a loss in 1969 and then a gain of 172,192
16 in 1970, followed by a gain of 51,565 for the 8 months
17 to June 30, 1971. And annualized, if we divide by 8 and
18 multiply by 12, the 551,000 on a annual basis becomes
19 \$77,350 approximately.

20 Q And how did this information fit into your
21 analysis?

22 A It showed me that despite increasing revenues,
23 that the business of Jefferson Memorial had not

J.APP. 0530

1 established a consistent pattern of earnings. So that
2 to an investor, it's going to show erratic earnings.
3 And that draws into question a number of things: its
4 management, its rate setting, its management of
5 deductions from revenue, its management of operating
6 expenses.

7 So it shows that there's a weakness in the
8 business that the eyes of an acquirer would see.

9 Q Did you also examine the information on the
10 balance sheets?

11 A I did.

12 Q And what did you do in that regard?

13 A I noticed, for example, that at June 30, 1971,
14 Jefferson first and importantly didn't own the building
15 that it operated in. And as I recall, it owned portions
16 of the land.

17 But we have, in effect, an operating company
18 that is leasing its physical space. So there's a
19 separation of the ownership of the operations and the
20 physical assets.

21 Q Have you, in your experience, have you seen
22 that with respect to other not-for-profit hospitals?

23 A I've seen a number of, great number of for

J.APP.0531

1 profit hospitals with that structure. I can't recall a
2 not-for-profit hospital that leased the hospital
3 building. I've seen them lease office buildings and
4 parking facilities and clinical spaces, but I can't
5 remember a 501(c)(3) hospital that leased its space.

6 I know of a very, very large teaching
7 institution that looked at doing that and ended up not
8 doing it. I can't remember one from my experience.
9 It's not to say that there aren't some out there. But I
10 don't know of any.

11 Q Now, what else did you look at with respect to
12 the financial information?

13 A I found that the total assets were \$1,292,000,
14 but the total liabilities totaled 1,685,000. So that
15 there was a deficit. The liabilities of the company,
16 Jefferson Memorial Hospital, Inc., exceeded the assets
17 by \$392,568.

18 Q Now, did you examine at this point how the JMHI
19 had been financed?

20 A At least in general terms, yes.

21 Q And what did you look at in that regard?

22 A That there had been -- that the financing that
23 was there was largely financing that had been provided

J.APP. 0532

1 by certain of the physicians on its staff, many of whom
2 were also members of its board. So it was in effect a
3 doctor financed operation.

4 Q Now, did you examine the JMHI's balance sheets
5 over a period of time it operated?

6 A I looked at the balance sheets from, I think,
7 1976 through 1971 and the JMHC balance sheets from 1972
8 through 1975.

9 Q You may have misspoken. I think you meant to
10 say 1967 to '71?

11 A Yes.

12 Q You said 1976.

13 A 1967 to '71.

14 Q All right. And what did you look at in that
15 regard?

16 A I wanted to find out some measures of the
17 financial strength of the business. I wanted to find
18 out how it had been financed, some measures of its
19 financial strengths. And I read other documents around
20 this, and they indicated that the hospital, JMHI,
21 financially struggled; that it was very poorly
22 capitalized; that by one measure, and I personally don't
23 use just one measure, but by one measure, it was

J.APP. 0533

1 insolvent. The assets exceeded the liabilities. By
2 another and I think more valuable measure of insolvency,
3 it was paying its bills. Perhaps not always on time,
4 but it was paying its bills.

5 So by my conclusion, it was a solvent
6 operation. But that it was -- had limited
7 capitalization all the way through the time period that
8 I looked at.

9 Q Did you examine its working capital?

10 A I did.

11 Q And what did that examination show you?

12 A I found that it had very limited working
13 capital. And part of its lack of capitalization, it
14 really, to be a stronger organization to an acquirer,
15 would have needed significantly more working capital.
16 There would need to be a working capital infusion.

17 Q In your experience with losses, is there some
18 general understanding of how much working capital a
19 hospital needs to function fairly well?

20 A I don't know that there's general. There's
21 kind of an understanding that you want two months worth
22 of working capital. You want enough on hand to cover
23 two months of all of your expenses.

J.APP.0534

1 There are institutions that like considerably
2 more for various reasons. There are some that run along
3 with less. But two months is something that I
4 frequently see.

5 Q And how did JMHI compare with that?

6 A JMHI did not maintain two months worth of
7 working capital. For example, at June 30, 1971, their
8 working capital was -- the assets, cash, accounts
9 receivables, other receivables and inventory totaled
10 \$829,000.

11 The liabilities, accounts payable, accrued
12 expenses, provisions for contractual allowances totaled
13 \$895,000. And that indicates negative working capital.
14 So this was an undercapitalized operation.

15 Q Now, did you examine the debt capacity of JMHI
16 in your analysis?

17 A I do.

18 Q Let me direct your attention to Exhibit 708F.
19 What did your examination of the debt capacity show you?

20 A I wanted to identify Jefferson's ability,
21 especially given a poor capital position, a retained
22 deficit, a poor working capital, to, by its own
23 credit-worthiness, to take on debt. An acquirer would

J.APP. 0535

1 look at, first in determining what kind of exposure they
2 would have, what kind of rate of return they would
3 demand. And second, an ability to borrow moneys to
4 support capital expenditures, for example, things of
5 that nature.

6 And the traditional measure used in hospitals,
7 in the hospital industry, is to start with net income
8 and then to realize that subtracted from the net income
9 is depreciation, but that's not a cash expense. And
10 then to add back also interest expense, because I'm
11 trying to find out how much money I would have to pay
12 principal and interest. So I have to add the interest
13 back.

14 So I have calculated that by the measure used,
15 the amount available for debt service was, I'll use
16 1970, for example, was \$243,644. That's how much money
17 Jefferson generated that year to pay its capital
18 expenditures, its interest expense, and to pay its
19 debts.

20 So I've included here the interest expense and
21 what they title curtailment of notes payable, which is
22 payments of debt, retirement of bonds payable, and found
23 that their debt service was \$244,728.

J.APP.0536

1 So Jefferson didn't quite generate enough to
2 pay or to cover their debt service during that year out
3 of their income statement operations. So their coverage
4 is less than one. If I have payments of 100 and I
5 generate 100, my coverage is one. Their coverage is,
6 for all purposes, one, but a hair under.

7 Then in 1971, their coverage was somewhat over.
8 And again, that's not including capital expenditures.
9 It's also not including any refunds of advanced deposits
10 should they be required. And as a measure in the health
11 care industry, debt service coverage for a hospital of 1
12 or 1.32 in this time period and in this period of its
13 life is very, very poor.

14 It makes it so that at least the large
15 sophisticated capital markets would not lend to
16 Jefferson on the strength of its earnings. There also
17 is a problem in trying to go to the market and, for
18 example, to sell tax exempt bonds because Jefferson
19 didn't own the building and it didn't own all the land,
20 and therefore, it could not offer up those mortgageable
21 assets, in effect, for purposes of collateral against
22 the loan.

23 So Jefferson, in terms of credit worthiness,

J.APP.0537

1 was very, very poor.

2 Q And how did that, those findings enter into
3 your analysis?

4 A It further indicated that financially this was
5 a very poor operation. It was struggling.

6 It also indicated that -- leverage buy-out is a
7 concept that really came about or grew in the 1980s, as
8 did weighted average cost of capital. Acquirers of
9 hospitals in the 1970s simply did not use the weighted
10 average cost of capital method of looking at returns.

11 But it showed that if I were to attempt to
12 borrow moneys to assist my financing of an acquisition,
13 that those borrowings would have to come from my credit
14 worthiness, not the credit worthiness of whatever I
15 acquired.

16 So it really shows that there just isn't credit
17 worthiness in JMHI at June 30, 1971.

18 Q Now, in your analysis, did you also examine
19 financial operations of Jefferson Memorial Hospital
20 Corporation?

21 A Yes, I did.

22 Q And would you explain what you did in that
23 regard?

J.APP. 0538

1 A I really did very much the same things. I had
2 considered the hospital's physical facilities, the
3 hospital's medical staff. I saw indications of
4 continuing strife and conflict within the physician
5 staff. I had looked at the trends of utilization and
6 the competitive factors. So I started to look again at
7 the financial operations of JMHC as included in their
8 financial statements.

9 Q Again, let me direct your attention to Exhibit
10 708G.

11 A All right.

12 Q Could you explain what you have prepared there
13 and how that entered into your analysis?

14 A Yes. This is a summary of the income statement
15 information for JMHC for the fiscal years June 30, 1972
16 through 1975. And it shows similar things to what I had
17 seen for JMHI for the prior periods.

18 It shows a continuing increase in revenues
19 measured either by top line revenue or net operating
20 revenue. And it also indicates erratic earnings. And
21 as there's been some conversation, I have a little bit
22 of the same problem that Mr. Wilson had with the foot
23 notes of the financial statement don't clearly identify

J.APP.0539

1 how treatment of deductions of revenues was made.

2 There also may be an inconsistency in the
3 statements. But there was a change in accounting policy
4 disclosed in the footnotes to the 1975 financial
5 statement. I've never received, I think it's pages 8, 9
6 and 10 of the 1974 statement. But in the 197 --

7 MR. BETTIUS: Nor have we, Your Honor.

8 MR. BONO: We produced, Your Honor, everything
9 that we could find.

10 THE COURT: All right.

11 THE WITNESS: But in the 1975 statement, it
12 indicates a change. But the same problem Mr. Wilson
13 has, it's not as nicely worded as I would have liked in
14 1997. But there's an indication that there's \$116,000
15 of, in effect, loss that's put in. Although the '75
16 footnote says 1973, I would suspect it's in 1974. But
17 there's some cloudiness as to the accounting change.

18 And what that would do, assuming it's in 1974,
19 is increase the 1974 earnings by, say, \$117,000, but
20 then decrease prior years earnings. And because of the
21 nature of deductions from revenue, probably the prior
22 two or three years earnings.

23 MR. BETTIUS: I'm going to object to

J.APP. 0540

1 "probably." This is now, at this point, purely
2 speculation.

3 THE COURT: Objection overruled.

4 THE WITNESS: So that what's known is if '74
5 goes up by 116, the prior years go down by 116 with no
6 ability to know how much in an individual year.

7 So what is shown with or without, whatever
8 treatment of the 116, again, is a pattern of
9 inconsistent earnings. Net income of 1972, \$208,000;
10 1973 of 139, \$140,000; net income of \$10,000 and a net
11 income of \$122,000.

12 So there is not the stream that an investor
13 would look for similar to revenues increasing of net
14 income increasing with some consistency, some
15 regularity, but rather some erratic operation in the ups
16 and the downs of the earnings stream.

17 Q And how did that impact the analysis which you
18 undertook?

19 A That's something that an investor would be very
20 concerned about. The same as I discussed for JMHI, an
21 investor looking for an acquisition would look for some
22 consistency in earnings as well as consistency in
23 revenues, but consistency in earnings. And the earnings

J.APP. 0541

1 simply weren't consistent.

2 Q Now, did you look at JMHC's balance sheets as
3 well?

4 A I did.

5 Q And what did your examination show you with
6 respect to those financial documents?

7 A I looked at the balance sheets for each of the
8 fiscal years, June 30, 1972 through 1975 and paid
9 special attention to June 30th, '73 and June 30, 1975.
10 And what I identified, for example, for June 30, 1973,
11 is that JMHC's balance sheet, now different from the
12 balance sheets we saw for JMHI, includes property, plant
13 and equipment, the building.

14 So this is now the financial statement of an
15 enterprise that has operations and has the fixed assets
16 versus JMHI which had the operations.

17 I find that there now is reported total
18 capital. There is not a deficit. The deficit that I
19 saw each year for JMHI now with JMHC as of June 30, 1973
20 shows that there is a positive capital amount. There is
21 not -- there's not even one measure that some people
22 might say it's insolvent. This is a company now that by
23 any measures I'm familiar with would be considered

J.APP. 0542

1 solvent. And I also consider that JMHI was solvent.

2 I also find that, again, looking at working
3 capital, there now is positive working capital. So that
4 JMHC financially is a stronger financial entity than was
5 JMHI.

6 Q Did you examine JMHC's retained earnings?

7 A I did.

8 Q And directing your attention to Exhibit 708K,
9 what did your examination of retained earnings show you?

10 Before we discuss retained earnings, let me go
11 back to your examination of financial operations of JMHC
12 and the balance sheets. Did you examine whether there
13 was sufficient working capital at that time?

14 MR. BETTIUS: What time? I'm sorry.

15 BY MR. BONO:

16 Q During the period of 1972, 1975 we were
17 examining.

18 A I did. Although there was positive working
19 capital at the end of the 1973 fiscal year and the end
20 of the 1975 fiscal year, JMHC did not have two months
21 worth of working capital, didn't have working capital
22 equal to two months of operating expenses. But it did
23 at each of those time periods have positive working

J.APP. 0543

1 capital.

2 Q And did you reach any conclusions with respect
3 to whether JMHC had sufficient working capital? Were
4 they still undercapitalized?

5 A I think they still -- as an acquirer looking at
6 this, I would have wanted additional working capital. I
7 think they should have had additional working capital
8 than what they had even at the end of fiscal '73 and
9 fiscal '75.

10 Q Now, looking now at the retained earnings
11 analysis that you looked at, Exhibit 708K --

12 A Right.

13 Q What did you look at there and what did you
14 determine?

15 A Within the balance sheet capital accounts
16 portion of what's there is the retained deficit. And
17 that's the accumulation of the earnings, gains, losses
18 over time.

19 And I wanted to track those. And I found that
20 at the end of fiscal year 1975, that the third number up
21 on the chart shows net income fiscal year 1975 and a
22 redemption of shares and then a retained deficit of
23 51,827, which showed that cumulatively earnings over

J.APP. 0544

1 time have been negative.

2 That really isn't the case, because over time
3 by June 30, 1975, cumulative earnings really were a
4 plus. There was 68,165. So by June 30, 1975 on a
5 cumulative basis, there wasn't a deficit anymore. The
6 accounting deficit, if you will, occurs because of a
7 redemption of shares that occurred during 1975.

8 Q Now, in terms of your analysis, when you
9 determined that there was this \$68,000 --

10 A 68,165.

11 Q And what did that tell you in terms of the
12 analysis that you were performing?

13 A It told me that start to finish, from its
14 financial opening until June 30, 1975, that cumulatively
15 the entities had become profitable.

16 Q And over what period of time did that run?

17 A I don't recall as I sit here today.

18 Q Having an accumulated earnings of that amount,
19 \$68,000, was that over a four-year period that you were
20 examining?

21 A It's at least the period from '71 to '75.

22 Q And what would that tell an acquirer?

23 A That historically, it had cumulative earnings

J.APP.0545

1 of 61 and 68,165, and that that was not a lot.

2 Q Now, did you also examine that debt capacity of
3 Jefferson Memorial Hospital Corporation?

4 A I did.

5 Q Let me direct your attention to Exhibit 708I.

6 A All right.

7 Q Okay. What analysis did you perform and what
8 did that tell you?

9 A In a similar fashion to Jefferson Memorial
10 Hospital, Inc., I looked at the measure of debt service
11 used for hospitals. And it showed that the hospital,
12 that JMHC was generating debt service coverage of 1.9,
13 1.7, 1.0, 1.2. And the 1.0, the .956 in 1974 with the
14 accounting adjustment may be higher, but the preceding
15 years were lower.

16 So what I found was first some inconsistency in
17 the amount starting out at 1.9 and going down to 1.2;
18 and finding that the debt service coverage amounts were
19 low, that this was not a debt service coverage amount
20 that would support a rating at all, any bond rating by
21 either Standard & Poor's or Moody's; and that Jefferson
22 Memorial Hospital Corporation, on its own merits, had
23 very limited debt capacity, very limited credit

J.APP.0546

1 worthiness.

2 And as an example, a benchmark to that,
3 Fairview's 1975 bond offering included debt service
4 coverage for 1975 of 2.23, for 1976 of 3.63. And
5 Fairview, Fairview's bonds went out at a little over 8
6 percent, by my recollection, with a Standard & Poor's A
7 plus rating.

8 Q And so what --

9 A I'm sorry, not Fairview. Fairfax.

10 Q I may have misspoken before when I said Exhibit
11 708I. I believe it's 708L, for the record.

12 But when you looked at JMHC's debt capacity,
13 how did that enter into your analysis?

14 A The same as for JMHI. It indicated that there
15 really wasn't debt capacity; that there was not great
16 credit worthiness here; that JMHC did not have access to
17 the capital markets that were becoming the most heavy --
18 most common access for hospitals, but its credit
19 worthiness was very, very limited.

20 Q And what does that tell a potential acquirer?

21 A It first puts the acquirer on awares that the
22 debt service, the debt that it has, isn't covered
23 greatly; that the credit worthiness of the institution

J.APP. 0547

1 is gone and that with fluctuating earnings, including
2 here, that the debt's priority on the amounts generated,
3 net income, plus depreciation and amortization and plus
4 interest expense are very significant; that if something
5 happens to the hospital's profitability, there's just
6 not much cushion there, and the debt holders may end up
7 getting paid out before an equity holder. It's a real
8 problem in the credit worthiness of the organization.

9 Q Now, what method of valuation did you look at
10 in your analysis?

11 A I looked at various methods. They summarize,
12 as we've heard before, the cost approach, market
13 approach and the income approach.

14 Q And did you, in your analysis, look at the
15 market approach?

16 A Yes.

17 Q And Mr. Cobb, what did you do when you were
18 examining the market approach in your analysis?

19 A I set out to identify two types of
20 organizations: One, publicly-held companies who owned
21 and operated hospitals. The information was in the
22 public domain, and I could make determinations about the
23 existence of comparable companies. I could look at the

J.APP. 0548

1 market response, market pricing of those companies, and
2 start to draw inferences from that information to the
3 kind of market price that might exist for Jefferson
4 Memorial Hospital, Inc. or Jefferson Memorial Hospital
5 Corporation.

6 I also sought to find information about the
7 acquisition of individual hospitals that might allow me
8 to draw similar types of inferences. I also, because
9 this is a measure of market, looked for transactions in
10 the stock of Jefferson Memorial Hospital Corporation.

11 So I wanted to find publicly-held companies
12 that were trading, ongoing. I wanted to find acquired
13 hospitals, and I wanted to find trades in Jefferson
14 Memorial Hospital Corporation stock.

15 Q Now, directing your attention to Exhibit
16 708T --

17 A Yes.

18 Q -- did you compare Jefferson with some other
19 hospitals in this chart?

20 A I did. And specifically with contractual
21 allowances, deductions from revenue.

22 Q And what were you examining here and how did
23 this enter into your analysis?

J.APP. 0549

1 A It became, in the early and middle 1970s,
2 increasingly important to understand reimbursement
3 issues for the hospital operations and to record costs
4 and to prepare cost reimbursement statements -- it's
5 called a step down, is what the process was called -- so
6 that the hospital was receiving appropriate
7 reimbursement for Medicare. And I wanted measures of
8 how the hospital was getting reimbursed.

9 I also wanted measures of the difference
10 between the hospital's billings and charges to see how
11 it stood in the community in that regard, how well it
12 was managing its billing process and its deductions,
13 charitable care, courtesy care type of process.

14 Q And what did you discover from this analysis?

15 A I looked at the deductions from revenue for
16 Jefferson Memorial, Fairfax and Commonwealth Doctor's.
17 Those are the hospitals for Northern Virginia that I had
18 the information for. And I found -- I'll use 1971 as
19 the first example. This is a little mixed because
20 Jefferson, 1971 is a time period ended June 30. Fairfax
21 and Commonwealth are both December 31.

22 But I found that in 1971 Jefferson had 16.5
23 percent of its revenues reflected as deductions from

J.APP. 0550

1 revenues. So that was an amount that it wasn't
2 collecting because of Medicare not paying what they were
3 billed, insurance companies not paying what they were
4 billed, free care, what have you. Fairfax had 3.1
5 percent and Commonwealth had 5.8.

6 Jumping ahead to 1973, Jefferson was 11.4;
7 Fairfax, 5.0; Commonwealth, 2.0. And in 1975, 13.5 for
8 Jefferson for a nine-month period; 6.5 for Fairfax and
9 for an eight-month period, 9.2 at Commonwealth.

10 Q And what did this comparison, what did you
11 conclude from this comparison?

12 A Jefferson was collecting less of its, in
13 effect, standard rates and charges as a percent than
14 were either Fairfax or Commonwealth Doctor's.

15 Q Now, let me direct your attention to Exhibit
16 708U. What were you comparing there between Jefferson
17 and Commonwealth and Fairfax?

18 A I was looking at revenue based on two measures:
19 patient days and admissions. And patient days, if I
20 have 100 people in my hospital for 365 days a year, I
21 have 100 -- I have 36,500 patient days. It's a measure
22 of people in a bed.

23 And including at Jefferson during this time,

J.APP.0551

1 routine charges, patient-day type charges, became less
2 important, and ancillary charges -- surgical service,
3 radiology, laboratory, anesthesia, things of that
4 nature -- became more and more important. Those things
5 are driven on admissions. The first day someone comes
6 to a hospital, they have surgery. They have x-rays.
7 There are laboratory services and what have you. And
8 then for the next four days, they spend the time in bed.
9 Maybe they have another x-ray, something of that nature.
10 So I wanted to look at revenue measures against patient
11 days and admissions.

12 Q As a result of the information you gathered
13 here, what conclusions did you derive?

14 A That on these measures, Jefferson was charging
15 or getting revenues that were less than the revenues,
16 charges from Commonwealth Doctor's or from Fairfax.

17 Q How does that impact your analysis?

18 A One, it reflects how well management is doing
19 in terms of pricing their services. They are not
20 pricing as high as two competitive hospitals.
21 Understand, of course, that the services vary at each
22 hospital.

23 So that at one blush, an acquirer may look at

J.APP.0552

1 that and say, well, I have some ability now to increase
2 rates. And that's positive. But what I find is that
3 Jefferson had increased its rates as a percent fairly
4 significantly in '73 and '74. And that because of the
5 contractual allowances, Jefferson was in effect leaning
6 behind the prior chart, 708T, I guess 1975, 13 and a
7 half percent.

8 But even increasing the rates, because of their
9 reimbursement policies, practices, charity policy and
10 practices, that there was difficulty in actually getting
11 money back from raising the rates.

12 MR. BONO: Your Honor, can we take a short
13 break here?

14 THE COURT: I was going to ask you how much
15 longer you would anticipate?

16 MR. BETTIUS: Your Honor, I want to point out I
17 told Mr. Cobb I would try to get him out of town today.

18 THE COURT: We will.

19 MR. BETTIUS: Everybody better be ready to stay
20 real late.

21 THE COURT: We will.

22 MR. BONO: Your Honor, I anticipate another
23 hour.

1 THE COURT: All right. Take a short recess.

2 (A brief recess was taken.)

3 MR. BETTIUS: Your Honor, may I make an inquiry
4 of the Court? Not only is Mr. Cobb from out of town,
5 and I've told him I would do my best to get him out, so
6 is another witness, Mr. Reilly. And I don't -- he's
7 about a 45 minute witness. Do you know how late the
8 Court is inclined to go tonight?

9 THE COURT: I indicated yesterday, Mr. Bettius,
10 I was going to do everything I could do, possibly,
11 reasonably, to get this evidence today. Now, if we're
12 still here late, late, late in the evening, it may not
13 be possible. We'll just have to wait and see.

14 Again, don't get the idea I'm trying to limit
15 either you or Mr. Bono or this witness. It's not a
16 threat. It's not a threat.

17 MR. BONO: I will, in light of the Court's
18 scheduling and the hour and because Mr. Cobb's report is
19 in evidence, I will scale down the questioning.

20 THE COURT: I don't want anybody to cut
21 anything. I keep telling you all, time is not a problem
22 in this case. It's a significant case. It's going to
23 get the time that it needs. It's not a problem.

J.APP. 0554

1 MR. BETTIUS: Your Honor, I'm going to tell
2 you, I'm very glad to hear that. Oft times counsel are
3 told that you have to move cases along because of the
4 court's docket. And all of us sincerely appreciate
5 that, Mr. Bono as well as myself.

6 THE COURT: Go ahead, Mr. Bono.

7 BY MR. BONO:

8 Q Mr. Cobb, before the break, one of the things
9 you mentioned you examined in your analysis were the
10 transactions in the shares of stock of Jefferson
11 Memorial Hospital Corporation; is that correct?

12 A Yes.

13 Q All right. And did you, in your analysis,
14 examine those transactions?

15 A I did.

16 Q And how did that review enter into your
17 analysis?

18 A I think it was important to look at exchanges
19 that did happen. As I understand it, the exchanges were
20 between company and physicians, all of whom were
21 familiar with Jefferson's operation, many of whom were
22 there every day involved, some of whom had positions
23 with the hospital in one form or another for a while.

JAPP 0555

1 And I think it would be remiss to not look at
2 those. And I looked at those and considered those.

3 I do take them with a grain of salt, one,
4 because of the level of sophistication brought to bear
5 in determining the values, and, two, because of the --
6 because of the nature of the transactions, in effect,
7 coming into and coming out of and being related to
8 practicing at the hospital, that there are other factors
9 that typically play in that type of transaction other
10 than just a willing buyer and willing seller. They are
11 physicians dealing with each other in their comings and
12 goings. But I thought it was important to consider
13 this.

14 Q And when you look at the sophistication of
15 those transactions, what did you see in that regard?

16 MR. BETTIUS: Your Honor, is the witness now
17 going to comment on the sophistication of the buyers
18 without having interviewed the men closest to the
19 operation? This is speculation and I object.

20 THE COURT: Rephrase that question.

21 BY MR. BONO:

22 Q Mr. Cobb, you just testified that you took into
23 account in your analysis the nature of the

J.APP. 0556

1 sophistication of those transactions; is that correct?

2 A Yes.

3 Q And would you explain what you meant by that?

4 A I'm not looking at the sophistication of the
5 individuals, but the sophistication of a market. Those
6 aren't transactions that are generated on the New York
7 Stock Exchange or the Toronto Exchange, to get scales of
8 size. And they are not -- there aren't a great number
9 of transactions.

10 So it's not a market sophistication type of
11 transaction. It's rather transactions between parties
12 that are closely related, that are close to the
13 business. So it's not a measure of fair market value
14 where the market is a large market, a sophisticated
15 market, a market with expertise, information in the
16 marketplace.

17 Q In the work that you performed, did you review
18 Mr. Reilly's report and analysis?

19 A I did.

20 Q And now, from an overall viewpoint, what
21 conclusions did you draw with respect to the analysis
22 that he made?

23 A I found Mr. Reilly's analysis to be very

J.APP.0557

1 formula driven, very mathematical, to be -- to have not
2 considered a number of key factors in looking at a
3 hospital and a hospital's operations, and to have used
4 information that was in many ways incomplete and
5 inappropriate, but largely was a very mechanical, very
6 formula-driven analysis.

7 Q And what key factors were not examined by
8 Mr. Reilly?

9 A I didn't find any indication in Mr. Reilly's
10 work or in his testimony of a consideration of the
11 physicians. And the first thing that an acquirer of a
12 hospital looked at was the physicians and the harmony
13 and type of practice, how the physicians were postured
14 within the medical community. And I thought that was
15 extremely important.

16 I didn't find specific consideration of the
17 building, the configuration, layout of the building,
18 location of the building. I was especially concerned
19 about the specific factors of Jefferson Memorial
20 Hospital. And I didn't find in the report or hear in
21 the testimony consideration of those factors.

22 Q And in your analysis, did you try to examine
23 the particularities of Jefferson and the marketplace in

J.APP.0558

1 which it sat?

2 A Absolutely. Jefferson is what was being valued
3 and Jefferson lived in the marketplace and competed with
4 those hospitals and the physicians at the other
5 hospitals. And I thought it was very, very important to
6 really understand that. All of the health care
7 financing that I've done, whether it's merger
8 acquisition, bond financing or what have you, that is
9 the starting point.

10 Q And did you see anywhere in Mr. Reilly's report
11 or hear anywhere in his testimony that he examined any
12 of those specific factors as to Jefferson and this
13 marketplace?

14 A I didn't.

15 Q Now, did you go through his report and examine
16 it with specificity?

17 A I did.

18 Q And did you reach certain conclusions with
19 respect to it?

20 A I did.

21 Q Now, can you tell the Court what those were
22 based on your examination?

23 A It's easiest to start with the various

J.APP.0559

1 approaches. I would start with the market approach. I
2 have some documents that would help, if I can get them.

3 I didn't go just to financial summaries. I
4 contacted Disclosure, Incorporated, which is a company
5 that maintains documents filed with the SEC. And I
6 identified a number of publicly-held companies that
7 owned, operated, managed hospitals. And many of those
8 were the same that Mr. Reilly had identified, and then I
9 filled in so mine were the same.

10 And it was very important to understand, as
11 Mr. Reilly said, the risks and the returns that these
12 enterprises were generating to find out if an investor
13 in those is looking at something that is similar, the
14 same, comparable to the instant company. Are the
15 underlying economics that drive these publicly-held
16 companies comparable to the subject company?

17 So you really can't do that off of just the
18 financial summary. So I got the annual reports. And
19 I'll use Extend-a-Care, which changed its name to
20 Humana. In their annual report, I want to find out the
21 underlying economics. I need to tell what line of
22 business they are in. And I find in 1970 and 1971,
23 Extend-a-Care was operating hospitals, nursing homes,

J.APP. 0560

1 mobile homes and other operations. Extend-a-Care was
2 one of the largest operators of mobile homes in the
3 United States at that time period.

4 And I wanted to look at the economics. Nursing
5 homes are subject to very, very different economics than
6 are hospitals and it's wrong to compare a hospital with
7 a nursing home as an investment. Nursing homes cater
8 to, generally speaking, an older population. Regulation
9 of nursing homes is at a federal level, in effect,
10 Medicaid level, is administered state by state. Their
11 reimbursement was very different.

12 I've done studies in the 1970s, '76, '77, as I
13 recall, of nursing home reimbursement state by state by
14 state to assist in the acquisition of 36 nursing homes
15 and then later 18. And the reimbursement is very
16 different, the referral patterns. The nursing homes
17 don't have a medical staff. It doesn't have a surgical
18 suite, doesn't have an emergency room, usually doesn't
19 have x-ray. It has completely different skills of
20 nurses and very different access needs for nurses. The
21 economics of a nursing home are very different.

22 The technology that was changing or has changed
23 in a hospital vary greatly. They now have outpatient,

J.APP.0561

1 ancillary short lengths of stays.

2 The huge explosion of medical diagnostic
3 equipment, CAT scanning in the early '70s, MRIs, didn't
4 impact the nursing home, a completely different
5 industry.

6 So there is a different impact at a nursing
7 home level. Obviously mobile home sales and mobile home
8 parks are completely different from hospitals, let alone
9 from nursing homes.

10 And then within the hospitals there are very,
11 very great differences. As an example, Extend-a-Care
12 stated in their report that the 38 hospitals, on page 2,
13 the 38 hospitals contained a total of 3,207 beds up from
14 2,162 one year ago.

15 An investor in Extend-a-Care knows that there
16 is expansion, knows that there is growth. They are not
17 buying in a static, single, 120-bed hospital. They are
18 buying a hospital company that's very diversified. It's
19 also a nursing home company. It's also a mobile home
20 company at that juncture. It's a completely different
21 scale of size and a completely different growth.

22 I as an investor am not relying on the growth
23 of a hospital. I'm relying on the growth of 38

J.APP. 0562

1 hospitals and the acquisitions of additional hospitals,
2 because the next paragraph tells me since the end of the
3 fiscal year, Extend-a-Care has acquired two more
4 hospitals. So there is a growth that's implied there.

5 I can also find the importance of their nursing
6 care centers. Extend-a-Care's nursing centers delivered
7 1,481,658 days of patient care, completely different
8 scale of operation than Jefferson. Extend-a-Care had a
9 Canadian subsidiary that operated nursing homes totaling
10 965 beds.

11 So we now have a diversity of reimbursement
12 across state lines. Extend-a-Care tells us that they
13 have hospitals in Alabama, six of them; Florida, four of
14 them; Georgia, one. And Indiana, Kentucky, Louisiana,
15 Mississippi, North Carolina, South Carolina, Tennessee,
16 Virginia, West Virginia. So they are subject to very
17 differing approaches.

18 As an example, Blue Cross/Blue Shield, which
19 was the major insurer to the extent there was one in
20 that time period, is an association in Chicago, but
21 there are more than 50 individual Blue Crosses varied by
22 state and maybe Ohio and northeast Ohio and northwest
23 Ohio. So the reimbursement differences exist by state.

J.APP. 0563

1 Different states will put in rate review on a
2 state by state basis. I participated in the design in
3 Minnesota.

4 In addition, there is growth. Extend-a-Care
5 has a map and it shows very clearly where their focus
6 is. The focus is the southeastern United States, very
7 strong operations in Alabama, Florida, Louisiana, Texas.
8 So there's geographic differences in the population
9 growth in the United States.

10 I can look very easily and find out
11 Extend-a-Care, on their balance sheet, tells me they
12 have construction in progress. So these are hospitals,
13 nursing homes, that they are constructing at that time
14 that aren't complete.

15 So I now know that if I buy today, at a future
16 point they're going to be complete. And they have
17 already spent \$7,725,000 with an estimated cost to
18 complete of \$15,486,000. So as an investor in
19 Extend-a-Care, I see that they are acquiring hospitals.
20 They already have 38 hospitals. They are building
21 hospitals. They are strong in nursing homes, strong in
22 mobile homes parks. They also have other operations.

23 So that the scale and magnitude of

J.APP. 0564

1 Extend-a-Care, just their operations, are very different
2 that to me conclusively indicate that the underlying
3 economics that drive Extend-a-Care are fundamentally
4 different than the underlying economics that run
5 Jefferson Memorial Hospital, Inc. and Jefferson Memorial
6 Hospital Corporation.

7 The scale, even in Mr. Reilly's own charts, the
8 total assets, 152,000,000, coming down to Jefferson's 1
9 million 2 at 1971, as I recall, the total sales, the
10 book value, the number of beds operated, the number of
11 hospitals operated, are just very, very different.
12 Hospital beds, 3,207; nursing home beds, 6,111.

13 So what I find is, when I look for this company
14 and look at this company to see if its underlying
15 economics are the same, they are not. They are
16 stunningly different. And I go through the companies
17 that Mr. Reilly identified as guideline companies,
18 comparable companies and even in Mr. Reilly's own
19 report, he tells me for Humana, which is Extend-a-Care,
20 total assets of 111,000,280; Jefferson, 1,000,293.

21 The difference in scale makes the economic risk
22 completely different. And I turn to the other companies
23 that I identified. And I can list or go through each.

J.APP.0565

1 American Medicorp, I looked at, 33 hospitals with 4,664
2 beds; Hospital Corporation of America, 36 or 38
3 hospitals with 4,535 beds; American Medical Enterprises
4 with 20 hospitals and 2,274 beds.

5 Even assuming that these companies have nothing
6 but hospital operations, which is wrong, the simple
7 scale of them, the diversity of location, shows that
8 they are fundamentally economically different. American
9 Med, which Mr. Reilly used, total assets 222 million;
10 General Health, 26 million; Hospital Affiliates, 42
11 million; Hospital Corporation of America, 65 million;
12 Humana, 111 million; Medfield, 8 million 8; R.H.
13 Medical, 12 million; and T&C, 2 million 6, the closest
14 to JMHI at 1.293. However, T&C is an operator of
15 nursing homes, not of hospitals. Completely different
16 economic setting.

17 So that a simple reading of the annual reports
18 of these companies show, I think, spectacular
19 differences. And they show me very conclusively that
20 these companies simply are not invested in, vested for,
21 operating under the same underlying economics. So they
22 are not comparable companies. And then to take them and
23 put them all together means I can't find anything that's

J.APP. 0566

1 good. I only find things that are bad. But if I put
2 them together maybe they are good.

3 And I can't fathom the correctness of that.
4 First, because if you put a lot of bad things together,
5 it doesn't make them good. And to understand that that
6 portfolio, an investment in that portfolio might be the
7 same as an investment in Jefferson? Or that I can even
8 draw inferences, I can say, well, that portfolio, here's
9 a mean and here's a measure of central tendency and I'll
10 go underneath that, or I'll even take the low, doesn't
11 work. It's not right. It's not how hospitals were
12 valued, period. And it's not lining up the economics.

13 So the use of comparables -- and I used
14 comparables and I learned a lot from the comparables. I
15 learned that they are not different. I relearned the
16 marketplace. I've always been familiar with Humana,
17 Charter Medical, and NME just from my past business
18 dealings. But the marketplace shows that these
19 hospitals, hospital companies were very, very different.
20 That also shows up in the financial literature and press
21 release type of information recorded in Barrons.

22 Medicorp's CEO and chairman reported that they
23 were expecting to grow at at least 20 percent a year for

J.APP.0567

1 at least the three years starting 1972. That's very
2 different than Jefferson saying, we're going to grow 20
3 percent every year from 1972. It doesn't work. It's
4 not right.

5 So HCA and Charter and Hospital Affiliates
6 reported in the financial press what they are doing,
7 contradict, I think, absolutely contradict the economic
8 sense of trying to look at any one of these individually
9 and certainly them together. I think in many ways they
10 become worse when they are together than they are when
11 they are apart.

12 Out of this jumble, this portfolio, to try to
13 draw anything, I don't believe works. And the analogy
14 really comes down to, do I want to invest in Jefferson
15 or do I want to invest in this portfolio? There's no
16 similarity. That's ridiculous. It's not a mutual fund
17 of hospital companies that tells me anything meaningful
18 about Jefferson Memorial Hospital. It doesn't tell me
19 about the physician staffs of these hospital companies,
20 let alone their nursing homes, their medical office
21 buildings, their construction companies. It simply
22 doesn't go across.

23 The other thing that comes out in these, and it

J.APP. 0568

1 makes indications of Mr. Reilly's considerations of the
2 merged and acquired, the characteristics of each
3 transaction need to be analyzed carefully. They need to
4 be. And what Mr. Reilly's report presents, and what I
5 heard him testify -- and I know that my ears aren't
6 perfect -- was that what he knew about the companies
7 that he was using to value were three things: He knew
8 acquisition price as it was reported in his documents;
9 the number of beds; and revenue generated in an annual
10 period or annualized period, because some of them were
11 actually calculations from, say, a six month number that
12 was reported that was multiplied by two.

13 Well, first, to say that all I need to know
14 about Jefferson is its annual revenue, its number of
15 beds and somehow I can divine its value from knowing
16 only that -- I can have two hospitals; both have 100
17 beds. Both have annual revenue of \$5 million. One of
18 them makes no money. The other is very profitable.
19 They are clearly not worth the same to an investor.

20 The beds they have may be in a building that
21 was built in 1938 and has hallways through which I can't
22 move a mobile piece of equipment that now in 1975's
23 medical practice I need in the patient's room. The

J.APP. 0569

1 other one might have been built three years ago or
2 renovated.

3 I don't know anything about the physical
4 location, the physical facility. I don't know anything
5 about the medical staff. And to assert that I can draw
6 meaningful information based on only those three pieces
7 of information is wrong.

8 Further, I went back through Mr. Reilly's
9 information and I identified a number of these hospitals
10 in doing my own analysis and a number of similar
11 acquisitions that weren't in Mr. Reilly's. And there
12 are some problems in what Mr. Reilly has. He doesn't
13 know revenue for approximately half of them. He doesn't
14 know beds for some of them, which is concerning.

15 There, for example, he has St. Luke's Hospital
16 of West Virginia with an acquisition price of \$2.1
17 million. But that acquisition price wasn't paid day
18 one. It was paid over time.

19 Mr. Reilly hasn't calculated the present value
20 of that. Mr. Reilly didn't look to see, by looking
21 through the annual reports and the other information,
22 that a number of these transactions were reported as
23 maximum amounts and some of them have had hold backs

J.APP. 0570

1 where the acquirer would say -- for example, American
2 Psychiatric Hospitals, which shouldn't have been used
3 anyway, and North Las Vegas Hospital --

4 MR. BETTIUS: Your Honor, may I suggest this is
5 cumulative. They both say the method is terrible. It
6 never should have been used, and it is cumulative and it
7 goes on and on.

8 THE COURT: If that's an objection,
9 Mr. Bettius, it's overruled.

10 MR. BETTIUS: Yes, sir.

11 THE WITNESS: North Las Vegas was reportedly
12 sold for 83,300 and, I think, 32 shares of stock of
13 Huntington. However, 58,332 of those shares were put in
14 escrow and the payment of those to the seller was
15 subject to certain performance measures into the future.

16 I can't find in the documents, mostly because
17 of the passage of time, I assume, how much actually was
18 paid for that. It's simply unknown. So the acquisition
19 prices aren't always known.

20 Fairfax Hospital in Seattle, Washington,
21 purchased by Community Psychiatric Centers was to be
22 paid for over ten years. There is no present value of
23 that.

J.APP.0571

1 You have to know what was sold. And that's not
2 shown here. For example, these are presented; visually
3 it looks like each is one hospital. But they are not.
4 For example, Surgeons Community and West Texas Hospitals
5 were three facilities in California and Texas, not one.
6 And really interesting, they are reported here of 281
7 beds being purchased in three institutions having 281
8 beds.

9 However, that is not all that was purchased.
10 In addition, in that same acquisition amount that
11 Mr. Reilly has recorded and used, is a 100-bed extended
12 care facility. But when Mr. Reilly divided acquisition
13 price by number of beds, the extended care beds aren't
14 in the number. So even the information that was
15 available is skewed.

16 Los Robles Hospital in California wasn't the
17 only thing purchased. Los Robles was purchased as were
18 three of its affiliated companies. Plantation General
19 Hospital purchased by Hospital Corporation of America,
20 260 beds wasn't the only thing purchased. In addition,
21 there was a 35,000 square foot office building.
22 Mr. Reilly has not factored that into his calculations.

23 The purchase of Anaheim General Hospital

J.APP.0572

1 included ten acres of land. That's not reflected.
2 There are -- there's a purchase at North Las Vegas
3 Hospital that wasn't just a hospital. It was also eight
4 office suites and a pharmacy. That simply isn't
5 factored in. There is incomplete information; there is
6 wrong information; and there's information that was
7 available that simply wasn't used, even about the
8 statistics that are set forth here.

9 There isn't consideration of location.
10 Interestingly, a number of these purchases were in
11 California. Half a dozen or more were in California. A
12 number are in Texas, a couple are in Texas, a couple are
13 in Alabama. So we have geographic differences.

14 I also found, for example, for the Louisiana
15 hospitals, Oakdale Medical and Winfield General, each of
16 them were the only hospital in their county. So they
17 are in a very strong position within their county.

18 They are also in a position to fit in the
19 portfolio already owned by Extend-a-Care because
20 Extend-a-Care already had operations in that state.
21 There's not consideration of that. Los Robles Hospital,
22 as reported in the annual report of HCA who acquired it,
23 is one of the most active, had one of the most active

J.APP. 0573

1 open heart surgery programs in the nation. And that's
2 very important. Open heart surgery is a very, very
3 strong credential to a hospital. It's also a very
4 strong revenue producer. It produces surgery,
5 anesthesiology and recovery room and x-ray and pharmacy,
6 and longer lengths of stay. So there's absolutely no
7 consideration in this.

8 Then by looking at the acquiring companies and
9 understanding them, HCA, Extend-a-Care, because I'd gone
10 through them and the others, I wanted to understand what
11 they were looking for. I had dealings with Humana,
12 Charter Medical, NME and HCA in the late 1970s and early
13 1980s, and I had strong recollections of what they
14 looked for. I had helped clients of mine look.

15 And I read and found what they were looking
16 for. They were looking for hospitals that were -- could
17 be expanded to a campus quickly, hospitals that were in
18 population growing areas, suburban areas, hospitals that
19 were well-situated in the marketplace for expansion.
20 They also looked for hospitals that were the only
21 hospital or the dominant hospital in a given community.
22 All things that really don't fit Jefferson.

23 There's no consideration of that. The proper

J.APP. 0574

1 consideration of these hospitals wasn't to make some
2 calculations and some calculations of median and
3 ignoring the variation around the median and all of a
4 sudden determining that some measure of value could come
5 out of that.

6 The right answer is, I simply don't know enough
7 from these comparable hospitals to say anything about
8 Jefferson from the information presented. And if I look
9 behind that information and I understand the acquirer
10 and the style of the acquirees, I find out that it
11 doesn't work for Jefferson. Jefferson's physicians
12 circumstance with split factions, bickering factions,
13 its position in the marketplace, etc., etc., all make
14 Jefferson fundamentally different than the types of
15 hospitals being acquired in 19 -- in the early 1970s.

16 Interestingly, because markets change, the
17 guideline merged and acquired companies used by
18 Mr. Reilly start in 1969 and go through -- there is one
19 as late as March of 1973. Some of his dates are off as
20 to when the transaction actually closed. But
21 acquisition of a hospital in Tennessee, one in Alabama,
22 one in Tennessee in 1969 or even as late as May 26, 1970
23 really doesn't tell me much about how much Jefferson is

J.APP. 0575

1 worth in 1975. I don't know revenue growth. I don't
2 know earnings. I don't know its reimbursement. I don't
3 know how it does in the marketplace.

4 And from 1969, 1970 to 1975 in the hospital
5 marketplace, there were many, many changes. A number of
6 his acquired companies, the transactions are relatively
7 stale. So there are huge problems in that.

8 Then interestingly, again, there is a mix-in of
9 nursing homes. Rolling Acres Nursing Home was acquired
10 by Extend-a-Care. American Psychiatric Hospital, a
11 psychiatric hospital, has more similarities to a nursing
12 home than it does to a general acute hospital. There is
13 no surgery. There is not radiology in the same way.
14 Many of them do have x-ray equipment. There is not a
15 lab. There aren't the same services that are there.

16 Patients tend to stay a longer time period.
17 The referring physician base is obviously more
18 concentrated. The competitive nature is different.
19 There are usually not multiple psychiatric hospitals in
20 a single area. So the inclusion of nursing homes and
21 psychiatric facilities, I think, is simply incorrect.

22 Once the guideline companies are in place, the
23 HCA, Extend-a-Cares, Mr. Reilly sets out to use 12

J.APP. 0576

1 measures. And the 12 measures have to do with earnings
2 and revenue over a last 12 month and a 5 year time
3 period. And those are all, once the calculations are
4 made, they are all simply taken on an equal weight of
5 revenue -- I'm sorry, the TBVIC, tangible book value,
6 isn't used. But all the others are equally weighted.

7 It's a very mechanical process. There is no
8 appreciation that EBIT and EBDIT are given equal weight.
9 Yet, to a large extent, they are measuring the same
10 phenomena, earnings before interest and taxes. One of
11 them adds back depreciation. They are given equal
12 weight.

13 So there is not a thought process that I would
14 have hoped to have seen. Rather there's an adding up of
15 the numbers and dividing by five or alternatively giving
16 each one 20 percent weight. It's very, very mechanical.

17 For the 1973 calculations by Mr. Reilly, under
18 the guideline company method, Mr. Reilly's narrative
19 indicates that they would be weighted 60/40; 60 for the
20 latest 12 months information, 40 for a five year period.
21 Yet the actual -- I'm sorry, he indicates in writing
22 that they are to be weighted 75/25. The actual math is
23 60/40. I don't know which is really right.

J.APP.0577

1 The fundamental flaw in the market approach,
2 whether it's the merged and acquired companies or the
3 individual health care Goliaths and the two little
4 nursing home tail ends, littlier company tail ends, they
5 simply don't work. They are not comparable. And the
6 underlying economics of the merged and acquisition
7 companies simply is unknown, uninvestigated.

8 When I looked at individual companies, I had
9 the same problem. First, the information really, full
10 information isn't -- wasn't in the public domain.
11 Second, it was -- it's so buried now that it can't be
12 found, at least reasonably. And therefore, we can't
13 draw meaningful conclusions out of the merged and
14 acquired companies because of the utter lack of matching
15 of underlying economics --

16 MR. BETTIUS: Your Honor, we're going through
17 the same thing four or five times now.

18 THE COURT: I agree with you.

19 BY MR. BONO:

20 Q Okay. Mr. Cobb, let me direct your attention
21 now to the asset based valuation that Mr. Reilly engaged
22 in in his calculation of intangible good will. Did you
23 examine that approach?

J.APP.0578

1 A I did.

2 Q And based on that, on your examination, what
3 conclusions did you reach?

4 A That use of this method, first, was
5 inappropriate. And second, the mechanics and
6 assumptions within it were inappropriate.

7 Q Why was this method inappropriate to value
8 JMHI?

9 A For several reasons. One, I have never seen or
10 heard of a hospital being valued under this method. I
11 can't imagine a hospital being valued under this method.
12 It simply isn't used.

13 Second, if you think about what's there, the
14 intangible value of the good will, the ability to
15 generate revenue greater than the assets might by
16 themselves indicate, doesn't really belong to a
17 hospital. It belongs to the physicians, because the
18 same as a key employee, the person that has all the
19 relationships with the customers, if that employee goes
20 away, my business isn't worth anything anymore. My
21 business is like that. Law firms are like that. The
22 assets go home every night. They get in the elevator
23 and go away. And if they don't come back, I'm closed.

J.APP. 0579

1 Hospitals really are the same way, because the
2 source of the patients and the treatment of the patients
3 are the doctors. There's not an intangible value in a
4 hospital unless I have a cohesive, strong, in-step
5 in-place staying-in-place physician group. And the
6 times that it has happened in the hospital industry in
7 the United States in the past 20 years when the
8 physicians have gone away, the hospitals have collapsed
9 quickly. It's happened twice to my knowledge. So
10 there's a nonmatching of what's really there to acquire.

11 The next is, this is a method originally
12 developed by the Internal Revenue Service that's since
13 disavowed. Not prohibited but disavowed because it's
14 subject to such manipulation and swing. And that's what
15 I find.

16 The calculations here, first, I don't believe
17 that it's appropriate to use projected income of
18 154,209. This is before corrections. And Mr. Reilly,
19 covering that, stated that he wasn't using net cash
20 flow. He was using -- I don't remember his word, but I
21 think operating cash flow.

22 However, in a hospital, different from other
23 businesses, they are very different, especially in this

J.APP.0580

1 time period. I can't have next year's cash flow. And
2 Mr. Reilly is capitalizing cash flow by his method --
3 and it might sound like too long a period, but it's
4 really not, what he's doing -- to infinity, in effect.
5 I can't get to infinity in a hospital unless I replace
6 and expand my equipment. I can't have a dirty, run down
7 hospital. I need new furnishings, new fixtures. I need
8 to move walls. I need to paint. I need to put up
9 Vickertext, which is vinyl wall covering in hospitals.

10 I need, very importantly, new equipment. I
11 need capital expenditures. And Mr. Reilly is taking out
12 capital expenditures in the calculation. And that's not
13 what is typically done. That is not a typical
14 calculation even when this is used.

15 Businesses don't use this. Business appraiser
16 analyst types do. Hospitals don't use this method. It
17 doesn't work. It doesn't come up with anything that's
18 meaningful.

19 Q Did you examine the discounted cash flow method
20 that Mr. Reilly used, and in particular, I think he
21 added control premium after he did all his calculations;
22 is that right?

23 A Yes.

J.APP. 0581

1 Q And did you examine that and reach certain
2 conclusions?

3 A I did.

4 Q What were those?

5 A The starting point of discounted cash flow are
6 the projections of revenues and expenses. And I think
7 anybody looking at this could come up with their own
8 set. And I don't find anything fundamentally wrong with
9 Mr. Reilly's. I did numerous sets of my own. Some
10 complete, some incomplete. The fundamentals here are at
11 least defensible. And that tells me that some acquirer
12 might believe that.

13 But if I'm an acquirer of this and I
14 determine -- and I don't have Mr. Reilly's corrected
15 schedules -- I determine that there is net cash flow of,
16 say, \$100 per year that I can get out of this, that's
17 what the business generates, I wouldn't pay more for
18 that than the present value of that. I can't write that
19 up by 30 percent because I can't turn it into 130. It's
20 going to be 100. That is what's paid.

21 Now, if I turn around and listen to the comment
22 that, well, that's the value that an acquirer would
23 bring, that's not genuine. What an acquirer would do in

JAPP. 0582

1 that case is they would relook at the projections. And
2 what an acquirer would know, is that this hospital needs
3 a lot of fixes. It needs stronger financial management.
4 It needs stronger administrative management. It needs a
5 big influx of working capital.

6 And I can't -- I may be able over the long run
7 to run this more efficiently. In the larger companies,
8 they are able to negotiate great prices on medical
9 supplies because they buy so many. And over time, they
10 can do that with Jefferson as well, buy medical supplies
11 more efficiently. And maybe they have figured out how
12 to staff in a different way. They can bring those in
13 time. But not short term.

14 And to the extent they do that, that's to the
15 benefit of the acquirer. And an acquirer won't pay that
16 to the seller. They might negotiate part of it. But
17 they won't negotiate all of it.

18 And as I look at these numbers to run them up
19 by 30 percent and then to say it's because what the
20 acquirer brings, that's not what I ever see in practice.
21 And I don't agree with that. It's fundamentally wrong.

22 And hospital acquisitions in this time period,
23 the acquirers knew that for the first time period of

J.APP.0583

1 buying a hospital, they were going to make contributions
2 to it. They were going to put money into it, not run
3 money out.

4 It also shows that an acquirer looking at this,
5 buying into Jefferson, why would I buy into Jefferson if
6 this is the play that's here and this is the money here?
7 I want to look at alternative hospitals. And there's no
8 consideration of the reality of acquiring this. I think
9 the 30 percent just takes it away.

10 The other concern is the discount rate that's
11 used. And I'll use 1975 as an example. The weighted
12 average cost of capital that's used, adjusted as I
13 understand it, is someplace under five percent. The
14 unadjusted, before changing for income taxes, was 5.04
15 percent. That's what's in Mr. Reilly's report. So
16 let's just say 5 percent. And the report asked me to
17 understand that that is the rate, after tax rate that I
18 would be able to bear debt on, related to my purchase of
19 this.

20 However, in 1975, if we look at hospitals, the
21 120 bed hospital, 330 bed hospitals, hospitals with a
22 long history of increasing revenue, a long history of
23 solid net income performance, a hospital with a broad

J.APP.0584

1 base, not just 100 physicians in total, but 220 in
2 total, of 320 in total, when they went to the tax exempt
3 bond market, tax exempt, the same as looking here, in
4 1975 an A plus rated Standard & Poor's hospital was
5 getting interest at over 5 percent. That was their tax
6 exempt interest rate.

7 For a real live prosperous hospital, A plus
8 rated, Standard & Poor's and Moody's would not rate
9 Jefferson. So what am I asked to believe for Jefferson?
10 5 percent. That's incredible. That's contradicted by
11 the market.

12 And then to look at the various, the
13 consideration that there would be 50 percent debt
14 financing. I looked at the debt capacity. I looked at
15 the debt service coverage here. There isn't debt
16 capacity in this organization. It's spent. So whatever
17 debt is taken on to make the acquisition, if I pay -- I
18 don't remember Mr. Reilly's number under this method for
19 this year.

20 Under discounted cash flow for 1975 before his
21 marketability discount, it's \$1,061,000. If I'm going
22 to pay \$1,061,000, I pay that to buy the company. That
23 doesn't mean I paid down its existing debt. So it has

J.APP. 0585

1 all of this existing debt which it's struggling to pay,
2 and now I've gone to a bank and I borrowed \$500,000, and
3 I didn't borrow at 5 percent after tax rate. That's not
4 genuine, unless it's my credit worthiness.

5 And if I use my credit worthiness, I want
6 compensation for that. But I'm now going to ask this
7 institution to pay off whatever debt it had and pay off
8 my half a million dollars.

9 It doesn't work. It's not how hospitals were
10 valued in the 1970s. They weren't valued on a weighted
11 average cost of capital. And Jefferson, because of its
12 financial position, I don't believe any reasonable buyer
13 would have looked at this on a weighted average cost of
14 capital basis because of its debt position. And they
15 certainly would never have used a 5 percent rate and
16 then assigned 50 percent debt. It doesn't work. The
17 math doesn't work.

18 So there's a formula approach. And I get to
19 the very beginning and I change 30 percent to 49 percent
20 and it all cascades through. It's a formula approach.
21 It doesn't match Jefferson. It doesn't match the other
22 organizations. It doesn't match the kinds of rates that
23 were being sought and achieved. It just doesn't work.

J.APP. 0586

1 Q In your experience, Mr. Cobb, when hospitals
2 are looking for other hospitals to acquire, do they
3 engage in the type of analysis that you looked at in
4 looking at the specifics of the hospital and the
5 marketplace?

6 A Absolutely. But in that time period, they were
7 coming and walking around in the hospital. They were
8 meeting with the physicians and learning about the
9 physicians. And they were really scrutinizing the
10 institution. That's what they were buying.

11 MR. BONO: No further questions, Your Honor.

12 THE COURT: Cross-examine, Mr. Bettius?

13 CROSS-EXAMINATION

14 BY MR. BETTIUS:

15 Q Mr. Cobb, let me see if I can get right to the
16 heart of this. You went back and Mr. DenUyl went back
17 and made an analysis of this hospital in 1971. And you
18 say zero, right, for value?

19 A For what a third party would pay, yes.

20 Q All right. And I know this probably didn't
21 influence you. But you know the result you had to reach
22 was zero because you read the complaint; isn't that
23 right?

J.APP.0587

1 A No. Not at all.

2 Q But you knew the complaint said zero, isn't
3 that correct, that it had no net asset value? You
4 indicated in your deposition you read the complaint and
5 you knew that; correct?

6 A You know, as I sit here, I don't remember what
7 was in the complaint. But I did read it.

8 Q Okay. And both of you come to zero and declare
9 insolvency. Basically, by technical measures, it's
10 insolvent?

11 A I don't believe it was insolvent even by
12 technical measures, not any of the measures that I use.

13 Q And then in 1975, no acquisition value for --
14 and we're going to get to what had no acquisition value.
15 But JMHI, its interest had no acquisition value, right?

16 A JMHI didn't exist in 1975.

17 Q And it didn't exist in 1973 either, did it?

18 A That's correct.

19 Q And you didn't value it, did you? You didn't
20 value JMHI's ongoing hospital operation, did you?

21 A I did not value JMHI's ongoing hospital
22 operation --

23 Q Thank you.

1 THE COURT: Let him finish.

2 BY MR. BETTIUS:

3 Q Yes, I'm sorry.

4 A -- in 1973 and '75. I did value JMHI in '73
5 and '75 as a holder of 5,000 shares of JMHC.

6 Q It never got 5,000 shares of JMHC, did it?

7 A Not that I find.

8 Q All right. Now, Mr. Reilly has been taken to
9 task for hours by both of you. And you would have
10 recommended, and you knew, as you said, what investors
11 were looking for in the '80s. You said that based on
12 your experience, didn't you?

13 A In the '70s. I also knew in the '80s.

14 Q And no investor, because why? It's insolvent;
15 right?

16 A No.

17 Q It has no earning capacity.

18 A No.

19 Q No?

20 A No.

21 Q It would have -- it had inadequate debt service
22 coverage. It had many problems. Right?

23 A It had many problems, yes.

J.APP. 0589

1 Q All right. And Mr. Reilly didn't know what he
2 was talking about if he would advise any investor to buy
3 this hospital; is that correct?

4 A No, I didn't say that.

5 Q In the 1980s, Mr. Cobb, in the 1980s, in 1982,
6 this hospital was acquired by one of the major health
7 care providers in the United States at a substantial
8 premium, wasn't it?

9 MR. BONO: Your Honor, I just would ask
10 Mr. Bettius to ask whatever question he wants of
11 Mr. Cobb. But just like in my examination of
12 Mr. Reilly, I think the tone should come down.

13 THE COURT: All right.

14 MR. BETTIUS: I'm sorry.

15 BY MR. BETTIUS:

16 Q It's true, isn't it, that a major health
17 provider came in here and bought exactly the same
18 facility and paid millions of dollars for them in 1982,
19 and then another major health care provider paid that
20 health care provider \$4 million two years later to buy
21 it out of this hospital, didn't it?

22 A I know in 1982, a major company, I don't know
23 which one, came in and somehow took over the operation.

J.APP. 0590

1 I don't know if there was an acquisition or lease or the
2 terms of that. And I don't know about the second
3 transaction.

4 Q So as we go back and we look, in 1971, in 1971,
5 if somebody took Mr. Reilly's advice and bought based on
6 his prognostication of a very active health care field,
7 a very active possibility for growth and a very positive
8 future, he would have been far much more correct than
9 you; isn't that correct?

10 A Not necessarily.

11 Q History bears out the projection, doesn't it?

12 A I've not looked at any numbers past 1975. I
13 don't really know.

14 Q In 1971, people were predicting we were going
15 to win the Vietnam war, weren't they, Mr. Reilly, based
16 on the statistics?

17 A I'm not Mr. Reilly.

18 MR. BONO: Objection, Your Honor.

19 MR. BETTIUS: I withdraw the question.

20 BY MR. BETTIUS:

21 Q In point of fact, millions of dollars were
22 made, millions of dollars were made by the investors in
23 this hospital who were dealing in an unsophisticated

J.APP.0591

1 market and buying every share that they could; isn't
2 that right?

3 A That's a compound question. I don't know all
4 the --

5 Q The unsophisticated investors were buying every
6 share they could get their hands on, weren't they?

7 A I don't know one way or another. I know there
8 were certainly purchases of the shares by various
9 physicians.

10 Q Were you sitting in the courtroom? Did you
11 hear the testimony? Every time there were shares
12 available, the doctors wanted them. If they didn't get
13 them, they threatened litigation; am I correct?

14 MR. BONO: Objection, Your Honor. That is
15 argumentative.

16 BY MR. BETTIUS:

17 Q Did you hear that testimony?

18 A I heard questions in that regard.

19 Q And this obsolete facility -- and there's one
20 of the questions that I find fascinating. And I want
21 you to know I'm not sophisticated in business, like the
22 people who are here to testify. You say one of the big
23 problems this hospital had to an investor was it had

J.APP.0592

1 inadequate debt service coverage; is that in effect
2 correct?

3 A It had very limited debt service coverage. I
4 didn't say inadequate. But it indicates that it doesn't
5 have the ability in and of itself on its own credit
6 worthiness to take on significant additional debt.

7 Q Being unsophisticated like I am, I would like
8 go out and find just this situation. Isn't this just
9 what I want? Like, for instance, when I go out to buy a
10 house, aren't I looking for the guy who can't -- who's
11 having trouble making the payments so I can buy that
12 thing and get much more out of it because I've got the
13 money to make it work?

14 A There's a big difference, though, because this
15 isn't a house. This is a very complex, very
16 sophisticated business, because you can't just go in and
17 repaint it. You can't just put money in it.

18 You've got to look to the physician base and
19 you've got to look to the competition. And this had a
20 very unique, fractionalized, warring physician base, and
21 in terms of its competitive position, it certainly was
22 not strong. So I don't think your analogy works.

23 Q Haven't we just seen through the depression --

J.APP. 0593

1 I call it a depression -- of 1989, '90, and '91,
2 companies literally stolen because they didn't have
3 credit, and other companies came in that did have
4 credit? Isn't that exactly the phenomena we have just
5 gone through in this economy?

6 I mean we had --

7 MR. BONO: Objection, Your Honor.

8 MR. BETTIUS: Excuse me. I'm sorry.

9 THE COURT: You've got to ask one question at a
10 time. Let's make them questions.

11 MR. BETTIUS: Your Honor, I apologize.

12 BY MR. BETTIUS:

13 Q We've just seen that very phenomena in terms of
14 very large and complex diversified real estate
15 companies, both in the United States and
16 internationally, haven't we?

17 MR. BONO: Objection, Your Honor. Whatever
18 happened in the real estate world internationally in
19 1990 has nothing to do with this case.

20 THE COURT: Objection sustained.

21 BY MR. BETTIUS:

22 Q But the parallel is there. Isn't this exactly
23 what the powerful investor, what the big company looks

J.APP.0594

1 for? It looks for the company that has limitations in
2 its growth so that it can come in and bring its capital
3 to the company and make it something very profitable?
4 Isn't that just what they look for?

5 A No. In some regards, yes, but they also look
6 for the proper base to do that from. And this wasn't
7 the proper base.

8 And if you look -- and if Mr. Reilly had looked
9 at even the annual reports of the various companies that
10 were making most of the acquisitions, they would see
11 that the acquisition strategy in the early, mid 1970s
12 was different.

13 Q Isn't it true that two very sophisticated
14 health care providers disagreed with your analysis?
15 They bought it.

16 A We're talking about a different time period.
17 And as I said, I don't -- I've heard, and it may have
18 been through you, about a 1982 transaction. But I don't
19 know the terms, conditions, structures of those.

20 Q But Mr. Reilly's projections of an active,
21 robust, healthy market for this property bore fruit in
22 years later, didn't it?

23 A I don't know that to be true.

J.APP.0595

1 Q Let me ask you this. You say that this company
2 suffered from severe capital problems and existed in an
3 obsolete facility; is that correct?

4 A I don't know if it was severe. I think that
5 already by the early 1970s, the facility had some real
6 characteristics of obsolescence.

7 Q In expressing these opinions on the quality of
8 its plant, did you examine the hospital that you
9 indicated was of significant competition to it,
10 Commonwealth Doctor's?

11 A I've been to each one of the competitive
12 hospitals. I've been to Commonwealth, as I recall, in
13 1976. I revisited it in 1996.

14 Q Do you know where it's located?

15 A I do.

16 Q Where?

17 A It's on Chain Bridge Road.

18 Q Isn't it almost precisely the same kind of
19 construction, same physical plant and layout?

20 A I think there are some similarities. Is it the
21 same physical plant layout? No. But there are some
22 similarities.

23 Q Did you look at -- do you know it sold almost a

J.APP.0596

1 year after 1975 for seven and a half million dollars?

2 A I thought it was a little more than that.

3 Q All right. And that obsolescence, the quality
4 of obsolescence didn't bother, apparently, the investors
5 in that hospital, did they?

6 A You're assuming the qualities of obsolescence
7 are different, and they are not. Commonwealth had a
8 different frontage to the road. There was an adjacent
9 acreage, I think, of 5.47 acres. Commonwealth had a
10 very different physician staff. So there are a number
11 of differences that I think are really extremely
12 important.

13 I can't tell you, knowing acquisition price,
14 beds, revenue or acquisition price, beds, revenue and
15 the building looked kind of the same, that that makes
16 the two go across. I can't tell you that the two go
17 across.

18 Q I'm glad you pointed me to that physician staff
19 difference. Do you know who the lead doctor was at
20 Commonwealth Doctor's in 1975?

21 A Of course not.

22 Q Do you know Dr. Gazale?

23 A Of course not.

J.APP. 0597

1 Q Was he foreign born? Was he foreign trained?

2 A I don't know.

3 Q I'm going to ask you this. You weren't in our
4 community, were you, in 1971 and 1975; were you?

5 A I was off and on. I was born and raised in
6 Washington, D.C.. And in 1970, my family moved back and
7 lived on Grennell Avenue in Fairfax, and I was back
8 with some frequency.

9 Q Well, the prejudice apparently that the
10 community felt to foreign-trained physicians, some of
11 the most leading physicians in this community at that
12 time, in fact, you can almost do an honor role of them,
13 were foreign trained, foreign born; weren't they?

14 A I can't tell you that here. But I know it's a
15 general statement across the United States. That's
16 true. There are many, many excellent physicians that
17 have been foreign trained.

18 Q We weren't a particularly, from your
19 experience, bigoted community, were we?

20 A Not Northern Virginia.

21 Q And there were many, many physicians who were
22 foreign born and foreign trained that represented some
23 of the finest doctors in this community; isn't that

J.APP. 0598

1 true?

2 A I can't tell you that. But I certainly would
3 be willing to assume that if that's what you're stating.

4 Q Why would -- would a hospital that was able to
5 fill its beds to 80 percent capacity, would you draw a
6 conclusion, Doctor, that this was a hospital --

7 A I'm not --

8 Q -- of physicians that were foreign born,
9 foreign trained, and to use the word that you used,
10 misfits? You used that word, didn't you?

11 A I certainly did.

12 Q Is it a matter of your consideration --

13 A Can I clarify that, though, because I'm not
14 sure your question stops. I got the term misfit from
15 Dr. Tauber. And I even went back and reread
16 Dr. Tauber's deposition and the word shows up in his
17 deposition. And the physicians understood that the
18 medical community, this is what Mr. Richards may have
19 been testifying about, saw them as misfits for whatever
20 factors.

21 They were new to the area, coming over from
22 Washington. A number of them were Hungarian born, spoke
23 with an accent, were foreign trained. The physicians

J.APP. 0599

1 saw themselves as misfits. They were in a combative
2 position, for example, with Alexandria Hospital.

3 Q These things you've been told?

4 A Those are things that I've been told.

5 Q But you, yourself, have no perception that
6 foreign-born people were -- had great difficulty in this
7 community in 1971, professionally or otherwise?

8 A I can't tell you in this community. But I
9 know, I did, have done two studies in that regard: One
10 in Minot, North Dakota, of all places, and the other in
11 Rochester, Minnesota. There are a huge number of
12 physicians that go through Rochester, Minnesota, the
13 Mayo Clinic, as you can imagine. And the Mayo Clinic,
14 in effect, recruits physicians from around the globe.

15 And I undertook analyses of the impact of
16 foreign-born physicians, as an example, in Minot, North
17 Dakota in the early and middle '70s. There ended up
18 being a large community of physicians that were from
19 India. And there was very much, intentional or not,
20 there was a separate community. I don't know if there
21 were cliques, but there was a natural differentiation
22 between the American-born and Indian-born, the
23 American-trained and Indian-born physicians. And that

J.APP. 0600

1 was also seen in the patient relationships.

2 To some extent, but much, much, much, much
3 lower, a little bit of the same phenomena at the Mayo
4 Clinic. The understanding was that it was much lower at
5 the Mayo Clinic because the physicians that were being
6 brought in internationally weren't physicians that had
7 gone offshore to be trained or were trained at whatever
8 university, medical university, but rather were
9 physicians that had achieved some notoriety, some
10 eminence in their own practice and were brought as very,
11 very highly recognized physicians in their community
12 into Rochester.

13 But I've seen in at least those two instances,
14 a little bit in Pittsburgh as well, that there does
15 tend, not by prejudice or nastiness or any of that, but
16 kind of how people were and languages were, that there
17 can be some isolation of groups of foreign-born,
18 foreign-trained physicians.

19 Q And it may be because my parents were both
20 immigrants that I have some sensitivity to this, but I'm
21 going to ask you, do you feel as an objective factor
22 that people were perceived as less qualified as
23 physicians in this community because they were foreign

J.APP.0601

1 born?

2 A I can't answer that.

3 Q There were many physicians on the staff of this
4 hospital, in fact, almost the great majority of
5 physicians on the staff of this hospital that had
6 general admitting privileges to any number of hospitals
7 in Northern Virginia; isn't that true?

8 A That's my understanding -- I don't know
9 majority. But it's my understanding that there were a
10 significant number of the physicians who were on the
11 staff of Jefferson that also had admitting privileges at
12 other hospitals.

13 Q So if they preferred to admit to Jefferson, it
14 certainly wasn't because there was a perceived prejudice
15 against them in admitting privileges in other hospitals;
16 is that correct?

17 A Not necessarily.

18 Q Do you know of any physician on the staff of
19 this hospital that was denied admission or admission to
20 the staff of any other hospital in Northern Virginia?

21 A Not as I sit here today.

22 Q All right, sir. Now, in terms of the
23 obsolescence of this plant --

J.APP.0602

1 A Of this plan or plant?

2 Q Plant, equipment.

3 A All right.

4 Q Did you visit Circle Terrace Hospital?

5 A Yes.

6 Q Isn't it almost the mirror image of this
7 hospital?

8 A No.

9 Q It's not? How is it different?

10 A It has a -- it's much more accessible to the
11 road. The building is different. The color of brick is
12 different. The windows are different.

13 Q It sold, did it not, for more than \$4 million
14 in exactly the same time period with the same number of
15 beds?

16 A Not that I can determine. And I find
17 information that contradicts that.

18 Q What do you find it sold for?

19 A I can't give you a number. But I find going
20 through the HCA materials very meticulously, that if you
21 make calculations on HCA's public disclosures to the
22 SEC, they paid a negative amount, which I certainly
23 don't believe.

JAPP. 0603

1 I also was aware from the discussion of
2 Dr. Tauber that it had sold for -- it's in my report, I
3 think about \$3.8 million. And I looked to see if I
4 could find what was sold.

5 I found that -- I think it's over here -- I
6 found that from the time that I understood the
7 announcement by, I think it was, HCA to acquire Circle
8 Terrace and the time the transaction was closed, that
9 there was a conveyance or sale of nine parcels of land
10 for \$10. And the original principal amount filed on
11 those parcels was \$1,387,000.

12 So that made me concerned about the rumor mill
13 first disclosure number of, say, 3.8 and what was
14 actually sold in the final analysis.

15 Q Not being sophisticated, would that maybe also
16 indicate that they were trying to step up the basis in
17 terms of the improvements of what they were acquiring?

18 A No, that's not --

19 Q You don't think so?

20 A No, the corporation sold out the parcels of
21 land. So whatever, whatever HCA finally bought, the
22 assets, included less land.

23 Q And they reportedly paid more money for less

J.APP. 0604

1 land?

2 A No.

3 Q Did you find any indication that it ever sold
4 for less than 3.8?

5 A As I said, if you go back, if you go back
6 through the SEC filings, it indicates that HCA paid a
7 negative number for it. I'm not telling you that I
8 believe that. But that's the financial mathematical
9 fact.

10 Q And you say accessibility from the road counts.
11 Do you think that Commonwealth Doctor's is more
12 accessible to the road than this hospital?

13 A No. No. The building itself is closer to the
14 street. But Circle Terrace --

15 Q I'm on Commonwealth, now. Commonwealth is much
16 further from the street than Jefferson; isn't it?

17 A It is.

18 Q So further from the street doesn't seem to --
19 and you reference that as one of the criteria. Did you,
20 by any chance, happen to visit Northern Virginia
21 Doctor's Hospital?

22 A I did.

23 Q Do you find it to be a plant comparable in size

J.APP.0605

1 and the way its built to this one, to the subject,
2 Jefferson?

3 A It's a compound question. Is it somewhat
4 comparable, similar in size? Yes. There's some
5 construction differences.

6 Q Low rise, isn't it?

7 A Low rise.

8 Q In fact, it suffers from more disadvantages
9 than Jefferson in terms of its construction based on the
10 criteria you enunciated, emergency room location and
11 surgical suites and things like that?

12 A Not necessarily.

13 Q All right. You indicated that acquirers were
14 looking for hospitals that could be expanded; is that
15 correct?

16 A Many of them were, yes.

17 Q Are you aware -- and you said that this
18 hospital couldn't be expanded?

19 A No, I didn't.

20 Q Let's look at your report and see what you did
21 say. What did you say about expansion potential for
22 this hospital?

23 A I think I indicated that there were

J.APP.0606

1 difficulties expanding it as I would expect the acquirer
2 would want to expand it. And I think I said someplace
3 that it had no immediate plans for expansion.

4 Q The first thing you said was that the hospital
5 was obsolete as a, or as the basis for a successful
6 general hospital; is that correct?

7 A Where is that?

8 Q I'm looking at 24.

9 A "Even by," it reads, "even by early 1973, the
10 hospital building was obsolete as a or as the basis for
11 a successful general acute hospital." And in
12 parenthesis, "the hospital's location and configuration
13 were outdated," close parentheses.

14 Q And I believe you said publicly held hospital
15 corporations reported acquisitions of hospitals during
16 1971. Publicly held hospitals generally sought
17 acquisition of hospitals with demonstrated potential for
18 expansion with excess property and expanding areas with
19 an implied profit enhancement?

20 A Yes.

21 Q And you said that Jefferson had no plans for
22 expansion; is that correct?

23 A Not that I was aware of.

J.APP. 0607

1 Q Let me see 508. Would you read this special
2 permit which was granted to Jefferson in 1971? Now, I'm
3 going to refer you to page 4754.

4 A All right.

5 Q The applicant proposes to increase bed --

6 A Where are you reading?

7 Q Number 2.

8 A All right.

9 Q "The applicant proposes to increase the bed
10 capacity of the existing Jefferson Memorial Hospital
11 located at 4600 King Street from 150 to 275 beds."

12 A Yes.

13 Q So somebody failed to tell you about the plans
14 for expansion, didn't they?

15 A I think as we discussed in my deposition when
16 you brought that up as a question, that was the first I
17 had heard of that.

18 Q But you did not seek to amend your report with
19 respect to that after being so advised?

20 A That's correct. I discussed that with
21 Dr. Tauber and understood that this was not a genuine
22 plan or anticipation of expansion, but rather, was some
23 sort of defensive maneuver or responsive maneuver to

J.APP.0608

1 Alexandria or Arlington, I don't remember which, I think
2 Alexandria Hospital, having some planning, some sort of
3 permit relating to expansion.

4 Q Did you hear Mr. Richards testify yesterday
5 that he wrote that letter and had verified that the
6 facts contained in there and therein were true and that
7 he would not have represented them if he had not
8 verified them?

9 A I don't remember the word verify. I recall
10 that he had written this and that he had written this
11 based on either what he knew or what his client had
12 represented to him.

13 Q Well, it's at least apparent, isn't it,
14 Mr. Cobb, that if they wanted to expand, they had just
15 gotten permission to do it?

16 A In terms of the permit. But they certainly
17 didn't have the financial wherewithal to do it. I'm not
18 aware that they had any architectural plans, drawings
19 and the real substance behind it at that time.

20 Q Haven't you just made my point? If a
21 hospital -- made earlier? If a hospital wanted to come
22 in here and grow and expand and these people didn't have
23 the money, the opportunity was certainly there to do it

J.APP. 0609

1 if they wanted to put their capital in there and exploit
2 the opportunity?

3 A I don't believe that's true. I don't believe
4 that a sophisticated operator of hospitals would have
5 purchased Jefferson Memorial Hospital given its site,
6 configuration, and the like in this time period with the
7 intent to significantly expand that facility.

8 Q Well, the doctors themselves significantly
9 expanded the facility; didn't they?

10 A To my understanding, they ultimately did.

11 Q They built two additional buildings on the
12 campus, one of which had structured parking; didn't
13 they?

14 A Some. They also built not only two -- perhaps
15 it was two additional buildings. They built a medical
16 office building. They built an intensive care unit on
17 the one end of the wing. And then they built an
18 additional floor on the bed wing.

19 Q Do you find structured parking anywhere on the
20 site?

21 A I don't know how you refer to structured
22 parking.

23 Q Parking not on grade but in a structure?

J.APP. 0610

1 A Yes.

2 Q Weren't they the first hospital in this area to
3 build structured parking?

4 A I have no idea.

5 Q Every hospital followed Dr. Tauber's example in
6 that regard within a few years, didn't they?

7 MR. BONO: Objection, Your Honor. There is no
8 testimony about structured parking. It's a medical
9 office building being attached to the hospital, was the
10 testimony, not parking. There is no testimony in this
11 record --

12 THE COURT: I don't specifically recall. The
13 witness indicated to you, Mr. Bettius, he did not know
14 whether they were the first. Your question is, the way
15 you phrased it, "followed Dr. Tauber" -- rephrase that.

16 BY MR. BETTIUS:

17 Q Do you know that within several years, Fairfax
18 Hospital found it advisable to follow his -- whether
19 they followed his example or not, they built structured
20 parking, did they not?

21 A Many hospitals across the United States built
22 some sort of structured parking. Most of the structured
23 parking was certainly more structured and larger than

J.APP. 0611

1 what I saw at Jefferson. It became very common.

2 And I understand there's a linguistic
3 difference and I don't know what it is here. In the
4 midwest it's a parking ramp. In many places it's a
5 parking garage. But they became relatively common
6 construction for hospitals.

7 Q Since you testified about land and land
8 values --

9 A I haven't.

10 Q Oh, I thought you indicated what they could do
11 and what they would do and what was economically
12 profitable?

13 A I didn't testify about land and land values,
14 Mr. Bettius. I talked about the -- there are definite
15 constraints on this site regarding retail stores,
16 apartments around it. It's not a large site. It is not
17 the type of site that the acquirers of hospitals in the
18 mid 1970s were identifying and purchasing for expansion
19 into a medical campus.

20 Q Well, it became a medical campus, didn't it?

21 A I wouldn't characterize that as a medical
22 campus.

23 Q It had the first ICU; is that correct?

J.APP. 0612

1 A I think it did have the first ICU.

2 Q And I don't mean to be flip. But to hear the
3 description of this hospital from the people who
4 testified before you, I thought it was almost the
5 cutting edge, right on the front. These people were
6 doing things that everybody else imitated, and it was
7 the neatest thing that formed the model for everybody
8 else to follow. Did you hear that testimony from the
9 Respondents?

10 A No, I didn't. And that certainly isn't what I
11 find.

12 Q There wasn't a list submitted of the things
13 that Jefferson did first: ICUs, office buildings on the
14 campus?

15 A I don't know if there was such a list. I don't
16 know if it's first. First doesn't necessarily mean its
17 done properly or even best.

18 Q Mr. Cobb, it appears, does it not, that the
19 people who were dealing in this unsophisticated market
20 were building --

21 A What unsophisticated market?

22 Q The doctors who were buying the stock in this
23 unsophisticated market were expanding their campus by

J.APP. 0613

1 building office buildings on it, were putting the first
2 ICUs in the area on it and were continuing to spend
3 money to improve it; isn't that true?

4 A I believe over time, that's true.

5 Q Weren't they the first hospital to consider,
6 and you talk about mixes, putting long-term care
7 facilities on their campus? Do you know that?

8 A I don't know that.

9 Q Okay. Do you know -- and you indicated that in
10 '75 they had no plans for expansion?

11 A None that I'm aware of.

12 Q Did you read the minutes?

13 A I've read certain of the minutes.

14 Q Do you know they were planning a research
15 facility and had gone to architectural drawings in 1974?

16 A I don't recall that as I sit here.

17 Q So if they were going to build a research
18 facility on campus and within that facility provide
19 another 20 or 30 beds for lease to the hospital, they
20 didn't tell you about that?

21 A That's correct. I certainly can't imagine a
22 buyer who would support that on this site. That's not,
23 not the kind of structure -- it's not the kind of site

J.APP.0614

1 where sophisticated hospital operators were even
2 contemplating that kind of facility in this time frame.

3 Q Do you know that notwithstanding the testimony
4 of obsolescence, that Dr. Tauber is still actively
5 pursuing a license for this hospital today?

6 A I heard some comment that there's an interest
7 in a license as a long-term care nursing care facility.
8 But I haven't heard any other -- and that I just heard
9 in passing. I don't even remember who I heard it from.

10 Q How about a pediatric hospital?

11 A Don't know.

12 Q Don't know about that?

13 A Don't know about that.

14 Q Would Dr. Tauber -- well, we're not trying this
15 case in today's market, anyway. I'm sorry.

16 THE COURT: Dr. Cobb, if you need to take a
17 break, let me know.

18 THE WITNESS: Well, at six.

19 MR. BETTIUS: Your Honor, I had actually made
20 Mr. Cobb sick in the deposition. I didn't mean to.

21 THE WITNESS: Oh, no, I came sick. You were
22 actually pretty helpful.

23 THE COURT: Probably made it worse.

J.APP.0615

1 THE WITNESS: No, he was very nice. He
2 couldn't have been nicer; he got me coffee when I
3 desperately needed it.

4 MR. BETTIUS: Thank you, Mr. Cobb.

5 THE COURT: Why don't we take a short break.

6 (A brief recess was taken.)

7 BY MR. BETTIUS:

8 Q Would it be fair to say, Mr. Cobb, that the
9 primary focus of your education is accountancy?

10 A I guess so, but the course work I took was
11 really, as required by the University of Iowa, is really
12 pretty rounded with economics, finance, business law,
13 investments.

14 And then the continuing education that I've
15 taken since, 40 hours a year, a fair amount of it's been
16 industry, functional, role and responsibilities of board
17 members, health care financing. So it's really fairly
18 diverse. But where did I start out? I'm an accountant.

19 Q You've never been certified as an appraiser in
20 any state, have you?

21 A I have not.

22 Q Nor have you ever sat for an exam for any
23 society that would recognize you as an appraiser, have

J.APP.0616

1 you?

2 A No.

3 Q And there is within accountancy a specialty, is
4 there not, where you can receive certification after
5 study and examination to be a specialist in valuation?

6 A I don't know if that's exactly true. I know
7 that there's a program in place to do that and the
8 activity is occurring, say, within even the last 90
9 days. I don't know if it's been finalized or not. The
10 last thing that I read indicated that it was going to be
11 finalized.

12 Q And these are called HCE certifications; is
13 that correct?

14 A I don't know.

15 Q The course materials and courses to teach
16 accountancy, to teach valuation on the basis of
17 accountancy have been in place by the AICPA for some
18 time, have they not, the course materials, and in fact
19 courses have been held; is that not correct?

20 A Courses have been held.

21 Q And you referred to the analysis done by
22 Mr. Reilly as a comparable analysis. He never referred
23 to these hospitals as comparables.

J.APP.0617

1 A He was very careful not to do that.

2 Q And pointedly careful not to do that, wasn't
3 he?

4 A I thought so.

5 Q Do you recognize that your own profession in
6 which you are certified recognizes and has courses on a
7 discussion of guideline company method steps?

8 A I think I'm aware of that, yes.

9 Q And isn't the analysis that was done by
10 Mr. Reilly in this case with the qualifications that he
11 stated perfectly in accordance with the steps, standards
12 and cautions contained in the literature of your
13 profession?

14 A I don't think so. Because that includes -- and
15 I'll even use it from his book. On page 211 of his blue
16 and gold book, not that I bought a copy, the very first
17 line under "criteria for guideline company selection"
18 reads, one succinct quote summarizes the essence of the
19 key characteristic that should be present in a guideline
20 company. And the quote is, "do the underlying economics
21 driving this comparable company match those that drive
22 our company"?

23 Q And isn't that totally explained in the

J.APP.0618

1 following terms, not by Mr. Reilly, but by the AICPA?
2 "Identification and application of search criteria. In
3 performing a preliminary search for a guideline company
4 suspects, it is usually wise to utilize broad criteria
5 measures at first. As the search progress, the criteria
6 for establishing comparability will be narrowed. The
7 following are means by which search criteria can be
8 identified, defined and narrowed."

9 Have you ever read this, how you proceed to do
10 this search?

11 A I think I have and I agree with that. And I
12 don't agree that's what Mr. Reilly did.

13 Q I'll let Mr. Reilly tell you.

14 Do you agree with this statement? "The
15 evaluator should not conclude that there are no
16 comparable companies that exist just because there are
17 no identifiable entities that are exactly like the
18 subject company in many or all respects"?

19 A Certainly.

20 Q All right. You do recognize that Mr. Reilly
21 was not identifying valuation criteria in the sense of
22 you can value this company or you can look at this
23 company and then say it's like this company. He didn't

J.APP.0619

1 didn't do that at all, did he?

2 A No. He should have.

3 Q He was trying to determine --

4 A No, he should have.

5 Q I understand that's your position. He used it,
6 and we'll determine which application is correct, to
7 understand how income and analysis should be done to
8 compare comparable types of, or similar types of
9 companies in the way they structure -- are structured in
10 order to determine the income potential, risk and
11 application of similar companies; isn't that what he
12 did?

13 A No, I don't know what a comparable type is or
14 similar type. What I don't find, what I don't find at
15 all is that he looked at the underlying economics and
16 that he found companies that have enough meaningful
17 economic similarity, driving factors, that there's any
18 sensical derivation of value. Whether you take them one
19 at a time or if you take all of the bad ones and put
20 them together, it simply isn't right.

21 Q At the time you did this report, you didn't
22 know what a guideline company was; did you?

23 A That's a term I don't use. I see it used

J.APP.0620

1 interchangeably between guideline and comparable. I
2 don't use the term guideline.

3 Q Would you answer my question? At the time you
4 took this and signed this report, you did not know what
5 a guideline company was; did you?

6 A Not as a specific term. It's not a term I use.

7 Q And you did not know the guideline company
8 approach and how it was applied to valuation at the time
9 you signed this appraisal, did you?

10 A I don't believe that's true.

11 Q In fact, if you had been asked do you know the
12 difference between a guideline company and a comparable,
13 you would say, you would have said not as I sit here
14 today?

15 A That's true. I don't know the difference,
16 because there isn't one. I see the terms used, and in
17 my mind, they are interchangeable. I can't tell you
18 somebody's definition of a guideline company. I can't
19 tell you Mr. Reilly's definition of a guideline company.
20 I can tell you what's in his book. I can tell you what
21 I see in practice.

22 Q I'm asking you if you are aware that both the
23 American Society of Appraisers and the AICPA recognize

J.APP.0621

1 that there is a distinct difference between a guideline
2 company and a comparable?

3 A I'm not aware of that.

4 Q Have you ever in your valuation practice
5 performed a market approach valuation?

6 A I have valued hundreds of companies and I've
7 used the market approach.

8 Q And in this company, you took the balance
9 sheet, did you not?

10 A No.

11 Q All right. Let me ask you what you did in
12 terms of valuing the assets. What did you do with the
13 balance sheet? How did you value assets off of the
14 balance sheet?

15 A I didn't value individual assets, Mr. Bettius,
16 the same as Mr. Reilly. I valued JMHI as of June 30,
17 1971; JMHC as of April 18, '73, January '75. And a
18 5,000 share holding in JMHC as of the last two dates.

19 Q Did you not indicate that the company was not a
20 candidate for acquisition based on numbers that you took
21 without exception off of the balance sheet and said it
22 had deficit? Is that what you said?

23 A It's true and it's not. The deficit is an

J.APP.0622

1 indicator that there's not acquisition value. There are
2 also a number of other indicators that I looked at.

3 Q Tell me what you used to indicate, and I want
4 you to find in your report for me where you indicate
5 that the company had deficits and was not a candidate
6 for acquisition.

7 A Together? I didn't -- the simple fact of a
8 deficit, Mr. Bettius, doesn't make any company,
9 including JMHI, not a candidate.

10 Q Show me where you use --

11 THE COURT: Let him finish.

12 Q I am sorry. I thought he was finished.

13 A It certainly can be a factor. But in and of
14 itself, it is certainly not determinative.

15 Q Will you show me where you used it in your
16 report?

17 A Used what?

18 Q The balance sheet deficit.

19 A How I used it. If you go to page 20, for
20 example, valuation of JMHI as of June 30, 1971, I'm
21 looking at the various methods. I am at this juncture
22 at a point where I have understood the hospital's
23 competitive position, the declining admissions,

J.APP. 0623

1 declining market share, building, physicians,
2 competition, expanding and the like, and with the
3 background knowledge, I'm starting to look at certain
4 measures of value so that I can make, I can draw an
5 opinion as to value.

6 One of the things that I looked at is the net
7 asset value, the same as Mr. DenUyl, for example, the
8 same as I see done very frequently, the same as I see in
9 references to cases and in revenue ruling 5960 for
10 example.

11 Q And in that respect, haven't bankruptcy
12 courts -- you practice in bankruptcy courts quite a bit?

13 A No, hardly at all.

14 Q Hardly at all?

15 A No.

16 Q Isn't it true that that is the surest way to
17 undervalue a company's assets?

18 A Oh, I don't agree with that.

19 Q As a matter of just sheer economics, every
20 capital asset I own, year after year is going to decline
21 in value; isn't it?

22 A Not necessarily.

23 Q But it depreciated, aren't they?

J.APP. 0624

1 A From a book value point of view?

2 Q Exactly.

3 A Yes.

4 Q Isn't that exactly what you're reporting here
5 in terms of all of the assets?

6 A It's very important, when I looked at the
7 balance sheet, for example, if we go back -- let me find
8 that page.

9 Go back for example to page 11, which is one of
10 the charts Mr. Bono had the number for, I don't know the
11 number, the June 30 balance sheet, the assets that
12 typically appreciate in value versus their depreciated
13 accounting value are buildings and land. The all-time
14 example, to my knowledge, is Dupont buying land along
15 the Brandywine Creek in the late 1780s.

16 Your generally accepted accounting principals,
17 whatever nominal amount they paid for that by today's
18 standards, on their balance sheet that's still there at
19 that value. The accounting model doesn't bring that up.

20 And I look at Jefferson and what do I see?
21 Cash, accounts receivable, other receivables, inventory.
22 And the plant equipment that's there doesn't include the
23 building. It doesn't include much of the land,

J.APP.0625

1 certainly not a controlling slice of the land, if you
2 will.

3 And I know -- and I've done numerous studies of
4 this for hospital clients and for medical equipment
5 companies that medical equipment does not appreciate in
6 value. In fact, it kind of falls off a cliff. It's
7 kind of like office furniture. The day they put it in
8 your office and it's lovely and it cost \$1,000, it's
9 worth maybe \$200.

10 I don't find any assets of JMHI because it
11 didn't own most of the land and the building that I
12 would expect to appreciate in terms of the accounting
13 model.

14 Q They were constantly restoring the capital base
15 with capital expenditures on the balance sheet, weren't
16 they?

17 A I don't know how you're using the "constantly."
18 There were ongoing capital expenditures. As I recall,
19 they were not -- they weren't what I would characterize
20 as great. They were 20, \$25,000 per year.

21 Q I respect your candor, Mr. Cobb. Isn't it true
22 that you now determined to your own satisfaction that
23 one asset on that balance sheet, the liability on that

J.APP.0626

1 balance sheet now shouldn't be there? That lease is an
2 absolute misrepresentation of a liability; isn't it?

3 A It's an interesting question and I've been
4 listening to it for the past couple days. And I can't
5 tell you it is or isn't.

6 But what I know is that I would expect an
7 acquirer to come in and sit down and say what am I
8 acquiring? I'm acquiring this. There's a lease on the
9 balance sheet. What's it for? It's for this or it's
10 for nothing.

11 But whoever is owed that money is owed that
12 money. So at June 31, 1971, whether it's substance or
13 not, I as an acquireer have to understand that I have
14 exposure to make payments on that. Maybe somebody
15 overpaid for something in the past or not. But what I'm
16 looking at as an acquirer is not how that debt got
17 there, but the fact that it's there, and I'm going to be
18 responsible for paying it.

19 Q You've just made my point, Mr. Cobb. These
20 people knew. They were the acquirer. They were the
21 acquirer. Do you find any evidence of due diligence
22 having been done by these people, even a smattering of
23 due diligence when they were taking these assets over?

J.APP. 0627

1 A As we've been through in my deposition, I don't
2 find the kind of writings, documentations of due
3 diligence that I would have expected to find and wanted
4 to find in this transaction. I don't -- to my
5 knowledge, they are not there. I don't know what the
6 people did mentally.

7 But due diligence is to find information that I
8 need as a buyer or seller. And these are the people
9 that are there every day and they know what's there. So
10 I don't know that they needed to do due diligence as we
11 would in 1997 when we do it much more thoroughly or we
12 would document it. But I sure don't find the kinds of
13 writings that I would have expected for this kind of
14 transaction in the early 1970s.

15 Q And isn't it true, it doesn't matter. You deal
16 every day with valuation of trusts and how trustees deal
17 with their property, don't you?

18 A Not every day, but very frequently.

19 Q And you know very well, do you not, that when a
20 trustee is going to acquire the assets of its cestui que
21 trust, that there is an absolute duty of due diligence?

22 A My mind wandered and I lost your question. I'm
23 sorry.

J.APP.0628

1 Q In every trust -- and I may have used a term
2 you're not familiar with. In every trust, there is a
3 trustee and there's a beneficiary; isn't that correct?

4 A Yes.

5 Q 1970, 1870.

6 A I don't go back quite that far.

7 Q Take a period of time. Trustees have always
8 had the duty to accurately and completely account when
9 they buy the assets of their beneficiary; isn't that
10 correct?

11 A I don't know how to answer accurately and
12 completely. I think they, to my understanding -- and I
13 don't practice law except to the extent that we all do;
14 I stop at stop signs because the law says I should. But
15 a trustee has duties and responsibilities to the
16 beneficiary. And I think that they need to be
17 reasonably, fairly, appropriately, executed and
18 reasonably, fairly and appropriately documented or
19 reported.

20 But do they have to be accurate? Can I
21 transpose 96 into 69? Well, there's some play in that.
22 There may be. But the essence and the reasonableness of
23 the presentation I think has to be there.

J.APP.0629

1 Q And it wasn't there. It's not here, is it?

2 A I don't know how to answer that. I don't know
3 how to go back that far as regards the due diligence. I
4 don't find the kind of documents that I would want to
5 see. I don't find the kind of legal agreements,
6 formalities around that that I would have expected to
7 see. I don't think they're there.

8 Q And in fact, you find patent conflicts between
9 what they say and what they did; isn't that correct?
10 Let's take a key one. Let's back up. Let's take a key
11 one.

12 Your analysis for '73 and your analysis for '75
13 proceeds on the basis of valuing 5,000 shares of stock
14 that were supposed to have been given to JMHI; is that
15 correct?

16 A As regards JMHI, yes.

17 Q And we know, for instance, that JMHI never even
18 got those 5,000 shares.

19 A Not that I can find.

20 Q So the basis for your valuation you can't
21 substantiate from any of the records. In fact, we find
22 in transactions all of the shares accounted for and they
23 reside in the doctors; do they not?

J.APP.0630

1 A That's what I have found, yes. I don't
2 remember the document. There's one document that I
3 found that lists out 245,000 shares and it has -- I
4 don't know all the doctors' names, but what I understand
5 to be the doctors' names.

6 Q And in fact, we find basic contradictions, do
7 we not, in the financial documents that report the
8 fundamental transfer of the assets from JMHA to whoever
9 got them. There are fundamental conflicts in the
10 documentation, aren't there?

11 MR. BONO: Objection, Your Honor.

12 MR. BETTIUS: Let me be more specific.

13 BY MR. BETTIUS:

14 Q The tax returns of JMHA, and in fact JMHA's own
15 financial statement reveals that the transaction that
16 occurred, occurred between JMHA and JMHI; isn't that
17 correct? You've seen that?

18 A I don't believe that I've seen JMHI documents.

19 Q JMHA, I said.

20 A JMHA. I believe that there's a JMHI notation
21 in a tax return that indicates that JMHA put its assets
22 into JMHI. I understand that that's considered to be an
23 error. I obviously don't have any independent knowledge

J.APP.0631

1 of that.

2 Q We in fact find, do we not, from the minutes
3 the exact structure of the transaction that
4 Mr. Reeves -- you know who Mr. Reeves is, the man who
5 gave them advice in 1970?

6 A I don't know who he represented. But he was
7 the lawyer that developed the transaction and
8 recommended the transaction to the board.

9 Q And he was a tax expert, supposedly, did you
10 understand that?

11 A I don't know.

12 Q He was recommending that the flow of the
13 transaction had to be through I to C?

14 MR. BONO: Objection, Your Honor.

15 BY MR. BETTIUS:

16 Q Let me show you --

17 THE COURT: Just a minute. Let me hear what
18 the objection is.

19 MR. BONO: This has nothing to do with the
20 testimony that Mr. Cobb is here to offer. Mr. Bettius
21 is just arguing the facts of his case. It has nothing
22 to do -- if you argue these facts to Your Honor, he's
23 argued them all day today. It has nothing to do with

J.APP. 0632

1 the compilation, nothing whatsoever.

2 THE COURT: Tell me what it has to do with the
3 valuation, Mr. Bettius.

4 MR. BETTIUS: Your Honor, the premise -- let me
5 lay a foundation for it.

6 BY MR. BETTIUS:

7 Q Mr. Cobb --

8 MR. BONO: Well, Your Honor --

9 THE COURT: The question is withdrawn and he's
10 going to see if he can lay a foundation.

11 BY MR. BETTIUS:

12 Q The basic premise of every valuation that you
13 do as a professional is that the documents you review
14 are true and correct and reflect the transactions as
15 they in fact occurred; am I correct?

16 A At least generally speaking.

17 Q These documents fundamentally do not document
18 the transactions that occurred; do they?

19 A That's a broad question. The documents are in
20 conflict. There are documents that indicate that there
21 was a transaction, the economic substance of which was
22 that JMHC, which was incorporated June 3rd of '71, I
23 think, acquired for 240,000 of its shares JMHA.

J.APP. 0633

1 And then it turned around and in exchange for
2 5,000 of JMHC's shares and the assumption of the
3 liabilities, about 1.6 million, of JMHI, JMHC is giving
4 the assumption of the liabilities and 5,000 shares, that
5 it got the net assets of JMHI.

6 Then we go down the road and find that the
7 information, including from Mr. Richards, as I
8 understand it, recall it at a little bit late hour now,
9 that that transaction really couldn't work. To my
10 knowledge, it couldn't work either. A 501(c)(3) has no
11 stock. A 501(c)(3) therefore can't sell its stock
12 because it doesn't have any.

13 But the economic substance of what's there may
14 work. A 501(c)(3) can sell its assets. It can sell its
15 net assets and take stock instead. So I looked at the
16 economic substance of that. There obviously are
17 conflicts, great conflicts in the transaction,
18 information and documentation that I see.

19 Further, and importantly, I think for you, a
20 corporation has a life. It's born. It lives and it
21 dies. Or it can't live forever, at least as we know it
22 forever. And one of the ways it can die is to have the
23 state to revoke its charter. If I don't send my \$100 to

J.APP.0634

1 Joan Grow, the secretary of the State of Minnesota, my
2 business goes poof.

3 In April of 1973, for nonpayments of fees, as I
4 understand it, the state of Maryland revoked their
5 charter. So at that point, JMHI as a legal entity,
6 maybe not as an economic entity, but certainly as a
7 legal entity has gone poof.

8 In 1975, someone realizes that everything
9 didn't quite work and whatever Mr. Reeves thought would
10 work wouldn't or whatever Mr. Reeves was supposed to
11 have done to make it work didn't happen, and we need to
12 clean this up.

13 And documents indicate to me at that time, and
14 listening to Mr. Richards, that at that time, there was
15 a reconvening of what was understood to be the members,
16 because there aren't stockholders in JMHI, and they had
17 a meeting to elect a board of JMHI. That was done in
18 1975, whereas at least from a legal point of view JMHI
19 didn't exist after 1973.

20 So I don't know how to get its members together
21 and I don't know how to get a board of directors
22 together. I don't know how to do anything for JMHI
23 other than run over to Annapolis, pay a whole lot of

J.APP. 0635

1 back fees and hope that that works to get me reinstated.

2 But it's a convoluted transaction. There's
3 problems in how it was done. There's problems in how it
4 was documented, problems in what could really be done.
5 But the economic substance that I see out of it is that
6 JMHI would have blessedly had another party assume its
7 liabilities and would have received 5,000 shares.

8 So I look at the economic substance of that
9 transaction as I come forward to '73 and '75 and say
10 what would JMHI have looked like economically in '73 and
11 '75 if it were the holder of those shares and if it
12 didn't have to liquidate those shares to make annual
13 payments or to make payments to keep its incorporation
14 alive, what would it look like as a holder of 5,000
15 shares.

16 Q Mr. Cobb, I respect your candor. The point is,
17 there weren't 5,000 shares. We established that.

18 A Not that I can find going to JMHI.

19 Q And the point is, haven't you made, in effect,
20 JMHI a holding company after 1971?

21 A I don't know how you define the terms. But,
22 yeah, I think in effect it's a holding company. It's
23 not an operating company anymore. Under that economic

J.APP. 0636

1 substance, its asset, singular, would be 5,000 shares of
2 JMHC. It's liabilities hopefully would be none. So
3 it's a holding company of the shares.

4 Q Precisely, Mr. Cobb. And that transaction is
5 never the parties' intended or described in any
6 document; is it?

7 A I think it's the economic substance of what I
8 see.

9 Q Didn't they describe what they were doing is
10 that JMHI and JMHC were the same company. They had
11 pooled their assets and a mere change of name and place
12 of organization had occurred; isn't that what they said
13 they had done?

14 A But it's different.

15 Q Would you answer that question, first?

16 A They said that in the context of tax. And they
17 are different things for the IRS and a different purpose
18 for the IRS. And so they reported an F reorganization.
19 And an F reorganization reports that it's -- I don't
20 remember the exact terms -- a mere change of name, a
21 mere change, a mere change but the economic substance is
22 the same.

23 Q I'm going to refer you to a document perhaps

J.APP. 0637

1 you haven't seen. Have you seen the note to the short
2 years statements of JMHI? And that is Exhibit 782?

3 A I don't know. I'd have to see it.

4 Q We're going to get it for you, Mr. Cobb.

5 A Can I put this one book back?

6 Q We'll get this out of your way, Mr. Cobb.

7 Now, this isn't a note -- sorry, Your Honor. I
8 apologize for the confusion.

9 A I have Exhibit 782.

10 Q Would you look at the second note to the
11 financial statement?

12 A Yes.

13 Q Would you read to the Court how JMHI reported
14 on its audited financial statement what was going to
15 occur?

16 MR. BONO: Your Honor, the document speaks for
17 itself.

18 THE COURT: Ask him a question about it,
19 Mr. Bettius.

20 BY MR. BETTIUS:

21 Q It wasn't on this statement reported as
22 anything other than an agreement with a new corporation,
23 JMHC, whereby all the assets and liabilities of the

J.APP. 0638

1 hospital as of June 30, 1971 would be acquired for an
2 exchange of the shares of stock of the new corporation.
3 That's the way they reported it there; is that correct?

4 MR. BONO: Your Honor, the document speaks for
5 itself.

6 MR. BETTIUS: All right.

7 BY MR. BETTIUS:

8 Q And then -- isn't that what you read?

9 A What I read I think is what we've been talking
10 about. On July 1, 1971, Jefferson Memorial Hospital had
11 entered into an agreement with a new corporation
12 entitled Jefferson Memorial Hospital Corporation whereby
13 all the assets and liabilities of the hospital as of
14 June 30, '71 would be acquired in exchange for shares of
15 stock of the new corporation.

16 Q And then C reported the transaction in its
17 audited financial statement in the following language,
18 did it not?

19 A Do you want me to read it or do you want to
20 read it?

21 MR. BONO: Might I ask what document?

22 MR. BETTIUS: I'm sorry, Mr. Bono. It is
23 Exhibit 200. "The exchange" -- reading note one. I'll

JAPP 0639

1 wait until you catch up, Mr. Bono.

2 MR. BONO: Go ahead.

3 BY MR. BETTIUS:

4 Q "The exchange resulted in a mere change in the
5 name and state of organization with no change in
6 management and the percentage of ownership by each
7 shareholder." Is that right?

8 A It's extremely important to read the whole
9 note.

10 Q All right.

11 A It reads "on June 30, 1971, Jefferson Memorial
12 Hospital, Inc., JMHI, merged into Jefferson Memorial
13 Hospital Corporation, a new corporation, incorporated in
14 the state of Delaware. JMHC received all the assets and
15 assumed all the liabilities of JMHI as of that date," so
16 they are compatible, "and 5,000 shares of JMHC common
17 stock were given to the JMHI stockholders in exchange
18 for all of the outstanding 5,000 shares of JMHI common
19 stock. This exchange resulted in a mere change in name
20 and state of organization with no change in management
21 and percentage of ownership by each shareholder."

22 And that last sentence, by my recollection, is
23 consistent with the wording in the Internal Revenue

J.APP. 0640

1 regulations regarding an F reorganization.

2 Q They did more than that, though, didn't they,
3 Mr. DenUyl? They filed a sworn statement that indicated
4 that a plan of reorganization and merger had been
5 entered into wherein JMHI ceased to exist? Did you read
6 that?

7 A As we talked before, there was such a plan
8 agreement. I think I read it separately, and I think it
9 was also an attachment to JMHC's tax return.

10 Q Well --

11 A But I don't remember the specifics of it
12 regarding ceasing to exist or whatever.

13 Q The reason I'm going over this is because your
14 analysis presumes that JMHI's only function after that
15 point in time was that it didn't cease to exist; it
16 became a company that held 5,000 shares of stock.

17 A That's generally correct, that JMHI would have
18 existed and its sole asset would have been 5,000 shares
19 of JMHC and that it wouldn't have had liabilities.

20 Q Would you look at your Exhibit 708M, please?

21 A I don't have that.

22 Q Will you give the witness a copy of 708M?

23 MR. FOX: Your Honor, may I inquire for a

J.APP.0641

1 moment? Mr. Reilly has to leave out of Dulles for
2 Chicago. Would you advise that he cancel that and plan
3 to --

4 THE COURT: You're asking the only person in
5 the courtroom, Mr. Fox, who doesn't know how much longer
6 we're going to be.

7 MR. FOX: I do intend to call him for rebuttal.
8 And I would assume that's probably going to take 45
9 minutes or so. And the question is whether the Court is
10 inclined to go much beyond this witness.

11 MR. BETTIUS: I'm ten minutes away at the most.

12 THE COURT: I don't know whether to advise him
13 to cancel that flight or not. But if he's here and
14 ready to go, we'll finish.

15 MR. BETTIUS: Do you have the exhibit?

16 THE WITNESS: Not yet. I have one.

17 MR. BETTIUS: All right. I'm going to ask him
18 a whole series of just quick numbers off the whole
19 series. So let's get him the whole --

20 THE COURT: Just take that.

21 BY MR. BETTIUS:

22 Q Would you tell me, sir, if you will, do you
23 show an adjustment SSA for \$67,111?

J.APP.0642

1 A Yes.

2 Q Where did that number 67,111 come from?

3 A As I recall, in the 1971 financial statement of
4 JMHI, there was indication that there had been a
5 settlement, adjustment through the reimbursement process
6 with the Social Security Administration which oversaw
7 the Medicare/Medicaid program.

8 Q And may I ask you, sir, about another figure,
9 about two figures down --

10 A Certainly.

11 Q -- where the number administration and finance
12 came from?

13 A Yes. I looked at the hospital's administration
14 and finance functions and from my determinations and
15 discussions with Dr. Tauber, they were inadequate; that
16 the hospital had, at least as of that time, did not have
17 the level of hospital administration, management that I
18 as an acquirer would want or expect. So I made an
19 increase in effectively the expenses related to
20 administration and finance of \$50,000.

21 MR. BETTIUS: Thank you. I'm trying to phrase
22 one last question, Your Honor, and then I'll be done.

23 THE COURT: All right.

J.APP. 0643

1 BY MR. BETTIUS:

2 Q Mr. Cobb when you deal with contract
3 adjustments, do you take those as a deduction from
4 working capital?

5 A It's hard to answer --

6 Q Well, how did you do it in this case?

7 A -- because there are pieces of that. A
8 contractual adjustment means that I set out to bill
9 \$100. But I might have a contract with Group Health,
10 Blue Cross/Blue Shield whereby they're only paying me 80
11 because of an agreement, because of lower cost or
12 charges or formula or what have you. So I want to
13 record the information in my books that I thought I
14 should get 100. So that's revenue.

15 When I bill that, I want to make an estimate
16 because I realize I'm not going to end up getting all
17 100. I don't want to tell the reader of my financial
18 statement I'm going to get 100 when I think I'm only
19 going to get 80. So I book that right away.

20 So I'm recording, in effect, 100 of revenue,
21 not cash, because I haven't collected it yet, 20 of
22 contractual allowance and therefore 80 of net revenue.

23 All right. Over in the balance sheet, a couple

J.APP. 0644

1 of things are happening. I'm booking an accounts
2 receivable, in effect, for 100. And I'm coming over --
3 but I know I'm not going to collect all 100 of that. So
4 I also want to book a liability of 20 that is the
5 contractual allowance. I'm not going to get all 100 of
6 that. I'm oversimplifying a bit.

7 So when I have handled that transaction, I've
8 impacted my working capital twice: once with an
9 accounts receivable and once with the liability; I'm not
10 really going to get that 20.

11 Q Well, I'm going to ask you, am I making an
12 adjustment on the income statement or am I making an
13 adjustment on the balance sheet? I need to know how you
14 actually handle it when you get over to the balance
15 sheet.

16 A It depends on what you're doing with the
17 contractual allowance.

18 Q Well, tell me what the differentiation is as to
19 where it appears on the balance sheet. Is it short
20 term, long term liability or not at all?

21 A Okay. Proper generally accepted accounting
22 principles tells you and has told you from the early
23 1970s, at any rate, that it is a short term or a current

J.APP. 0645

1 liability. There have been hospitals that have sat down
2 and said -- it evolved because Medicare has really been
3 the driving force of this across the country.

4 A number of the Blues and Group Health have
5 been doing this for a long time, since the late '40s,
6 where they'd sit back and say I'm really not going to
7 have to -- I'll use Blue Cross for a minute, because it
8 comes to mind. I bill \$100 to Blue Cross and they
9 actually pay it. But I know at the end of year, they
10 are going to have two accountants who come out there
11 with very little personality and very little humor and
12 they are going to go through my costs and they are going
13 to say, you have to give me \$20 back.

14 So I book the revenue January 1st. I'm not
15 going to see the accountants until March of the
16 following year. It will be July before I get their
17 report. We'll squabble over the report, and it will be
18 the following January that I have to give money back.
19 So the fact of the matter is, very often I really don't
20 have to give the money back within one year. And that's
21 the test for a current liability.

22 But by and large, as reimbursements became more
23 sophisticated, I do have to give it back on a more

J.APP.0646

1 timely basis. And I don't want to overstate my
2 financial statement. And I don't want to understate my
3 liabilities or the timing of my liabilities. And as it
4 evolved, proper accounting, generally accepted
5 accounting principles says it's a short term liability.

6 MR. BETTIUS: I want to ask you one more
7 question, Mr. Cobb. I hope you'll forgive me for being
8 obtuse, and I'll ask you to do that. And that's my last
9 question.

10 THE COURT: Any redirect, Mr. Bono?

11 MR. BONO: No, Your Honor.

12 THE COURT: Thank you, sir. You're excused and
13 free to go.

14 (Witness excused.)

15 Any further evidence on behalf of Respondents?

16 MR. BONO: Your Honor, just a couple of
17 exhibits to be taken care of.

18 THE COURT: What I'm going to suggest due to
19 the lateness of the hour, let's wrap up the testimony,
20 and I'll give you all the weekend to review whatever you
21 think wasn't offered and you can come in Monday and
22 offer whatever you think wasn't offered. Let's get the
23 testimony done first.

J.APP.0647

1 certainly other exhibits that we'll come to.

2 THE COURT: All right.

3 MR. BONO: I call Mr. Bruce DenUyl.

4 Whereupon,

5 ROBERT BRUCE DENUYL

6 was called for examination by counsel for defendants, and,
7 after having been first duly sworn, was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BONO:

11 Q. Mr. DenUyl, would you please state your full name
12 and business address?

13 A. Yes. Robert Bruce DenUyl, 200 East Randolph,
14 Chicago, Illinois.

15 Q. By whom are you employed?

16 A. Price Waterhouse.

17 Q. How long have you been employed by Price
18 Waterhouse?

19 A. Almost 12 years.

20 Q. And prior to going to work with Price Waterhouse,
21 where were you employed?

22 A. I was at Coopers & Lybrand prior to that.

23 Q. And were you in a particular group when you were

J.APP. 0648

PLATT & DAWSON, INC. (703) 591-0007

1 at Coopers & Lybrand?

2 A. Yes. The economic consulting group.

3 MR. FOX: Your Honor, not to interrupt. Mr. Bono
4 I know may want to put obviously his witness' curriculum
5 vitae on, but I'm not going to have any objection.

6 THE COURT: All right.

7 MR. BONO: I will be very, very brief with these
8 questions.

9 BY MR. BONO:

10 Q. What is your current title at Price Waterhouse?

11 A. I'm a partner at Price Waterhouse and director of
12 health care valuation.

13 Q. And as director of health care valuation, do you
14 have responsibilities for any particular area, geographic
15 area?

16 A. Throughout the United States.

17 Q. Nationwide responsibilities?

18 A. Yes.

19 Q. Could you briefly just describe those
20 responsibilities as director of health care valuation.

21 A. Well, we do a lot of valuations in the health
22 care industry, particularly in the recent years since
23 acquisition activity has heated up.

J.APP. 0649

PLATT & DAWSON, INC. (703) 591-0007

1 So I'm responsible for building that practice and
2 working on valuations across the country.

3 Q. What type of valuations have you performed in the
4 health care area?

5 A Well, just about in every area of health care
6 from hospitals to HMOs to physician practices to home care
7 companies, pharmaceutical companies, clinics.

8 Q. For how long have you been engaged in those types
9 of valuation services?

10 A. Since I joined Price Waterhouse in 1985.

11 Q. Approximately how many valuations specifically
12 related to the health care industry have you conducted?

13 A. I could only estimate. Certainly well over a
14 hundred.

15 Q. Now, have you performed health care valuation
16 work for any Attorneys General?

17 A Yes I have, in a number of cases.

18 Q. Would you just briefly describe the work that you
19 have performed for Attorneys General?

20 A. Most of it relates to issues like in this case
21 where a not-for-profit entity was converting to a
22 for-profit entity, either in connection with conversion and
23 the existing management will continue to run it, or it may

J.APP.0650

PLATT & DAWSON, INC. (703) 591-0007

1 be a sale to a for-profit chain, joint venture, et cetera,
2 and I got involved in that back in California in the 80s
3 with a number of HMOs that were converting, and more
4 recently I have been involved with five transactions in the
5 State of Ohio helping the Attorney General evaluate the
6 valuation and the fairness of those transactions as well as
7 the Attorney General of the State of Texas.

8 Q. What type of work did you do for the Attorney
9 General of Texas?

10 A. Same thing. We're currently looking at a
11 hospital conversion, a joint venture with Columbia Health
12 Care, and we also evaluated the fairness of a conversion of
13 an HMO in Texas.

14 Q. Now, have you valued stand-alone hospitals in
15 your practice?

16 A Yes. Most of the hospitals I valued have been
17 stand-alone hospitals.

18 Q. Approximately how many stand-alone hospitals have
19 you valued?

20 A. Certainly more than 20.

21 Q. Have you provided expert testimony in court on
22 health care cases before today?

23 A Yes, I have.

J.APP. 0651

PLATT & DAWSON, INC. (703) 591-0007

1 Q. And on how many occasions?

2 A. I haven't counted up. There's probably been
3 testimony in maybe six or seven cases.

4 Q. Now, what is your educational background?

5 A. I have an undergraduate degree from Lawrence
6 University in Wisconsin in economics and geology, and then
7 I went to the University of Michigan, received a Master's
8 in resource economics, and completed the course work for a
9 Ph.D. in resource economics at the University of Wisconsin.

10 Q. Let me refer you to Exhibit 791. Do you have a
11 copy of that in front of you?

12 A Yes.

13 Q. Is this a copy of your current curriculum vitae?

14 A Yes.

15 Q. Does that list the various experiences and work
16 you have done in the health care industry?

17 A. It's a sample listing, yes.

18 Q. Does it also list cases in which you have
19 testified?

20 A. It does, yes.

21 MR. FOX: Now, Your Honor, I would move at this
22 time Exhibit 791.

23 THE COURT: It's already been admitted.

J.APP.0652

PLATT & DAWSON, INC. (703) 591-0007

1 MR. BONO: I'm sorry. Thank you.

2 Your Honor, at this point we offer Mr. DenUyl as
3 an expert.

4 THE COURT: Isn't that stipulated, Mr. Bettius?

5 MR. BETTIUS: Yes, sir.

6 THE COURT: All right.

7 BY MR. BONO:

8 Q. Now, Mr. DenUyl, would you please tell the Court
9 what was it that you were requested to do in connection
10 with this case?

11 A. I was asked to look at Jefferson Memorial
12 Hospital, Inc. and evaluate what, if any, charitable
13 dedication should have been made at three points in time:
14 June 30, 1971; April of 1973 and January of 1975.

15 Q. In connection with that work, did you prepare a
16 report?

17 A Yes, I did.

18 Q. Let me refer you to Exhibit 711. Is that the
19 report that you prepared?

20 A Yes. That's my summary report.

21 Q. Turning to page 5 of that report, is that your
22 signature?

23 A Yes, it is.

J.APP. 0653

PLATT & DAWSON, INC. (703) 591-0007

1 Q. And on what date did you submit, sign that
2 report?

3 A. June 18, 1996.

4 Q. And does this report summarize the opinions and
5 conclusions you have reached?

6 A Yes. It's a summary of all of my opinions.

7 Q. Have your opinions or conclusions changed in any
8 way since last June of 1996?

9 A. No.

10 Q. Now, in connection with your evaluation that you
11 performed, what sources of information did you review?

12 A. We of course looked at the financial statements
13 of Jefferson Memorial Hospital, Inc. from 1967 through
14 1971; we looked at the financial statements and tax returns
15 for JMHC; we looked at tax returns, financial statements
16 for JMHA; we looked at -- I think may have also looked at
17 financial statements for some of the predecessor and
18 succeeding corporations that -- King Street Joint Venture
19 and Jefferson Memorial Hospital Joint Venture; we looked at
20 publicly available information in the health care industry,
21 including many of the publications at that time; SEC
22 filings of companies in the industry; we looked at
23 acquisition information that was available at that time.

J.APP. 0654

PLATT & DAWSON, INC. (703) 591-0007

1 And that pretty much summarizes it.

2 Q. In general, what procedures did you then employ
3 in connection with your analysis?

4 A. Well, we talked to Dr. Tauber to try to get an
5 understanding of what was going on back at that time. I've
6 been at this for a while but not back to 1971. We reviewed
7 all of the information, did some financial analyses based
8 on the financial statements of the company at that time.
9 We did a normalized cash flow analysis; capitalization of
10 earnings approach. We calculated discount rates in
11 connection with our work. We looked at the balance sheets
12 and made certain adjustments to those to reflect the fact
13 that after 1971 JMHC operated with the assets that were
14 previously in JMHA, and we looked at various approaches to
15 use, that sort of thing.

16 Q. Now, prior to signing and finalizing your report,
17 did you have any discussions or conversations or contact
18 with Mr. Arthur Cobb?

19 A. No. I didn't meet Mr. Cobb until this week and I
20 did not -- I reviewed his report after mine was submitted.

21 Q. Now, turning to your report, Mr. DenUyl, could
22 you outline for the Court what valuation method you looked
23 at and utilized in your analysis.

J.APP. 0655

PLATT & DAWSON, INC. (703) 591-0007

1 A. We used the standard -- or looked at the standard
2 approaches to valuation: the income approach, the market
3 approach, and the cost approach. We relied primarily on
4 the income approach and a variant of that called
5 capitalization of earnings approach.

6 We also reviewed the market approach, looked for
7 publicly-traded companies that might be similar. We looked
8 to see if we could find transactions that might be
9 comparable and helpful in our determination of value.

10 And then we also looked at a variant to the cost
11 approach and adjusted book value approach to -- we didn't
12 appraise the actual assets but we looked at that as another
13 measure of value.

14 Q. Now, with respect to your analysis for 1973 and
15 1975, did you make some assumptions or adjustments?

16 A Yes, we did.

17 Q. What were those?

18 A. The adjustments we made were -- obviously, as we
19 all know, there's a dispute as to when this conversion
20 actually occurred.

21 We didn't need to make any in 1971; the balance
22 sheet reflected the fact that the building, the goodwill
23 and the lease payable were part of JMHA at that time. But

J.APP.0656

PLATT & DAWSON, INC. (703) 591-0007

1 in 1973 and in 1975 they were reflected on the balance
2 sheet of --

3 Q. Sorry. I didn't mean to interrupt you.

4 A. -- of JMHC. So we wanted to put the corporation
5 as if --

6 Because we're valuing the not-for-profit, we want
7 do make sure that we do not include assets or liabilities,
8 including mortgage, that wouldn't have been contributed
9 until after the conversion. So we adjusted for that.

10 MR. BETTIUS: Your Honor, on this basis -- I
11 understand Your Honor may want to hear some testimony --
12 I'm going to have a continuing objection. The thrust of
13 the testimony is that they created an artificial company.
14 What they did was to take the assets of the land and
15 buildings, which are integral parts of the financial
16 reports, remove them in effect, assume the lease was back
17 in place, and I will proffer to the Court that these kinds
18 of adjustments distort the entire balance sheet because all
19 third-party payments -- all Medicaid, all Medicare payments
20 -- depend on capital structure, and you can't, first of
21 all, make these adjustments, and secondly -- and I want to
22 do this once.

23 Secondly, as that point, as Your Honor said,

J.APP. 0657

PLATT & DAWSON, INC. (703) 591-0007

1 we're not here to appraise hypotheticals. So on that
2 basis, Your Honor, I'm going to object on the basis that
3 the witness has stated that his methodology created a
4 hypothetical.

5 THE COURT: All right. You have a continuing
6 objection. I'll hear the testimony.

7 MR. BONO: May I just briefly respond just so the
8 record reflects our position?

9 THE COURT: All right.

10 MR. BONO: The assignment is to value the
11 non-profit entity. The non-profit entity was JMHI, and in
12 order to value that entity at any date after June 30, 1971,
13 you must make sure what you are valuating is JMHI and not
14 some other entity. And in that regard our position is that
15 Mr. Reilly in his 1973 and 1975 analysis evaluated JMHC,
16 evaluated the wrong entity, and in that regard his report
17 and analysis for 1973, 1975 is totally defective.

18 MR. BETTIUS: Based on that, Your Honor, I want
19 to make another objection.

20 THE COURT: All right.

21 MR. BETTIUS: In the law, the Scottish maximum of
22 approbate and reprobate does not allow a defendant to take
23 inconsistent positions factually in connection with the

J.APP.0658

PLATT & DAWSON, INC. (703) 591-0007

1 case. They either got rid of this thing in 1971 and it no
2 longer existed or it continued. They cannot take the
3 position that if it didn't exist, it should be recreated in
4 some form by making adjustments to a balance sheet and
5 creating a company that didn't exist, and on the basis of
6 judicial estoppel, we would object to any testimony where
7 they attempt to say that the company ceased to do business
8 in 1971 and then attempt to recreate the company
9 hypothetically in '73 and '75.

10 Your Honor, we think there's an abundance of law
11 on estoppel and this is clearly a case approbate and
12 reprobate.

13 THE COURT: Your objection is noted. Go ahead,
14 Mr. Bono.

15 MR. BONO: Thank you, Your Honor.

16 BY MR. BONO:

17 Q. Mr. DenUyl, were the adjustments you just
18 mentioned necessary for purposes of your '73 and '75
19 analyses?

20 A Yes.

21 Q. And why was that?

22 A. Well, because you have to create the corporation
23 that existed, the not-for-profit that existed prior to the

J.APP. 0659

PLATT & DAWSON, INC. (703) 591-0007

1 conversion, in essence. There would be no reason for JMHA
2 to have contributed those assets prior to the conversion.

3 And I have seen that in other conversions. There
4 may be real estate that you have to either exclude or
5 include as part of the valuation.

6 Q. Now, turning to your first approach, the income
7 approach, what type of income approach did you utilize?

8 A. We used what is known as capitalization of
9 earnings approach.

10 Q. Could you briefly describe what capitalization of
11 earnings approach is?

12 A. Basically you try to come up with a normalized
13 cash flow that a willing buyer would expect this hospital
14 to have going forward for some time. And then you
15 capitalize that using rate of return that's appropriate
16 given the risk of this entity, and I can go through an
17 example if you want.

18 Q. That's fine at the moment. We'll get more detail
19 later.

20 Would you please describe briefly what cost
21 approach you utilized.

22 A Yes. We looked at the balance sheet, looked at
23 the value of the assets and the value of the liabilities

J.APP. 0660

PLATT & DAWSON, INC. (703) 591-0007

1 and determined on that basis what the value would be on a
2 book value basis.

3 In this particular context, we have taken the
4 building out, so most of the assets that were left and
5 liabilities would be at or around the approximate book
6 values, because the equipment and the building would be
7 things that would tend to change the most.

8 Q. What is the market approach?

9 A. The market approach could be either one of two
10 things; either you look at publicly-traded companies and
11 compare those to the subject hospital here, or much more
12 appropriately I think, if you can find some transactions
13 that are very relevant, you can use those as a guide for
14 determining value.

15 Q. Now, did you look at the market approach?

16 A Yes, I did. We spent a fair amount of time
17 looking at companies that are publicly-traded, looking at
18 transactions that were happening at that time in -- well,
19 at least 1971.

20 Q. Did you rely on the market approach in this case?

21 A. No, we did not.

22 Q. Why didn't you rely on the market approach?

23 A Well, I'll explain in more detail. You are

J.APP.0661

PLATT & DAWSON, INC. (703) 591-0007

1 comparing a small stand-alone facility with large
2 publicly-traded hospital companies that are growing at many
3 times the rate of this hospital at that time, and maybe
4 even more importantly, the profitability differences were
5 very substantial between this hospital JMHI and the public
6 companies. The transactions were even more problematic
7 because, while there were transactions in 1970, 1971, they
8 were all over the country and there was very little
9 information on those transactions, and it is imperative
10 when you are doing comparisons in hospital valuations that
11 you really understand all of the features of the
12 transactions, because I have seen many situations where a
13 hospital right down the street will trade at significantly
14 valuation than the other one. So comparing it to hospital
15 transactions across the country could be extremely
16 misleading unless you have a lot of information.

17 Q. Notwithstanding your ultimate conclusion that you
18 did not rely on that, what effort did you make to try and
19 find comparable or guideline companies?

20 A. We searched the data bases that we have at our
21 disposal, including mergers and acquisition data base,
22 Lexus, the health care publications, the public companies
23 who are doing most of the acquisition work plus most of the

J.APP. 0662

PLATT & DAWSON, INC. (703) 591-0007

1 acquisitions at that time would list acquisitions in their
2 10K filings but generally didn't provide a lot of detail on
3 the transaction.

4 Q. And how much time did you spend trying to look at
5 the available information or data for the market approach?

6 A. We spent quite a bit of time.

7 Q. Now, did you reach a conclusion with respect to
8 after you did your analysis which approach was the best
9 approach to use with respect to this particular case?

10 A Yes. The income approach is usually the best
11 approach to use in most transactions and in this case I
12 think it was the best indicator of value for a number of
13 reasons.

14 Q. And what were those reasons?

15 A. Well, this hospital's cash flow was up-and-down
16 and it was struggling a bit to do better than break even
17 during the early years.

18 So if an investor is looking at this facility,
19 they're going to look at what is the profit potential of
20 this facility, and particularly in this hospital case where
21 you had fairly full utilization in the first valuation date
22 of 1971, someone would say, well, you know, we can't get
23 more patients in the door, and yet they're not making much

J.APP. 0663

PLATT & DAWSON, INC. (703) 591-0007

1 money. We need to focus on that and examine why that would
2 be true.

3 So an investor would be cautious to pricing it
4 like some hospital that was very profitable or had a lot of
5 opportunity to put patients in beds.

6 Q. What was the conclusion you reached with respect
7 to the value of JMHI on the three dates in question that
8 you mentioned you looked at?

9 A. Well, in 1971 because they had so much debt, the
10 value was less than zero. In other words, the debt
11 overwhelmed the value of the enterprise there. So you get
12 a negative value.

13 Q. What about with respect to 1973 and 1975?

14 A. '73 and '75 were the same to a lesser extent than
15 1971, but all of them were less than zero.

16 Q. Can you look at Exhibit 709-A.

17 A Yes.

18 Q. Now, does that exhibit -- does that the reflect
19 the summary of your evaluation for June 30, 1971 which was
20 part of your report?

21 A Yes, it does.

22 Q. Now, there's a capitalization of earnings
23 approach outlined on the left column; is that correct?

J.APP. 0664

PLATT & DAWSON, INC. (703) 591-0007

1 A Yes.

2 Q. Would you please explain to the Court the work
3 and process that's depicted on this exhibit.

4 A Yes. What we did was we took a weighted average
5 of the three years ending June 30, 1971. Because of the
6 erratic earnings a potential buyer would look over time to
7 see what the profitability had been.

8 So we took three years weighting each, '71 the
9 highest of three, then weighting 1970 at two and 1969 at
10 one, and that is reflected in the revenues and expenses
11 which is reflected here.

12 Q. Now, the figures that you reflect here with the
13 weighting, where did you go to get the source of those?

14 A. These are from the financial statements of JMHI.

15 Q. Would you just walk down the list of items here
16 and explain what they represent?

17 A. Sure. At the top we have revenue, both routine
18 and special services, and then we have deductions from
19 revenue. They were subtracted and we arrive at weighted
20 average revenues of \$3,268,000.

21 We then do the same thing with expenses, taking
22 the weighted average of the last three years, deducting
23 that, to come to operating income.

J.APP. 0665

PLATT & DAWSON, INC. (703) 591-0007

1 There are a few other income items -- rental
2 income and interest income -- that are added in.

3 So we come down to the term EBIDT, "earnings
4 before interest, depreciation and taxes."

5 We then subtract depreciation from that and
6 deduct income taxes at 40 percent. So that gets us to
7 after-tax cash flow of about \$73,000.

8 Q. Why do you subtract income taxes?

9 A. Because it's converting to a for-profit entity.

10 Q. And then after you calculate the after-tax cash
11 flow at 73,615.00, what further adjustment did you make?

12 A. What you then need to do is adjust to true cash
13 flow, what they can use in the hospital operations. You
14 add back depreciation and amortization because that's a
15 non-cash expense. In other words, it's deducted but it's
16 not a true cash expense.

17 Then we deducted expected capital expenditures,
18 and based on the level of expenditures at that time, we
19 used one percent of revenues, which corresponds well with
20 what approximately they were spending.

21 Then you have to make one other adjustment. As a
22 hospital grows, it needs more working capital on average.
23 So we adjusted; we said that this needs 10 percent of a

J.APP. 0666

PLATT & DAWSON, INC. (703) 591-0007

1 change in revenue.

2 So if you grow from 100 to 200, you take 10
3 percent of that change, and that's what the hospital needs
4 for its working capital. And that gets us to adjusted cash
5 flow.

6 Q. On that side it's called "capitalization
7 factor." What is that?

8 A. The capitalization factor is a discount rate that
9 reflects growth going forward. So, in other words, in our
10 calculations we determined that a 20 percent discount rate
11 was appropriate for this hospital, but it will grow into
12 the future.

13 So we could have just done a projection at a
14 three percent growth and cash flow going forward but
15 mathematically it's the same to subtract that three percent
16 growth from the 20 percent and it gives you 17. So this is
17 saying you are going to grow this cash flow at three
18 percent into perpetuity.

19 Q. Then you come up with a figure you call "net
20 enterprise value." What is that figure?

21 A. That's just dividing the cash flow, 46,137, by
22 .17. So you're saying the value of the enterprise before
23 debt is \$271,397.

J.APP. 0667

PLATT & DAWSON, INC. (703) 591-0007

1 Q. Then you have an item that says "less
2 liabilities." What does that reflect?

3 A. Those are the liabilities that would need to be
4 paid. If you were to sell the hospital today or make the
5 appropriate charitable dedication, you are left with these
6 liabilities that you have to pay off.

7 Now, this doesn't include the working capital
8 liabilities. It includes the other liabilities, the debt
9 of the hospital.

10 Q. And what liabilities would that include?

11 A. It includes -- there were notes payable, bonds
12 payable, there were debts to Medicare, Medicaid, the group
13 hospitalization. A number, which I think I detail on the
14 balance sheet a little bit later.

15 Q. And then you arrive at a net equity value; is
16 that correct?

17 A Yes.

18 Q. And what is that value?

19 A. Well that would be -- if you sold the hospital,
20 paid off all the liabilities, you would be at a net deficit
21 position.

22 Q. The amount of net deficit position is what?

23 A. \$798,000.

J.APP. 0668

PLATT & DAWSON, INC. (703) 591-0007

1 Q. That's negative; is that correct?

2 A Yes.

3 Q. In doing your analysis in 1971 and '73 and '75,
4 before I specifically discuss the adjustments you made, did
5 you basically do the same kind of analysis that you just
6 described?

7 A Yes, that's right.

8 MR. BETTIUS: Your Honor, that's where I would
9 like my continuing objection.

10 THE COURT: It's noted.

11 BY MR. BONO:

12 Q. To bring you back to 709-A, I believe you
13 testified that you felt that the capitalization of earnings
14 approach was the best approach with respect to this
15 particular hospital.

16 A Yes.

17 Q. And why did you reach that conclusion?

18 MR. BETTIUS: I think that's been asked and
19 answered, Judge.

20 THE COURT: I thought he answered that.

21 MR. BONO: If it was, I apologize, Your Honor.

22 BY MR. BONO:

23 Q. I notice on this exhibit there's also an item

J.APP. 0669

PLATT & DAWSON, INC. (703) 591-0007

1 called "Adjusted Book Value Approach."

2 A Yes.

3 Q. Could you explain to the Court what that item
4 reflects.

5 A Yes. That's the balance sheet items that reflect
6 the value of the assets minus the liabilities. So here
7 again, JMHI, at June 30, 1971, was in a negative equity
8 position of almost 400,000.

9 Q. Now, after you did the capitalization of earnings
10 approach, why did you look at the adjusted book value
11 approach?

12 A. I did that in each instance because whenever I
13 get negative value on cash flow, even a low value, you
14 begin to wonder if it wouldn't make more sense to perhaps
15 look at liquidation value.

16 That would be the floor. In other words, you
17 wouldn't sell it to someone for less than you could
18 liquidate it for. I looked at that as another basis of
19 value.

20 Q. When you looked at that book value approach, what
21 did that tell you?

22 A. In this year it was negative.

23 Q. Did you make the same approach, same size of

J.APP. 0670

PLATT & DAWSON, INC. (703) 591-0007

1 adjustment, when you looked at '73 and '75?

2 A Yes, I did.

3 Q. Now, would you turn to Exhibit 709-B.

4 A Yes.

5 Q. And this was your analysis for the date April 18,
6 1973; correct?

7 A Yes, that's correct.

8 Q. What adjustments did you make in this approach
9 specifically to reflect the fact that you were -- as you
10 explained earlier -- you were evaluating JMHI?

11 A. With regard to capitalization of earnings
12 approach?

13 Q. Yes.

14 A Yes. One principal adjustment, the hospital,
15 JMHI, had been paying a lease payment, and so if the
16 building is not part of the corporation, then we assumed it
17 would continue to make the lease payment.

18 Now, on the other hand, it didn't have to make a
19 mortgage payment and it didn't have to make -- it didn't
20 have a depreciation expense in any building modifications,
21 but we took out the lease expense and also didn't count in
22 the mortgage or any maintenance. Not maintenance, but
23 capital improvements.

J.APP.0671

PLATT & DAWSON, INC. (703) 591-0007

1 Q. And did you make any other adjustments to the
2 capitalization of earnings approach?

3 A. Again, it was three years weighted average, and
4 other than that, I think that was -- most of it was pretty
5 much the same approach as we used before.

6 Q. Did the weighted average approach you described,
7 did you weight the three years in the same manner as you
8 had done in 1971?

9 A Yes. We gave most weight to '73, next '72 and
10 the least to 1971 in this case.

11 Q. And, again, these figures were -- the source was
12 taken directly off the financial statements --

13 A Yes, it was.

14 Q. -- with the adjustments you mentioned; is that
15 right?

16 A. Yes.

17 Q. Now, going down to the capitalization factor --

18 A Yes. That was a little bit different in this
19 year. The discount rate we determined for this year was 19
20 percent, so the capitalization factor, assuming three
21 percent in growth in cash flow, was 16 instead of 17.

22 Q. As a result of this valuation, what did you
23 conclude with respect to net enterprise value liabilities

J.APP. 0672

PLATT & DAWSON, INC. (703) 591-0007

1 and net equity value?

2 A Well, you can see that the earnings improved in
3 these years and so you are getting higher cash flow. So
4 the liabilities still exceed the enterprise value, but it's
5 not as big a deficit as it was in 1971.

6 Q. Now, going up to the top, Adjusted Book Value
7 Approach, would you explain what that block reflects.

8 A Yes. With the additions of the building and the
9 other assets, the book value went up to 881,000.

10 So, again, we're trying to put the corporation as
11 if it was still the not-for-profit and these assets and
12 liabilities had not been contributed. So the things that
13 would be backed out is essentially -- we call it the plant
14 and equipment of 548,000. Principally the building, but
15 there was some equipment that was contributed as well.

16 Goodwill. Now, the goodwill was transferred from
17 JMHA, and it's a curiosity because it's pretty unusual for
18 a real estate company to have goodwill. But it was there
19 and because it was a pooling of interests, they transferred
20 everything. So this goodwill did not stem from these
21 operations. They stemmed from JMHA, so we pulled that
22 out.

23 There was a lease payable on the equipment. JMHA

J.APP. 0673

PLATT & DAWSON, INC. (703) 591-0007

1 had leased equipment to JMHI and they had not been making
2 lease payments in the later years, and so this payable was
3 still outstanding prior to the conversion.

4 And finally, we also then didn't add in the
5 mortgage payable. So we subtracted that liability.

6 So our equity value changes from 881,000 to
7 291,000 at that time.

8 Q. And what did that item reflect to you in this
9 1973 analysis?

10 A. Well, again, we haven't done a liquidation
11 approach and the presumption is it's going to continue to
12 go on, but I did indicate that there was some nominal
13 value, at least on that approach.

14 Q. And in 1975, is that analysis reflected on 709-C?

15 A Yes.

16 Q. And did you make the same type of adjustment in
17 1975 that you described in your 1973 analysis?

18 A Yes, we did.

19 Q. Were there any different adjustments other than
20 the ones you have just described?

21 A. The discount rate went back up to 20 percent, so
22 the capitalization rate went back up to 17 percent. And
23 the other thing, the liabilities went up between '73 and

J.APP. 0674

PLATT & DAWSON, INC. (703) 591-0007

1 '75 and so the value changes some. But the approach is
2 still the same.

3 Q. Did you use the same three-year weighted average
4 approach?

5 A Yes, we did.

6 Q. Did you do the weighting the same way?

7 A. Almost. We're using a sort of a middle of the
8 year period, January 31, so what we did was we took the
9 prior seven months of '75, the prior five months of '74,
10 and we did that for three years. So we've got essentially
11 starting from January 31, 1972.

12 Q. And why did you select that approach for 1975?

13 A Well, because you don't have an end of the year
14 financial statement here. So we tried to make it as if it
15 was at that time.

16 Q. And as a result of that analysis, what did you
17 calculate under the capitalization of earnings approach?

18 A. The capitalization of earnings approach had a
19 deficit again of about 585,000.

20 Q. Did you also look at the adjusted book value
21 approach?

22 A Yes. We made the same adjustments. There were
23 changes because the plant and equipment had depreciated

J.APP. 0675

PLATT & DAWSON, INC. (703) 591-0007

1 further. There had been some payments on the mortgage. So
2 they went down, but other changes were the same.

3 Q. Now, Mr. DenUyl, would you please look at 709-E.

4 A Yes.

5 Q. Can you explain what this exhibit reflects?

6 A. Yes. This shows the income statements from 1969
7 through 1975, and then for the three columns to the right,
8 Your Honor, those are three-year weighted average.

9 And basically these are the years we used in our
10 calculations of the three-year weighted average at each
11 valuation date.

12 Q. Based upon your review of income statements that
13 are summarized here, did you reach any conclusions with
14 respect to JMHI's financial condition?

15 A Well, if you look at the bottom line -- perhaps
16 that's as good a place to go as any -- you will see that in
17 1969 we had a loss of 107,000, then a gain and a profit of
18 215,000. Then it goes down to 136; then up to 315; up to
19 341. And then in '74 it's down to 93,000 again.

20 So we've got a fairly erratic profit history over
21 that period of time. And for a buyer, even though the
22 revenue line was going -- it goes all the way from 2.6
23 million to 6.3 million during that period of time, the

J.APP.0676

PLATT & DAWSON, INC. (703) 591-0007

1 profitability is just going like this with maybe a slight
2 upward trend.

3 So we felt that the approach we used best
4 reflected that history.

5 Q. Now, did you look at the EBIDT you calculated on
6 the sheet?

7 A Yes, we did.

8 Q. Did you draw any conclusions based upon those
9 figures?

10 A. Similar conclusions. It's going up-and-down.
11 What is particularly noteworthy in a valuation of a
12 stand-alone hospital is it never achieves the level of a
13 lot of comparable hospitals. In other words, most
14 hospitals that you could get financial information on were
15 up in the teens, 15, 18, percent EBIDT.

16 This hospital was in the four to seven, eight
17 percent range during that period of time.

18 Q. Now, for example, looking back at the EBIDT
19 figure, did you calculate a three-year weighted average for
20 1971?

21 A Yes.

22 Q. What was that?

23 A. 121,979.

J.APP. 0677

PLATT & DAWSON, INC. (703) 591-0007

1 Q. There's a four percent figure. What is that?

2 A. Four percent is the percentage of revenue, of net
3 patient revenue.

4 Q. Did you draw any conclusions from that number?

5 A. Again, it's low relative to where a hospital
6 would be normally.

7 Q. Now, would you look at Exhibit 709-E.

8 A Yes.

9 Q. Could you describe what this exhibit is?

10 A. These are the balance sheets -- I should say
11 adjusted balance sheets for the hospital at various points
12 in time starting with 1967, and this is where we made
13 adjustments to take out the building and the mortgage, et
14 cetera.

15 Q. And what conclusions did you draw with respect to
16 JMHI's financial condition from examining the balance
17 sheets?

18 A Well, the one thing that stands out probably the
19 most is the amount of debt in this hospital.

20 Q. Where is that reflected?

21 A Well, if you look at the liabilities, they're
22 broken into current liabilities and total other
23 liabilities, and the hospital had in many cases low working

J.APP. 0678

PLATT & DAWSON, INC. (703) 591-0007

1 capital relative to the norms of the industry and it had a
2 lot of other liabilities, debts, that it was responsible
3 for.

4 Q. On what line is the debt that you are referring
5 to reflected?

6 A Well, all of the debt is below the total assets
7 right here. We have current liabilities in this group here
8 and then a total list of all of these: Provision to group
9 hospitalization, provision for Medicare adjustments; lease
10 payment; bond payables; advance deposits to Medicare and
11 things like that.

12 Q. Now, Mr. DenUyl, would you look at Exhibit 709-F.

13 A Yes.

14 Q. Now, earlier when we were talking about Exhibit
15 709-A, which was your valuation for June 30, 1971, you said
16 you calculated the capitalization factor, which I believe
17 you said was 20 percent and you reduced it by your three
18 percent getting to 17 percent.

19 A. Yes.

20 Q. What does exhibit 709-F reflect?

21 A. 709-F reflects the calculation of the discount
22 rate.

23 Q. Now, would you explain what these calculations

J.APP.0679

PLATT & DAWSON, INC. (703) 591-0007

1 reflect and how you went about doing it.

2 A. Okay. I'll do it fairly quickly. This is a
3 standard approach for calculating a discount rate in
4 valuation using a weighted average cost of the capital
5 model, and we first go about determining the equity return
6 using a capital asset pricing model.

7 Basically what you do is you start with a
8 risk-free rate such as long-term government bond at 6.4
9 percent in 1971 and we add the premium that equity
10 investors have historically received over these long-term
11 government bonds, and there's sources that calculate this
12 for the period since 1976 and it's fairly standard in the
13 valuation profession.

14 In addition, there's another premium for the fact
15 that this a small company; we refer to that as a small
16 stock premium. And we're adding that as well.

17 We have also, as part of the analysis, reflected
18 the Beta and the Beta is just a measure of riskiness of a
19 particular industry group.

20 So, for example, the average is 1 for all
21 companies, and a company, say a food company, would tend to
22 have a beta less than 1. Less risky. It's more stable.
23 Biotech Company would have betas over two or three because

J.APP. 0680

PLATT & DAWSON, INC. (703) 591-0007

1 they're very risky. Very volatile.

2 The hospitals during that period of time were
3 riskier than average. Their stocks were bouncing around a
4 fair amount because of the volatility of the industry. So
5 we came up with a beta of 1 1/2 essentially to get an
6 overall rate of return on equity of 25 percent.

7 Q. Is that reflected down on the bottom left-hand
8 side?

9 A Yes, it is.

10 Q. Now, at the top there, what is the "Long-term
11 Debt as Percentage of Total Capitalization"?

12 A. Long-term debt?

13 Q. Yes.

14 A Yes. There are two components to capital. One
15 is the equity and one is the debt, and the debt component
16 is the amount you would pay on debt.

17 In this case, we used nine percent, which is a
18 B-AA rated bond, and then, because payments on debt are tax
19 deductible, you tax-affect it essentially; you deduct the
20 tax payment. So you get an overall after-tax return of 5.5
21 percent.

22 Q. Now, there's a second block toward the middle of
23 the page where you say "Comparable Company Analysis."

J.APP. 0681

PLATT & DAWSON, INC. (703) 591-0007

1 Would you explain what you were doing there.

2 A Yes. This company analysis is the companies that
3 are large hospital companies that are publicly-traded.
4 We're using this to reflect -- to try to determine the
5 riskiness of the industry as a whole.

6 Q. What did those calculations show you?

7 A. Again, as I explained, we're just using this to
8 get the Beta, the riskiness of the industry.

9 Q. This is how you calculated your 1.5 Beta?

10 A. Yes.

11 Q. How do you translate that information to get your
12 bottom capitalization rate?

13 A Well, what we did, this particular exhibit
14 reflects something that was different than we actually
15 concluded.

16 This has a calculation at a weighting of debt to
17 equity of 42 to 58 percent. Remember what we actually
18 concluded was a weighting of 25 percent -- 75 percent
19 equity. So the true discount rate reflecting that should
20 be 20 percent instead of the 17 we have here.

21 Q. Why did you select the weighting of debt to
22 equity at 25/75?

23 A Well, because this hospital would have had

J.APP. 0682

PLATT & DAWSON, INC. (703) 591-0007

1 trouble funding a lot of debt, normal debt. So, in other
2 words, a willing buyer of this facility would have had
3 trouble raising debt other than like these doctors did
4 through their own contributions, et cetera. Or bonds.

5 So you need to reflect what the expected debt
6 level is, particularly since this hospital JMHI that we
7 were valuing didn't have the building and much of the
8 equipment, there was no collateral basically to borrow
9 against. Therefore you would have a higher equity
10 component than a debt component.

11 Q. Now, Mr. DenUyl, did you review the valuation
12 analysis done by Mr. Reilly?

13 A Yes, I did.

14 Q. Now did you, in doing that review, reach certain
15 conclusions?

16 A Yes.

17 Q. And did you prepare charts and exhibits that
18 summarize those conclusions?

19 A Yes, I did.

20 Q. Now, would you turn to Exhibit 787-A.

21 A Yes.

22 Q. Would you explain what this exhibit depicts.

23 A. This is the --

J.APP. 0683

PLATT & DAWSON, INC. (703) 591-0007

1 Q. Sorry. This is one that's titled --

2 A. I've got it. Do they have color or are all they
3 black and white like this?

4 Q. I may have given you the ones that are xeroxed.

5 A. That's okay. The first one reflects the error
6 that Mr. Reilly talked about regarding the tax rate.

7 Basically, the federal rate used in his original
8 valuation was 26 percent for 1971 and 26 percent for 1971.
9 If you actually calculated it based on the income in his
10 analysis, it would have been at a 44 to 46 percent rate for
11 1971 and 46 percent for 1975. This is exclusive of state
12 taxes. This is just the federal taxes.

13 Q. Now, did you, after hearing Mr. Reilly, make
14 certain corrections for the tax rate? Did you do any
15 further analysis of his tax rate adjustment?

16 A Yes. Well, the only thing I received was his
17 Exhibit 568-AA, which shows the summary of how the numbers
18 changed after the adjustments were made and I don't have
19 his actual calculations. But I ran my own and I come to
20 some different numbers.

21 Q. Would you explain what numbers you arrived at --

22 A Yes.

23 Q. -- and compare them to Exhibit 568-AA?

J.APP. 0684

PLATT & DAWSON, INC. (703) 591-0007

1 A. Okay. The significant differences would be in
2 the income approach. He had revised his number from -- in
3 1971 on the income approach -- from a million three
4 eighty-one to, I believe, a million two seventy-nine.

5 Is that what you have?

6 A Yes.

7 Q. Now, I think part of that may be based on a
8 calculation that the discount rate dropped from 13 to 11
9 percent. My calculations would be that you got something
10 over eleven-and-a-half percent and therefore you round
11 maybe to eleven-and-a-half, not all of the way down to 11.

12 If you did that, your income approach would go
13 down to a million-o-seven-two. Again, this is assuming, as
14 he said, a 49 percent rate. So that's what I'm using
15 here.

16 Q. So in your calculation it would decrease another
17 \$207,000.

18 A Yes.

19 Q. Now, did you do any other calculations?

20 A Yes. In that same year, the asset-based
21 approach, I think he adjusted it to 792. My calculations
22 are 713, 713,000.

23 And the guideline company approach, his

J.APP. 0685

PLATT & DAWSON, INC. (703) 591-0007

1 calculations I derived as well.

2 Q. So those were not affected by the calculations?

3 A. No. So you get an overall value for 1971,
4 assuming the weighting we did, of a million-o-fifty-four
5 instead of 1.1 million.

6 Q. Referring now to Exhibit 787-B.

7 A. Do you want me to give you the other numbers?

8 Q. Oh. I'm sorry. Yes.

9 A. We did the same thing for '73 and '75.

10 Q. All right.

11 A. Our calculations showed that the income approach,
12 instead of 532 would be 474,000. The asset-based approach
13 would be a million-o-six-one instead of one million
14 one-o-three.

15 The guideline company approach under the
16 publicly-traded company would be a little bit different.
17 The reason for that is because in his report it says that
18 they used a 75/25 weighting between current and five years,
19 but if you look at it, I think they actually use a 60/40
20 weighting.

21 So if you use that actual weighting, it drops to
22 one million four sixty from fifteen seventy-four.

23 Q. Did you also do calculations for 1975?

J.APP.0686

PLATT & DAWSON, INC. (703) 591-0007

1 A Yes. That's where the biggest difference was.
2 The income approach was 296,000 instead of 624,000. The
3 asset-based approach was a million-o-six-six. And we
4 agreed on the market approach numbers.

5 Q. Now, just so I understand you clearly, the only
6 thing you were doing here was simply doing the calculations
7 based on his numbers but just adjusting for the tax rate.

8 A. No. You also have to adjust for the discount
9 rate because the discount rate does fall and so the effect
10 isn't as dramatic as it might appear. But just doing that,
11 those were the numbers that we came up with.

12 Q. Now, would you turn to Exhibit 787-B.

13 A Yes.

14 Q. Would you explain what is depicted in this
15 exhibit.

16 A Yes. This shows non-interest-bearing liabilities
17 that we subtracted from our valuation that Mr. Reilly he
18 did not subtract from his valuation, and particularly in
19 1971 and 1973 the numbers are fairly significant.

20 What these reflect are almost all Medicare,
21 Medicaid and group hospitalization liabilities. In other
22 words, they're estimates by the accountant of amounts due
23 that have not been paid, and it appears, based on the

J.APP.0687

PLATT & DAWSON, INC. (703) 591-0007

1 footnotes to the financial statements, that the hospital
2 was having trouble paying these on a current basis.

3 You always get some adjustments every year, but
4 if you look at Footnotes 9 and 10 of the 1971 statement,
5 you will see that they talk about it over a period of time
6 that they had been building up, and then as our chart
7 shows, they do go down a fair amount by 1975.

8 Q. Now, can I refer you to the Exhibit 787-R.

9 A. "R"?

10 Q. "R."

11 A. Yes. Okay.

12 Q. Am I correct that this is exhibit which is
13 summarizing the effects of various changes that you were
14 examining between your analysis and Mr. Reilly's?

15 A Yes.

16 Q. Now, we talked about Exhibit 787-A, the tax rate
17 change; right?

18 A Yes.

19 Q. Is that change then reflected on Exhibit 787-R?

20 A. It is. It shows the drop from almost 900,000 --
21 this is his income approach -- to 439,000, understanding
22 that part of the change is later in the discount rate,
23 because as the tax rate changes, the discount, but we do

J.APP. 0688

PLATT & DAWSON, INC. (703) 591-0007

1 take each one separately.

2 Q. You start off with 897,420 figure. Is that taken
3 from Williamette's report?

4 A Yes. It's their value less the marketability
5 discount of 35 percent.

6 Q. And so I understand, as a result of the tax rate
7 change, it would drop the value from 897,000 to 439,000?

8 A Yes.

9 Q. So the Court is clear, these analyses are with
10 respect to Mr. Reilly's original report before he made
11 corrections?

12 A Yes, that's right.

13 Q. On Exhibit-B where we talked about the
14 inappropriate exclusion of non-interest-bearing
15 liabilities, is that then also reflected on 787-R?

16 A Yes.

17 Q. Where is that reflected?

18 A. It's the next box. So if he had included the
19 liabilities that we believe are appropriate, it would have
20 dropped had value down a 113,000.

21 Q. All right. Now, in Mr. Reilly's income approach
22 he also has a 30 percent control payment; is that correct?

23 A. Yes.

J.APP. 0689

PLATT & DAWSON, INC. (703) 591-0007

1 Q. Did you draw any conclusion with respect to that
2 30 percent control premium?

3 A Yes. You're referring to 787-C?

4 Q. Yes.

5 A. Basically the idea of a control premium in a
6 discounted cash flow model is that the controlling buyer
7 assumes they can improve the cash flows, do much better, so
8 they pay a premium.

9 What we objected to was, if you look at the top
10 part here, this shows the projected growth in cash flow for
11 the first two years of the Willamette valuation for each
12 of these dates, 1971, 1973 and 1975.

13 So they're assuming very high cash flow growth in
14 these years particularly, 1971 and 1975. But then on top
15 of that they have added another premium of 30 percent,
16 saying someone is going to improve it 30 percent more, and
17 for a stand-alone hospital that's got its beds mainly
18 utilized, that's going to be tough to do. Very difficult
19 assumption to make, one that you wonder whether someone
20 will actually pay for if they're going to bring that to the
21 table.

22 So the bottom shows the assumed growth of these
23 cash flows in the first three years assuming that kind of

J.APP.0690

PLATT & DAWSON, INC. (703) 591-0007

1 premium.

2 Q. And what conclusions did you draw based on this
3 analysis?

4 A. That it is just a very aggressive assumption of
5 how you could improve the cash flow of this hospital.

6 Q. And did you draw any conclusion as to whether
7 it's appropriate in valuing JMHI to add a control premium
8 on the income approach?

9 A. I think it's very inappropriate. As I said
10 before, the revenues were going up but the cash flow was
11 not going up that dramatically, and so to assume these kind
12 of cash flow growths and then put another premium on top
13 seems to be very aggressive.

14 Q. Did you then on Exhibit 787-R reflect the
15 elimination of a control premium?

16 A Yes. Now, if you look at 787-R, it doesn't seem
17 like much. It only goes from about 113 to 87, and that's
18 because it's 30 percent. So whatever number, we're just
19 taking 30 percent off that.

20 If it had been the first thing we had done here,
21 it would have been a bigger number. But that wouldn't have
22 been fair, so we did it this way.

23 Q. Now, did you also examine the difference between

J.APP. 0691

PLATT & DAWSON, INC. (703) 591-0007

1 your discount rate and the one Mr. Reilly has selected?

2 A Yes. Particularly the year 1971, before he made
3 his adjustment it was 13. We were at 20.

4 For a stand-alone hospital of this size, I think
5 that's a very low discount rate, and therefore if he would
6 reflect that, his numbers --

7 If he reflected all of these things, his numbers
8 would have been close to what we derived.

9 Q. Do you show that on 787-R?

10 A Yes.

11 Q. To summarize, what are the four changes that are
12 reflected on Exhibit 787-R?

13 A. The four changes are adjusting for the tax rate
14 which he admitted was wrong; the debt rate change; not
15 subtracting liabilities, taking off the control premium,
16 and increasing the discount rate.

17 Q. And then when you make those four changes, what
18 is the result that you arrived at?

19 A. A negative 478,000.

20 Q. I refer you to Exhibit 787-Q and 787-P.

21 A. Okay.

22 Q. And are those basically the same kind of bar
23 graph analysis for the years 1973 and 1975 as you just

J.APP. 0692

PLATT & DAWSON, INC. (703) 591-0007

1 described for 1971?

2 A. '73 is the same things. '75 we also subtracted
3 the mortgage, which he admitted he should have done, so
4 that has a big impact.

5 Q. So, in effect, subtracting the mortgage, what
6 does this do to the value?

7 A. It lowered it to 220,000.

8 Q and in the same respect as the other four
9 changes, this depicts the results of those four changes; is
10 that correct?

11 A Yes, that's right.

12 Q. Now, can I direct your attention to Exhibit
13 787-E.

14 A Yes.

15 Q. And what are you depicting in this exhibit?

16 MR. BETTIUS: I thought that had been covered.

17 Mr. Bono.

18 THE COURT: It's "E."

19 MR. BETTIUS: Sorry. I though you said "D."

20 A. This covers the effect of the amount of debt
21 that's assumed in the calculation of a discount rate and
22 what effect that has on the discount rate.

23 So what Mr. Reilly assumed was he said

J.APP. 0693

PLATT & DAWSON, INC. (703) 591-0007

1 company-specific debt was 100 percent, the industry debt
2 was 45 percent, and therefore he selected 70 percent as the
3 right debt-to-total-capital ratio. And what I'm reflecting
4 on the right-hand side is, if you are going to use
5 company-specific debt, you need to reflect the value, the
6 market value of each of the components.

7 So, for example, I used 684,000 for the debt
8 level. That's fine. But I said the hospital is worth 1.2
9 million.

10 So what you do is you take 684 divided by the
11 value of the hospital plus the value of the debt to get the
12 right ratio. That's the way it's done, and if he had used
13 that, it would have been 36 percent.

14 Q. And what did that tell you?

15 A. That told me that his debt rate was too high and
16 the discount rate was too low.

17 Q. And did you reflect the impact of that difference
18 on Exhibit 787-S?

19 A. "S"?

20 Q. "S."

21 A Well, let's -- I seem to be missing 787-S.

22 Yes. What this shows is that if you had used the
23 industry average debt ratio in 1971, you would have had an

J.APP. 0694

PLATT & DAWSON, INC. (703) 591-0007

1 18 percent discount rate instead of a 13 percent.

2 If you had used the company-specific, it would
3 have been 19 percent. So the assumption of the right debt
4 level is very critical to the valuation and in 1971 it
5 differs substantially from his calculations in 1973 and '75
6 even though I don't think the risk was higher in the later
7 years.

8 Q. If Mr. Reilly had used that debt ratio, it would
9 have resulted in either an 18 or 19 percent discount rate,
10 1971?

11 A Yes.

12 Q. And that was about what yours was; is that right?

13 A Yes.. A little bit lower.

14 Q. Now, did you examine Mr. Reilly's asset-based
15 calculation in his calculations of goodwill?

16 A. Yes, I did.

17 Q. And did you prepare a chart with respect to that
18 as well?

19 A Yes.

20 Q. Is that 787-K?

21 A Yes, it is.

22 Q. Would you explain what that 787-K reflects.

23 A. The 787-K shows the goodwill amounts that were

J.APP. 0695

PLATT & DAWSON, INC. (703) 591-0007

1 calculated prior to the revisions. So, for example, in
2 June of 1971 his calculation of goodwill was a little over
3 1.3 million. Then it went down to 993,000 in 1973, and
4 543,000 in 1975.

5 Now, during that same time, the top line shows
6 the revenue assumed in his analysis, and you can see it's
7 going from 3.8 million to 5.5 million. Probably even more
8 important, the cash flow or EBIDT increases from 204,000 to
9 403,000 and then declines slightly to a little under
10 400,000 in '75.

11 So you see the goodwill going down significantly
12 even though the revenues and earnings are higher, and this
13 is counter-intuitive to what you would expect. Goodwill is
14 usually reflected in the earnings of the hospital. And so
15 we have a goodwill going down when the earnings are going
16 up basically.

17 Q. Did you draw any conclusions based upon this
18 analysis?

19 A Yes. I think that -- well, I take issue with the
20 whole approach. It's not an approach that's used in
21 hospital acquisition valuations, but I think it just shows
22 that the results are incorrect and counter-intuitive.

23 Q. Now the approach you just mentioned that we were

J.APP. 0696

PLATT & DAWSON, INC. (703) 591-0007

1 talking about, that's the asset-based approach?

2 A Yes. That's what it's referred to.

3 Q. What is your experience with that approach that
4 Mr. Reilly used in his calculations of goodwill in his
5 report?

6 A. It's not an approach I have ever seen used in
7 valuing hospitals for acquisitions It might be something
8 you would use in a tax or IRS sort of valuation but not in
9 determining the value for this purpose.

10 Q. Have you ever seen it used in the context of
11 conversion from not-for-profit to for-profit hospitals?

12 A. No.

13 Q. Now, sticking with that same approach, would you
14 please look at Exhibit 787-L.

15 A Yes.

16 Q. Did you also look at the assumed rates of return
17 that Mr. Reilly used in that asset-based approach?

18 A Yes, I did.

19 Q. What do you detect with respect to that on this
20 exhibit?

21 A Well, what I'm showing here is he calculated
22 certain rates based on asset class, if you will. So, for
23 example, he assigned eight percent to working capital, nine

J.APP. 0697

PLATT & DAWSON, INC. (703) 591-0007

1 to eleven percent rate of return to net fixed assets, and a
2 13 percent to his overall discount rate for the company.
3 And then in subsequent years it was the same sort of thing
4 except we have higher discount rates.

5 You will see the goodwill has a capitalization
6 rate of seven percent, which in almost all cases the
7 discount rate for intangible assets is higher than it is
8 for the company as a whole. And in this case you've got to
9 make two assumptions: One, he's assuming that the rate of
10 return is the same for goodwill as it is for the company as
11 a whole, but you've also got to assume it's going to grow
12 at six percent into perpetuity.

13 So you get a very high value because of that. So
14 you get an overall implied rate of return that's lower than
15 you get for your fixed assets basically. Particularly if
16 you look at his revision, he revised it to eleven percent,
17 that's the rate he had for net fixed assets. That's saying
18 the company as a whole has the same risk as the assets, the
19 hard assets that you can mortgage.

20 Q. What conclusion did you draw from that analysis?

21 A. That you get these high values for goodwill
22 because of these low capitalization rate assumptions.

23 Q. In your opinion, is that appropriate?

J.APP. 0698

PLATT & DAWSON, INC. (703) 591-0007

1 A. No.

2 Q. Now, you also examined, did you not, Mr. Reilly's
3 market approach?

4 A Yes.

5 Q. Would you refer to Exhibit 787-G.

6 A. Okay.

7 Q. What were you depicting in this exhibit?

8 A Well, this shows the multiple of EBIDT that was
9 used; in other words, the publicly-traded companies on
10 average or the ones -- the ratio he selected were trading
11 at 11 times their last 12-months earnings before interest
12 depreciation and taxes in 1971.

13 You can see he valued it prior to the adjustments
14 he made at 1.2 million.

15 Now, the market dropped between 1971 and '73 such
16 that the average multiple was only 6.2 times EBIDT, and yet
17 the valuation overall didn't change, at least until these
18 recent adjustments he made.

19 Q. What conclusions did you draw from that analysis?

20 A. Well, I drew the conclusion that the market
21 approach is probably not appropriate given the way that
22 this is coming out.

23 Q. Now, would you refer to Exhibit 787-H.

J.APP. 0699

PLATT & DAWSON, INC. (703) 591-0007

1 A Yes.

2 Q. What were you depicting in this exhibit?

3 A. This shows the average valuation for the
4 companies that he used in his guideline company approach,
5 so that in 1971 they had an average market value capital of
6 \$112 million as contrasted with his valuation of JMHI of
7 \$1.9 million and you get a similar effect for '73 and '75.

8 So you're comparing a very small company with one
9 that's -- to others that are very, very large and much
10 faster growing, much more profitable.

11 Q. What conclusions did you draw from that analysis?

12 A. I think it is inappropriate to make that big a
13 leap. In other words, unless you make severe adjustments,
14 you really are distorting valuation of this hospital.

15 You're saying a stand-alone hospital is going to
16 trade like the big boys do and in the valuations that I
17 have been involved with, you usually don't use this
18 approach for that reason.

19 Q. Would you look at Exhibit 787-I.

20 A Yes.

21 Q. What did you depict on this exhibit?

22 A. I think this is significant. It shows the
23 earnings for the comparable companies relative to Jefferson

J.APP.0700

PLATT & DAWSON, INC. (703) 591-0007

1 Memorial, and in general you can see that in 1971 they
2 range from a low of 12.8 percent to a high of 19.6, but in
3 general they were in the mid teens, and Jefferson was at
4 seven percent.

5 So you're saying people are going to pay the same
6 for our company as they are for these much more profitable
7 ones and I think you get misleading conclusions from that.

8 Q. Would you look at Exhibit 787-J.

9 A Yes.

10 Q. What did you depict in this exhibit?

11 A. This again reflects in most cases the significant
12 size difference for the guideline companies than those of
13 our company. The first one has 40 hospitals in 11 states
14 with 7,500 beds. The ones -- the smallest ones, like
15 Medfield, that's a psych hospital, and Town & Country has
16 eleven nursing homes, and that's not a good comparable as
17 he has testified to compare nursing homes. So I think
18 you've got either large companies that are in the hospital
19 industry or you've got the smaller ones which aren't very
20 good comparables.

21 Q. What conclusions did you draw?

22 A. Again, I think the guideline company approach is
23 inappropriate for those reasons.

J.APP. 0701

PLATT & DAWSON, INC. (703) 591-0007

1 Q. Now, Mr. DenUyl, turning back to Exhibit 787-F,
2 does this exhibit deal with Mr. Reilly's guideline merged
3 and acquired company method?

4 A Yes.

5 Q. That was the second of the two market approaches?

6 A Yes. That's right.

7 Q. What were you displaying with this exhibit?

8 A. This shows the price per bed paid for each of the
9 hospitals in his list. So, for example, North Las Vegas
10 Hospital, according to his calculations, sold at \$41,000
11 per bed, and St. Lukes of Virginia sold at \$9,000 per bed,
12 and you can see that there's not a consistent pattern to
13 this at all. It's all over the map.

14 Q. What conclusions did you draw as a result of
15 that?

16 A Well, I don't think you can draw any
17 conclusions. If you are presented with this, you show this
18 to someone you are advising as to what they should pay for
19 a hospital, they're going to say, well, what number do I
20 pick? Do I pick \$41,000. Do I pick \$9,000?

21 It really depends on the profitability, the
22 growth; the location is very important. All of these
23 things have to be known before you can apply this

J.APP. 0702

PLATT & DAWSON, INC. (703) 591-0007

1 methodology.

2 Q. Did Mr. Reilly know those factors in applying
3 this methodology?

4 A. No.

5 Q. Turning back to the discounted net cash flow
6 method, and specifically looking at Exhibit 787-0 and M,
7 what were you displaying in these exhibits?

8 A. We're showing that given the cash flow that's
9 projected in his discounted cash flow analysis, if you
10 subtract the net cash flow from the debt each year, you
11 will see that it slowly chips away at the value, but in
12 each case you haven't paid off that debt given that cash
13 flow projected until you got to the residual, beyond five
14 years.

15 So I think the analysis has a very high amount of
16 value in the residual. So the buyer has got to assume that
17 most of his value is going to come beyond that five-year
18 period.

19 Q. What does that tell a buyer if the value is not
20 projected to arrive until more than five years after the
21 supposed purchase?

22 A Well, he's taking a big bet on something that's
23 five years out.

J.APP.0703

PLATT & DAWSON, INC. (703) 591-0007

1 Q. When you say big bet, what do you mean by that?

2 A. Well, in other words, you might take that gamble
3 but it's a risk key one, it's very speculative. And to sit
4 back in 1971 and say that it's worth all of this money when
5 most of it isn't until after 1976 I think is very
6 speculative.

7 Q. Now, Mr. DenUyl, let me refer you to Exhibit
8 787-P.

9 MR. BETTIUS: Can I ask how much longer Mr. Bono
10 is going to go because I need to break for three minutes to
11 take care of something.

12 MR. BONO: I should be done in about five or ten
13 minutes.

14 THE COURT: All right.

15 BY MR. BONO:

16 Q. Do you have that, Mr. DenUyl, 787-P?

17 A. This exhibit shows the results on the left-hand
18 side of the actual year-end results 1974 and then they
19 adjust that, for the starting point of their discounted
20 cash flow model in 1975. Before they even start projecting
21 they have assumed that you are going to get this kind of
22 improvement.

23 So, in other words, at the end of the year 1974

J.APP.0704

PLATT & DAWSON, INC. (703) 591-0007

1 fiscal year, we had \$4.4 million in revenues. At 1/31/75
2 we're going to start out at 5.5 million, which is 10
3 percent more, 10 percent growth from the basis that
4 Williamette used.

5 In other words, not to confuse the issue, they
6 started with the last fiscal year and they used a valid
7 basis. They increased it to five million and then grow
8 that another 10 percent there. Probably most significant
9 though is they have assumed that EBIDT will increase from a
10 175,000 to 389,000 in that seven-month period for the
11 starting point of their valuation, which I think if you
12 were looking at -- a buyer looking at this might think that
13 was pretty aggressive.

14 Q. Now, Mr. DenUyl, did you review what Mr. Reilly
15 was purporting to value 1973 and 1975?

16 A Yes.

17 Q. What did you conclude that he was valuing as of
18 those valuation dates?

19 A. He was valuing the entity JMHC which held the
20 building and the equipment and mortgage and goodwill at
21 that time.

22 So, in other words, he valued it with that
23 already in it.

J.APP. 0705

PLATT & DAWSON, INC. (703) 591-0007

1 MR. BONO: One moment please, Your Honor.

2 THE COURT: All right.

3 BY MR. BONO:

4 Q. Mr. DenUyl, the opinions which you have expressed
5 today, do you hold those opinions and conclusions with a
6 reasonable degree of certainty?

7 A. You mean my overall valuation opinions?

8 Q. Yes

9 A Yes.

10 Q. In addition to that, the other opinions and
11 conclusions which you have testified today, you also
12 express those to a reasonable degree of certainty?

13 A. Very much so.

14 Q. Now, if I can just go back for a moment to your
15 Exhibit 709-A, can you just summarize the difference in the
16 analysis of capitalized earnings with your approach and
17 with the approach of Mr. Reilly.

18 A Well --

19 MR. BETTIUS: Your Honor that's been asked and
20 answered.

21 THE COURT: Objection overruled. I'll let him
22 explain.

23 A. Basically we both did an income approach. Mine

J.APP.0706

PLATT & DAWSON, INC. (703) 591-0007

1 was a capitalization of earnings approach where we took
2 weighted historical earnings. He made a projection going
3 out into the future. Our valuation came down to a negative
4 valuation for some of the reasons I have explained. His
5 was higher based on a low discount rate and taxes and
6 working capital and things like that that were different.

7 Q. And so I understand it, I'm trying to make sure
8 we understand the differences, you used different taxes
9 assumptions; correct?

10 A Yes. Well, ultimately he changed that.

11 Q. But initially he had used 30 percent and you had
12 used 40 percent?

13 A. That's right.

14 Q. You both have growth rates, but what was the
15 difference?

16 A. He had a six --

17 Well, there's two differences. One he had fairly
18 high growth in the early years of the projection and then
19 he had six percent into perpetuity beyond that.

20 We have used a three percent growth because the
21 cash flow growth over these years has not been significant.

22 Q. You both deducted liabilities; is that correct?

23 A Yes.

J.APP. 0707

PLATT & DAWSON, INC. (703) 591-0007

1 Q. And what was the difference between your
2 deduction of liabilities and his?

3 A. I deducted interest-bearing debt and he looked at
4 what the true debts of the corporation were.

5 Q. And there was a difference with respect to
6 capitalization factors; is that correct?

7 A. His discount rate, particularly in '71, was
8 significantly different.

9 Q. Yours was what?

10 A. Our capitalization rate was 17 percent.

11 Q. And Mr. Reilly's was?

12 A. Well, he would have used in his residual
13 calculation five percent.

14 Q. Now, what is the ultimate conclusion of value of
15 JMHI that you reached as of June 30, 1971?

16 MR. BETTIUS: Your Honor, that's been answered.

17 THE COURT: I'll let him say.

18 A. At that date, it's zero.

19 BY MR. BONO:

20 Q. Did you reach that conclusion with a reasonable
21 degree of certainty?

22 A Yes, I did.

23 Q. Now, with respect to your '73 analysis, can you

J.APP. 0708

PLATT & DAWSON, INC. (703) 591-0007

1 summarize for the Court what the differences are between
2 your approach and Mr. Reilly's?

3 A. Again, the original valuation he did has a
4 significant difference in taxes. He's applied a control
5 premium to his cash flow and has higher growth than we have
6 assumed, and, again, we have different levels of debt.

7 Q. And with respect to the debt, is the difference
8 between interest-bearing and the debt figure you used?

9 A Yes.

10 Q. And the debt figure you used was what?

11 MR. BETTIUS: Your Honor, that's repetitive.

12 THE COURT: We've gone through that.

13 BY MR. BONO:

14 Q. As a result of your analysis, what conclusion did
15 you draw as to the value of JMHI as of April 18, 1973?

16 A. The conclusion of value was zero to nominal
17 value.

18 Q. Did you reach that conclusion with a reasonable
19 degree of certainty?

20 A Yes.

21 Q. Turning to your 1975 analysis --

22 A Yes.

23 Q. -- what were the differences between you and Mr.

J.APP.0709

PLATT & DAWSON, INC. (703) 591-0007

1 Reilly?

2 A. Again, the differences were --

3 The tax rate was not an issue in this case. He
4 did not subtract out the mortgage debt in the original one,
5 but that's an adjustment he made.

6 Again, the differences are assumed growth of
7 income and is six percent versus our three percent, and the
8 discount rate is somewhat different and he has a control
9 premium as well.

10 Q. All right. What conclusion did you reach with
11 respect to the value of JMHI as of January 31, 1975?

12 A. Again, zero to nominal value.

13 Q. Did you reach that conclusion with a reasonable
14 degree of certainty?

15 A Yes.

16 Q. And as a result of those conclusions, Mr. DenUyl,
17 did you reach an opinion and conclusion as to whether a
18 charitable dedication should have been made when JMHI was
19 converted to a for-profit entity?

20 A Yes.

21 MR. BETTIUS: Objection, Your Honor. That's the
22 ultimate issue.

23 THE COURT: Unless the statute changed that

J.APP.0710

PLATT & DAWSON, INC. (703) 591-0007

1 objection, it allows an expert to testify.

2 MR. BETTIUS: Your Honor, that's actually true,
3 but I guess my real objection is it's irrelevant and
4 immaterial.

5 THE COURT: Objection overruled.

6 A. I wouldn't have recommended a charitable
7 dedication at that time.

8 BY MR. BONO:

9 Q. Do you reach that conclusion with respect to all
10 three of the dates that you looked at?

11 A. Yes.

12 Q. And you reached that conclusion with a reasonable
13 degree of certainty?

14 A Yes.

15 MR. BONO: Your Honor, I would like to move into
16 evidence Exhibits 787-A through S.

17 MR. BETTIUS: I would ask Your Honor to reserve
18 until I finish my cross.

19 THE COURT: I'll take it under advisement until
20 you finish cross-examination.

21 MR. BETTIUS: Your Honor, I need about two
22 minutes. I don't want to take a long time because I think
23 we can finish this witness today.

J.APP.0711

PLATT & DAWSON, INC. (703) 591-0007

1 THE COURT: We'll recess anyway because it's time
2 to recess.

3 (Whereupon, a recess was taken.)

4 CROSS-EXAMINATION

5 BY MR. BETTIUS:

6 Q. Good afternoon, Mr. DenUyl.

7 A. Good afternoon, sir.

8 Q. Mr. DenUyl, the valuation that you have done
9 covers a period of time from 1971 to 1973 to 1975. I know
10 you have indicated that these aren't contemporary years for
11 you in business but certainly you have studied them and the
12 economics of those years in your profession, haven't you?

13 A. I did some study in connection with this case.

14 Q. Sure. Well, you know that this is a period of
15 the Vietnam war; is that right?

16 A. Yes.

17 Q. And an oil crisis; correct?

18 A. Yes.

19 Q. And the Israeli- Arab war.

20 A. Yes.

21 Q. And all of those events had profound effect, did
22 they not, on the marketplace?

23 A. In general, or on the health care market?

J.APP. 0712

PLATT & DAWSON, INC. (703) 591-0007

1 Q. In general and on health care market in terms of
2 equity markets, borrowing and how you valued businesses.

3 A Well, I think it depends on the business you are
4 talking about.

5 Q. Well, for instance, if I'm in the business and
6 I'm borrowing money, I may have had a better year in 1969,
7 but when you valuation people -- and I'm not saying that in
8 a pejorative sense -- find that interest rates have become
9 double digits or there are problems, suddenly you know my
10 business is better than it was last year, but from an
11 equity point of view it's worth less, isn't it?

12 A. Interest rates didn't go up until 1975 and then
13 even then it wasn't dramatic.

14 Q. You didn't find that inflation was dramatically
15 increasing in '71, '73 and '75?

16 A. No. If you look at the CPI, it actually
17 decreased from '71 through 1973 and then started up again.

18 Q. Do you remember in the history of this country
19 price controls affecting any period of this time?

20 A Yes, I do.

21 MR. BETTIUS: Your Honor, I'm going to tie this
22 in. It affects the operations of this hospital.

23 BY MR. BETTIUS:

J.APP.0713

PLATT & DAWSON, INC. (703) 591-0007

1 Q. You are not a Certified Public Accountant, are
2 you?

3 A. No.

4 Q. And you are not a member of the American Society
5 of Appraisers, are you?

6 A. No.

7 Q. You have never sat for any certification that
8 requires an exam?

9 A. In valuation?

10 Q. Yes.

11 A. No.

12 Q. All right, sir. And I'm not saying that
13 diminishes your credentials at all. I just want to know if
14 you subscribe to the standards of the American Society of
15 Appraisers.

16 A. I don't know all of the standards. I think what
17 I do conforms in general with what they do.

18 Q. Do you know whether or not a CEA certification is
19 to an accountant?

20 A. CEA.

21 Q. Yes.

22 A. No.

23 Q. Do you know that accountants have begun to try

J.APP.0714

PLATT & DAWSON, INC. (703) 591-0007

1 and become certified as valuation experts in the last
2 several years?

3 A Yes. You mean AICPA?

4 Q. Yes.

5 A. It's starting, yes.

6 Q. You are aware of things called accounting
7 conventions, aren't you?

8 A Yes.

9 Q. And all of the work that you do is dependent upon
10 the financial statements and the way they are kept
11 ultimately if that's what you're working from as your
12 source material; isn't that correct?

13 A. No. We make adjustments to accounting statements
14 to get to cash flow.

15 Q. Did you have peer review of your appraisal?

16 A. Peer review?

17 Q. In this case.

18 A. Did I have anybody else look at it?

19 Q. Yes.

20 A Yes.

21 Q. Who did that?

22 A. My other health care specialist.

23 Q. Now, is your other health care specialist by any

J.APP. 0715

PLATT & DAWSON, INC. (703) 591-0007

1 chance an accountant?

2 A Yes.

3 Q. And a CPA?

4 A Yes.

5 Q. And found no problem with the statements and the
6 way they were kept in this hospital?

7 A. We didn't do an audit of these statements.

8 Q. Well, I'm talking about as to whether or not the
9 statements accorded with what I believe you call in the
10 jargon GAAP. Do you know what GAAP is?

11 A. General accepted accounting principles.

12 Q. Yes. Do you know whether or not they accorded
13 with GAAP standards?

14 A I didn't review the statements for that, no.

15 Q. Well, are there audit review standards that CPAs
16 follow?

17 A Yes.

18 Q. And aren't there conventions that are
19 particularly driven to the care health care industry?

20 A. There are some.

21 Q. In fact, isn't there a whole section that deals
22 with the audit and accounting guide of health care
23 companies?

J.APP. 0716

PLATT & DAWSON, INC. (703) 591-0007

1 A. You mean recently?

2 Q. Then in 1970, sir.

3 A. There is a health care guidelines, yes.

4 Q. And there is a chapter that deals specifically,
5 is there not, with current liabilities and long-term
6 obligations?

7 A. I haven't reviewed that.

8 Q. Okay. Did you notice in your preparation for
9 testimony any notes to financial statements that indicated
10 that statements in connection with JMHI or JMHC, as you
11 want to call it, had not been kept in accordance with
12 generally accepted accounting principles but that changes
13 were being made?

14 A. I don't know that they were not kept in
15 conformance.

16 Q. I'm asking you. You read the financial
17 statements, didn't you?

18 A Yes.

19 Q. And the notes are very material to those
20 statements, aren't they, or can be?

21 A. Can be.

22 Q. And if they indicate a change in accounting
23 procedure, those should be noted; is that correct?

JAPP.0717

PLATT & DAWSON, INC. (703) 591-0007

1 A Yes.

2 Q. Now, did you notice any anomalies with regard to
3 the treatment of any of the large items on the balance
4 sheet in 1975, things that had changed dramatically in
5 reporting from previous years?

6 A. In '75?

7 Q. Yes.

8 A. The year ended '75?

9 Q. Yes.

10 A. I don't know that I recall, because our valuation
11 ended in January of '75.

12 Q. Well, are there some anomalies that are, for
13 instance, shown on your own report? Did you see something
14 that you had previously reported as part of debt that was
15 no longer recorded as part of debt that was significant?

16 A. I don't recall.

17 Q. Let me return to that later. You indicate, do
18 you not, throughout the entirety of your testimony that
19 revenues continue to grow?

20 A Yes.

21 Q. But profitability doesn't; isn't that correct?

22 A. Not much.

23 Q. And what we see constantly mentioned are debt and

J.APP. 0718

PLATT & DAWSON, INC. (703) 591-0007

1 long-term liabilities; isn't that right?

2 A. No. I didn't refer to long-term liabilities.

3 Q. You didn't, did you?

4 A. No.

5 Q. You referred to liabilities. Now, in valuation,
6 is there a significant difference between short-term and
7 long-term liabilities as they affect valuation?

8 A. Well, basically what we assumed here was that the
9 hospital had to have a given level of working capital.

10 Q. Would you please first answer my question, and
11 then, if you would, I'll give you every opportunity to
12 explain.

13 A. Okay. The true test of whether it's a debt or
14 not --

15 Q. I think it was a "yes" or "no," Mr. DenUyl. Let
16 me repeat it for you.

17 Does it make a difference in valuation whether
18 you classify something as a long-term or a short-term
19 liability?

20 A. Not necessarily.

21 Q. All right. Now, I would like you to explain.

22 A. Okay. For these balance sheets, they didn't
23 classify them as short or long-term. Okay?

J.APP. 0719

PLATT & DAWSON, INC. (703) 591-0007

1 And when we looked at this, we looked at what are
2 the adequate levels of working capital for this facility.

3 Anything outside of that would be a liability
4 that must be paid.

5 For example, we have long-term liabilities.
6 There was a contract payable to the pathologist that was
7 over a number of years. It was up there with current
8 liabilities.

9 The adjustments to Medicare for group
10 hospitalization were all over a period of years, but the
11 important point is what a willing buyer assumed a normal
12 level of working capital. Above that it's left as debt of
13 the corporation, and that's the real test of whether it's
14 debt that needs to be subtracted or not.

15 Q. Does it matter if a debt for valuation purposes
16 is handled on the income statement or whether it's handled
17 on the balance sheet? Does that make a difference in
18 valuation?

19 A. I'm not sure I understand your question.

20 Q. If a debt should properly be on the income
21 statement, does it mean that it necessarily appears on the
22 balance sheet, a liability?

23 A. Well, you mean is it expensed or is it

J.APP. 0720

PLATT & DAWSON, INC. (703) 591-0007

1 capitalized?

2 Q. Yes. That's exactly right. It makes a
3 difference, doesn't it?

4 A. That's right.

5 Q. It's an income expense on the balance sheet but
6 it doesn't get classified on the balance sheet as a
7 long-term liability, does it?

8 A. That's right. But if it's on the balance sheet
9 as a liability, then it hasn't been expensed.

10 Q. That's right. If it should be expensed and it
11 has been expensed and it doesn't belong on the balance
12 sheet and it is included then, it's an error, isn't it?

13 A. If it has been expensed?

14 Q. Yes.

15 A. And it's included?

16 Q. On the balance sheet as a liability.

17 A. That would be unusual to see.

18 Q. All right. Did it happen in this case?

19 A. Not to my knowledge.

20 Q. Okay. Now, you indicate that -- strike that.
21 What is a closely-held corporation?

22 A. One whose stock is held by private parties,
23 generally. Not publicly traded.

J.APP. 0721

PLATT & DAWSON, INC. (703) 591-0007

1 Q. With tight control between assets, liabilities
2 and shareholders?

3 A. No. It has nothing to do with that.

4 Q. Did you study the structure of this corporation?

5 A Well, I looked at JMHI and JMHA and then compared
6 them.

7 Q. Did you determine whether it had the
8 characteristics after a closely-held corporation?

9 A. Which corporation are you talking about?

10 Q. JMHI and JMHC.

11 A Well, JMHI was a not-for-profit.

12 Q. I understand.

13 A. So you don't really refer to that as a
14 closely-held corporation. JMHC would have been, I think.

15 Q. You just made my point. You weren't informed,
16 were you, prior to taking this engagement that the
17 501(c)(3) status of JMHI had been revoked?

18 A. I understood that, yes.

19 Q. You remember giving me your deposition in this
20 case?

21 A Yes.

22 Q. Do you remember saying you weren't aware of that?

23 A Well, you called it a revocation and I just

J.APP.0722

PLATT & DAWSON, INC. (703) 591-0007

1 didn't recall. I always knew that the 501(c)(3) status had
2 been revoked.

3 Q. Do you know why?

4 A Yes. There was a dispute with the IRS regarding
5 the bonds.

6 Q. The bonds? Was there anything else?

7 A. That was the one I was aware of.

8 Q. Did the respondents not supply you with all of
9 the information concerning the revocation?

10 A. I don't know.

11 Q. How about the 1972 letters written to JMHA and
12 JMHI with adjustments based on the revocation?

13 A. I'm not sure. I reviewed a lot of material early
14 on.

15 Q. All right. Now, is it your testimony in court
16 today that what you did in this case is what you did for
17 the Attorney General in Ohio?

18 A. Same sort of procedure.

19 Q. I'm not saying "sort of procedure." Level of
20 investigation, inquiry and so forth. It's different, isn't
21 it?

22 A. No. In many ways I spent more time on this
23 engagement than I have on some other ones.

J.APP. 0723

PLATT & DAWSON, INC. (703) 591-0007

1 Q. Are you often given a transaction where they tell
2 you, Look, the valuation, the transfer may have happened in
3 one year or another year or another year?

4 Do you often see that?

5 A. No. That's unusual.

6 Q. Normally when you come in, aren't you reviewing
7 well done due diligence prepared by the directors who are
8 seeking conversion?

9 A. No. Quite frankly for not-for-profit it's often
10 not, you know, as rigorous a due diligence as it is for
11 for-profits.

12 Q. What do you do when that happens?

13 A. We dig into it.

14 Q. You dig into it, don't you?

15 Now, in this case you didn't have contemporaneous
16 interviews with management, did you?

17 A. Not in 1971, no.

18 Q. You had no ability to interview management, did
19 you?

20 A Well, I interviewed Dr. Tauber and asked him what
21 was going on back then.

22 Q. Why didn't you review the corporate minutes?

23 A. I did look at some of the corporate minutes.

J.APP. 0724

PLATT & DAWSON, INC. (703) 591-0007

1 Q. It's not shown on your list. Is that an
2 oversight?

3 A. We looked at that. If I didn't list it, I think
4 we said we looked at financial documents. I did look at
5 corporate minutes.

6 Q. Well, corporate minutes aren't financial
7 documents, are they?

8 A. No.

9 Q. What did those corporate documents reveal to you
10 with respect to the treatment of assets by the directors,
11 if you recall?

12 A. What specifically do you want?

13 Q. Well, let's take the lease. Do you remember any
14 discussions about the directors considering or determining
15 the fairness of the lease?

16 A. No.

17 Q. Do you remember any discussions by directors that
18 indicated that their purpose in operating the hospital was
19 to make sure that it had few assets in case they were sued
20 for malpractice?

21 A. I remember some correspondence about being
22 concerned about malpractice.

23 Q. And they were, in that respect, successful,

J.APP. 0725

PLATT & DAWSON, INC. (703) 591-0007

1 weren't they?

2 A. I'm not a legal expert. I don't know.

3 Q. Well, haven't you testified all day that you see
4 a lot of debt here?

5 A Yes.

6 Q. And you see a lot of long-term liabilities.

7 Now, let's take your first statement in 1971. We
8 have total debt on that statement of a million sixty-nine;
9 is that right?

10 A Yes.

11 Q. Two hundred and eighty thousand would be roughly
12 28 percent of that total debt, wouldn't it?

13 A Yes.

14 Q. Anyone tell you what that lease was about?

15 A. My understanding was that there was equipment
16 that was leased to the hospital and the financial statement
17 notes say that there were various lease payments in the
18 later years. They were supposed to be paying \$42,000 a
19 year. The lease term was ten years, after which the
20 equipment would be donated to the hospital.

21 Q. And the lease is dated January 2nd, isn't it,
22 1966? That's the date that's referred to?

23 A. I remember 1966.

J.APP.0726

PLATT & DAWSON, INC. (703) 591-0007

1 Q. I'm going to show you this lease and ask you if
2 it is not for one dollar a year.

3 MR. BETTIUS: Mr. Bono, I'm referring to Exhibit
4 474.

5 BY MR. BETTIUS:

6 Q. It's a dollar a year, isn't it?

7 A. This one says that. The financials say something
8 different.

9 Q. Let me see if I can help you, I want you to look
10 now at Exhibit 362, a letter written by counsel for the
11 hospital to the Internal Revenue Service.

12 Have you had a chance to look at that, Mr.
13 DenUyl?

14 A. Yes.

15 Q. Would you read aloud for the Court item 5?

16 A. "This lease for equipment was canceled and all
17 the equipment was purchased at the invoice cost of the
18 vendors."

19 Q. Okay. Now, I'm going to show you another letter
20 written to the Internal Revenue Service and this time the
21 date is September, 22, 1966, and I refer, sir, to Exhibit
22 368.

23 What does that letter say about the lease?

J.APP. 0727

PLATT & DAWSON, INC. (703) 591-0007

1 A. I don't know. I haven't gotten it yet.

2 Q. I'm sorry.

3 MR. BONO: I have an objection, Your Honor.
4 There's no foundation that the lease that he's talking
5 about, this one, this lease, is the financial statement
6 that we're talking about. This witness is unable to
7 testify about that. The documents speak for themselves

8 THE COURT: I'll let him proceed. Go ahead.

9 A. Do you want me to read the whole letter?

10 BY MR. BETTIUS:

11 Q. No, sir. It indicates, does it not, that the
12 hospital equipment originally was leased from Westwood
13 Financial Company composed of the following persons, and
14 then it indicates, does it not, that Blue Cross and Blue
15 Shield directed that the equipment not be leased? Is that
16 correct?

17 A. Sorry. Could you repeat the question?

18 Q. Well, you read the letter and tell me if it
19 conveys to you the understanding that the lease existed and
20 that the corporation JMHI bought the equipment for the
21 issuance of its bonds and the assumption of notes.

22 A Well --

23 MR. BONO: Objection, Your Honor. No

J.APP. 0728

PLATT & DAWSON, INC. (703) 591-0007

1 foundation.

2 MR. BETTIUS: I'm about to lay it.

3 THE COURT: He can answer the question if he
4 knows. If he doesn't know, then he can't.

5 A. The lease -- I mean, there's a lease here that's
6 referring to equipment was originally leased in 1964.

7 BY MR. BETTIUS:

8 Q. Do you know when this equipment first appears on
9 the balance sheet?

10 A. Which balance sheet?

11 Q. Of JMHI, sir.

12 A. I don't know that this is the equipment that is
13 on the financial statements.

14 Q. It's pretty easy to tell. We can track when the
15 equipment gets on the balance sheet and the amount and see
16 how it's depreciated. It's not hard to make that
17 connection, is it?

18 A. This doesn't make any sense. Why would they
19 record it on the financial statements they didn't lease
20 it?

21 Q. The IRS couldn't figure that out either I'm going
22 to show you that in a minute.

23 MR. BONO: This is getting argumentative.

J.APP. 0729

PLATT & DAWSON, INC. (703) 591-0007

1 THE COURT: Yes. What is your question, Mr.
2 Bettius?

3 BY MR. BETTIUS:

4 Q. Isn't it on the balance sheet, doesn't it clearly
5 reflect on the balance sheet that the equipment that we're
6 talking about and the notice for its purchase -- .

7 I'm talking about Exhibit 191.

8 Would you give it to him?

9 A. What do you want me to look at?

10 Q. I want you to look at that statement and tell me
11 if it doesn't reflect the acquisition of the notes, the
12 creation of the bonds and the first depreciation of the
13 equipment, and they're all the same?

14 If you can't tell, I'll give you another
15 exhibit.

16 MR. BONO: That exhibit comes with several pages,
17 Your Honor.

18 MR. BETTIUS: He looked at several pages. I
19 think the witness will tell me if he can tell or not, and
20 if he can't, that is what I want to know.

21 A Well, the only one I see regarding equipment is
22 note 6.

23 BY MR. BETTIUS:

J.APP. 0730

PLATT & DAWSON, INC. (703) 591-0007

1 Q. All right. Isn't that the same equipment that we
2 see carried continuing on these sheets describing --

3 Can't tell?

4 A. No. I mean, the amounts seem different.

5 Q. Show the witness Exhibit 367.

6 A. Okay.

7 Q. I want you to go over to page 3.

8 A. All right.

9 MR. BONO: I don't understand. Page 3 of what?

10 MR. BETTIUS: 367.

11 A. Yes. Is there a question?

12 BY MR. BETTIUS:

13 Q. Does it not say there the equipment is leased to
14 JMHI, Inc., and does it say has no obligation on the part
15 of the hospital?

16 A. That's what this says.

17 Q. I would like you to look at the next exhibit
18 which is the IRS audit adjustment, Exhibit 380.

19 I'm looking at the first page of adjustments
20 where it says: "It is held that a certain sale and
21 lease-back arrangement --"

22 A. What Bates number?

23 Q. The Bates number is 012196. "It is held that a

J.APP.0731

PLATT & DAWSON, INC. (703) 591-0007

1 certain sale and lease-back arrangement the partnership
2 incurred with Jefferson Memorial Hospital, Inc. is not to
3 be recognized for tax purposes. The partnership is not the
4 legal owner of the equipment involved in the sale and
5 lease-back arrangement and, accordingly, is not entitled to
6 any depreciation of the equipment."

7 Do you see that note?

8 A Yes.

9 Q. And it refers to the very lease, doesn't it?
10 Isn't that \$17,500 payment the one you found to be in
11 default?

12 A. Well, the ones that I was looked was 42,000 in
13 the later years.

14 Q. Yes, sir. In later years.

15 But when you look at the allowance, there's no
16 doubt in anyone's mind when you look at all the payments
17 it's that lease.

18 MR. BONO: Objection, Your Honor. There's no
19 foundation.

20 THE COURT: Rephrase that question.

21 BY MR. BETTIUS:

22 Q. When you look at the adjustments that they made
23 in each year, it describes this lease, does it?

J.APP. 0732

PLATT & DAWSON, INC. (703) 591-0007

1 MR. BONO: Objection, Your Honor. Same --

2 THE COURT: He can answer if he recalls from his
3 review of the records.

4 A I can't tell if it is the same lease.

5 BY MR. BETTIUS:

6 Q. Do you find anywhere, because you said reviewed
7 JMHI's and JMHA's statements, other equipment?

8 A. I don't recall any.

9 Q. You don't recall. Do you recall any other lease
10 dated January 2, 1966 entered anywhere on anybody's books?

11 A. No. I'm not sure if this is January 2nd though.

12 Q. Let's take their tax return, if you will. Look
13 at the adjustments on this sheet. I'm still on the same
14 exhibit.

15 And if you will go through the various Bates
16 numbers, you see, do you not, the rent for the various
17 years that are disallowed, Mr. DenUyl? I mean, the rents
18 that they're credited for and the depreciation that's taken
19 away.

20 Q. Which pages?

21 A. They follow in sequence, all of the adjustments
22 that are made.

23 Q. Okay. Do you find an identity of rental

J.APP. 0733

PLATT & DAWSON, INC. (703) 591-0007

1 payments?

2 A. Identity --

3 Q. Well, what rental payment was due?

4 For instance --

5 Would you look at Exhibit 207?

6 A. I have it over here. Yes.

7 Q. Page 45091?

8 A. Yes.

9 Q. Would you look at the present rental that's
10 disallowed or the rental that's shown there.

11 A. For equipment? Equipment is 17,500.

12 Q. Okay. And do you see any other equipment shown
13 on JMHA's statement?

14 A. Not on this page, no.

15 Q. Anywhere?

16 A. Not on the income statement. That's the only
17 thing I see.

18 Q. Where else would you look for it? Isn't that
19 where you record rent on equipment?

20 A. On the rent.

21 Q. Isn't the equipment rented from JMHA and don't
22 you find in 1971 that there was a donation, supposed
23 donation, of this equipment and a donation of the building?

J.APP. 0734

PLATT & DAWSON, INC. (703) 591-0007

1 MR. BONO: Objection, Your Honor. Argumentative.

2 THE COURT: Objection overruled.

3 BY MR. BETTIUS:

4 Q. That's part of your analysis, isn't it?

5 A. No. I didn't assume a donation.

6 Q. Well, there was a transfer of the equipment and
7 the building, as I understand it; is that correct?

8 A Yes, that's right.

9 Q. Well, if I'm correct, \$280,000 disappears from
10 your liabilities, doesn't it?

11 A. If you are correct what?

12 Q. That this is the \$280,000 lease that you show
13 there as part of your thousand sixty-nine. Your
14 liabilities are overstated right there, aren't they?

15 MR. BONO: I'm going to object to the question
16 because about ten minutes ago Mr. Bettius promised that he
17 would link up these leases and he hasn't done that.

18 THE COURT: Objection overruled.

19 BY MR. BETTIUS:

20 Q. If this is the lease that you are showing there
21 as a liability with the rent unpaid, then your liabilities
22 are overstated by \$280,000, aren't they?

23 A. Well, I think there's two issues and I'm not

J.APP. 0735

PLATT & DAWSON, INC. (703) 591-0007

1 exactly clear. Because the IRS disallows depreciation
2 deductions doesn't mean it's not a liability.

3 Q. They said they're not the owner of the equipment.

4 A. Then why did they reflect that in the financial
5 statements?

6 Q. I think it's a very good question, Mr. DenUyl. A
7 very good question. And it was one of the reasons they're
8 exemption was revoked, isn't it? I mean, read it. That's
9 why they revoked it.

10 A. I don't have any knowledge of it.

11 Q. Did you read this letter? It starts out, does it
12 not --

13 A. You had me go to page 3. Does it talk about it
14 in page 1?

15 Q. The exempt status of Jefferson Memorial Hospital,
16 Inc. has been recommended to be revoked as of January 1,
17 1966.

18 A. Excuse me. What are you on?

19 Q. 012193.

20 A. What exhibit?

21 Q. The same one you are looking at, the '72; 380.

22 A. It is recommended that it be revoked.

23 Q. And it's being recommended for revocation, is it

J.APP. 0736

PLATT & DAWSON, INC. (703) 591-0007

1 not, on the basis that since the actions of the partnership
2 are responsible for the recommendation for revocation of
3 the hospital's exempt status, contributing to the
4 hospital's exempt status, contributions to the hospital are
5 recommended to be disallowed; isn't that correct?

6 A. But this is 1966.

7 Q. Pardon me? That's for year 1966.

8 A. I understand, but the revocation didn't happen
9 until 1971.

10 Q. They revoked the charitable status all of the way
11 back to '66, didn't they, Mr. DenUyl?

12 A. Yes. I know they did that.

13 Q. And this is one of the questions I want to ask
14 you. Did you examine the tax returns?

15 A. Which tax returns?

16 Q. For JMHI.

17 A. JMHI?

18 Q. Uh-huh.

19 A. I probably did.

20 Q. Did you notice anything strange about them?

21 A. I don't recall.

22 Q. They were all filed on the same day, weren't
23 they?

J.APP. 0737

PLATT & DAWSON, INC. (703) 591-0007

1 A. I don't remember that.

2 Q. Weren't all of the returns for '66, '67, '68 and
3 '69 and '70 filed on the same day?

4 A. Well, I suppose if they had to go back and refile
5 as a tax-paying entity, that's what you would do.

6 Q. That's right. So the income and the balance
7 sheet reflected in those tax returns would be affected,
8 would it not, by the adjustments necessary to convert it to
9 a tax-paying corporation?

10 A Well, again, they didn't own the equipment,
11 according to the P&L.

12 Q. That's right. And the IRS said they did; isn't
13 that correct?

14 A. That's what they're saying here.

15 Q. And all of the letters seem to indicate, do they
16 not, that even after 1966 -- and the one I'm referring to
17 specifically is Exhibit --

18 If you look at 367, it is written, is it not,
19 after January 2, 1966, and it says the equipment is at no
20 cost to the hospital.

21 A. It's referring to some equipment at no cost to
22 the hospital.

23 Q. Well, what equipment does the hospital have other

J.APP.0738

PLATT & DAWSON, INC. (703) 591-0007

1 than that shown on the balance sheet?

2 A Well, it had other equipment.

3 Q. What other equipment?

4 A. There's other equipment on the books.

5 Q. Well, if I'm correct -- and can you show me what
6 other equipment?

7 A Yes.

8 Q. You're talking about this \$16,000 worth?

9 A Well, let's get the --.

10 Do you have the financial statement for JMHI as
11 of 1971?

12 Q. Uh-huh. Do you want it? It's Exhibit 200, I
13 think.

14 A. Okay. It's got fixed equipment here of 136,000,
15 major movable equipment, 321,000.

16 Q. Isn't that the exact number that the IRS found?

17 A. I didn't see that.

18 Q. But if I'm correct, your liabilities are
19 overstated by \$281,000; correct?

20 MR. BONO: Objection, Your Honor. No
21 foundation.

22 THE COURT: Objection overruled.

23 BY MR. BETTIUS:

J.APP. 0739

PLATT & DAWSON, INC. (703) 591-0007

1 Q. You show a lease liability for equipment here of
2 \$280,000, don't you?

3 A. Yes.

4 Q. And if it's the same one, your liabilities are
5 overstated by two-eighty. That's easy, isn't it, Mr.
6 DenUyl?

7 A. It would be the same one, that they didn't really
8 owe it. But I'm not confident of that, because it was on
9 the statement for so many years.

10 Q. Yes. And it was on the statement and what the
11 court -- what the IRS did was make them go back for each
12 and every one of those years and file amended returns;
13 isn't that correct?

14 A Yes. But was there a true liability?

15 Q. I'm going --

16 MR. BONO: Your Honor, can I ask Mr. Bettius to
17 please not interrupt.

18 MR. BETTIUS: He's right and I apologize.

19 BY MR. BETTIUS:

20 Q. The note tells us who the lessor is, doesn't it?

21 A. I would have to check. Which way do the years go
22 in the exhibits?

23 Q. Pardon me, sir?

J.APP. 0740

PLATT & DAWSON, INC. (703) 591-0007

1 A. This will do.

2 No, it doesn't say.

3 Q. It doesn't say?

4 A. No.

5 Q. All right. Now, we have no way of knowing, do
6 we, how the rent was fixed; isn't that correct?

7 A. How rent on what? The equipment?

8 Q. On the building.

9 A. On the building?

10 Q. Yes.

11 A. You mean how it was originally determined?

12 Q. Yes.

13 A. No. I know just what they were paying.

14 Q. Do you know who owned the assets of JMHI that it
15 was renting?

16 A. The building?

17 Q. And equipment.

18 A. JMHA, was my understanding.

19 Q. Now, if we wanted to make sure that the
20 corporation remained thin and we owned all of its assets,
21 that's not difficult, is it?

22 A. Sorry. If it's thin?

23 Q. Yes. If we want to make sure that if somebody

J.APP.0741

PLATT & DAWSON, INC. (703) 591-0007

1 comes after it, we can be very successful if we own all of
2 its assets, can't we?

3 A. You mean they would have nothing to get, or is
4 this a legal question.

5 Q. We can fix the rent, we can fix the terms, we can
6 do whatever we want.

7 A. My understanding was the building was fixed at
8 cost.

9 Q. Are you aware that \$39,000, for instance, of the
10 bonds on that statement had previously been testified to be
11 payments of rent that were issued as bonds?

12 A. I have no knowledge of that.

13 Q. Did you see a note on this 1982 revocation that
14 the IRS held that the equipment lease was a method for
15 selling the corporation's bonds on the installment plan?

16 A. I didn't see that.

17 Q. Well, we have another problem, don't we, if
18 that's true? You would be showing a debt, would you not,
19 for the equipment, and if in fact bonds had been issued for
20 the equipment, you would have a liability stated for the
21 bonds, wouldn't you?

22 A. You would have a liability for the bonds.

23 Q. Correct. Now, do you show bonds on that

J.APP. 0742

PLATT & DAWSON, INC. (703) 591-0007

1 statement?

2 A. Which statement?

3 Q. 1971.

4 A. For JMHI?

5 Q. Yes, sir.

6 A. What exhibit is that again?

7 Q. It's 200. Sorry. 199?

8 A. Okay. 195?

9 Q. Try 782.

10 A. Well, then we've got to get another book.

11 Q. Either one.

12 A. Well, I have --

13 Q. I think we need 782 for the balance sheet, don't
14 we?

15 MR. BERGHOLD: 782 is the correct exhibit.

16 A. There's an balance sheet here.

17 BY MR. BETTIUS:

18 Q. All right. Tell me if it shows bonds being
19 issued.

20 A. Being issued?

21 Q. Liabilities.

22 A. There is.

23 Q. How much?

J.APP. 0743

PLATT & DAWSON, INC. (703) 591-0007

1 A. Four hundred nineteen thousand.

2 Q. Do you know what they were issued for?

3 A. Not specifically.

4 Q. Do you know who they're issued to?

5 A. No.

6 Q. Did you notice that this hospital, with as much
7 debt as it had, carried a lot of notes from doctors?

8 A Yes. They were doing essentially the financing
9 of the hospital.

10 Q. No, no, no. Notes payable to the hospital. Did
11 you notice that?

12 A. Payable to the hospital?

13 Q. Uh-huh.

14 A Well, I thought you were talking about bonds.

15 Q. Did you notice that the hospital in debt had a
16 lot of notes that it were owed to it by doctors?

17 A. No.

18 Q. Didn't notice that. Did you notice that the IRS
19 found that bonds were issued and notes were taken in
20 payment of bonds and that when the notes weren't paid, the
21 hospital didn't enforce them, and that was one of the
22 reasons for revocation? Did you notice that?

23 A. There's only \$4,000 in notes receivable on here.

J.APP. 0744

PLATT & DAWSON, INC. (703) 591-0007

1 Q. Look at the '67 financial statement.

2 A. What exhibit is that?

3 Q. Would you look at Bates number DT 000165.

4 A. Okay.

5 Q. Do you see a lot of notes from doctors?

6 A Yes.

7 Q. It's like an honor roll of directors, isn't it?

8 MR. BONO: Objection, Your Honor.

9 BY MR. BETTIUS:

10 Q. It's a representative body of the directors, isn't
11 it?

12 A. I don't know all of the directors so I can't
13 testify to that.

14 Q. Well, we find a corporation that has little
15 capital as you say, supposedly deeply in debt, and it's
16 carrying notes from its directors who own all of its
17 assets.

18 Does that, as a reviewer for an Attorney General,
19 set off any bells in your head?

20 MR. BONO: Objection, Your Honor. Surely
21 argumentative. And it has nothing to do with his valuation
22 and for what he's being offered. Mr. Bettius is arguing.

23 THE COURT: Rephrase your question.

J.APP. 0745

PLATT & DAWSON, INC. (703) 591-0007

1 MR. BETTIUS: I will change it.

2 BY MR. BETTIUS:

3 Q. Does it set off a badge of potential director
4 abuse that you want to investigate?

5 A. This is in 1967 and I'm doing it as of 1971 where
6 there were almost no notes receivable.

7 Q. Are you sure that in 1971 these notes had all
8 been paid, or were they treated in some other way, Mr.
9 DenUyl?

10 A Well, what ways would they have been treated?

11 Q. I'm asking you. You are the one who made the
12 analysis. Did these notes disappear through payment, if
13 you know, or just tell me if you can't tell.

14 A. No, they're not on the balance sheet at that
15 time, so as a reviewer I would not be particularly
16 concerned that there were outstanding receivables.

17 Q. You were not concerned nor did you make any
18 investigation, did you, of the related parties'
19 transactions extant between the for-profit partnership and
20 the not-for-profit corporation?

21 MR. BONO: Objection, Your Honor.

22 BY MR. BETTIUS:

23 Q. Did you make any such investigation?

J.APP. 0746

PLATT & DAWSON, INC. (703) 591-0007

1 MR. BONO: The witness already testified he
2 reviewed the relationship between the parties.

3 THE COURT: Objection overruled.

4 BY MR. BETTIUS:

5 Q. Did you make an investigation like that?

6 A. There was doctor financing; I'm aware of that.
7 The hospital was converted and some of the same people were
8 shareholders.

9 But in terms of my valuation, it really didn't
10 make a lot of difference.

11 Q. Mr. DenUyl, isn't it one of the first precepts of
12 valuation in related-parties transactions where you see a
13 number of related-parties transactions and a close
14 relationship between directors and the corporation that you
15 have to, as a premise of valuation, determine the fairness
16 of the insider transactions? Isn't that the first premise
17 of valuation?

18 A. No, it's not the first premise of valuation. You
19 would look to see if any of the related-party transactions
20 were not at fair market value. For example, if the bonds
21 were priced at too high an interest rate. And we didn't
22 see any of that.

23 Q. What you saw was the that the manipulation of the

J.APP. 0747

PLATT & DAWSON, INC. (703) 591-0007

1 bonds caused revocation. Did you see that the IRS also
2 charged by way of revocation that they had billed to the
3 hospital cost of improvement which the hospital had paid
4 and that they were then billed back to the hospital and
5 released? Did you notice that in any of your
6 investigations?

7 A. No. But regarding the bonds, the bonds were
8 guaranteed by the doctors and then lent to the hospital.
9 So, in other words, you know, they received them at six on
10 their personal recognizance and loaned them at eight.

11 I didn't find that to be particularly egregious.

12 Q. When you read the minutes did you notice that the
13 hospital was referring for collection to its attorney notes
14 owed by the doctors who hadn't paid the notes for their
15 bonds? Did you see that?

16 A. No, I don't recall that.

17 Q. Did you see that the IRS, as part of its
18 revocation, determined that bonds were issued for notes,
19 the notes weren't enforced, and then the notes were paid by
20 the hospital? Did you note that?

21 A. I didn't see that.

22 Q. Mr. DenUyl, suppose with me for a moment that I
23 want to create a tax shelter investment.

J.APP. 0748

PLATT & DAWSON, INC. (703) 591-0007

1 Could I have a more opportune model than to
2 create a charity, have it pay me rent, build my equity, and
3 any income that it would generate would be tax-free?

4 Could I build a better model if I could get away
5 with it?

6 A. I don't know.

7 Q. Oh, you do know, don't you, Mr. DenUyl?

8 A. I'm not a tax advisor.

9 MR. BONO: Objection, Your Honor. He's just
10 arguing with the witness.

11 THE COURT: Objection sustained.

12 BY MR. BETTIUS:

13 Q. Mr. DenUyl, a tax-exempt organization pays no
14 taxes, does it?

15 A. That's right.

16 Q. And that means that 50 percent --

17 And you were very critical and probably correctly
18 so, that for people not using the right rate -- life would
19 be very good for all of us, wouldn't it, if we didn't have
20 to pay income tax?

21 A. It would be better.

22 Q. And it would be particularly good, would it not,
23 if 50 percent of our income we could keep? That would be

J.APP. 0749

PLATT & DAWSON, INC. (703) 591-0007

1 good?

2 A. That would be good.

3 Q. And you and I would celebrate if we could achieve
4 that status, wouldn't we?

5 A Yes.

6 Q. And isn't that precisely what the IRS found was
7 going on here?

8 A. I don't know all that you are alleging that was
9 going on here.

10 Q. Well, you have come in to this Court and
11 expressed an opinion that no money was due to the charity
12 by virtue of it being converted.

13 A. Okay. Let me explain. What I did was say what
14 was the hospital worth at these three dates. Okay? If
15 there's a charitable deduction due because it's worth a
16 lot of money, that's what I was doing.

17 Did I go back and examine all the interrelated to
18 say that there was impropriety? No, I didn't do that.

19 Q. Absolutely. And what you did was to apply
20 standard valuation techniques to numbers that were given to
21 you and you believed them, didn't you?

22 You're saying on the numbers, on the face of the
23 numbers given to me, this is what I would conclude.

J.APP. 0750

PLATT & DAWSON, INC. (703) 591-0007

1 A. Well, I think you've got to be careful. I
2 mean --

3 Q. Yes do you, sir. I concede that.

4 A. Most of the numbers I believe were probably just
5 fine, and if you look at the analysis, I mean, the
6 magnitude of the debt was so great as to overwhelm the
7 value of the enterprise.

8 Q. I want to talk about that debt.

9 A. Okay.

10 Q. I think I may have found what you need to tie
11 this lease down.

12 Would you look at Exhibit 194 in the notes to the
13 financial statements contained on 43926.

14 A. The equipment you are referring to?

15 Q. Yes.

16 A. Describe what the rental is there.

17 A. For which year? I mean, it's the same amount as
18 we have every year.

19 Q. Yes sir. There's now an identity, isn't there?

20 A. What? It's the same number.

21 Q. Seventeen thousand five hundred for the first two
22 years.

23 A. Right.

J.APP. 0751

PLATT & DAWSON, INC. (703) 591-0007

1 Q. That's not what we just found on that IRS
2 statement, is it?

3 A. Same number.

4 Q. The corresponding liability for the leased
5 equipment on 43927 as similarly been entered on the books
6 and appears on the accompanying balance sheet as the lease
7 agreement. That's what it says, doesn't it?

8 A. Where are you? Sorry.

9 Q. The last paragraph of that note.

10 A. The last paragraph to the note?

11 Q. Note 6.

12 A Yes. Did they deduct, allow 17,500 every year?

13 Q. No, sir. The amount changes. And you will see
14 it when you look at the statement, and if I'm wrong, I
15 suppose counsel would surely rebut me.

16 Q. I'm looking for that summary of liabilities where
17 you get to the debt.

18 A. I've got it.

19 Q. By the way, have you ever seen a situation in one
20 of these conversions where an Attorney General is told to
21 pick a date for the conversion: '71, '73 or '75?

22 A. You asked me that and I said I have not.

23 Q. Now, you have described this as a sale, haven't

J.APP.0752

PLATT & DAWSON, INC. (703) 591-0007

1 you, Mr. DenUyl, because you said it is a willing buyer and
2 a willing seller?

3 A. That's the standard of fair market value that you
4 use in a conversion.

5 Q. Well, I understand, but the transaction here
6 wasn't a sale, was it?

7 A. No, but you set up this hypothetical for a
8 conversion.

9 Q. I understand that. But the structure of the
10 contemplated transaction was not a sale, was it?

11 A Well, it was alleged to be a merger.

12 Q. Alleged to be a merger. Have you ever heard the
13 valuation example where a man has a new Rolls Royce on the
14 desert and he's out of gas and another man has got 10
15 gallons of gasoline and they're 40 miles from water and
16 which one is more valuable if the Rolls Royce is out of
17 gas? Have you ever heard that one?

18 MR. BONO: Objection, Your Honor.

19 A. No, I haven't.

20 THE COURT: Get to the point, if you would.

21 MR. BETTIUS: Yes, sir.

22 BY MR. BETTIUS:

23 Q. This was a single purpose building, wasn't it?

J.APP. 0753

PLATT & DAWSON, INC. (703) 591-0007

1 A. It was a hospital facility, yes.

2 Q. And it was, without an operator, worthless,
3 wasn't it?

4 A. No. I'm sure it wasn't worthless.

5 Q. What do you do? Play ping-pong in it? What
6 would you do with it if you didn't have a hospital?

7 A. Convert it to a long-term facility.

8 Q. So your view of it is that its highest and best
9 use -- isn't that one of your concepts -- is as a hospital
10 if it's a single-purpose building?

11 A Yes. I agree with that.

12 Q. So when you tell me it's a nursing home, then
13 it's not a single-purpose building. You're saying it's
14 convertible to another purpose. Is that what you're
15 telling us, that it's not single-purpose?

16 A. You said it was worthless. I don't believe it
17 was worthless.

18 Q. But you agree it's a single-purpose building?

19 A. At that time it was.

20 Q. Did you understand what the contemplated actions
21 that the parties were going to take was once they got the
22 two assets united? Did you know what they were going to do
23 with it?

J.APP. 0754

PLATT & DAWSON, INC. (703) 591-0007

1 A. What two assets?

2 Q. The hospital and the building. Once they put
3 them together in this merger, do you know what they were
4 going to do?

5 A. What?

6 Q. They were going to sell it in the stock market.

7 A. (Laughing) Mr. Bettius, you can't sell a
8 stand-alone hospital with these revenues on the stock
9 market.

10 Q. I understand that that's your opinion, but that's
11 what they were going to do; isn't that correct?

12 A. No.

13 Q. They didn't say that?

14 A. If they said it, they were very naive. No
15 investment banker would ever undertake that.

16 Q. I understand that. But that's what they thought
17 they were doing; isn't that correct?

18 A. I don't know that.

19 Q. Well, did you look at the owner's contemporary
20 view of value as appropriate to go to directors to ask them
21 what they think it's worth?

22 A. No, I never do that.

23 Q. You never do that?

J.APP. 0755

PLATT & DAWSON, INC. (703) 591-0007

1 A. They generally have a skewed view either one way
2 or the other.

3 Q. Did you find any indication of insolvency here?

4 A. It was technically insolvent at 1971.

5 Q. Technically?

6 A Yes.

7 Q. Did it go out of businesses?

8 A. No. But its liabilities were greater than its
9 assets.

10 Q. That's on the balance sheet; isn't that true?

11 A. And that's the standard of insolvency in most
12 courts.

13 Q. You testify in a lot of bankruptcy courts, don't
14 you?

15 A. I have done it in a few.

16 Q. You tell me that's the standard in bankruptcy
17 court?

18 A. That is one of the standards: inadequate capital.

19 Q. The standard for insolvency for bankruptcy is
20 that you can't pay your debts in the ordinary course of
21 business.

22 Now you know that, don't you, Mr. DenUyl?

23 A. No. I'm telling you the technical standard is

J.APP. 0756

PLATT & DAWSON, INC. (703) 591-0007

1 inadequate capital, and this hospital --

2 I'm not even claiming that but I'm saying it
3 could have probably met that definition.

4 Q. You told me in your deposition that this wasn't a
5 case of insolvency?

6 A. I didn't look at it that way. They were
7 operating.

8 Q. And what's interesting is that that situation was
9 bad supposedly in 1971, and it improved and got better by
10 your own analysis by 1973.

11 A. It was better, yes.

12 Q. So rather than going insolvent, it was getting
13 better. And when you look at 6/75, we're still in
14 business, aren't we?

15 A. 6/75?

16 Q. 1975. We're still in business.

17 A. Yes.

18 Q. And we find in 1975 the stockholders reacquiring
19 it, the doctors; isn't that true?

20 A. The building.

21 Q. They united, did they not, the operation and then
22 leased it back to another corporation?

23 A. There was a sale lease-back in 1975.

J.APP. 0757

PLATT & DAWSON, INC. (703) 591-0007

1 Q. What is a COPN?

2 A. Certificate of Public Need.

3 Q. When did Virginia adopt the law?

4 A. I think it was '73 or '72.

5 Q. What happened to these institutions by virtue of
6 COPN status? Did they become more valuable?

7 A. Not necessarily. At that time there was a lot
8 of building of beds in this area.

9 Q. If Dr. Tauber testified that he justified the
10 donations of stock to his own charitable foundation at \$15
11 a share in 1975 based on the COPN, do you think that that
12 would have no relative bearing on what he thought it was
13 worth?

14 A. If that's true, what he thought it was worth.

15 Q. Do you know anything about Dr. Tauber?

16 A. What do you want me to know?

17 Q. Do you know he's qualified in this court as an
18 expert in real estate?

19 A. No, I don't know that.

20 Q. Do you know him to be an expert in real estate,
21 Mr. DenUyl?

22 A. I don't know much about his background.

23 Q. You don't know much about the doctor.

J.APP. 0758

PLATT & DAWSON, INC. (703) 591-0007

1 THE COURT: What exhibit?

2 MR. BETTIUS: 709-E, Your Honor.

3 BY MR. BETTIUS:

4 Q. You notice on this statement about these things
5 we've been calling "contract adjustments" -- do you notice
6 any change happening there in '75?

7 A. Which adjustments?

8 Q. These contract adjustments.

9 A. You mean the Medicare and --

10 Q. Yes.

11 A. They've been going down since 1971.

12 Q. Well, they disappear, don't they?

13 A. Not quite.

14 Q. Almost. Do you know why?

15 A. The cash flow has been better and I assume they
16 can pay it.

17 Q. Not really. Did you notice in the 1974 statement
18 that they had been accounting for them incorrectly?

19 A. That doesn't make them go away.

20 Q. That's what I said, but you have counted them at
21 as long-term liabilities, haven't you?

22 A. No, sir.

23 Q. Well, if they should have been on this statement

J.APP. 0759

PLATT & DAWSON, INC. (703) 591-0007

1 along and they shouldn't have been considered long-term
2 liabilities, that's another overstatement of liabilities,
3 isn't it?

4 If they're washing through the income statement,
5 they shouldn't be there. That's fundamental, isn't it?

6 A. They should be there. They're liabilities that
7 have not been expensed or paid at that time, and it does
8 not matter if they're long-term or short term to the
9 analysis.

10 Q. Are you aware of accounting conventions of how
11 you treat these kinds of expenses -- and they're not
12 expenses, they're adjustments to contracts as short-term,
13 non-interest-bearing obligations? Do you think they belong
14 as long-term liabilities?

15 A Well, number one, I have just stated it doesn't
16 matter to my analysis if they're long-term, but for most
17 corporations, they're able to pay them on a yearly basis
18 and so they are current.

19 Q. If they're washed through the income statement
20 and they're on the income statement, you have counted them
21 twice, haven't you?

22 A. That's not what I believe is happening here.

23 Q. That's not what you believe?

J.APP. 0760

PLATT & DAWSON, INC. (703) 591-0007

1 A. No.

2 Q. Now, in the review of medical hospitals, do you
3 normally see this liability carried on the balance sheet?

4 A Yes.

5 Q. You do?

6 A Yes.

7 Q. And are you familiar and do you recognize that
8 there's an appropriate audit procedure accounting for these
9 liabilities prescribed by the AICPA?

10 A Yes.

11 Q. And it's your testimony in this courtroom that
12 that standard provides that these are carried on the
13 balance sheet and they're carried as long-term liabilities?

14 A. No. They're normally short-term liabilities.

15 Q. And in your capitalization of earnings, you're
16 telling me that you considered short-term liabilities?

17 A Yes. When they exceed the required working
18 capital, you have to deduct them. In other words, a buyer
19 will assume that when they buys a hospital it has adequate
20 working capital. If you move these into working capital,
21 you will have negative working capital and therefore they
22 will not pay you as much.

23 Q. Did you notice what the change in accounting

J.APP. 0761

PLATT & DAWSON, INC. (703) 591-0007

1 policy had on corporate operations in 1974? I'll find it.

2 A. There was a change in 1974, yes. I'm aware of
3 that.

4 Q. Now, did you in your review of the minutes of
5 this corporation note the impact that that change in
6 accounting policy had on the corporation?

7 A. It had no effect on the income statement and
8 there was an adjustment of \$116,000 to the retained
9 earnings in 1973.

10 Q. Would you show the witness Exhibit 123.

11 A. Is there a particular part that you want me to
12 read?

13 Q. Yes. I will be there in just a second.

14 Do you know who Mr. Ritter was?

15 A. No.

16 Q. Would you look at that part of the minutes under
17 item 6-A.

18 A. Okay.

19 Q. What does it say there?

20 A. Do you want me to read it to you?

21 Q. Yes.

22 A. "Mr. Ritter gave the financial report. He
23 pointed out that the report showed a loss of \$105,000 which

J.APP. 0762

PLATT & DAWSON, INC. (703) 591-0007

1 was due to a change in their accounting procedure which
2 makes write-offs for contractual allowances and bad debts
3 at the time of discharges instead of at time of settlement
4 on the actual bad-debt write-off. Had a prior procedure
5 been used for --"

6 Q. " -- the '74 --"

7 Is that what it says?

8 A. I can't read it. But I go on. "-- the
9 financial statement would have shown about \$180,000
10 profit. Following a number of questions and some
11 discussion, Mr. Ritter reported that the hospital cash
12 receipts were running about \$300,000 better than the same
13 period for 1973."

14 Q. Did you think that the hospital was in worse
15 condition in 1974 based on your analysis, or in better
16 condition?

17 A. Than --

18 Q. It had been the previous year.

19 A. It had a lower profit in 1974.

20 Q. And it was totally due, was it not, to a change
21 in accounting policy?

22 A. There's no reflection of that in the financial
23 statements and this does not comport to the financial

J.APP. 0763

PLATT & DAWSON, INC. (703) 591-0007

1 statements.

2 Q. I'm talking about in terms of the operation of
3 the hospital. They're telling you that they're running
4 \$300,000 ahead and but for -- and we're talking about
5 cash. We're always talking about this hospital not having
6 cash. They had three hundred thousand dollars ahead and if
7 they had reported it on a consistent basis, it would have
8 shown as \$180,000 profit.

9 A. This does not coincide with the financial
10 statements which were audited. I don't know who this guy
11 is, but I generally believe in the audited financial
12 statements more than some guy's report that doesn't conform
13 to them.

14 Q. The audited financial statements of this company
15 are consistently incorrect, aren't they?

16 A. No, I have no knowledge of that.

17 Q. Do they report that a merger occurred on June 30,
18 1971?

19 A. I don't know if they use the word "merger." They
20 might have. I could check.

21 Q. And the minutes, on the other hand, reflect
22 clearly it didn't happen. Am I correct?

23 A. Everybody understood it to happen in 1971.

J.APP. 0764

PLATT & DAWSON, INC. (703) 591-0007

1 Q. They understood it to happen?

2 A Yes.

3 Q. Did you read the minutes of October 19, 1971?

4 A. I don't recall them.

5 Q. I'm going to show them to you.

6 I want Ms. Harper to also show the witness the
7 1971 tax return.

8 MR. BONO: Your Honor, I object to these
9 questions. We have gone on for quite a while. It has
10 nothing to do with Mr. DenUyl's valuation. He evaluated
11 the entity on three specific dates and Mr. Bettius is just
12 arguing this facts. It has nothing to do with this man's
13 analysis. He hasn't tied it in to his analysis at all.

14 THE COURT: The question would be the effect --
15 if these things you observed are true, Mr. Bettius, what
16 effect, if any, did it have on his valuation.

17 MR. BETTIUS: Yes. What it really shows, Your
18 Honor, is that the income reported on the financial
19 statements and the income reported on the tax returns is
20 erroneously reported, and, Your Honor, in response to the
21 objection, I'm going somewhere with this and I hope Your
22 Honor will give me a little latitude.

23 THE COURT: All right. Go ahead.

J.APP.0765

PLATT & DAWSON, INC. (703) 591-0007

1 BY MR. BETTIUS:

2 Q. You have just indicated, have you not, that you
3 would rely on the audited financial statements; correct?

4 A. More than this guy's assertions.

5 Q. The audited financial statement for the year
6 ending June 30, 1971 says a merger has occurred; is that
7 correct?

8 A. Can I see them?

9 Q. Yes. Exhibit 200.

10 A. It says JMHI merged in to JMHC.

11 Q. And would you show the witness the 1971 tax
12 return filed November 1972.

13 It indicates, does it not, on that tax return
14 that the two companies had merged and that really JMHI -- I
15 want you to tell me from an accounting point of view that
16 JMHI really is JMHC; it's just changed its name place of
17 organization?

18 MR. BONO: Objection, Your Honor. Argumentative.

19 MR. BETTIUS: No.

20 THE COURT: Just a minute.

21 BY MR. BETTIUS:

22 Q. It doesn't --

23 THE COURT: Just a minute.

J.APP. 0766

PLATT & DAWSON, INC. (703) 591-0007

1 MR. BETTIUS: Excuse me. I'm sorry.

2 THE COURT: There's an objection that the
3 question is argumentative. I don't know that that's the
4 problem, but you have asked this gentleman about it from an
5 accounting standpoint?

6 MR. BETTIUS: No, Your Honor. I'm going to ask
7 him to read this statement on the tax return.

8 MR. BONO: The statement speaks for itself.

9 THE COURT: Well, let him read it and I'll hear a
10 question.

11 A. Do you want me to read it allowed or --

12 MR. BETTIUS:

13 Q. Yes, sir.

14 MR. BONO: What page number is that?

15 MR. BETTIUS: What is the Bates number?

16 MS. HARPER: 2191. Tag 2191.

17 MR. BONO: Thank you.

18 A. "On June 30, 1971, Jefferson Memorial Hospital,
19 Inc., a Maryland corporation, underwent an F
20 reorganization." I can't read a couple words -- "of a mere
21 change of the place of organization and a change of name to
22 Jefferson Memorial Corporation, a Delaware corporation, be
23 the surviving corporation."

J.APP. 0767

PLATT & DAWSON, INC. (703) 591-0007

1 Q. Now, doesn't that mean that JMHI is JMHC?

2 A. No, because JMHC has different assets and
3 liabilities. I know what it says, but that's not right.

4 Q. It's not right?

5 A. No.

6 Q. The next day, did the hospital open and continue
7 business as usual?

8 A Yes. The operations were the same.

9 Q. The building was the same?

10 A. But it wasn't owned by JMHI. It was owned by
11 JMHA and then by JMHC.

12 Q. Do you know what JMHI's statements say happened
13 to the building in their tax return?

14 A. I can look if you would like.

15 Q. I would like to show them to you.

16 MR. BONO: Let me object again. This is just
17 argument and it has nothing to do with valuation. Mr.
18 Bettius has three times during this cross-examination said
19 he was going to link things up.

20 THE COURT: I suspect I know where he's headed,
21 but I wish you would get there, Mr. Bettius.

22 MR. BONO: I wish he would link it to any point
23 that affects the valuation. He hasn't done that yet.

J.APP. 0768

PLATT & DAWSON, INC. (703) 591-0007

1 THE COURT: Go ahead, Mr. Bettius.

2 MR. BETTIUS:

3 Q. It says: "One represents the capital balances
4 June 1971 which were reduced by zero by a proportionate
5 distribution of stock received from Jefferson Memorial
6 Hospital, Inc. in exchange for all assets and liabilities
7 of JMHA."

8 MR. BONO: I object. If he's got the actual
9 document, I prefer he see the document.

10 THE COURT: Do you have it there?

11 THE WITNESS: Yes, I do.

12 MR. BONO: Well, sorry.

13 A. What was your question again?

14 BY MR. BETTIUS:

15 Q. It says that they went from JMHA to JMHI, doesn't
16 it?

17 A Well, it says they received a distribution of
18 stock from JMHI, which of course is not possible.

19 Q. Well, if you read the note to the financial
20 statement, they all say, do they not, that the day before,
21 July 1, that these two companies exchanged stock and became
22 the same, "I" and "C"?

23 A. Who exchanged stock?

J.APP. 0769

PLATT & DAWSON, INC. (703) 591-0007

1 Q. That "I" and "C" exchanged stock and became one
2 and the same.

3 A. Well, I don't --

4 Q. Isn't that what they have described? Whether it
5 could happen or not, that "I" and "C" exchanged stock on
6 the 1st and that "I" acquired "A" on June 30th? Isn't that
7 exactly what is said here?

8 Did you understand how the transfers worked, Mr.
9 DenUyl?

10 A. I understand the transfers worked that JMHI sold
11 --

12 Q. Many times over --

13 THE COURT: Let him finish.

14 MR. BETTIUS: I'm sorry.

15 A. -- sold its assets and liabilities and
16 contributed them to JMHC in return for stock. They
17 couldn't get stock from JMHI.

18 BY MR. BETTIUS:

19 Q. You will agree with me, will you not, that there
20 is no stock, there is no stock, in a not-for-profit?

21 A. That's right.

22 Q. So there's no stock to exchange; is that right?

23 A Right.

J.APP. 0770

PLATT & DAWSON, INC. (703) 591-0007

1 Q. And the assets of that company do not belong to
2 the shareholders; they belong to the public; is that right?

3 A Right.

4 Q. Now, you have dealt in many cases, have you not,
5 that involve the valuation of trusts, have you not?

6 A. On some occasions.

7 Q. And trustee relationships; is that correct?

8 A. What do you mean "trustee relationships"?

9 Q. Whether the trustees dealt correctly with the
10 property or not?

11 A. I have not.

12 Q. Are you familiar in your work with the word
13 "co-mingle"?

14 A Yes.

15 Q. Do you find, if there was not a lawful transfer,
16 there was a co-mingling of assets?

17 MR. BONO: Objection.

18 THE COURT: Objection sustained.

19 MR. BONO: Your Honor, I would also point out
20 that Mr. Bettius has gone on to another topic. He never --

21 THE COURT: I'm going to let him finish his
22 cross-examination, Mr. Bono.

23 BY MR. BETTIUS:

J.APP. 0771

PLATT & DAWSON, INC. (703) 591-0007

1 Q. You know, do you not, that on these financial
2 statements JMHC took net operating losses that were
3 generated by JMHI; is that correct?

4 A. Well, but --

5 Q. Just answer it "yes" or "no" and I'll let you
6 explain.

7 A. No.

8 Q. Would you look at that 1971 tax return and tell
9 me if that company earned income and paid taxes.

10 A Yes, it did. I don't need to look.

11 Q. It paid taxes?

12 A. It didn't pay taxes in 1972 because of NOLs.

13 Q. And the NOLs belonged there to the operations of
14 JMHI?

15 A. And it got the revocation which made them file as
16 a for-profit entity.

17 Q. JMHI is not filing that tax return, is it, unless
18 you believe that JMHI has become JMHC, and isn't that right
19 at the crux of it?

20 A. I'm sorry. I'm lost here.

21 Q. Didn't you tell me that it would be wonderful if
22 we didn't have to pay income tax?

23 A. Yes.

J.APP. 0772

PLATT & DAWSON, INC. (703) 591-0007

1 Q. Well,, if you can take a company's net operating
2 losses and use them so that you don't have to pay income
3 tax, aren't they assets?

4 A. They're assets.

5 Q. Against income.

6 A. Yes.

7 Q. Where did you account for them?

8 A. Where did I account for them?

9 Q. Pardon?

10 A. What is your question?

11 Q. Well, in the value, in the assets, in your
12 schedule, where are these net operating losses that they
13 acquired from JMHI and used? Where are they?

14 A. In a fair market value valuation, the buyer of a
15 hospital probably couldn't take advantage of the NOLs, so
16 you wouldn't count them.

17 Q. That's my point. You valued a transaction
18 between two entities that allegedly merged and the
19 consideration that was exchanged included the asset of the
20 these NOLs and you didn't account for it, did you?

21 A. You don't do that on a fair market value basis.
22 None of us did.

23 Q. You told this Court that the consideration that

J.APP. 0773

PLATT & DAWSON, INC. (703) 591-0007

1 should be paid is based on what should have been paid to
2 the charity for what was delivered. What was delivered
3 here in fact was the use of NOLs; is that not correct?

4 A. No. You misunderstood.

5 Q. They didn't use them?

6 A. You are mischaracterizing my valuation. My
7 valuation had this hypothetical willing buyer, willing
8 seller, that's going to buy this hospital.

9 Q. And it is -- excuse me. You didn't finish.

10 A. No, I didn't finish.

11 Q. I apologize.

12 A. Under that standard, you generally do not
13 consider NOLs because they cannot be used by the buyer.

14 Q. We have come full circle.

15 Can you apply that standard in terms of a
16 fairness opinion when you are dealing with related entities
17 who have inappropriately reported income and have
18 inappropriately engaged in inter-party relationships?

19 MR. BONO: Objection.

20 BY MR. BETTIUS:

21 Q. Can you validly apply that standard?

22 MR. BONO: Objection. Argumentative. Lacks
23 foundation.

J.APP. 0774

PLATT & DAWSON, INC. (703) 591-0007

1 THE COURT: Do you understand the question?
2 There's an assumption in there. Rephrase it.

3 BY MR. BETTIUS:

4 Q. Can you apply in terms of a fairness opinion when
5 you represent an Attorney General and the Attorney General
6 says is what happened here appropriate, do you put on
7 blinders and go to the statement and just look at these
8 numbers or do you look at the inappropriate actions of the
9 parties in self-dealing with the assets?

10 A. If I'm asked to render a fairness opinion, I
11 might look at the whole transaction.

12 Q. Isn't the point that what you are doing here is
13 taking numbers off a balance sheet that don't necessarily
14 have anything to do with fairness?

15 A. No. I mean, consider. If you include the NOLs,
16 you are still negative in the value.

17 Q. Let's say \$280,000 worth of lease payments.

18 A Okay.

19 Q. Now, we have seen a witness taken to task here
20 for the wrong tax rate. Do you think that these numbers
21 would cause you to make adjustments to your statements?

22 A. No, not necessarily, unless I found that the two
23 hundred and eighty wasn't a true liability.

J.APP.0775

PLATT & DAWSON, INC. (703) 591-0007

1 Q. Mr. DenUyl, you are compelled in this analysis to
2 serve your client's purpose to come to zero, aren't you?

3 A. No, sir.

4 MR. BONO: Objection.

5 THE COURT: Objection sustained.

6 BY MR. BETTIUS:

7 Q. You did not, did you, Mr. DenUyl, reference in
8 any of the disclosures you made about willing buyers and
9 willing sellers the fact that there was a purposeful
10 evaluation of the hospital throughout its entire history
11 for purposes of shielding the doctors in the event they got
12 sued?

13 A. Well, number one, our valuation didn't include
14 the hospital building in that entity.

15 Q. We're about to move to the next point.

16 Did you read the description of the transaction
17 and the history of the hospital contained in Exhibit 31374?

18 A. Can you show it to me?

19 Q. I'm sorry. 3/13/74. It's Exhibit 119.

20 A. Where do you want me to read?

21 Q. The part that says that in the past King Street
22 Joint Venture owned the building and one-and-a-half acres
23 of land.

J.APP. 0776

PLATT & DAWSON, INC. (703) 591-0007

1 A. What page are you on?

2 MR. BETTIUS: Give me a copy, Eric, of the
3 minutes.

4 Dr. Tauber reported it in negotiations with
5 Georgetown Medical School.

6 THE COURT: Where are you reading from?

7 MR. BETTIUS: Item 3, 00632.

8 BY MR. BETTIUS:

9 Q. Are you with me?

10 A. Sale and lease-back?

11 Q. Yes.

12 A. Dr. Tauber reported in negotiations with
13 Georgetown Medical School that the affiliation would not
14 take place since the entire Board of Directors did not
15 agree with the proposal, and he goes on and recites the
16 history.

17 Dr. Tauber stated that in the past the King
18 Street Joint Venture owned the building and one-and-a-half
19 acres of land and formed the Jefferson Memorial Hospital
20 non-profit organization which ran the business of the
21 hospital. The reason for this was that if the hospital
22 corporation would be sued for malpractice, they would not
23 have any other assets except equipment, and creditors could

J.APP.0777

PLATT & DAWSON, INC. (703) 591-0007

1 not touch the building. Since this set-up -- as he called
2 it -- this set-up gave some tax depreciation to the owners
3 building. When in 1971 the decision was made to change the
4 hospital from non-profit to a profit corporation, the
5 partnership was dissolved and thus all the property became
6 assets of the hospital. This of course took away from the
7 stockholders any depreciation or other benefits being
8 received under the partnership arrangement. This also
9 carried the possibility of shareholders of the corporation
10 losing the building in the event of any suits against JMH
11 Corporation. After giving a brief history, he stated that
12 at the previously-mentioned meeting they came up with the
13 following proposal: (A) The profit-making corporation of
14 Jefferson Memorial Hospital would reinstate the old King
15 Street Joint Venture and everyone would get an interest in
16 the new venture by a percentage of stock which they owned.
17 The King Street Joint Venture would then enter into a firm
18 lease with Jefferson Memorial Hospital profit-making
19 corporation, which would be a partial liquidation of the
20 assets of the corporation, shifting the physical value of
21 the building and the land to the partnership and then the
22 partnership would lease it for 20 years for \$100,000 plus
23 the mortgage payment plus the original land and ground

J.APP. 0778

PLATT & DAWSON, INC. (703) 591-0007

1 payments.

2 Is that the transaction that occurred in 1975?

3 A. I don't think so.

4 Q. You don't think so. Was it not a sale?

5 A Yes, it was a sale. I don't think it was on
6 those terms.

7 Q. It was really worse for the corporation. It was
8 112,000 rent, wasn't it?

9 A. I would have to review the actual thing. It was
10 after my valuation date that they made that transfer.

11 Q. The sale and lease-back agreement -- and that's
12 why I'm interested that you say that -- is dated December
13 24, 1974. It was a Christmas present, wasn't it?

14 MR. BONO: Objection, Your Honor.

15 THE COURT: Objection sustained.

16 BY MR. BETTIUS:

17 Q. Did you look at that document?

18 A. It didn't go into effect until after the
19 valuation.

20 Q. From a valuation point of view, do we value
21 transactions at contract date? Is that fair? Isn't that
22 when the parties come to their economic term?

23 A. No. It's when the actual payments would start

J.APP. 0779

PLATT & DAWSON, INC. (703) 591-0007

1 and you have to show that the payments were unfair for the
2 -- that the lease rate was not at market.

3 Q. We have to show that?

4 A. You're telling me that I'm supposed to find
5 supposedly all these inter-related transactions, and I am
6 saying if I were looking at that, I would have to see if it
7 was a fair market value lease.

8 Q. When the directors lease the property of a
9 corporation to themselves in accounting and in law, isn't
10 great scrutiny paid to that transaction for fairness just
11 by virtue of fact that that has happened?

12 MR. BONO: Objection, Your Honor.

13 THE COURT: Objection sustained.

14 MR. BETTIUS: I'll try to rephrase the question.
15 I don't want to go anywhere you don't want me to go that's
16 improper.

17 BY MR. BETTIUS:

18 Q. In accounting, when you see a related-parties
19 transaction involving individuals in a trustee
20 relationship, does that transaction warrant from an
21 accounting point of view or from a valuation point of view
22 scrutiny?

23 A. You should make sure that it is at a fair market

J.APP. 0780

PLATT & DAWSON, INC. (703) 591-0007

1 rate.

2 Q. And there were any number of transactions here
3 between those kinds of insiders, were there not?

4 A. Over what period?

5 Q. From beginning to end.

6 A. There were insider --

7 Q. Isn't it true that the entirety of your
8 assignment had nothing to do with that; that's not what you
9 were looking for?

10 A. Well, if I would have seen something that I found
11 would alter the financial substantially, I certainly would
12 have reflected it.

13 Q. How about an IRS determination for abuse; does
14 that kind of set off some sort of alarm?

15 A. No, because the hospital at that time --

16 Let's that happened and so let's say they needed
17 to sell it. Then the point is how much should be
18 charitable deduction be, what is it worth?

19 Q. I want to ask you this question. If there never
20 was a transaction, if the Court concludes that there wasn't
21 a transaction in 1971 and nothing occurred, the valuation
22 historically is interesting but it's not particularly
23 relevant; isn't that true?

J.APP. 0781

PLATT & DAWSON, INC. (703) 591-0007

1 MR. BONO: Objection, Your Honor.

2 BY MR. BETTIUS:

3 Q. From an accounting point of view, if it doesn't
4 relate -- if there is no transaction, because you have
5 indicated value between a buyer and a seller, it may be an
6 interesting point of view but in terms of the business of
7 the company, it doesn't reflect any watershed event, does
8 it? It's just a valuation that's taken place.

9 A Well, in this particular case we have some
10 dispute as to which date is relevant, and I'm just taking
11 those three dates. But it's a legal decision as to which
12 date is relevant.

13 MR. BETTIUS: I'm about to wind up Your Honor.

14 BY MR. BETTIUS:

15 Q. Did you find any winding up of JMHI in 1971?

16 A Well, I found that the assets went over to JMHC
17 or whatever the corporation was in 1971.

18 Q. Did you see a winding up?

19 A. Winding up?

20 Q. Yes.

21 A. No. It continued to operate.

22 Q. Did you see any winding up in 1973?

23 A. You mean did it stop operations?

J.APP. 0782

PLATT & DAWSON, INC. (703) 591-0007

1 Q. Uh-huh.

2 A. No. It continued to operate.

3 Q. And it didn't wind up in '75 either, did it?

4 A. No. It continued to operate.

5 Q. That raises this point. If it didn't wind up and
6 it continued to do business, what value was given to its
7 intangible goodwill?

8 MR. BONO: Objection. The question is
9 ambiguous. I keeps using the pronoun "it" and --

10 BY MR. BETTIUS:

11 Q. To JMHI's goodwill, if it wasn't wound up and its
12 operations continued.

13 A. JMHI?

14 Q. Yes.

15 A. Well, JMHI wound up at one of those dates. Well,
16 that's what we presumed in our valuation.

17 Q. You presumed it, but it didn't happen; isn't that
18 correct?

19 A. It appeared to me like it did happen.

20 Q. That it wound up?

21 A Yes. It merged.

22 Q. You did see it discharge its --

23 But you said it didn't merge. You said everybody

J.APP. 0783

PLATT & DAWSON, INC. (703) 591-0007

1 thought it merged, but it didn't merge.

2 A. I'm saying the testimony I have heard is that
3 they had to correct a lack of legal documentation. But for
4 all intents and purposes, everybody called it JMHC.

5 Q. What if it was illegal?

6 A Well, that's a legal conclusion that I can't ...

7 Q. But you found no winding up, did you?

8 A Well, I did for JMHI.

9 Q. In terms of its being merged?

10 A Yes.

11 Q. Now, I want to ask you a question, being familiar
12 with the health care industry such as you are.

13 You've read Mr. Cobb's report, haven't you?

14 A. It was a long time ago.

15 Q. He said, did he not, you could not value JMHI in
16 1973 and 1975, didn't he?

17 A. I don't recall.

18 Q. Well, didn't he say they were out of business, so
19 you could not do anything to value the stock, the 5,000
20 shares of stock?

21 I mean, he was very pointed. You can't value a
22 hypothetical, can you?

23 A. You mean a hypothetical stock?

J.APP. 0784

PLATT & DAWSON, INC. (703) 591-0007

1 Q. A hypothetical company.

2 A. Well, I think basically everybody assumed they
3 were out of business at that time.

4 Q. Well, in order to create this hypothetical
5 company, you transferred the asset of the building out,
6 transferred the mortgage out and transferred the lease in,
7 didn't you?

8 A. The mortgage in?

9 Q. You transferred the lease in, the mortgage out
10 and the building out?

11 A. You've got all the arrows going the right way.

12 Q. Let me ask you this. In a health care company's
13 financial life, does the capital structure dramatically
14 affect its balance sheet in terms of reimbursements from
15 Blue Cross, Blue Shield, Medicaid and Medicare?

16 A. You will get reimbursements for equipment that's
17 on the balance sheet.

18 Q. So your 19 --

19 A. Back then.

20 Q. Yes. Your 1973 and 1975 valuations don't make
21 those adjustments because it's impossible to make them,
22 isn't it?

23 A. No.

J.APP.0785

PLATT & DAWSON, INC. (703) 591-0007

1 Q. Did you adjust the Medicaid/Medicare payments?

2 You just took these values, substituted them on
3 the balance sheet and did a value, didn't you?

4 A. No. I took the depreciation out.

5 Q. That's right, but you didn't make any adjustment
6 in terms of its transfers -- I mean, its accounts
7 receivable payments that it would receive from Blue Cross,
8 Blue Shield, Medicaid and Medicare by virtue of the fact
9 that you changed its whole capital structure?

10 A. No, no, no. That's not right.

11 Q. It's not right?

12 A. No. Those payments are unrelated to
13 reimbursement. They're in the reimbursements.

14 Q. But the point is, the amount of reimbursement is
15 totally determined by your capital structure because
16 they're reimbursing costs, aren't they?

17 A. They're reimbursing capital cost, but not --

18 The liability that's booked is something that's
19 already been incurred.

20 Q. Are you telling this Court that the changes that
21 you have made on the balance sheet by simply moving the
22 depreciation around, moving the leases around and moving
23 the mortgage around don't make any changes that ripple

J.APP. 0786

PLATT & DAWSON, INC. (703) 591-0007

1 through third-party payers' payments and don't make other
2 changes that would need to be adjusted on the balance
3 sheet?

4 A. They were very minor, the amount of depreciation.

5 Q. I didn't ask you that. It's a company that you
6 have valued --

7 THE COURT: Let's the witness finish.

8 A. It wouldn't have much of an impact because the
9 depreciation, additional depreciation, was about \$30,000 a
10 year.

11 BY MR. BETTIUS:

12 Q. I'm going to ask you this, sir.

13 A. Okay.

14 Q. Did you make the other adjustments to this
15 company and weren't you -- strike that. In fact you were
16 valuing a hypothetical, weren't you?

17 A Well --

18 Q. JMHI didn't exist.

19 A. We made adjustments to reflect as best we can,
20 given this, what would have happened in terms of
21 depreciation --

22 Q. And you made the assumption that management of a
23 company would respond to financial matters that occurred

J.APP. 0787

PLATT & DAWSON, INC. (703) 591-0007

1 during the course of its financial year in the same way if
2 it owned all of its capital and if it didn't own all of its
3 capital. You made those assumptions too, didn't you?

4 A. It would not make much difference. I mean, it
5 just operated the same basically. It's just who owned
6 those assets.

7 Q. It was the same, wasn't it, Mr. DenUyl?.

8 A. It wasn't the same legally. It had different
9 assets. But in terms of its operations, it was much the
10 same.

11 Q. How was it different legally?

12 MR. BONO: Objection, Your Honor. Now he's
13 asking for a legal conclusion.

14 MR. BETTIUS: The witness said it was different
15 legally and I want to ask him how.

16 THE COURT: I'll let him answer, if he can.

17 A. The assets and liabilities were different and
18 that's all we adjusted for.

19 BY MR. BETTIUS:

20 Q. They were co-mingled, weren't they?

21 MR. BONO: Objection.

22 THE COURT: Objection sustained.

23 A. No.

J.APP. 0788

PLATT & DAWSON, INC. (703) 591-0007

1 BY MR. BETTIUS:

2 Q. They weren't treated as the same pot?

3 A. One was in the separate corporation before the
4 conversion.

5 Q. But now they're all in the same place, aren't
6 they?

7 A. After the conversion?

8 Q. Yes.

9 A. Yes. But there was a dispute as to when this
10 date was.

11 Q. And you modeled the financial statements as if
12 they weren't; right? That's what you presented to the
13 Court?

14 A. You have to. To determine what is due, you have
15 to take out, because in 1971 it's real easy. These assets
16 are not in there. But if it didn't happen until '75, then
17 they wouldn't have contributed those assets until '75.

18 Q. If a willing buyer and a willing seller were
19 looking at the '73 transaction, they would look at it a lot
20 differently based on where the assets were, wouldn't they?

21 A. If the conversion.

22 Q. Yes or no?

23 Go ahead.

J.APP. 0789

PLATT & DAWSON, INC. (703) 591-0007

1 A. If the conversion had not happened, JMHA would
2 not have contributed those assets.

3 Q. How do you know?

4 A. Why would they? It would be an uneconomic
5 decision.

6 Q. It would be an uneconomic decision? Would it be
7 an uneconomic decision in the face, Mr. DenUyl, of
8 revocation of tax status and a recommendation? Did you
9 read the recommendations of Mr. Reeves in the letter --

10 A Yes.

11 Q. -- of 1970?

12 A 1970?

13 Q. 1970. He recommended that you had to put them
14 together as a result of the revocation, didn't he?

15 A. Well, but they would then be a profit-making
16 corporation, so they would contribute that and get stock in
17 the new corporation.

18 Q. It's a different entity then?

19 A. I'm not sure I understand the question.

20 Q. Is JMHI a different entity than JMHC if you do
21 that?

22 A Yes. JMHC is the for-profit that now has those
23 assets from JMHA which they received stock for.

J.APP.0790

PLATT & DAWSON, INC. (703) 591-0007

1 Q. And in your financial report you indicate, do you
2 not, on page 1 that your report is dependent upon the
3 accuracy of the financial statements and records presented
4 to you?

5 A Well, the whole thing just doesn't get blown if
6 there's a small change.

7 Q. Well, aren't you supposed to put all of those
8 qualifications in the report?

9 A. What?

10 Q. Those small things that change, like we didn't
11 merge?

12 A. Mr. Bettius, I don't have any knowledge of any
13 changes that we didn't reflect. I'm just saying the whole
14 conclusion, if there would have been an accounting
15 regularity, wouldn't necessarily change the fundamental
16 value of the hospital from is what it is.

17 Q. Despite the insider transactions?

18 A. I didn't see anything significant that would have
19 caused a major change in the income of the company.

20 Q. Did you look?

21 A. I did.

22 Q. In other words, you looked -- you're now telling
23 me you looked at the transactions that were conducted

J.APP. 0791

PLATT & DAWSON, INC. (703) 591-0007

1 between the directors and JMHI?

2 A. The ones between 1971 and January 31, 1975? Yes.

3 Q. And you just happened to miss this lease issue?

4 A. Which lease issue?

5 MR. BETTIUS: Objection. He's arguing with the
6 witness.

7 THE COURT: Mr. Bettius, we've been through this
8 before.

9 BY MR. BETTIUS:

10 Q. Do you assume in your valuation that the
11 purchaser can lawfully continue in business after he
12 acquires the asset?

13 MR. BONO: Objection, Your Honor. Calls for a
14 legal conclusion.

15 MR. BETTIUS: He says it right on the first page.

16 THE COURT: I don't think it is a legal
17 conclusion. It's more of a factor he considered and I
18 suspect I know the answer to that. Go ahead and answer
19 it.

20 A. We assumed a going concern.

21 BY MR. BETTIUS:

22 Q. You also assumed that the buyer can lawfully
23 operate; is that right? You say, do you not, right in

J.APP. 0792

PLATT & DAWSON, INC. (703) 591-0007

1 your --

2 A. I don't recall that being in my report.

3 Q. Well, let me see if I can find it. You assume
4 that the business is ongoing; is that correct?

5 A Yes.

6 Q. Now, in a hospital, does that involve a license?

7 A Yes.

8 Q. Is the license, if you know, in Virginia
9 transferrable?

10 MR. BONO: Objection, Your Honor. Calls for a
11 legal conclusion.

12 A. We assumed it was ongoing. Whether it was
13 transferrable, we have assumed that it would be
14 transferrable to the buyer.

15 BY MR. BETTIUS:

16 Q. But you don't know what the law is in Virginia as
17 to transferability at this time, do you?

18 A. I don't know.

19 Q. And what impact would it have on your decision if
20 it was non transferrable, do you know?

21 A. It wouldn't have any, because I presumed that
22 it's ongoing. If it's not ongoing, then you've got a
23 difference.

J.APP.0793

PLATT & DAWSON, INC. (703) 591-0007

1 Q. How about if it's to be operated, it has to be
2 operated outside the law? That would have a dramatic
3 impact on valuation, wouldn't it?

4 A. We have assumed it is ongoing. I can't --

5 Q. And if the nature of the operation, just by
6 virtue of the way it's going to be operated -- for
7 instance, the corporation doesn't qualify to do business
8 which makes the directors personally liable -- that would
9 affect value, would it not?

10 A. No. You are taking a very specific case here and
11 we're saying what is this willing buyer, willing seller
12 going to pay for this hospital.

13 Q. I'm taking this case, Mr. DenUyl. The
14 corporation that bought it never qualified to do business?

15 MR. BONO: He's now --

16 THE COURT: You are now testifying, Mr. Bettius.

17 MR. BETTIUS: I'm through.

18 THE COURT: Redirect?

19 MR. BONO: No, Your Honor. No questions.

20 THE COURT: May the witness be excused?

21 (Witness excused.)

22 MR. BONO: I would like to note for the record,
23 because Mr. Bettius never linked up any of the items that

J.APP. 0794

PLATT & DAWSON, INC. (703) 591-0007

1 AFTERNOON SESSION (2:18 p.m.)

2 Whereupon,

3 JOHN THORPE RICHARDS,

4 was called as a witness by and on behalf of the
5 petitioner and after having been first duly sworn, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BETTIUS:

9 Q Good afternoon, Mr. Richards.

10 A How are you, sir?

11 Q Always a pleasure to see you, sir.

12 A Thank you.

13 Q Mr. Richards, would you state your name for the
14 record?

15 A My name is John Thorpe Richards.

16 Q And you're a member of the bar of the
17 Commonwealth of Virginia?

18 A Yes, sir.

19 Q And you're not recently admitted, are you?

20 A No, sir.

21 Q When were you first admitted?

22 A 1950.

23 Q Have you always maintained your practice here

J.APP. 0795

1 in Alexandria?

2 A Since 1954. Before that I was in Washington,
3 in 1950 and '51 and then I was back in the navy, Korea
4 in '52 and '53.

5 Q And then you came here to Alexandria to
6 practice?

7 A Been here ever since.

8 Q Would you give me your office address, please?

9 A My present office address is 225 Reineker's,
10 R-E-I-N-E-K-E-R-S, Lane, Alexandria, 22314.

11 Q Did it use to be on Royal Street? I'll get
12 to --

13 A Fairfax.

14 Q Fairfax. I'm sorry. You did perform no
15 services for Dr. Tauber in connection with the original
16 acquisition of the land; is that correct?

17 A That's right. I was representing the Hopkins
18 at the time.

19 Q You did, however, do the use permit, did you
20 not, for the hospital?

21 A Yes, sir.

22 Q Do you recall about when that was,
23 Mr. Richards?

J.APP. 0796

1 A That would be '62 or '63. It was a condition
2 of the sales contract at that time.

3 Q We've seen in the privilege log a great deal of
4 correspondence going back and forth between you and
5 Dr. Tauber at that time. That was primarily collecting
6 land rents and things for the Hopkins, wasn't it?

7 A I can't --

8 Q In the early '60s?

9 A No. The only thing that I recall going back
10 and forth with Dr. Tauber on the Hopkins was with regard
11 to mortgage payments.

12 Q And --

13 A My recollection is, you know, 25, 30 years old.

14 Q I understand. But there was a fair amount of
15 correspondence between you and Dr. Tauber where you were
16 representing Hopkins in terms of just collecting rents,
17 real estate taxes and things like that; is that correct?

18 A I don't know. I can't recall.

19 Q All right. That's fair. You didn't represent
20 Dr. Tauber in connection with an entity known as King
21 Street Joint Venture either, did you?

22 A Not in the formation of it.

23 Q Did there come a time later when you did

J.APP. 0797

1 represent him in connection with King Street Joint
2 Venture, do you recall?

3 A Yes, in dealing with certain aspects of the
4 real estate. I've forgotten now whether King Street
5 Joint Venture owned it or whether it had gone into the
6 next partnership.

7 Q Do you remember what the aspect was that you
8 were dealing with?

9 A It was probably on the question of -- this
10 would have been around '69 or '70. So it was with
11 regard to splitting out the undivided interests that
12 were in the land and subdividing the property and giving
13 deeds to the parties who had the undivided interest,
14 making them have a total interest in a parcel of the
15 land.

16 Q Right around January of 1970, would it be
17 Mr. Richards? I know -- but that's about the right time
18 frame, isn't it?

19 A It was about that time, yes, sir.

20 Q Okay. You didn't -- other than this
21 representation, and I understand that you didn't know
22 whether it was a joint venture or -- King Street Joint
23 Venture or Jefferson Memorial Associates, you didn't

J.APP. 0798

1 draw or participate in representation in connection with
2 JMHA, did you?

3 A In the formation of it, no, sir.

4 Q How about administration? Did you do that or
5 did Mr. Krakow do it?

6 A I'm not sure what you mean by administration.

7 Q Did the partnership consult you in matters of
8 business in JMHA that you recall?

9 A Not that I recall.

10 Q Okay. Would it be fair to say that your
11 involvement with the hospital really started around in
12 '74 or '75?

13 MR. CHOCKLEY: I object. Leading.

14 A No, that's not so.

15 MR. BETTIUS: I kind of think I'm examining
16 counsel for the other side and I haven't had a chance --
17 I don't want to say he's adverse, but I think some
18 leading is at least appropriate.

19 MR. CHOCKLEY: Your Honor, I have not objected
20 to all the previous leading questions. But then when he
21 gets into a broad question like this, I think it's
22 improper for him to ask in a leading fashion.

23 THE COURT: Objection will be sustained until

J.APP. 0799

1 there is a showing that Mr. Richards --

2 MR. BETTIUS: I don't think Mr. Richards is
3 hostile.

4 THE COURT: I understand. Well, there's a
5 difference between being hostile and having an adverse
6 interest. I haven't heard anything yet that indicates
7 Mr. Richards has an adverse interest.

8 BY MR. BETTIUS:

9 Q Mr. Richards, what involvement did you have
10 with the hospital in '74 and '75?

11 A In '74 and '75?

12 Q Yes, sir.

13 A I was at that time asked to rectify the problem
14 that had arisen because a supposed merger in '71 had not
15 been done.

16 Q Wasn't your first representation because there
17 was a bond default?

18 A No. I was called in to, as I recall, on the
19 question of the Delaware corporation issuing new bonds
20 to replace the old bonds of the Maryland corporation.
21 Those old bonds were and had been in default because
22 there had never been a sinking fund established, which
23 was a requirement of the bond.

J.APP. 0800

1 Q No one had ever called a default at any time,
2 had they?

3 A You mean prior to '74?

4 Q Any time.

5 A I think my recollection, as I stated in my
6 deposition, was that there had been a default in
7 interest in that year.

8 Q In 1974?

9 A Yes, sir.

10 Q So the default that occurred, as you understood
11 it, was in 1974?

12 A No. The default was in the sinking fund. The
13 failure to establish a sinking fund was a default.

14 Q Were you aware, sir, that JMHC also never
15 established a sinking fund?

16 A Am I aware of it now?

17 Q Yes.

18 A No.

19 Q You're not aware?

20 A No.

21 Q We'll come back to that. But no one had at any
22 time during JMHI's tenure ever declared a default, had
23 they?

J.APP. 0801

1 A I'm not sure what you mean by declared a
2 default. Do you mean had any of the bond holders come
3 in and asserted a claim against the Maryland
4 corporation?

5 Q Yes.

6 A I think, as I had previously stated, my
7 recollection is that in '74, some of the doctors who had
8 held bonds of the Maryland corporation were no longer
9 affiliated with the hospital and they were raising
10 problems. Now, whether they were declaring a default or
11 what their objections were, I don't recall.

12 Q Well, that default would have been after, long
13 after 1971, June 30 of 1971; is that correct? '74 is
14 later --

15 A You and I are using the term default
16 interchangeably. I say the default existed all along
17 because the sinking fund had never been established.
18 Now you're saying did any of the doctors come in and
19 make a claim? I have no knowledge that they made a
20 claim prior to 1974.

21 Q All right. Is it not true, based on your own
22 knowledge of the situation, that the bonds were all
23 owned by physicians in the hospital?

J.APP. 0802

1 A I just got through stating that some of the
2 doctors had left the hospital staff --

3 Q In '74.

4 A Well, I don't know when they left. They
5 started asserting claims in '74.

6 Q Do you recall that the fact of whether or not
7 this alleged controversy which arose in '74 arose around
8 October or November or December of that year?

9 A What controversy?

10 Q Where you indicated that some doctors had
11 become unhappy.

12 A Yes, sir.

13 Q They had left the hospital?

14 A No, I just stated, I don't know when they
15 started making the demands. I have no recollection of
16 that.

17 Q Let me see, for purposes of refreshing your
18 recollection on this issue, do you recall giving a
19 deposition at my office on June 25th, 1996?

20 A Yes, sir.

21 Q We have a copy of the deposition for
22 Mr. Richards. Let me read the answer, Mr. Richards, and
23 see if it refreshes your recollection.

JAPP.0803

1 A Certainly.

2 Q My recollection --

3 MR. CHOCKLEY: Page, please?

4 MR. BETTIUS: Page 45. Okay.

5 BY MR. BETTIUS:

6 Q Before you answer, in fairness, I will tell you
7 that throughout the period, there was always a question
8 about the sinking fund which was never established to
9 the best of our knowledge. And I know -- and you said
10 and I know that's a default. We're talking about a
11 default in the payment of interest. Yes, sir.

12 Principal and interest. And your answer was --

13 THE COURT: Just a minute, Mr. Bettius.

14 MR. CHOCKLEY: I think counsel just
15 inadvertently misread that.

16 MR. BETTIUS: Please correct me, Mr. Chockley.

17 MR. CHOCKLEY: Thank you, Your Honor. It said,
18 and I know that's a default. But we are talking
19 about --

20 MR. BETTIUS: Right. And I know that's a --

21 MR. CHOCKLEY: I haven't gotten to the
22 correction yet. But we are talking about a default and
23 the payment of interest.

J.APP. 0804

1 MR. BETTIUS: Right.

2 BY MR. BETTIUS:

3 Q And your answer to that was, my recollection is
4 that it was in the fall of 1974. I understand there to
5 be a default in the payment of interest.

6 Does that refresh your recollection?

7 A I thought that's what I had testified to here.

8 Q And then I asked you, I believe, when did you
9 say you thought it was, Mr. Richards? And you said, the
10 end of the year. I don't know when it was, you know,
11 October, November, December. Does that -- sometime.

12 Does that refresh your recollection on that
13 issue at all?

14 A Well, I've already testified that that was my
15 recollection.

16 Q I'm just trying to pin down the time.

17 A I thought that your question to me was when had
18 the doctors started objecting about the bonds. And
19 that's when I told you I had no recollection of when
20 they started asserting claims on the bonds of the
21 Maryland corporation.

22 Q Well, did you not understand the series of
23 questions that were being asked you in that deposition

J.APP. 0805

1 related to a default and the payment of interest and
2 your answer was that you thought that occurred in 1974,
3 November, December?

4 A In the payment of interest, yes.

5 Q Okay.

6 A We're both agreed on that.

7 Q All right. And you believe the sinking fund,
8 the sinking fund had not been maintained for some time;
9 is that correct?

10 A No, I didn't say it had not been maintained. I
11 said it had never been started.

12 Q You also determined that there was a default in
13 connection with the contract of settlement of a
14 Dr. Palmer; did you not?

15 A Yes, sir.

16 Q And you now know that the settlement that was
17 reached with Dr. Palmer was reached under the auspices
18 of a corporation that styled itself JMHC; is that
19 correct?

20 A No, I don't know that.

21 Q Let me show you the minutes of October 19th,
22 1971. That's Exhibit 89. And in order to save time, I
23 want you to look at item four on those notes.

J.APP. 0806

1 A Yes, sir.

2 Q Would that refresh your recollection that the
3 Palmer settlement was participated in by you with the --
4 and revealed at a stockholders meeting of Jefferson
5 Memorial Hospital Corporation?

6 A It does not refresh my recollection, but I
7 don't deny that what the minutes state, if --

8 Q So ultimately if there was a default in that
9 contract, it was a contract that had been entered into
10 with Dr. Palmer while the operating entity described
11 itself as JMHC; is that correct?

12 A No.

13 MR. CHOCKLEY: I object. It's leading and
14 argumentative.

15 THE COURT: It was leading and that's enough.

16 BY MR. BETTIUS:

17 Q Let me ask you this, Mr. Richards. When did
18 you -- whose contract did you understand came into
19 default with respect to Dr. Palmer and when did it
20 happen?

21 A The Maryland hospital, I think as I previously
22 testified in my deposition. The problem arose prior to
23 '71.

J.APP.0807

1 Q Right.

2 A And as I said, I can't remember whether
3 Dr. Palmer filed suit or he didn't file suit. But
4 eventually a discussion was had and a settlement was
5 reached on the dispute. Under the terms of that
6 settlement, and I gather that's the settlement that's
7 being discussed in these minutes, there was so much to
8 be paid to Dr. Palmer.

9 Q And that settlement, according to those
10 minutes, if they are correct -- and they have been
11 admitted into evidence -- occurred between Dr. Palmer
12 and JMHC. I don't care when the debt arose. They
13 agreed to settle that case in those minutes, didn't
14 they?

15 MR. CHOCKLEY: I object, Your Honor; leading.

16 THE COURT: Sustained.

17 BY MR. BETTIUS:

18 Q Is that your understanding?

19 MR. CHOCKLEY: Objection, Your Honor.

20 BY MR. BETTIUS:

21 Q What is your understanding of when that
22 settlement was entered into?

23 A The only understanding, because I have no

J.APP. 0808

1 recollection of it, so the only understanding I have is
2 what was shown to me in the minutes.

3 Q All right.

4 A Because as I said, the problem arose with the
5 Maryland corporation. I told you that in my deposition.

6 Q I'm not concerned, Mr. Richards, with the
7 problem. I'm concerned with its settlement and not the
8 breach.

9 A I was concerned because, as I said, I think he
10 filed suit. And the suit was filed against the Maryland
11 corporation. That was my concern.

12 Q The suit was filed against the Maryland
13 corporation?

14 A Sure.

15 Q Do you recall when this alleged breach
16 occurred?

17 A It was prior to '70. That's what I've said.

18 Q Well, you're representing in 1974, are you not,
19 that there's a breach of the Palmer settlement? Didn't
20 you go to the board and say that settlement had been
21 breached?

22 A Yes, sir.

23 Q And I want to know who entered into that

J.APP. 0809

1 settlement.

2 A My recollection -- I have no recollection, but
3 the minutes indicate that it was entered into by the
4 Delaware corporation.

5 Q All right. So if there had been a default of
6 that, we have to understand -- in 1974, how would we
7 understand whose responsibility payment of that contract
8 was?

9 A The ultimate payment of the contract depended
10 upon the initial agreement with the Maryland corporation
11 because that's where the debt arose.

12 Q And what would the settlement agreement -- how
13 would the settlement agreement affect that?

14 A The settlement agreement entered into between
15 the parties because there was a lesser amount agreed
16 upon. Dr. Palmer gave on what his demand was.

17 Q And so it appears, does it not, that Palmer --
18 well, you tell me if it appears to you that Palmer and
19 somebody reached a settlement agreement in 1971 as
20 reflected in those minutes.

21 A Yes, sir.

22 Q Now, if there was a sinking fund default, that
23 it continued, I would take it, at least to the point

J.APP.0810

1 where in October of 1974 you went to the board of JMHC
2 purportedly and told them that there was a default in
3 the bonds and a default in the Palmer contract; is that
4 right?

5 A I have no --

6 Q Let me show you some minutes.

7 A Yeah, I don't deny what you're saying. I just
8 have no recollection of it.

9 Q Please show the witness Exhibit 133. Now, I'm
10 reading the part that says the purpose of the board
11 meeting, Jefferson Memorial Hospital, Inc. bonds. The
12 chairman brought to the attention of the board the fact
13 that bonds issued by Jefferson Memorial Hospital, Inc.,
14 a Maryland nonprofit corporation, were in default due to
15 the nonpayment of interest. The chairman also brought
16 before the board the point that the Maryland corporation
17 had no money to pay the bond interest and its own assets
18 consisted of certain real estate and used equipment in
19 the hospital.

20 Do you recall those events?

21 A Are you asking whether I was at this meeting?
22 I don't know.

23 Q I'm asking you --

J.APP.0811

1 A It doesn't indicate that I was.

2 Q I'm asking you if these events were brought to
3 your attention, Mr. Richards?

4 A Oh, yes, sir, I'm sure they were.

5 Q At about this time?

6 A Yes, sir.

7 Q And had you, prior to this meeting, counseled
8 the board that it was appropriate now to cure the
9 default that had occurred in 1974?

10 A Appropriate for the board of the Delaware
11 corporation to cure the default?

12 Q Yes, that had occurred in '74.

13 A On the bonds?

14 Q Yes.

15 A To establish a sinking fund?

16 Q And the complaints about interest.

17 A I'm not sure --

18 Q Let me ask you this, Mr. Richards. If these
19 bonds and all of the liabilities of JMHI had been
20 assumed as of June 30, 1971, how could these bonds be in
21 default?

22 MR. CHOCKLEY: I object, Your Honor.

23 BY MR. BETTIUS:

J.APP. 0812

1 Q Can you tell me how these bonds could be in
2 default?

3 A Because the Maryland corporation was obligated
4 on the bonds to the bond holders. They had not, it had
5 not established a sinking fund, and it had not paid
6 interest.

7 Q Well, if all of the assets and liabilities had
8 been assumed by JMHC as of June 30, 1971, then they were
9 also in default; is that correct?

10 MR. CHOCKLEY: I object, Your Honor, lack of
11 foundation for the question.

12 THE COURT: Objection overruled.

13 BY MR. BETTIUS:

14 Q Isn't that correct?

15 A They were also in default. Who was in default?

16 Q JMHC, they assumed all the obligations and
17 liabilities.

18 A Oh, yes. The Delaware corporation, had they
19 assumed the obligation on the bonds, they also were
20 subject to the claims of the doctors or the bond
21 holders.

22 Q And the response is to, as I understand it, and
23 please tell me if this was all -- what was your

J.APP. 0813

1 understanding of whose problem this was?

2 A My understanding was that the demands were
3 being made against the Maryland corporation.

4 Q They were?

5 A Yes.

6 Q And would you look at document Exhibit 420,
7 Mr. Richards?

8 A Yes, sir.

9 Q You worked very closely with Mr. Linton during
10 this time, did you not?

11 A Yes, sir.

12 Q And you relied on him for many of these things,
13 many of the disposition issues of assets and things such
14 as that nature?

15 A Yes, sir.

16 Q And it's pretty clear, isn't it, that he said
17 the default was brought about during the period in which
18 the Delaware corporation was legally assuming the assets
19 and liabilities of the Maryland Inc.?

20 MR. CHOCKLEY: I object, Your Honor. It's
21 leading and the document speaks for itself.

22 THE COURT: The document does speak for itself,
23 doesn't it?

J.APP.0814

1 MR. BETTIUS: It's not his letter. He
2 testified he relied a lot on Mr. Linton and I want to
3 know if he has any -- if there is any reason in his mind
4 to doubt what Mr. Linton says in this letter.

5 THE COURT: You can ask the question that way,
6 I suppose.

7 BY MR. BETTIUS:

8 Q All right. Is there any reason to doubt this
9 is the correct recitation of the bond default?

10 A No, I have no doubt that bond default on the
11 Delaware corporation bonds are as they were stated in
12 Mr. Linton's letter.

13 Q You did not advise the corporation in 1970 in
14 connection with its plans to go to public offering, did
15 you?

16 A Delaware corporation, no, sir.

17 Q All right. Let me have Mr. Reeves's letter,
18 1970. 374.

19 You did not see that letter, did you -- can you
20 tell us whether or not you saw that letter at that time?

21 A I've never seen that letter.

22 Q You've never seen it?

23 A No, I never have.

J.APP.0815

1 Q Let me see if I can refresh your recollection
2 on that. Did you not previously say that you saw it
3 several years ago in Dr. Tauber's files?

4 A No, I don't think this letter. I don't think
5 I've ever seen this letter before.

6 Q I'll come back. Can you tell us whether or not
7 you had any communication with Mr. Reeves
8 contemporaneous with this letter in the '70s?

9 A I don't think I talked to him until '74.

10 Q Would you hand this to the witness? Do you
11 have a recollection of whether or not Mr. Palmer was,
12 now Dr. Palmer, was not being paid in 1974?

13 A Yes. I have a recollection that he was
14 objecting to something in the settlement, he had not
15 been paid.

16 Q In '74?

17 A Yes.

18 Q And this was a long existing debt?

19 A Yes, sir.

20 Q And it grew out of JMHI; is that correct?

21 A Yes, sir.

22 Q And the bonds were long existing debts. And
23 can you tell us whether or not they grew out of JMHI?

J.APP. 0816

1 A Yes, sir, they did.

2 Q Let me have Mr. Peters' May 18th letter.

3 MR. BERGHOLD: 613.

4 Q Do you know what office Mr. Peters held?

5 A No. I don't recall. I can say it says
6 secretary. But I don't recall what office he held.

7 Q Were you aware of the -- let me ask you this.
8 What was your role in representing the hospital in May
9 of 1973, if any?

10 A I don't know that I had any.

11 Q Were you aware that Mr. Peters had written
12 every stockholder and said that the merger wasn't
13 complete?

14 A Not that I recall.

15 Q They never told you that, did they,
16 Mr. Richards, at that time?

17 A At that time, no, sir.

18 Q And they never told you that the Delaware
19 corporation had never qualified to do business as
20 recited here; is that correct?

21 MR. CHOCKLEY: Objection, leading.

22 THE COURT: Objection overruled.

23 BY MR. BETTIUS:

J.APP. 0817

1 Q You were not advised?

2 A I was not advised at that time.

3 Q Tell me what advice you had from your -- and I
4 was about to say your client. Tell me what advice if
5 any you had received in April, a month before this
6 letter, that the certificate -- that the authority of
7 the Maryland corporation JMHI had been terminated in the
8 state of Maryland. You didn't know that either, did
9 you?

10 A At that time?

11 Q Yes.

12 A No, sir.

13 Q Okay. Did you participate as counsel in any of
14 the board meetings in 1971? Or tell us what role you
15 had in 1971 with the board of JMHI or JMHC in connection
16 with a merger or transfer of assets and liabilities.

17 A I have no recollection at this time, sir, what
18 board meetings I attended. I think, as I've told you
19 before, if I was retained to do something, I would come
20 before the board and give them whatever they required in
21 the way of information or decisions, and then I would
22 leave because I charged for my time and they didn't like
23 to pay lawyers.

J.APP.0818

1 Q I know they didn't like to pay lawyers. But
2 the question I'm trying to get for you, Mr. Richards, is
3 do you recall any involvement with JMHI or JMHC as their
4 counsel in 1971 where plans of merger were discussed?

5 A No.

6 Q And prior to the meeting which we have seen in
7 1974, late -- in the fall of 1974, can you recall ever
8 anyone, while JMHI was supposedly running the
9 corporation, did anyone raise the issue of default? You
10 may have answered that and I'm just not sure.

11 A I don't recall at that time, no, sir.

12 Q Do you recall -- and I think I asked you this
13 before -- why you were retained? And I'm going to ask
14 you if it sparks your recollection, you were retained to
15 cure the bond default?

16 A No. I believe what I told you was my original
17 thought was that I was called in because the Delaware
18 corporation wanted to issue new bonds. And that's when
19 Mr. Linton informed me that the matter had not gone
20 through.

21 Q Would you show the witness his deposition? I'm
22 going to see if I can refresh his recollection. Would
23 you look at page 17, line 5 and the question that

J.APP.0819

1 follows? And then tell me if you can recall how you
2 became aware that no merger had occurred?

3 A You want me to read my answer? Because I think
4 that's what I'm stating now, is exactly what's in the
5 deposition.

6 Q I'm not trying to impeach you. I just want to
7 see if we can get a flow. What is your answer?

8 A I was contacted by Mr. Linton because the
9 Delaware corporation wanted to issue new bonds to take
10 the place of the Maryland corporation bonds which were
11 in default. And I gather, as I say here, that they were
12 in trouble.

13 Whether, as I said before, whether at that
14 point claims were being made against the hospital by
15 doctors who were no longer members of the medical staff
16 and who were bond holders and were therefore raising the
17 issue, I don't recall. But that's what I have in my
18 mind.

19 Q As counsel, what conclusion would you come to
20 if JMHC had assumed JMHI's obligations and there was now
21 a default?

22 MR. CHOCKLEY: Object, Your Honor.

23 BY MR. BETTIUS:

1 Q Do you recall that advice being sought?

2 MR. CHOCKLEY: The question posed is
3 hypothetical, Your Honor.

4 THE COURT: I didn't hear a hypothetical. I'll
5 overrule that one.

6 A Can you repeat it?

7 BY MR. BETTIUS:

8 Q Do you recall advising your client, who I take
9 it was JMHC --

10 A Yes, yes, it was, because it was the hospital.

11 Q Do you recall what advice you gave them as to
12 their responsibility?

13 A No, I don't think the question of their
14 responsibility came up because what we were trying to do
15 at that point was to cure the problem that had arisen
16 because there was no completion of what had been planned
17 in 1971.

18 Q Well, in effect, Mr. Richards, can you tell us
19 what whether or not you then declared a present default
20 of the bonds as a basis for holding meetings and
21 transferring assets? That's what you did, isn't it?

22 A Well, they were already in default. Claims
23 were being made against the Maryland corporation. I

J.APP. 0821

1 think as we've gone through before, both corporations
2 were liable because the Delaware corporation had assumed
3 all liabilities. So they were both liable on the bonds.
4 But I was worried at that time that the claims were
5 being made against the Maryland corporation.

6 Q Well, wasn't -- can you tell us what fix you
7 proposed for this problem?

8 A Yeah. The fix that I proposed was to go ahead
9 and sell the assets of the Maryland corporation to the
10 Delaware corporation.

11 Q Well, how did that cure anything if the
12 Delaware corporation was also in default?

13 A Because they were going to issue new bonds to
14 pay off the old ones.

15 Q Why couldn't they just cure the default they
16 had undertaken in 1971?

17 A Why couldn't they have just cured --

18 Q Yes.

19 A Because that still didn't solve the underlying
20 problem.

21 Q Why not?

22 A Because you still had a merger that was
23 supposed to have taken place in 1971 that actually never

J.APP. 0822

1 went through in toto.

2 Q Well, Mr. Richards, you were -- your solution
3 was to issue the bonds of a company that had been
4 responsible since 1971 for curing the default; isn't
5 that correct?

6 A No, they were going to raise the money and then
7 the money would be used to pay off the bond. They
8 weren't going to replace them, is my recollection.

9 Q They didn't raise a dime, did they?

10 A I don't know.

11 MR. CHOCKLEY: Objection, Your Honor.

12 THE COURT: Just a minute.

13 MR. CHOCKLEY: Leading.

14 THE COURT: That was leading.

15 BY MR. BETTIUS:

16 Q Tell me whether or not, if you know, they
17 raised any money.

18 A I have no recollection of whether they raised
19 money or didn't, other than the letter you've already
20 showed me indicated that the bonds were sold. So I
21 assume they raised money.

22 Q Isn't what they did, Mr. Richards, if you know,
23 to redeem those bonds for stock that had been issued two

J.APP. 0823

1 years before at \$4 and used the bonds to buy the
2 building? Isn't that what they did?

3 A No.

4 Q You don't know that?

5 A No, I don't.

6 Q Do you know -- you handled the '75 transaction,
7 didn't you?

8 A Yes, sir.

9 Q Do you know how, what the consideration was for
10 the transfer of the building?

11 A The building wasn't transferred in '75.

12 Q When was the building transferred?

13 A The Maryland corporation never owned the
14 building. You know that and I know that.

15 Q I wonder if counsel will stipulate to that?

16 THE COURT: Ask your next question,
17 Mr. Bettius.

18 MR. BETTIUS: Yes, sir.

19 BY MR. BETTIUS:

20 Q So you believe, then, that neither corporation
21 ever owned the building; isn't that correct?

22 A I didn't say that. I said the Maryland
23 corporation never owned the building.

J.APP. 0824

1 Q Well, when did the C corporation own the
2 building?

3 A I gather from the things that you've recently
4 shown to me that it acquired the building from one of
5 the partnerships.

6 Q You never knew that contemporaneous with the
7 transaction, though, did you?

8 A No, sir.

9 Q So you were documenting a transaction, as I
10 understand it, and attempted to straighten out the
11 assets but never knew that one of the assets had been
12 transferred or supposedly transferred to the operating
13 corporation C. You didn't know that, did you?

14 A That had nothing to do with the Maryland
15 corporation. I can't -- I don't know how many times you
16 want me to say it. The Maryland corporation never owned
17 the building. That was not an asset of the Maryland
18 corporation.

19 Q Well, do you understand based on your
20 representation in 1975 whether or not the building was
21 supposedly sold by an operating corporation to a
22 partnership called JMHJV? Did you know that? You
23 didn't know that, did you?

J.APP.0825

1 A In '75?

2 Q Yes.

3 A No, I think I found that out later.

4 Q So if you were documenting the transaction, you
5 did not know that one of your responsibilities was to
6 convey the building from C to a partnership; is that
7 right?

8 A No, that was not a responsibility of mine.

9 MR. CHOCKLEY: Objection, Your Honor. It's
10 leading. He's trying to cross-examine the witness here.

11 THE COURT: It sounded like cross-examination
12 to me, Mr. Bettius.

13 MR. BETTIUS: Your Honor, I would ask that I be
14 given that leave. I'm having to ask this witness about
15 transactions which he represented at the time which
16 privilege has been claimed and I've been denied the
17 documents. And Your Honor, I just don't think this is
18 appropriate. I think -- I would ask for permission to
19 lead.

20 MR. CHOCKLEY: With respect to that, we haven't
21 denied any of the documents with respect to 1975, which
22 is exactly the period he's talking about. We turned
23 over all the documents for which we previously claimed

J.APP.0826

1 privilege through 1975. That is not an issue.

2 THE COURT: I still haven't heard anything,
3 Mr. Bettius, from which I could conclude that
4 Mr. Richards has an adverse interest and certainly
5 not -- also, I think that the tone is starting to go up
6 a little bit. We need to calm it back down. But --

7 MR. BETTIUS: I'll do that, sir. I apologize.

8 BY MR. BETTIUS:

9 Q Mr. Richards, you would then, as I understand
10 your testimony, take the position that you did not
11 document the transaction?

12 A The transaction that I documented was the sale
13 of the assets of the Maryland corporation to the
14 Delaware corporation.

15 Q And what did you understand those assets to be?

16 A At that time, the remaining assets were two
17 pieces of real estate and some equipment.

18 Q And what was the consideration for the
19 transfer?

20 A The consideration for the transfer was the
21 taking over of the Palmer dispute and the assumption of
22 the bonded indebtedness of the Maryland corporation.

23 Q What happened to the lease?

J.APP. 0827

1 A My understanding that the lease rent had not
2 been paid and therefore, the lease had no value.

3 Q The rent hadn't been paid?

4 A Um-hum. Originally -- are we talking about the
5 same lease?

6 Q I'm talking about JMHI's operating lease. You
7 understood it hadn't --

8 A That it had not paid rent that was called for.

9 Q Well, it had been out of the operation of the
10 hospital since 1971; hadn't it?

11 A Yes. That's the time that that part of the
12 transfer took effect because that's when the Delaware
13 corporation came in and started operating the hospital.

14 Q How did you understand it to pay rent if
15 operations had been assumed by this C corp?

16 A The rent that it hadn't been paying was the
17 rent that was due in '71 when the C corporation came in
18 and took over the operation of the hospital.

19 Q So it's your understanding -- and I want to be
20 very clear about this -- that there was a rent default
21 in 1971?

22 A Yes, sir.

23 Q And what rent was in default?

J.APP. 0828

1 A The rent from the hospital to the joint
2 venture.

3 Q And that's your understanding. Do you remember
4 who communicated that to you?

5 A Mr. Linton.

6 Q Mr. Linton wasn't there in '71, was he?

7 A Mr. Linton was a, to me, a seasoned hospital
8 administrator. He served his 30 years and he -- in the
9 army medical corps and in hospital administration the
10 whole time. And when he came on board, as I told you,
11 after 1971, he made a thorough investigation of all of
12 the assets and the liabilities and the debts of both
13 corporations. He's the one who informed me -- and
14 that's why when you ask me in my deposition as to
15 whether I had done any investigation of my own, I told
16 you I relied on Mr. Linton.

17 Q Well, you were here when Dr. Tauber testified
18 in this trial, weren't you?

19 A No.

20 Q No? Would it surprise you if I told you that
21 Dr. Tauber testified -- and let me read it to you. In
22 response to a question, Mr. Reeves --

23 MR. CHOCKLEY: Excuse me, Your Honor. May I

J.APP.0829

1 have the page?

2 THE COURT: Where are you reading from?

3 MR. BETTIUS: I'm reading from page 328.

4 MR. CHOCKLEY: Thank you, Your Honor.

5 BY MR. BETTIUS:

6 Q Mr. Reeves wanted, did he not, the assets of
7 the hospital because of the problems that he had
8 enunciated of indebtedness and control and being sued to
9 be placed in one basket, didn't he?

10 And Dr. Tauber answered. That has entirely a
11 different reason for it. Ask me. I answer to you.
12 Entirely different reason for it.

13 Question: What is that reason?

14 That what I'm answering you, he planned to go
15 to Wall Street and he emphasized it that this concept,
16 what with the help of Mr. Krakow constructed, that I
17 separate the partnership which owned the place in the
18 corporation. Without owning the hospital they will
19 have, not have any chance to go to Wall Street and try
20 to sell it to the public. And he comes down and he said
21 that was the only reason. No other reason.

22 MR. CHOCKLEY: Object, Your Honor.

23 THE COURT: Objection sustained.

J.APP.0830

1 MR. BETTIUS: Your Honor, I'm reading from line
2 19.

3 THE COURT: I understand that. But you're
4 asking Mr. Richards about Dr. Tauber's testimony.

5 BY MR. BETTIUS:

6 Q Do you think his recollection would be better
7 than yours?

8 A I didn't hear you read anything about the fact
9 that the interest hadn't been paid.

10 Q Didn't he say there was only one reason, and
11 that was to go to Wall Street?

12 A Yeah, but I don't -- I'm sorry. I don't want
13 to appear more stupid than I am. But what's that got to
14 do with the fact that the hospital hadn't paid the
15 interest on its lease?

16 Q I'm going to ask you where that's documented,
17 if you know, anywhere? Someone told you that?

18 A Yes, sir. That's what I've just told you.
19 That's correct.

20 Q And you have a recollection that Mr. Linton
21 told you that rent wasn't paid?

22 A Yes, sir.

23 Q And do you remember when he told you that?

J.APP.0831

1 A It would have been in '74.

2 Q Why didn't you raise that as part of the
3 defaults that you raised when you were taking over the
4 bonds? Can you tell me why that wasn't another one of
5 the defaults, the lease payments, they hadn't paid the
6 bonds and they hadn't paid Dr. Palmer. That is never
7 mentioned, is it?

8 A Because the Delaware corporation had already
9 taken over certain of the assets and liabilities of the
10 Maryland corporation in 1971 and assumed the operation
11 of the hospital.

12 Q Well, weren't they saying in 1974, if you
13 recall, can't you tell me whether or not the whole
14 thrust of your representation is that they hadn't taken
15 them over and they were now calling a default?

16 MR. CHOCKLEY: Object, Your Honor. Again, he's
17 lapsing into cross-examination. I know that's hard for
18 Mr. Bettius.

19 THE COURT: It sounds like cross-examination to
20 me.

21 BY MR. BETTIUS:

22 Q Was it not a position being taken by you that
23 the Delaware corporation was now going to address a

J.APP. 0832

1 present, all the present defaults of JMHI, bonds, Palmer
2 contract, going to do all these things now in '74 and
3 '75?

4 A Those are the defaults that I knew existed at
5 that time. The other defaults had been cured when the
6 Delaware corporation took over the operation of the
7 hospital as I understood it.

8 Q Why weren't the bond defaults of JMHI cured
9 when they took over all the liabilities?

10 A Because the doctors who held the bonds were
11 making claims against the Maryland corporation.

12 Q All right. And which doctors had left, if you
13 recall, that were making these claims?

14 A I can't answer that, sir.

15 Q It's Dr. Small, whose letter you wrote, was
16 still a member, wasn't he?

17 A I don't know when Dr. Small left.

18 Q You realize -- what did you realize in
19 connection with this merger that Mr. Reeves had
20 attempted to create? Did you understand that it
21 happened legally?

22 A No. As I've stated, I didn't think it could
23 happen.

J.APP.0833

1 Q Well, let's go back and review, then, what you
2 knew in 1974, late 1974 or '75. You never knew at that
3 time that the building had been transferred to C; is
4 that correct?

5 MR. CHOCKLEY: Objection. Asked and answered.

6 THE COURT: I thought it had been.

7 MR. BETTIUS: All right.

8 BY MR. BETTIUS:

9 Q You knew -- what was your understanding of what
10 members of a charitable corporation own?

11 A They don't own anything.

12 Q What was your understanding of whether a merger
13 could take place between a stock and nonstock
14 corporation?

15 A It could not take place at that time.

16 THE COURT: I'm sorry. At what time?

17 THE WITNESS: At that time.

18 THE COURT: Which time are you referring to?

19 THE WITNESS: I'm assuming he's referring to
20 '71.

21 THE COURT: '71?

22 THE WITNESS: Yes, sir.

23 BY MR. BETTIUS:

J.APP.0834

1 Q And you didn't even go back and try and figure
2 out what Reeves had tried to do, did you?

3 A As far as I knew, he hadn't done anything but
4 form a Delaware corporation.

5 Q So you didn't go back and investigate the past.
6 You took it as a present problem and solved it in the
7 present; is that a fair statement?

8 MR. CHOCKLEY: I object, Your Honor; leading.
9 He can ask him in direct fashion what he did.

10 THE COURT: I'll let him answer that if you
11 can. I'm not sure you can.

12 BY MR. BETTIUS:

13 Q Did you treat it as a present problem in '74
14 and '75 or did you treat it as a past problem?

15 A There was a problem that still existed in that
16 the assets that remained in the Maryland corporation
17 were still remaining in it and claims were being made
18 against it. And I did a purchase and sale agreement.
19 The prior assets that had been done in '71, as far as I
20 was concerned had been purchased, and the consideration
21 was the assumption of those liabilities that were tied
22 in with those assets.

23 Q Tell us what steps if any you took to make an

J.APP.0835

1 investigation as to how the assets of JMHI, the former
2 charity, had been dealt with in the interim between '71
3 and your picking it up in '74 or '75.

4 A What investigation did I make of what had
5 happened to those --

6 Q Yes.

7 A My only investigation was conversations that I
8 had with Mr. Linton.

9 Q Do you recall telling me that --

10 A I don't recall any particular instance, no,
11 sir. It's been 20 odd years ago.

12 Q So you didn't go back and try to see what had
13 happened to the assets in the meantime?

14 A I think they been told by Mr. Linton what had
15 happened.

16 Q What did you understand the assets were?

17 A The assets were accounts receivable -- I
18 can't -- you know, there obviously were other things
19 besides that.

20 Q Medicare?

21 A Medicare, I consider those as accounts
22 receivable, moneys due to the hospital, and then they
23 had all these payables.

J.APP. 0836

1 Q So you thought Mr. Linton had taken care of
2 that?

3 A No, no. Mr. Linton informed me of the status
4 of all of that.

5 Q What was the status?

6 A He hadn't taken care of it because he wasn't
7 there in '71.

8 Q What was the status as he communicated it to
9 you?

10 A The status was that the Delaware corporation
11 had taken over these assets and these liabilities and
12 was operating the hospital.

13 Q Well, you knew as a matter of fact, they had no
14 certificate of authority to transact business in
15 Virginia, didn't you?

16 A That doesn't keep them from doing business.

17 Q It doesn't?

18 A No, it subjects them to a penalty. But it
19 doesn't keep them from doing business.

20 Q In 1971, Mr. Richards?

21 A Um-hum.

22 Q You think in 1971 and '75, and you so advised
23 your client, that there was a penalty but it didn't

J.APP. 0837

1 matter in terms of them continuing to do business?

2 A No. I didn't know then that they were not
3 domesticated.

4 Q Well, if they weren't domesticated, what do you
5 understand the consequences to be?

6 A As I recall, under the corporation law, there
7 is a penalty involved if you do not domesticate.

8 Q But that's it, as far as you knew?

9 A Yes, sir. Well, the directors may be
10 personally liable for anything that the corporation
11 which has not domesticated may have done in that period.

12 Q And how about the directors of JMHI?

13 A That was domesticated.

14 Q Not after '73, was it?

15 A Yes, sir.

16 Q Did you not see the revocation of its corporate
17 status in Delaware?

18 A Yes, sir.

19 Q And it's your position that -- and I just want
20 to understand -- it's your position as a matter of law
21 that you can revoke a corporate charter in the domiciled
22 state and it still be effectively functioning in another
23 state?

J.APP.0838

1 A I don't know that I've ever taken that
2 position, sir.

3 Q Well, if there are responsibilities on JMHI's
4 directors after 1973 -- I mean, if they were revoked in
5 1973, those directors would have personal
6 responsibility, wouldn't it?

7 A For anything that particular corporation did
8 that it shouldn't do.

9 Q Like bond defaults?

10 A Yes.

11 Q And like failure to make lease payments?

12 A Yes.

13 Q And if the corporation ceased to exist in 1971,
14 do you know if the directors of the two corporations, C
15 and I, were the same or what identity there was?

16 A I don't know that they were the same, no.

17 Q Did you ever read the financial statements,
18 while you were doing this, did you go back and inquire
19 about the financial statements?

20 A I don't recall. Again, I discussed a lot of
21 the financial matters with Mr. Linton. Whether he
22 showed me financial statements, I don't know at this
23 time.

J.APP. 0839

1 Q Would you show the witness the financial
2 statement from year ending 1971? I believe it's 270.
3 200, I'm sorry. Would you look, sir, at page 6?

4 A Page 6 is the 6 in the lower right-hand corner?

5 Q Yes.

6 A Yes, sir.

7 Q Were you aware that the directors of JMHC and
8 JMHI indicated -- and I just want to know if you knew
9 what it says here -- that they exchanged stock that
10 resulted in a mere change of name and state of
11 organization?

12 A I'm sorry. We must be looking at different
13 pages.

14 Q Are you looking at note one?

15 A 44026, number 6.

16 Q I'm sorry. 44028. I'm sorry.

17 A Page 8. Okay. I'm sorry, sir. Would you
18 now --

19 Q In the representation of your client, were you
20 informed that JMHC received all the assets and assumed
21 all the liabilities of JMHI as of that date, June 30th,
22 1971, and that 5,000 shares of JMHC common stock were
23 given to JMHI's stockholders in exchange for all the

J.APP.0840

1 outstanding 5,000 shares of JMHA stock and this exchange
2 resulted in a mere change of name and state of
3 organization? Did your clients tell you that that's
4 what they had done?

5 A No, sir.

6 Q Weren't they, if this is what they did, really
7 saying I is C; JMHI is JMHC?

8 MR. CHOCKLEY: Object, Your Honor, the document
9 speaks for itself and it's leading.

10 THE COURT: Objection sustained.

11 BY MR. BETTIUS:

12 Q Did you take -- tell us what steps if any you
13 took to go back, if you didn't see this, to understand
14 what supposedly had happened in '71.

15 A I think I told you, I had extensive
16 conversations with Mr. Linton who had gone over all of
17 the financial records and all of the records of both
18 companies that existed, as far as I knew, he knew at
19 that time.

20 Q But in those extensive conversations, he never
21 told you about this note that we just read?

22 A I don't recall whether he told me or not, sir.
23 It's 25 years ago.

J.APP. 0841

1 Q Will you show the witness Exhibit 235? Would
2 you turn to the TAG number 002912? And I'm going to ask
3 you a question about the effect of the merger that's
4 recited on 2913, if you were advised of that. And the
5 part I'm talking about is that all rights of creditors
6 and of any persons dealing with JMHI and JMHC and all
7 liens upon any property of JMHI and JMHC shall be
8 preserved unimpaired by the merger except for options to
9 purchase JMHI stock which shall be assumed by JMHC as
10 provided in Article 3 hereof, and all debts,
11 liabilities, obligations and duties of JMHI shall
12 thenceforth attach to JMHC and may it be enforced
13 against it to the same extent as if the same had been
14 incurred by it.

15 Did Mr. Linton tell you that JMHC had stepped
16 into that position?

17 A I don't recall that, no.

18 Q That would have been very material, wouldn't
19 it?

20 A I knew it couldn't have been done.

21 Q It would have been very material -- it couldn't
22 have been done?

23 A No.

J.APP. 0842

1 Q But had they operated under that premise and
2 told you that they had assured JMHA of that, would that
3 have changed in any way what you did in 1975 by calling
4 a present bond default and issuing new bonds?

5 A I guess my answer, since I knew they couldn't
6 do it, it wouldn't have affected what I was doing.

7 Q Isn't the truth of the matter that the
8 financial statements of this company and its tax returns
9 are at variance with the facts as you understood them to
10 be?

11 A Yes, sir.

12 Q And they are at variance with the way the
13 company actually operated?

14 MR. CHOCKLEY: Object, Your Honor, leading.

15 THE COURT: Objection overruled.

16 BY MR. BETTIUS:

17 Q Are they at variance with the way the company
18 operated?

19 A I find it hard to answer for this reason:
20 Without knowing the extent of operations but on a broad
21 brush, I would say that the company, the Delaware
22 corporation, operated as if it, the merger had been
23 effective up until 1975.

J.APP.0843

1 Q Tell me, Mr. Richards, how could there be a
2 bond default by JMHI? I withdraw the question.

3 A I didn't understand your statement. I'm sorry.

4 THE COURT: The question was withdrawn.

5 THE WITNESS: Oh, I'm sorry.

6 BY MR. BETTIUS:

7 Q Show the witness Exhibit 21. Do you recognize
8 what that document is?

9 A Yes, sir. It's an annual report.

10 Q Whose annual report?

11 A The Maryland corporation.

12 Q Who's it filed with?

13 A Filed with the state of Virginia.

14 Q And what does it say the last corporate meeting
15 of the entity finally -- when does it say it was held,
16 Mr. Richards?

17 A On the second page it says the date of the last
18 annual meeting of stockholders and members was January
19 26th, 1973.

20 Q That's JMHI's statement, isn't it?

21 A Yes, sir.

22 Q So apparently, as of the date you just read,
23 this corporation was filing papers in Virginia saying it

J.APP.0844

1 was operating in good stead; isn't that correct?

2 A Yes, sir.

3 Q Do you think that's at variance with the facts
4 as you understand them?

5 A As I understand them now, yes. I didn't
6 understand it then.

7 Q Is there a list of who the directors are?

8 MR. CHOCKLEY: Your Honor, the document is in
9 evidence. It speaks for itself.

10 MR. BETTIUS: It's going to be material --

11 THE COURT: All right, go ahead.

12 A Yes, sir.

13 BY MR. BETTIUS:

14 Q You didn't file that document, did you?

15 A No, sir.

16 Q Nor did anyone -- and you may have testified to
17 this and I apologize if I'm asking you again. No one
18 forwarded you the communication -- or did anyone forward
19 you the communication that Maryland had revoked JMHI's
20 standing one month before?

21 A No, sir.

22 Q And you didn't know that at the time you
23 attempted to work out these problems of asset management

J.APP. 0845

1 and conveyance; is that correct?

2 A That's correct.

3 Q All right. Did you know -- give the witness
4 the minutes of the meeting of March 13, 1974, the board
5 meeting.

6 I'm going to direct you to item number 3. Were
7 you aware or did your client make you aware, if they
8 were your client, that they were planning to sell and
9 lease back the building?

10 A In 1974?

11 Q Yes.

12 A No, sir.

13 Q Did Dr. Tauber tell you that the partners at
14 that time were seriously agitating to make a profit on
15 their investment?

16 A No.

17 Q When you became aware of the bond default, were
18 you aware and had you participated in discussions or
19 documentation at the time of the recommendations that
20 you made in January with respect to how to handle the
21 situation of the sale and lease back was pending? I'm
22 talking January of '75.

23 A What's your question?

J.APP. 0846

1 Q Did you know that the -- in January of 1975
2 when you -- let me withdraw that. You conducted
3 meetings in 1975 where you represented the JMHI board
4 and members, did you not?

5 A Yes, sir.

6 Q And when you represented them, you had no
7 knowledge that they were not in good standing, did you?

8 A No, sir. The corporation, you mean?

9 Q Yes. You had no idea their charter had lapsed.

10 A No, sir.

11 Q And when you represented them in those
12 meetings, you were also effectuating and preparing to
13 transfer hospital assets from JMHC to JMHIJV; weren't
14 you?

15 A I don't know that I was at that time.

16 Q Give me the sale of the stock. I'm going to
17 ask the witness to be shown Exhibit 301.

18 Did you prepare that document styled memorandum
19 of sale and lease back, Mr. Richards?

20 A I don't think so, sir.

21 Q Never seen that document?

22 A I didn't say that.

23 Q You have seen it, then?

J.APP. 0847

1 A You've showed it to me a number of times.

2 Q But you didn't prepare it?

3 A I don't think so.

4 Q And you were unaware when you conducted these
5 meetings to get JMHI's assets into JMHC, that JMHC had
6 already agreed to sell them before they got them?

7 MR. CHOCKLEY: Objection, leading.

8 THE COURT: Objection sustained.

9 BY MR. BETTIUS:

10 Q Does this document purport to you, if you know,
11 to convey the assets of JMHI to JMHC?

12 MR. CHOCKLEY: The document speaks for itself,
13 Your Honor.

14 MR. BETTIUS: I think I have the right to
15 inquire, Your Honor.

16 THE COURT: A document he didn't prepare and
17 you're asking, I guess you're asking his interpretation
18 or understanding of it? Is that the question?

19 MR. BETTIUS: I'm asking him if at the time he
20 declared the default and transferred these assets back
21 and forth on January 29th, 1975, that he knew it was to
22 effectuate a sale and a lease back.

23 THE COURT: You can ask him that question.

J.APP. 0848

1 That would be all right. That isn't what you asked him.
2 But you can ask him that question.

3 MR. BETTIUS: Your Honor, I tell you what, I
4 can use all the help I can get.

5 THE COURT: I thought he had already answered
6 it, but I'll let him answer it again.

7 A I don't recall.

8 BY MR. BETTIUS:

9 Q Well, from reading this document, is it
10 apparent whether your client told you or not that they
11 had planned to sell and lease back Jefferson Memorial
12 Hospital Corporation and the assets of JMHI to JMHJV?

13 A Where are you reading from?

14 MR. BETTIUS: Do I have you confused, Your
15 Honor?

16 THE COURT: Yes, you do.

17 BY MR. BETTIUS:

18 Q All right. Do you know that JMHJV acquired
19 JMHC's assets in 1975?

20 A I know around that period of time. I don't
21 know when.

22 Q Did you do it?

23 A I think I participated in that. Or I knew

J.APP.0849

1 about it. Whether I actually drew documents or not, I
2 can't recall.

3 Q Did you know that JMHC was going to sell JMH --
4 did you know that JMHC was going to sell JMHI's assets
5 to JMHJV?

6 MR. CHOCKLEY: That's been asked and answered.

7 THE COURT: I want to hear it one more time, if
8 he understands the question.

9 A At what period in time are you talking about?

10 THE COURT: When are you talking?

11 BY MR. BETTIUS:

12 Q I'm talking of the 24th of December, 1974, did
13 you know that JMHC had contracted to sell its assets and
14 JMHI's assets to JMHJV?

15 A No.

16 Q You were not advised of this by your client?

17 A I don't recall. I don't know whether I was
18 advised of it or not. You asked me whether this
19 document refreshes my recollection. I haven't even
20 gotten that far yet.

21 Q That wasn't the question, Mr. Richards.

22 A All right.

23 Q I'm asking you -- and let's see if we can

J.APP.0850

1 understand what happened. This memorandum of agreement
2 of sale and lease back, which is admitted into evidence,
3 was entered into between JMHC and Laszlo Tauber,
4 Trustee, is that correct?

5 MR. CHOCKLEY: Your Honor, the document speaks
6 for itself.

7 THE COURT: He has to lay a foundation for the
8 question, Mr. Chockley. Let's get on with it,
9 Mr. Bettius. Do you read it that way, Mr. Richards?

10 THE WITNESS: That's what it says, yes, sir.

11 BY MR. BETTIUS:

12 Q And you subsequently, did you not, affect the
13 transfer of JMHC's assets to JMHJV?

14 MR. CHOCKLEY: Asked and answered.

15 A I think I testified I don't recall what I did.
16 But I knew about it and I think I probably participated
17 in some way. Whether I drew documents or not, I don't
18 know.

19 BY MR. BETTIUS:

20 Q What I'm asking you is, wasn't a series of
21 transactions planned, if you know, whereby JMHC was
22 going to call a default against JMHI, take its assets
23 and then convey them to JMHJV? You knew that, didn't

J.APP.0851

1 you?

2 A No. At that time? No.

3 Q When did you find out?

4 A Damned if I know.

5 Q So your client had you operating to declare a
6 bond default but didn't tell you that the result of that
7 default was that I's assets were going to be conveyed to
8 JMHJV?

9 MR. CHOCKLEY: I object. He's
10 mischaracterizing his testimony.

11 THE COURT: It's an argumentative question,
12 Mr. Bettius. I think he answered it about three times
13 already, quite frankly. Mr. Richards, correct me if I'm
14 wrong, but my understanding of your testimony is that at
15 the time you were working on the transfer of the assets
16 from the Maryland corporation to Delaware, you did not
17 know about the proposed transfer of the assets from the
18 Delaware corporation to the joint venture; is that
19 correct?

20 THE WITNESS: That's right.

21 THE COURT: You found out sometime later but
22 don't recall when.

23 THE WITNESS: That's right.

J.APP.0852

1 THE COURT: All right.

2 BY MR. BETTIUS:

3 Q Did you conduct a board of directors meeting
4 for JMHI in January of 1975?

5 A Yes, sir.

6 Q Show the witness Exhibit 135. Now, you
7 advised, as I understand these minutes, JMHI that its
8 assets exceeded by far its liabilities -- its
9 liabilities exceeded by far its assets; is that correct?

10 A That's what it says, sir.

11 Q Where did you get that information?

12 A From what I knew and from my conversations with
13 Mr. Linton.

14 Q What did you know?

15 A I knew that the bonds were in default; that
16 there had been calls made on them. I knew that Dick
17 Palmer was making noises about withdrawing from the
18 hospital, which would have closed its doors, which was
19 the worst thing that could happen. And so that was the
20 basis for that of my own personal knowledge.

21 The rest of it I knew from Mr. Linton as far as
22 the status of the Maryland corporation at the time that
23 it had transferred operating assets to the Delaware

J.APP. 0853

1 corporation.

2 Q You held that meeting at 7:00, is that correct,
3 if these minutes are right?

4 A If the minutes are right.

5 Q You held another meeting at 7:15 of the board
6 of directors?

7 A That's what it says.

8 Q Where did you get a list of directors from?

9 A Where did I get the list of directors?

10 Q How did you know who the directors were?

11 A Because I just nominated them in the prior
12 meeting.

13 Q All right. How did you know who the members
14 were?

15 A Because I went into the minute book and found
16 out who the members were.

17 Q As of what date?

18 A As of the time that the company went from a
19 stock corporation to a nonstock corporation.

20 Q You went back to '65?

21 A Um-hum. There had been no change in the
22 members.

23 Q Well, if the corporation dissolved in April of

J.APP. 0854

1 1973, who were the proper people to hold that meeting
2 with? They are listed right there on Exhibit 21, aren't
3 they?

4 MR. CHOCKLEY: Your Honor, is he asking for a
5 legal opinion?

6 MR. BETTIUS: He represented them and he
7 convened the meeting. I'm going to ask him what he
8 understood about who should have been conducting that
9 meeting.

10 THE COURT: He can ask him what his
11 understanding about of who should have been there and
12 who should have been conducting the meeting.

13 BY MR. BETTIUS:

14 Q The dissolved corporation is in trust, is it
15 not, to its members, I mean directors, at the time of
16 dissolution; is that correct?

17 A That's right.

18 Q Would you look at Exhibit 21? Does that tell
19 you who the directors were, not only in May, but in
20 December of 1973?

21 A No, it doesn't tell me who they were in
22 December --

23 Q '72, I'm sorry. 1972.

J.APP.0855

1 A No.

2 Q It doesn't tell you who the directors were?

3 A No.

4 Q Would you read it? Who were those people that
5 are listed there as directors?

6 MR. CHOCKLEY: I'm sorry, Your Honor, which
7 exhibit is he referring to?

8 MR. BETTIUS: I'm looking at the certificate of
9 authority or the certificate in good standing filed by
10 JMHI with the state on May --

11 THE WITNESS: You're talking about the annual
12 report, aren't you, not the certificate of good
13 standing?

14 BY MR. BETTIUS:

15 Q Yes, I'm sorry. The annual report filed tells
16 you who the directors of JMHI are; doesn't it?

17 A As of January of 1973?

18 Q Yes, sir.

19 A Yes, sir.

20 Q And if that's when it went into dissolution,
21 those are the people that should have held the meeting;
22 is that right?

23 A If these were the directors in January of '73

J.APP.0856

1 and it went into dissolution in January of '73, yes,
2 sir.

3 Q That's not the people -- those aren't the
4 people in this meeting, are they?

5 A No.

6 Q Okay. Because you weren't advised and you were
7 directed back to the minute book in '65; is that
8 correct?

9 A No, I had the minute book. My recollection is
10 that I didn't know who the directors were in '75. And I
11 went to the minute book and found out that there were no
12 minutes going back for a good number of years. And
13 therefore, I went back to the beginning of the
14 corporation's nonprofit existence and took the members
15 and had them convene and hold a special meeting or
16 annual meeting, I've forgotten which, and elect a new
17 board.

18 Q The corporation didn't share with you all the
19 interim minutes that had been collected since 1971 up to
20 and including 1975?

21 A No. I didn't know there were any.

22 THE COURT: Mr. Bettius, let me ask you, again
23 without limiting anybody, how much longer do you think

J.APP. 0857

1 you'll be on direct?

2 MR. BETTIUS: An hour.

3 THE COURT: Why don't we take a short recess?

4 (A brief recess was taken.)

5 BY MR. BETTIUS:

6 Q Mr. Richards, the reason that I have been
7 having some difficulty with the last questions we have,
8 would you show the witness his previous deposition?
9 Would you read on page 50 from line 17 down to line 7 on
10 the next page?

11 Mr. Richards, it's probably my fault and I may
12 not have understood. And I'm going to ask you the
13 question as it was written: Was there any doubt in your
14 mind, Mr. Richards, that the actions that were being
15 taken on the 27th of January and the 29th of January by
16 the respective corporations were antecedent to conveying
17 this property to the partnership? That's why you're
18 doing these things, isn't that correct, because the
19 memorandum of sale and lease back had already been
20 executed in '74?

21 Do you remember how you answered that?

22 A I said yeah.

23 Q That's why they were done; isn't that correct?

J.APP. 0858

1 A That's what I now know, yes, sir.

2 Q You now know. All right, sir.

3 A That's when everything we were talking about
4 was directed.

5 Q As I said, perhaps it's my understanding. Now
6 I'm going to ask you the next question I asked you: So
7 what was happening is, you were tying up the ends that
8 were necessary to effectuate and convey title to the
9 assets to Dr. Tauber's new venture; isn't that correct?

10 MR. CHOCKLEY: Your Honor, I don't want to slow
11 this thing down any further than it needs to be, but
12 this is not proper examination. He's neither impeaching
13 him or refreshing his recollection.

14 THE COURT: He's just asking him the question.
15 He just read it from the deposition.

16 BY MR. BETTIUS:

17 Q I'm just asking the question. Will you answer
18 that for me, Mr. Richards, if you can?

19 A And I said I think that's correct. Yes, sir.

20 Q All right, sir.

21 Mr. Richards -- would you show the witness
22 Exhibit 508, please? Do you recognize this document,
23 Mr. Richards?

J.APP. 0859

1 A Yes, sir. Application for special use permit.

2 Q And this was filed on April 19th of 1971; is
3 that correct?

4 A I can't read the date. But I don't disagree
5 with you.

6 Q I'm sorry, Mr. Richards. Let me just ask you
7 to reference a specific page, because I may be wrong
8 about that. Would you turn to page 004762 of that
9 exhibit?

10 A Yes, sir.

11 Q You used to do a good bit of zoning, didn't
12 you, Mr. Richards?

13 A Yes, sir.

14 Q And I as well. And our representations to,
15 lawyer's representations to public bodies and the
16 integrity of those representations is important, isn't
17 it.

18 A Yes, sir.

19 Q And you believed everything you wrote in that
20 letter, didn't you?

21 A As far as I know, yeah.

22 Q And it came not from your head but based on the
23 advice of your client; isn't that true?

J.APP.0860

1 A I don't know where it came from at this time.

2 Q But you wouldn't --

3 A I might have known it myself.

4 Q But you wouldn't have put these things in here
5 if you didn't believe them to be true or hadn't been
6 advised by your client that you had authority to do it,
7 isn't that right?

8 A One or the other.

9 MR. BETTIUS: Yes, sir. Your Honor, I'm going
10 to move -- it's already in. Excuse me.

11 BY MR. BETTIUS:

12 Q Mr. Richards, what was your understanding, if
13 you can recall, in 1972 about who was operating the
14 hospital?

15 A I have no recollection of having any
16 understanding.

17 Q Well, did you think it was JMHC or JMHI or just
18 frankly, you don't remember?

19 A I don't know.

20 Q Would you show the witness Exhibit 610? You
21 were, Mr. Richards, personally responsible for obtaining
22 tax relief from the city for Jefferson Memorial Hospital
23 Inc. as a charity, were you not?

J.APP.0861

1 A Yes, sir. I've read the note.

2 Q You obviously believed the lessee was in
3 possession of this building in 1972; isn't that correct?

4 A Yes.

5 Q And in fact, Mr. Richards, you were able to
6 maintain tax exempt status for this charity in the city
7 all the way up through 1975; were you not?

8 MR. CHOCKLEY: Objection, leading.

9 THE COURT: Objection overruled.

10 BY MR. BETTIUS:

11 Q Were you able, can you tell us whether or not
12 you were able to obtain tax exempt status with real
13 estate taxes --

14 A Yeah, I did that, I think, in the late '60s.

15 Q And you continued it, did you not?

16 A This is an appeal from an assessment. It has
17 nothing to do with exemption.

18 Q All right. But you indicate, do you not, that
19 you're going to maintain the position that it's the
20 tenant who is responsible for the taxes?

21 A That's right.

22 Q And that tenant -- there was only one tenant
23 ever in this building, isn't that correct, JMHI?

J.APP.0862

1 A Now at that point in time, I assumed that there
2 was only one tenant in the building.

3 Q Right. Okay.

4 May the witness be shown Exhibit 464? This is
5 getting a little closer, Mr. Richards, to the time of
6 present recollection, isn't it?

7 A Um-hum.

8 Q 1993, Your Honor.

9 And in this letter, you indicate that there is
10 a separation of beneficial and equitable ownership of
11 the property that's held pursuant to 5010 of the code;
12 is that correct?

13 MR. CHOCKLEY: Object, Your Honor. The letter
14 speaks for itself.

15 MR. BETTIUS: I understand.

16 BY MR. BETTIUS:

17 Q How did you understand the title was held? In
18 the partnership, isn't that correct? You always
19 believed that.

20 A The title was in the name of Tauber, Trustee
21 for a partnership. Is that what --

22 Q And you believe it had always been in a
23 partnership; isn't that true?

J.APP. 0863

1 A Yes, sir.

2 Q And you confirmed that, did you not, in the
3 subsequent letter on May 27?

4 A I don't understand where in this letter I
5 confirm that it was always in the partnership.

6 MR. CHOCKLEY: I'm sorry, Your Honor. May I
7 have an exhibit reference?

8 THE COURT: 464?

9 MR. BETTIUS: I'm very sorry, Mr. Chockley.
10 It's 612.

11 BY MR. BETTIUS:

12 Q Wasn't it your understanding --

13 MR. CHOCKLEY: Your Honor, may I have a moment
14 to get it?

15 THE COURT: All right.

16 MR. BETTIUS: I'm sorry. Mr. Chockley, feel
17 free to read mine, too.

18 MR. CHOCKLEY: Thank you, sir.

19 BY MR. BETTIUS:

20 Q Mr. Richards, wasn't it and hasn't it always
21 been your understanding that King Street Joint
22 Venture -- or tell me what you understood as to the
23 succession of JMHA to KSJV? Did you understand that one

J.APP. 0864

1 succeeded the other?

2 A Yes, sir.

3 Q And wasn't it always your understanding that
4 Mr. Krakow died, and when the partnership was withdrawn,
5 there was an omission by Dr. Tauber of the A, and that's
6 how it got to JMHJV?

7 A I can't -- I don't recall where he dropped the
8 A. I mean I thought it was a separate partnership.

9 Q But doesn't your letter say that Dr. Tauber
10 advised you that when Mr. Krakow died, he redrafted the
11 instrument, lost the A and that's how you got to JMHJV?

12 A But that's the lease agreement, not the
13 partnership agreement.

14 Q Oh. So you understood that the lease ran
15 different than the partnership land ownership?

16 A No. No. That's not what I said.

17 Q Well, didn't you --?

18 A You asked me whether Dr. Tauber, when he formed
19 the partnership -- and Mr. Krakow died, Dr. Tauber, when
20 he formed the partnership, dropped the A. And I don't
21 know that.

22 Q Isn't that what you recite in that --

23 A No. What this recites, this letter recites, is

J.APP.0865

1 that when Dr. Tauber did the lease agreement, he dropped
2 the A. Not when he did the partnership. And that was
3 the question that you asked me.

4 Q Well, correct me if I'm wrong, isn't the lessee
5 always the partnership?

6 A That was my understanding until very recently.

7 Q Okay. Thank you. Until very recently?

8 A Yes, sir.

9 Q How recently?

10 A I don't know. The last year, maybe.

11 Q Okay. So it would be fair to say that you, who
12 were Dr. Tauber's counsel and friend for years, weren't
13 exactly clear how title was held; isn't that correct?

14 A Obviously I had forgotten that it had gone into
15 the corporation at one time. These things happened a
16 long time ago, and it's nice to say that I should be
17 bound by everything I did 25 years ago.

18 But I have no recollection of those. And when
19 I wrote these letters, I had no recollection of them. I
20 always thought that the title to the building was in,
21 the equitable title, was in one or more of the
22 partnerships.

23 Q And still do, don't you?

J.APP. 0866

1 A No. I gather now that the documents would show
2 that the Delaware corporation bought the building.

3 Q Well, you were making a review in connection
4 with a multimillion dollar sale when you wrote this
5 letter, weren't you, review of title and explaining
6 title in connection with a multimillion dollar sale?

7 MR. CHOCKLEY: Your Honor, I object. This is
8 way beyond --

9 THE COURT: I'm sorry. I'm lost, Mr. Bettius.

10 BY MR. BETTIUS:

11 Q When these two letters were written, you were
12 acting as counsel for Dr. Tauber in a multimillion
13 dollar sale to INOVA; is that correct?

14 A No. I think about the time of May 27 -- had
15 you all already gotten out of it by then? Because you
16 know better than I do on those.

17 Q No, sir.

18 A You hadn't. Okay. I thought you all got out
19 on May 19.

20 Q Suit was tried in --

21 A I'm not talking about the suit. I'm talking
22 about when you interjected and told Lawyer's Title that
23 you weren't going to go through.

J.APP. 0867

1 Q Isn't it true, Mr. Richards, that this is your
2 position and your client's position as to the title of
3 this property in 1993, representing it to the title
4 company?

5 A My position -- yes, sir --

6 MR. CHOCKLEY: Your Honor, I object what their
7 position is in 1993. It has nothing to do with what his
8 position was when he was giving advice back in 1975.

9 THE WITNESS: Do I take it that they're going
10 to withdraw reliance on this quiet title suit?

11 MR. CHOCKLEY: No, Your Honor. That's not the
12 point. It's still irrelevant what he was doing in 1993.

13 MR. BETTIUS: It's relevant on the point of
14 latches. If counsel who represented him doesn't know
15 which nut the pea is under, how are we supposed to?

16 THE COURT: That's really a reach there,
17 Mr. Bettius, I can tell you that. I'm afraid you
18 gentlemen -- maybe it's because it's late in the day and
19 we started early or something, but I'm really having a
20 difficult time following this, Mr. Bettius. Really,
21 I --

22 MR. BETTIUS: Let me see if I can clarify it.
23 The real question is who owns this property. And the

J.APP. 0868

1 real question is, nobody ever knows. And that's pretty
2 clear.

3 THE COURT: But you asked Mr. Richards if it
4 was always his understanding that title was in the
5 partnership, and Dr. Tauber is trustee for a
6 partnership. And he said up until recently, he says
7 about a year or so ago, he always thought that was the
8 case; that he's now seen some documents that indicate
9 that at one time the C corporation, as we refer to it
10 here, may have bought the property. Okay?

11 Now, tell me with that, where are we? That's
12 what I'm having a hard time figuring out.

13 MR. BETTIUS: Your Honor, you're going to see
14 sworn interrogatories in this case as to title. You're
15 going to see representations made in the quiet title
16 suit to this court. You're going to see lawyers
17 presented to this court that represent where this title
18 is. And they are saying we're guilty of laches and
19 that we should have known where the title was.

20 And my point is, Your Honor, they don't know
21 where the title is, and they change like a chameleon
22 ownership of this property whenever they need to. And
23 that's my point.

J.APP.0869

1 THE COURT: All right. Refresh my recollection
2 as to what your last question was to Mr. Richards.

3 MR. BETTIUS: I asked him if this wasn't
4 prepared on behalf of Dr. Tauber as his counsel to
5 represent the status of title in 1993?

6 THE WITNESS: You're asking me that now?

7 MR. CHOCKLEY: The ownership in 1993 doesn't
8 make any difference, Your Honor.

9 THE COURT: Objection overruled.

10 THE WITNESS: You're asking me the question
11 now? Because that's not what you asked me before that I
12 answered.

13 BY MR. BETTIUS:

14 Q Is that what you understand these letters to
15 say?

16 A That's my position.

17 Q And you're communicating, are you not, what
18 your clients advised you about dropping the A?

19 A Yeah, that's what I say in here, that
20 Dr. Tauber stated that he had no explanation why he
21 dropped the associates when he drafted the lease
22 document.

23 Q Mr. Richards, I would like to ask you now --

J.APP.0870

1 think about this, if you will -- what documents have you
2 recently seen that say that C owned it for a period of
3 time?

4 A Something has been shown to me fairly recently
5 on the fact that the Delaware corporation was buying the
6 building from the partnership and giving it stock in
7 return.

8 Q You mean these notes on financial statements?

9 A I don't know. If that's what it is, yeah.

10 Q The thing I showed you today?

11 A It may have been, yeah. I may have seen
12 others. I don't know how many documents I've seen. But
13 I have seen enough to realize that, at least, that the
14 documentation --

15 Q Well, we're coming full circle. If in fact
16 that were true --

17 A Um-hum.

18 Q -- and these statements issued as of June 30,
19 1971, someone should have told you instead of writing to
20 the city and saying the lessee was in possession, the
21 real truth at that time, if these statements are
22 correct, is it not, that a new owner was in possession,
23 C.

J.APP.0871

1 A What's that got to do with the lease?

2 Q Well, if the owner is now occupier and the
3 owner owns the property, doesn't that merge --
4 traditionally in law, isn't that a merger and no lease?

5 A The owner didn't own the land at that time.
6 That's what we did in 1975.

7 Q Didn't you tell me earlier in your testimony
8 today that you thought the lease went out the window in
9 1971 because of nonpayment?

10 A The lease for the hospital, not the lease for
11 the ground. There are two different leases.

12 Q Well, is it your position that the letter you
13 wrote in 1972 pertained to the ground? It dealt with
14 the building, didn't it?

15 A Show me the letter.

16 Q Show him the letter, please, Ms. Harper. It's
17 Exhibit 610. It references both the leases on the land
18 and the lease on the hospital; doesn't it, Mr. Richards?

19 A Um-hum, yes, yes, sir, it does.

20 Q And if the owner was JMHC and it was the
21 operator, there wasn't any lease anymore, was it?

22 A Of the building.

23 Q That's correct.

J.APP. 0872

1 A Yes, sir.

2 Q You commissioned an appraisal, did you not, as
3 part of the consideration for the 1975 exchange of
4 bonds?

5 A I'm sorry.

6 Q When you did the assumption of liabilities in
7 19 --

8 A The reason I'm -- wasn't listening to you is
9 because what you and I were talking about on this letter
10 is not correct.

11 Q I certainly want the correct answer.

12 A All right. Well, it's my understanding that
13 the corporation, the Delaware corporation, bought the
14 building sometime in '74, '75, '76, is what I understand
15 now. And this letter was written in 1972.

16 Q I thought you just told me, sir, that you read
17 on the financial statements that I handed you, in 1971,
18 that they acquired it June 30, 1971?

19 A I need to see the --

20 Q Let the witness see the statement. 200 and --
21 Your Honor, I'm almost finished.

22 On 200, it's the note -- note two, I'm sorry,
23 on page 44028. It's note two, Mr. Richards.

J.APP.0873

1 A Yeah, that's what the note says.

2 Q It says it happened in 1971; isn't that
3 correct?

4 A That's what the note says.

5 Q So if that note is true, there shouldn't have
6 been a lessee in the building in '72, should there?

7 A We all know those notes are not true, don't we?

8 Q I think that. But counsel is saying here,
9 Mr. Richards, that liabilities were assumed and this was
10 really, in effect, a merger, just one document?

11 A No.

12 MR. CHOCKLEY: Your Honor, I object.

13 THE COURT: Next question, Mr. Bettius.

14 MR. BETTIUS: I withdraw it.

15 BY MR. BETTIUS:

16 Q Mr. Richards, you commissioned an appraisal,
17 did you not? And I'm going to show you Exhibit 507.

18 A Yes, sir.

19 Q Would you look at the conditions and
20 assumptions? Would you look at condition number 4?

21 A Yes, sir.

22 Q No title was provided with the appraisal, was
23 it?

J.APP. 0874

1 A No.

2 Q And in addition, would you come over to page
3 00728 where it says --

4 A Number four doesn't say that it didn't give
5 them a title. It just said no certified title.

6 Q Okay.

7 A All right. I don't know what they got, because
8 I don't recall. But obviously they were not given a
9 certified title.

10 Q Would you look at the occupancy and use
11 provision which says subject is improved modern hospital
12 in good condition as per instructions. The subject,
13 however, is considered as unimproved and unencumbered
14 for purposes of this study. Who gave that instruction?

15 A I'm sure I did. I don't recall it, but I'm
16 sure I did.

17 Q Now, before you dealt with the assets of JMHI
18 in 1975, did you read the ground lease?

19 A I don't recall whether I did or not.

20 Q It's apparent -- do you know if the ground
21 lease contains a provision that upon termination of the
22 lease, that JMHI will be paid for all of the
23 improvements it owns on the site?

J.APP.0875

1 A No. I don't know that either.

2 MR. BETTIUS: One moment, Your Honor. Your
3 Honor, we would move 464, which is the letter to Tom
4 Diggs from Mr. Richards, the letter dated May 13th,
5 1993.

6 We would move the letter dated -- 610, July 24,
7 1972 to Dr. Tauber from Mr. Richards, re: appeal on
8 real estate; and 612, letter dated May 27th to Mr. Tom
9 Diggs.

10 MR. CHOCKLEY: I'm sorry. Your Honor. I
11 missed the second one.

12 THE COURT: 464.

13 MR. CHOCKLEY: I got that one. There was
14 another one after that.

15 THE COURT: 610 and 612.

16 MR. CHOCKLEY: Yes, Your Honor, we do object to
17 464 and 612 on the ground that those are irrelevant as
18 to time. They are both dated from the 1990s. We don't
19 have any objection to 610.

20 THE COURT: They will be admitted and your
21 objection is noted.

22 (The letter previously marked
23 for identification as Complainant's Exhibit

J.APP.0876

1 No. 464 was received in evidence.)

2 (The letter previously marked
3 for identification as Complainant's Exhibit
4 No. 610 was received in evidence.)

5 (The letter previously marked
6 for identification as Complainant's Exhibit
7 No. 612 was received in evidence.)

8 MR. BETTIUS: I have one more question. I hope
9 it's the last one.

10 BY MR. BETTIUS:

11 Q Mr. Richards, you have examined with me in the
12 past the deeds -- a couple more questions. I'm sorry.
13 You and I have examined the deeds before in the 1965,
14 '66, '64 time period, and each and every one of those,
15 including 1975, Dr. Tauber always less and excepts the
16 improvements when he conveys the fee, doesn't he?

17 A Yes, sir, I believe he does.

18 Q And do you have a conclusion as to what that
19 makes his status with respect to the improvements on the
20 property he doesn't own, or real estate he doesn't own?

21 A The status would be tenant by sufferance.

22 Q All right, sir. Now, there's only one other
23 question I want to ask you. Do you remember that

J.APP.0877

1 subdivision in 1974 -- '70, where the parcels were
2 divided into four pieces?

3 A Yes, sir.

4 Q Do you know why that was done?

5 A I think, as I said, it was done at the request
6 of one of the parties.

7 Q Dr. Gondor?

8 A No, I don't recall who it was. It could have
9 been done actually by me because of the tax exemption
10 that we were having with the city on the real estate
11 taxes.

12 Q Well, there was also an IRS investigation
13 pending, wasn't there?

14 A Not that I know of.

15 Q Your client did not inform you that in 1969 the
16 IRS had started an investigation looking toward the
17 revocation of exempt status of JMHI? They never told
18 you that?

19 A In 1969?

20 Q Yes.

21 A Not that I know of.

22 Q All right. Were you aware when you did that
23 subdivision that there were off record conveyances?

J.APP. 0878

1 A I can't recall now. I may have, certainly.

2 Q Was it your understanding in Virginia then and
3 Virginia now that to have a valid subdivision, that all
4 the property owners and all the owners of interest agree
5 on an equitable title and had to join in?

6 MR. CHOCKLEY: Object, Your Honor. Calls for a
7 legal conclusion. We're not offering him for that
8 purpose here.

9 MR. BETTIUS: That's a fair question, Your
10 Honor. I'll withdraw it.

11 THE COURT: All right. Anything further?

12 MR. BETTIUS: Nothing further.

13 THE COURT: Let me ask you, Mr. Chockley, how
14 long you would anticipate, again, not trying to limit
15 anybody, just trying to get some scheduling.

16 MR. CHOCKLEY: I would guess probably about 30
17 minutes, Your Honor.

18 THE COURT: All right. Mr. Richards, are you
19 ready to go forward?

20 THE WITNESS: Yes, sir. I'll get it over and
21 done with. Would be fine with me.

22 THE COURT: Me, too.

23 CROSS-EXAMINATION

J.APP. 0879

1 BY MR. CHOCKLEY:

2 Q Good afternoon, Mr. Richards. Mr. Richards, on
3 direct you were asked about the events of late 1974,
4 early 1975 when you were engaged to advise the company
5 about how to deal with the earlier 1971 transaction. Do
6 you recall that, sir?

7 A Yes, sir.

8 Q And you made certain recommendations to the
9 company about how to proceed; did you not?

10 A I did.

11 Q And what did you recommend that they do in
12 order to clean up the earlier 1971 transaction?

13 A I recommended that there be a purchase and sale
14 of the remaining assets of the Maryland corporation.

15 Q And in order to accomplish that sale, did you
16 undertake any kind of preparatory work?

17 A I had the land appraised that the corporation
18 still owned, and Mr. Linton had the equipment appraised.

19 Q And why did you have the land appraised?

20 A Well, the understanding that I had in my
21 discussions with Mr. Linton was that the Maryland
22 corporation had been, in 1971 --

23 MR. BETTIUS: I object to what Mr. Linton told

J.APP.0880

1 him.

2 THE COURT: It's not offered for the truth of
3 the statement, is it, Mr. Chockley?

4 MR. CHOCKLEY: No, Your Honor.

5 A The corporation was insolvent and that its
6 liabilities greatly exceeded its assets. And that in
7 1971, the Delaware corporation took over the operating
8 of the hospital and the intangible assets were
9 transferred to the Delaware corporation and it assumed
10 those liabilities which were tied in with the intangible
11 assets.

12 That still left the tangible assets, being the
13 real estate and the equipment outstanding and the bonds
14 on which the Maryland corporation was still obligated
15 and which there were threats now being posed by bond
16 holders who were no longer members of the medical staff
17 of the hospital. And because of the threat by
18 Dr. Palmer that he was again going to institute suit
19 because of the nonpayment of what was due and owing to
20 him, I suggested that the assets be valued and
21 determined as to whether the assets had more value than
22 the remaining liabilities or less value.

23 Q And the hospital authorized you to proceed with

J.APP. 0881

1 getting an appraisal?

2 A Yes, sir.

3 Q And you got an appraisal from a competent real
4 estate appraiser at the time?

5 A Yes, sir.

6 Q And did you obtain appraisals of anything else
7 at that time?

8 A Mr. Linton got the appraisal of the equipment
9 that was still owned by the hospital.

10 Q Why did you get the appraisal of the equipment
11 owned by the hospital?

12 A Because that was a piece of tangible personal
13 property that had not been transferred to the Delaware
14 corporation.

15 Q Did you recommend getting any other kind of
16 appraisals in that time?

17 A I don't think so.

18 Q And did you, for example, did you retain
19 somebody to value the hospital business?

20 A No. I didn't. In those days, there were not
21 people as there are today who run around and value
22 hospitals as such. I knew from my own knowledge what
23 was going on in the Washington metropolitan area, that

J.APP. 0882

1 the hospitals had been greatly overbuilt. Fairfax was
2 in the process of building Mt. Vernon Hospital with 4 or
3 500 beds in it that I think, as counsel described it,
4 the Harris Folly. And Alexandria Hospital had just gone
5 back to the City Council, I believe, in Alexandria for
6 more money to finish the new Alexandria Hospital that
7 was going up on Seminary Road. And I knew that Circle
8 Terrace, which had been bought by a private corporation,
9 was in dire straits. As it subsequently happened, it
10 did close and become a nursing home.

11 And I had talked also with one of the owners
12 of -- I'm trying to think of the name of the hospital.
13 It's out in Fairfax and Fairfax later bought it.
14 Commonwealth.

15 Q Commonwealth Doctor's Hospital?

16 A Doctor's, as to whether there was any interest
17 there. And I knew that Mr. Linton had talked with
18 Northern Virginia Doctor's, and I knew that Dr. Tauber
19 had offered the operation to Georgetown. And nobody
20 wanted it.

21 Q Who did you talk to at Commonwealth Doctor's
22 Hospital?

23 A Mrs. Edna Hunter was the majority stock holder

J.APP.0883

1 at that time.

2 MR. BETTIUS: Your Honor, I object to all of
3 that as hearsay. If it's not offered for the truth of
4 its content, that's fine.

5 THE COURT: Objection overruled.

6 BY MR. CHOCKLEY:

7 Q Now, Mr. Richards, what did this information
8 about the market tell you about Jefferson?

9 A It told me that Jefferson as an operating
10 hospital had no value because there were no third
11 parties interested.

12 MR. BETTIUS: I object. He hasn't been offered
13 as an expert in value. And that's way outside the scope
14 of direct.

15 THE COURT: What's it offered for,
16 Mr. Chockley?

17 MR. CHOCKLEY: Mr. Richards was examined at
18 great length about why he did what he did in the fall of
19 1974 and 1975. And I'm asking him what his motives were
20 for --

21 THE COURT: All right. It's admitted for the
22 limited purpose of showing why Mr. Richards did what he
23 did.

J.APP.0884

1 MR. CHOCKLEY: Your Honor, I didn't hear
2 whether the witness answered the question or not.
3 Perhaps the --

4 THE COURT: All right. Have the court reporter
5 read it back.

6 (The answer was read.)

7 MR. BETTIUS: I'm going to ask for a continuing
8 objection. I didn't ask why he did what he did. I
9 asked him what he did.

10 THE COURT: Your continuing objection is noted.

11 BY MR. CHOCKLEY:

12 Q Had you completed your answer, Mr. Richards?

13 A Yes, sir.

14 Q Now, you had attended the board meeting at
15 Jefferson in October of 1974, had you not?

16 A I think one of the things that Mr. Bettius
17 showed me indicated I had.

18 Q And you're referring to -- bear with me,
19 please. Exhibit No. 130.

20 You don't have the exhibit up in front of you
21 anymore, do you, Mr. Richards?

22 A No, I think they are all over here. I think
23 those are Mr. Bettius's exhibits.

J.APP. 0885

1 Q Let me give you one.

2 A The nice lady that was helping me has gone and
3 sat down.

4 MR. CHOCKLEY: May I approach the witness, Your
5 Honor.

6 THE COURT: All right.

7 BY MR. CHOCKLEY:

8 Q Well, sir, was that the exhibit that
9 Mr. Bettius showed you earlier?

10 A I believe so, yes, sir.

11 Q And in the meeting of October 16, 1974, you
12 were called upon to make a report, were you not?

13 A Yes, sir.

14 Q And what is it that you reported at that time?

15 A The document states that I reported on the
16 actions taken to organize the Delaware corporation. I
17 don't have an independent recollection of what went on
18 at that meeting at all.

19 Q And what were you asked to do then by the
20 board?

21 A Again, according to what the document states,
22 then I was asked to represent the hospital in looking
23 after and insuring that the hospital corporate structure

J.APP. 0886

1 for the past, present and immediate future be handled so
2 as to do something that everything is legally correct.

3 MR. BETTIUS: Please read it all, Mr. Richards.

4 A And in keeping with the best interests of the
5 investors of the hospital.

6 BY MR. CHOCKLEY:

7 Q All right, sir. And did you undertake to do
8 that?

9 A Yes, sir.

10 Q And did the transactions that you proposed for
11 the boards of the respective hospital organizations in
12 January of 1975 accomplish that to the best of your
13 ability?

14 A In my opinion, they did, yes, sir.

15 Q I want to take you back in time, Mr. Richards,
16 to another area that Mr. Bettius asked you about. And
17 that was in your first work for Jefferson Hospital, the
18 first work that brought you in contact with the
19 hospital. That was the special use permit back in the
20 early 1960s; correct?

21 A Yes, sir.

22 Q And what is it that you were asked to do at
23 that time?

J.APP. 0887

1 A I was asked to get a special use permit to
2 operate the hospital at that location. In those days,
3 the zoning ordinances of Alexandria required a hospital
4 to have a special use permit regardless of the zone in
5 which it was located.

6 Q And why did the hospital need to hire a lawyer
7 to do that?

8 A I guess because they thought I knew things in
9 Alexandria.

10 Q All right. And what did you do as part of
11 obtaining the special use permit?

12 A Well, I appeared at all the necessary hearings
13 before the planning commission and the city council. I
14 met with various groups that were interested either in
15 favoring a new hospital and also met with groups such as
16 the Medical Association of Alexandria which was opposed
17 to it to try and relieve doubts and insure people of the
18 purposes for which this new hospital was going to be
19 erected.

20 Q Why were --

21 MR. BETTIUS: Your Honor, that is way beyond
22 the scope.

23 THE COURT: Well, you asked something about --

J.APP. 0888

1 the initial question was his first workup.

2 MR. BETTIUS: I asked him did he file the
3 application.

4 THE COURT: All right. Go ahead, Mr. Chockley.

5 MR. CHOCKLEY: Thank you.

6 BY MR. CHOCKLEY:

7 Q And why were people opposed to the application?

8 MR. BETTIUS: I'm going to object to why --

9 THE COURT: What's the purpose of that?

10 MR. CHOCKLEY: I'm trying to put in context why
11 he would come to Mr. Richards back in the early 1960s.

12 THE COURT: What does that have to do with the
13 case?

14 MR. CHOCKLEY: Your Honor, quite frankly, what
15 was going on in the community at that time had a lot to
16 do with why they asked for the special use permit they
17 did and why they inserted certain conditions on the
18 special use permit and what occurred later on in the
19 '60s and '70s.

20 THE COURT: It's bad enough to try issues from
21 the '70s. That's tough enough. Now you want to go back
22 and retry whether the special use permit is proper or
23 why it's the way it is. It is the way it is, isn't it,

J.APP.0889

1 Mr. Chockley?

2 MR. CHOCKLEY: Absolutely, Your Honor. It is
3 what it is. And eventually it led to certain further
4 actions by the parties at a later time. I can get into
5 this in our case and put that on, if the Court prefers.

6 THE COURT: Have Mr. Richards come back?

7 MR. BETTIUS: He's not the barometer of what
8 the community opinion is.

9 THE COURT: Oh my heavens. You know -- go
10 ahead, Mr. Chockley.

11 BY MR. CHOCKLEY:

12 Q Thank you, Your Honor. And Mr. Richards, why
13 were there opponents to the special use permit?

14 MR. BETTIUS: May I have an objection as to why
15 there were opponents?

16 THE COURT: It's noted, Mr. Bettius.

17 A The opponents to the application were the
18 Alexandria Hospital and the Medical Society of
19 Alexandria.

20 BY MR. CHOCKLEY:

21 Q And on what grounds did they oppose it?

22 A They opposed it on the grounds that the doctors
23 that were going to be members of the hospital staff of

J.APP.0890

1 this new hospital were all foreign and were foreign
2 trained and therefore were not up to the standards of
3 American doctors. And furthermore, that there was an
4 abortion mill that was going to be run out of the new
5 hospital.

6 MR. BETTIUS: May I have a continuing
7 objection?

8 THE COURT: Yes, you may, Mr. Bettius. It's
9 noted.

10 MR. CHOCKLEY: May I have a moment, Your Honor?

11 BY MR. CHOCKLEY:

12 Q Moving forward in time, you were asked on
13 direct about the subdivision in 1970. And when you were
14 asked to -- and first, you were asked to obtain a
15 subdivision or prepare a subdivision of the party, were
16 you not?

17 A Yes, sir.

18 Q And what did you do to accomplish that?

19 A I drafted the necessary documents, the
20 subdivision deeds, the deed of dedication. Frankly, I
21 have forgotten whether there was a deed of dedication
22 now. But there was a subdivision deed. There was a
23 deed, then, from the record owners to the subsequent

J.APP.0891

1 owners of the property, all of whom were the
2 undivided -- owners of an undivided interest in the
3 property before it was subdivided.

4 Q And how did you know what description to put in
5 the deeds of the subdivided property?

6 A We retained the engineering firm of Holland
7 Engineering to do the actual engineering work for the
8 subdivision. They carved up the land to fit the
9 percentage of ownership of the then owners as undivided
10 owners -- I mean as owners of an undivided interest.

11 Q And did the rezoning subdivision match the
12 original percentage of ownership?

13 A Yes, sir.

14 Q Now, moving forward to, again, to 1974, '75
15 when you made your recommendations to the board as to
16 how to proceed, did you make any other recommendations
17 to the board at that time?

18 A I don't recall.

19 Q Let me ask you this. Do you recall any
20 recommendations that you made to the board in '74,
21 October of '74 to January of '75 time period that they
22 did not follow?

23 A I don't have any recollection of that,

J.APP. 0892

1 Mr. Chockley. I don't -- we're too far back in time.
2 I'm sorry.

3 MR. CHOCKLEY: If I might.

4 THE COURT: All right.

5 MR. CHOCKLEY: If the Court will bear with me
6 just one moment.

7 THE COURT: All right.

8 MR. CHOCKLEY: Thank you, Your Honor. I don't
9 have any further questions.

10 MR. BETTIUS: I have just a few, Your Honor.

11 THE COURT: All right.

12 REDIRECT EXAMINATION

13 BY MR. BETTIUS:

14 Q Mr. Richards, you indicated you felt the
15 hospital was insolvent in 1971?

16 A Based on what Mr. Linton told me, yes.

17 Q Mr. Linton wasn't there in '71, was he?

18 MR. CHOCKLEY: Your Honor, that was asked and
19 answered.

20 THE COURT: We went through that.

21 BY MR. BETTIUS:

22 Q Do you know they had a \$219,000 after tax
23 profit? Did he tell you that?

J.APP. 0893

1 MR. CHOCKLEY: Your Honor, I didn't get into
2 that, didn't ask whether they were insolvent on
3 cross-examination.

4 THE COURT: I'm looking for that. Did I miss
5 something?

6 MR. BETTIUS: I thought he said --

7 THE COURT: If he said it, I didn't hear it.

8 MR. BETTIUS: He said he was told they were
9 insolvent.

10 THE COURT: He said he believed it was of no
11 value because there were no third parties interested in
12 acquiring it. I don't know that he ever testified
13 anything about insolvent.

14 BY MR. BETTIUS:

15 Q So you didn't know whether it was insolvent or
16 not, in '71?

17 MR. CHOCKLEY: He's getting into the same area.

18 THE COURT: I'll let him answer that question.

19 A In 1971, did I know --

20 BY MR. BETTIUS:

21 Q Let me ask, did you answer a question that you
22 thought that Mr. Linton had told you it was insolvent?

23 A Mr. Linton told me in '74 that it was insolvent

J.APP.0894

1 in '71.

2 Q That it was insolvent in '71?

3 A Yes.

4 Q Did you inquire about that?

5 A Yeah. I went over it with him.

6 Q It had a \$219,000 after tax profit; didn't it?

7 A That doesn't mean it's not insolvent.

8 MR. CHOCKLEY: Objection, Your Honor.

9 A It doesn't mean --

10 THE COURT: Just a minute.

11 MR. CHOCKLEY: Lack of foundation for the
12 question. The question was leading.

13 THE COURT: Objection overruled.

14 BY MR. BETTIUS:

15 Q Were you handling --

16 A Do you want me to answer the question?

17 THE COURT: Just a minute. Go ahead and let
18 him finish answering the question.

19 BY MR. BETTIUS:

20 Q Answer the question, yeah.

21 A The fact that you make a profit one year has
22 absolutely nothing to do with whether your corporation
23 is solvent or insolvent. That depends on whether your

J.APP. 0895

1 liabilities exceed your assets. If they do, then you're
2 insolvent.

3 Q I thought insolvent was you couldn't pay your
4 bills.

5 THE COURT: It's too late in the day to start
6 this with this witness, Mr. Bettius. We're not going to
7 do it. We're not going to do it.

8 MR. BETTIUS: All right, Your Honor. All
9 right.

10 BY MR. BETTIUS:

11 Q Now, did you tell me that you had talked to
12 Ms. Hunter and she told you that Commonwealth Doctor's
13 was insolvent?

14 A No. That they weren't interested. They were
15 in trouble, but they weren't interested in buying this
16 hospital.

17 Q Are you aware that Commonwealth sold for \$7.6
18 million in 1975?

19 A Yes, you bet.

20 Q And can you tell me when Circle Terrace sold?

21 A It was before '74. And I've forgotten exactly
22 how much.

23 Q It was \$4.5 million, wasn't it, for a facility

J.APP.0896

1 almost exactly like this one?

2 A Um-hum. And the value went down to 1.2 three
3 years later.

4 Q I don't care what happened to the value. I
5 asked you what it sold for. I don't want to get in an
6 argument. If you answer my question, we'll be fine.

7 MR. CHOCKLEY: Objection, Your Honor.

8 THE COURT: We're going to stop it right now,
9 Mr. Bettius. This is way, way, far afield of anything.
10 He said he talked to these people and they weren't
11 interested in Jefferson. Whether they sold in '74 or
12 '97 or '83 doesn't really matter.

13 BY MR. BETTIUS:

14 Q Were you out trying to sell the hospital?

15 A I was trying to find out if there was any way
16 that somebody would be interested in acquiring the
17 hospital.

18 Q Who told you to do that?

19 A I don't know that anybody told me to do it,
20 Mr. Bettius. I do a lot of things on my own.

21 Q So you went to try and sell the hospital? You
22 were a volunteer to sell the hospital?

23 A I was not volunteering to sell the hospital. I

J.APP. 0897

1 was making inquiries as to whether anyone would be
2 interested.

3 Q But you had not the slightest knowledge of its
4 financial statements, hadn't made any study of its
5 financial statements --

6 THE COURT: That's enough, Mr. Bettius. Way,
7 way, far afield.

8 MR. BETTIUS: I'm sorry, Your Honor.

9 Your Honor, I believe the witness --

10 THE COURT: Anything else?

11 MR. BETTIUS: Yes, but I believe -- all right.
12 I'm sorry, Your Honor.

13 THE COURT: All right. Go ahead.

14 BY MR. BETTIUS:

15 Q You indicated that there was no one valuing
16 hospitals at this time?

17 A That I knew of, no, sir.

18 Q Were you aware that the hospital acquisition
19 market was very active and that there were investment
20 bankers all over the country valuing them?

21 A No.

22 Q Did you know that there were investment bankers
23 handling brokerage deals for hospitals right here in

J.APP. 0898

1 this area?

2 A No.

3 Q In the minutes of 130, whose interests were you
4 told to look out for, do you remember?

5 A The hospital corporation.

6 Q No, sir, that's not what it says, is it? Isn't
7 it in the best interests of the investors of the
8 hospital?

9 A Um-hum. That's what it says, yes, sir.

10 Q Who were they?

11 A They were the stockholders of the Delaware
12 corporation.

13 Q The doctors?

14 A I don't know who all the investors were,
15 Mr. Bettius.

16 Q Now, you indicated that there was no demand.
17 Did you know that the hospital all through '74 and '75
18 was considering an expansion to add another 30 beds and
19 rent them?

20 A There was no demand for what?

21 Q Were you aware that in 1974 and '75 the
22 hospital was considering an expansion, had gone to an
23 architect and was looking for a program to build

J.APP. 0899

1 another -- build and lease another 30 beds?

2 A No. I knew that the hospital was planning to
3 increase the office space.

4 Q That wasn't the question I asked you. You were
5 not aware --

6 THE COURT: He said no.

7 A I was aware of the fact that they were planning
8 to increase the office space.

9 BY MR. BETTIUS:

10 Q Do you think it would be -- if what I say is
11 true, that the board was considering and in fact
12 authorizing plans to go ahead to expand the size of the
13 hospital to 130 beds, that it would be somewhat contrary
14 to what you were being told about insolvency?

15 MR. CHOCKLEY: Object, Your Honor, leading and
16 argumentative.

17 THE COURT: Rephrase the question, Mr. Bettius.

18 BY MR. BETTIUS:

19 Q Do you find a contradiction in being in trouble
20 in '74 and seeking an expansion of another 30 beds?

21 A The insolvency was with regard to the Maryland
22 corporation, Mr. Bettius.

23 Q Oh, I see. It wasn't the Delaware corporation

J.APP. 0900

1 that was operating the hospital. It was fine?

2 A That's what you've been asking me all the time,
3 sir, about the Maryland corporation and its insolvency.

4 Q So you took the questions that were being asked
5 on examination by Mr. Chockley to be about the Maryland
6 corporation?

7 A I'm talking about your questions to me.

8 Q Weren't you indicating to Mr. Chockley that --

9 MR. CHOCKLEY: Your Honor, I don't mean to
10 interrupt, but counsel knows that my name is pronounced
11 Chockley and I don't appreciate --

12 MR. BETTIUS: I'm sorry. I did not know that
13 and I wouldn't for the world, because my name is -- how
14 do you pronounce it?

15 MR. CHOCKLEY: C-H, Chockley.

16 MR. BETTIUS: Chockley. I sincerely apologize.
17 No offense was intended and if Mr. --

18 MR. CHOCKLEY: Apology is accepted, Your Honor.

19 BY MR. BETTIUS:

20 Q Did you take Mr. Chockley's questions to be
21 about the Maryland corporation?

22 A Which questions are you talking about?

23 Q About being in trouble and your answers of

J.APP. 0901

1 being insolvent and being in trouble in 1974.

2 A No. If you read me the question and the
3 answer, I'll be able to answer your question.

4 Q Let's not go through that. Did you perceive --

5 A I want to go through with it, sir, because I'm
6 not sure what you're talking about.

7 Q Did you perceive that the Delaware corporation
8 was in trouble in '74?

9 A We've been through this before, Mr. Bettius,
10 that I didn't find out until recently that the Delaware
11 corporation owned the building. Obviously if it owned
12 the building, it had an asset that was unknown to me at
13 that time. And certainly the Delaware corporation would
14 not have been insolvent because its assets would have
15 exceeded its liabilities.

16 Q That's not the thrust of my question at all.
17 When you were advising the board in 19 -- the questions
18 Mr. Chockley asked you about in '74 and '75 when you
19 were advising the board, did you believe the Delaware
20 corporation was in trouble?

21 A No. I was advising the board with regard to
22 the Maryland corporation.

23 Q Okay. I misunderstood. You had no reason to

J.APP.0902

1 believe that the Delaware corporation was having any
2 problems at all, did you?

3 A I can't recall whether I did or didn't,
4 Mr. Bettius.

5 Q Well, did you participate as counsel in the
6 drawing up of the bonds and the issuance of those bonds
7 as a dividend in 1974?

8 MR. CHOCKLEY: Object, Your Honor.

9 MR. BETTIUS: Strike that.

10 BY MR. BETTIUS:

11 Q Did you know that the hospital repurchased its
12 stock that it had issued in '72 for \$4 in 1974 for \$6?

13 A I have no recollection.

14 MR. BETTIUS: I'm almost finished Your Honor.

15 BY MR. BETTIUS:

16 Q When you did this subdivision, were you
17 representing the hospital?

18 A I can't answer that as to exactly who I was
19 representing and who I sent a bill to. I don't know.

20 Q Well, did you get a resolution from the
21 hospital with respect to the fairness, appropriateness
22 and their consent to joining in the subdivision in 1970?

23 A I don't recall, Mr. Bettius.

J.APP. 0903

1 Q Is it your understanding normally when
2 corporations either sell, divide or deal with their
3 assets, they do so after a duly authorized board meeting
4 and a resolution?

5 A If they sell or buy, yes, sir.

6 Q Okay. And they became, as a virtue -- by
7 virtue of this subdivision, did they not, a record owner
8 of a 65 percent undivided interest, and that was
9 converted to a 20 percent divided interest, is that
10 correct, of record?

11 A Of record? Yes, sir.

12 Q One moment.

13 Did I understand you to say or did you say that
14 the intangible assets of JMHI were transferred in 1971?
15 Or do you not have an opinion?

16 A That's my recollection.

17 Q What did you understand the intangible assets
18 to be?

19 A I think the list that quickly came to mind were
20 the accounts receivable. You asked me about the
21 dealings with Blue Cross and so on like that. And I
22 included those as accounts receivable.

23 Q That's based on what someone told you?

J.APP.0904

1 A I don't recall now, Mr. Bettius. As I say, I
2 do recall I went all through all of this with Mr. Linton
3 in great detail. How much of it I knew of my own
4 knowledge or how much I learned from him, after 27
5 years, ain't no way I know what else to tell you.

6 Q About 30 minutes ago, I showed you a financial
7 statement that said that JMHI and JMHC were the same
8 corporation, didn't it?

9 A You showed me something that said they merged.

10 MR. CHOCKLEY: I object, Your Honor.

11 THE COURT: Way beyond cross.

12 MR. BETTIUS: Nothing further.

13 THE COURT: All right. Is Mr. Richards to be
14 excused or is he subject to being recalled in the
15 respondent's case?

16 MR. CHOCKLEY: I hate to tell Mr. Richards yes,
17 but he is subject to recall in the case.

18 THE COURT: Thank you, sir. You're excused and
19 free to go for now. We'll let you know if we need you
20 back.

21 THE WITNESS: Thank you, Your Honor.

22 (Witness excused subject to recall.)

23 MR. BETTIUS: There is one logistical problem I

J.APP. 0905