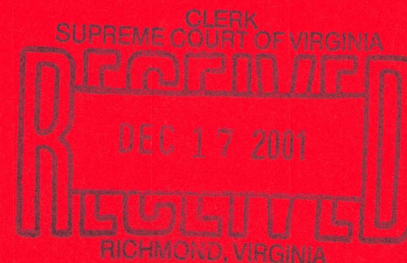


263 Va 520

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.

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Internal Revenue Service
District Director

Department of the Treasury

Date: NOV 14 1980

CONFIDENTIAL

Person to Contact:

E. Calfee

Telephone Number:

304-771-1964

Refer Reply to:

Quality Review Staff

Jefferson Memorial Hospital, Incorporated
4600 King Street
Alexandria, Virginia 22302

Gentlemen:

We have enclosed a copy of our examination report explaining the adjustments we made to your return because of your tax shelter activity.

If you accept our findings, please sign and return the enclosed Form 870. If additional tax is due, you may want to pay it now and limit the interest charge; otherwise, we will bill you. (See the enclosed Publication 5 for payment details.)

If you do not accept our findings, you may request a hearing with our Office of Regional Director of Appeals. You may want to attach to your hearing request a statement outlining your position. Unless significant new facts or legal arguments are submitted to justify further consideration, we will issue a notice of deficiency and, if necessary, litigate any case contesting the adjustment. If the proposed increase is more than \$2,500, please submit a written protest. Publication 5 explains your appeal rights and how to prepare your protest. If you request a hearing, we will forward your written statement or protest to the Office of Regional Director of Appeals. That office will contact you to schedule an appointment.

If we do not hear from you within 30 days, we will have to process your case on the basis of the adjustments shown in the examination report. An addressed envelope is enclosed for your convenience.

If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

Sincerely yours,

James P. Boyle
District Director

Enclosures:
Examination Report
Form 870
Publication 5
Envelope

Ex. 802
TAUBER 43240

400 N. 8th St., Richmond, VA 23240

Letter 1389(DO) (2-80)

J.APP. 4305

Form 4549-A
(Rev. September 1978)

Department of the Treasury - Internal Revenue Service
Income Tax Examination Changes

Return Form No. 21
1120

Name and Address of Taxpayer

Jefferson Memorial Hospital, Inc.
4600 King Street
Alexandria, VA. 22302

S.S. or E.I. Number

54-0784092

Filing Status

Corporation

Person With
Whom
Examination
Changes
Were Discussed

Name and Title

Mr. Wright - Controller

CONFIDENTIAL

1. Adjustments to Income	Year: 7806	Year:	Year:
a. Partnership Loss Disallowed	170,623.00		
b.			
c.			
d.			
e.			
f.			
g.			
2. Total Adjustments	170,623.00		
3. Adjusted Gross, Taxable as Taxable Income Shown on Return or as Previously Adjusted	127,624.18		
4. Corrected Adjusted Gross, Taxable as Taxable Income	298,247.18		
5. Tax	129,658.64		
6. Alternative Tax, If Applicable (From Page _____)			
7. Tax Surcharge			
8. Corrected Tax Liability (Lesser of line 5 or 6, plus line 7)	129,658.64		
9. Less Credits (specify)			
a. Investment Credit	7877.20		
b.			
c.			
10. Balance (Line 8 less total of lines 9a through 9c)	121,781.44		
a. Tax from recomputing prior year investment credit			
11. Plus:			
b. Self-employment tax			
c.			
12. Total Corrected Income Tax Liability (Line 10 plus total of lines 11a through 11c)	121,781.44		
13. Total Tax Shown on Return or as Previously Adjusted	39,882.40		
14. Deficiency (Increase in tax before credit adjustments, line 12 less line 13)	81,899.04		
15. Overassessment (Decrease in tax before credit adjustments, line 13 less line 12)			
16. Adjustments to Prepayment Credits			
17. Balance Due (Line 14 or 15 adjusted by line 16)	81,899.04		
18. Overpayment (Line 14 or 15 adjusted by line 16)			
19. Penalties, if any (See explanation)	None		
Other Information			

Examiner's Signature

Rawlin E. Jefferson

District

Richmond

Date

10/20/80

Form 4549-A, (Rev. 9-78)

TAUBER 43241

J.APP. 4306

EXPLANATION OF ITEMS

NAME OF TAXPAYER

Jefferson Memorial Hospital, Inc.

CONFIDENTIAL

A) Partnership Loss Disallowed

\$170,623.00

Adjustment made to disallow your share of loss from Lost Creek Partners Partnership per examination of the partnership. It was determined that the deductions (per the partnership return) did not qualify as ordinary and necessary business expenses as required by and described in section 162 of the 1954 Internal Revenue Code.

Amount Claimed \$170,623.00

Amount Allowed - 0 -

Adjustment \$170,623.00

Taxpayer's Position: You stated you wish to disagree at this time since the issue is unagreed at the partnership level.

Form 870
Rev. 3-78

Department of the Treasury Internal Revenue Service

**Waiver of Restrictions on Assessment
and Collection of Deficiency in Tax and
Acceptance of Overassessment**

Date received by
Internal Revenue Service

CONFIDENTIAL

I consent to the immediate assessment and collection of any deficiencies (increase in tax and penalties) and accept any overassessment (decrease in tax and penalties) shown below, plus any interest provided by law. I understand that by signing this waiver, I will not be able to contest these years in the United States Tax Court, unless additional deficiencies are determined for these years.

Increase in Tax and Penalties		
Taxable year ended	Amount of tax	Penalty
June 30, 1978	\$81,899.04	
Decrease in Tax and Penalties		
Taxable year ended	Amount of tax	Penalty

Names and address of taxpayers (Number, street, city or town, State, ZIP code)

Signature	Title (if applicable)	Date
Signature	Title (if applicable)	Date
Signature	Title	Date

By _____

NOTE: If you consent to the assessment of the deficiencies shown on this waiver, please sign and return the form in order to limit any interest charge and expedite the adjustment to your account. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are so entitled, nor prevent us from later determining, if necessary, that you owe additional tax, nor extend the time provided by law for either action.

If you later file a claim and the Service disallows it, you may sue for refund in a district court or in the United States Court of Claims, but you may not file a petition with the United States Tax Court.

We will consider this waiver a valid claim for refund or credit of any overpayment due you resulting from any decrease in tax

and penalties determined by the Internal Revenue Service, shown above, provided you sign and file it within the period established by law for making such a claim.

Who Must Sign: If you filed jointly, both you and your spouse must sign. If this waiver is for a corporation, it should be signed with the corporation name, followed by the signatures and titles of the corporate officers authorized to sign. An attorney or agent may sign this waiver provided such action is specifically authorized by a power of attorney which, if not previously filed, must accompany this form.

If this waiver is signed by a person acting in a fiduciary capacity (for example, an executor, administrator, or a trustee), Form 56, Notice of Fiduciary Relationship, should, unless previously filed, accompany this form.

Form 870 Rev. 3-78

TAUBER 43243

J.APP. 4308

Appeal Rights and Preparation of Protests for Unagreed Cases

CONFIDENTIAL

Department
of the
Treasury
Internal
Revenue
Service

Publication 5
(Rev. 9-79)

Instructions

If You Agree

If you decide to agree with the examiner's findings in the enclosed examination report, please sign and return to that examiner the agreement form enclosed with our transmittal letter. By signing you will indicate your agreement to the amount shown on the form; and if you owe additional tax, you will stop an interest charge 30 days after filing the form.

Through June 30, 1975, interest is figured at the rate of 6 percent a year; from July 1, 1975, through January 31, 1976, interest is figured at 9 percent a year; from February 1, 1976, through January 31, 1978, interest is figured at 7 percent a year; and beginning February 1, 1978, interest is figured at 6 percent a year. No further interest (or penalties) will be charged unless you fail to pay the amount you owe within 10 days after the date of the notice you receive showing such amount. However, if you pay the tax when you sign the agreement form, interest stops immediately.

If you want to pay, make your check or money order payable to the Internal Revenue Service. Include interest figured as explained above, on the additional tax (but not on penalties) from the due date of the return to the date of payment. Please do not send cash through the mail. If the examination results in a refund, the Internal Revenue Service can have your money refunded more promptly if you sign the agreement form. You will receive interest, figured as explained above, on the amount of the refund.

If You Don't Agree

If you decide not to agree with the examiner's findings, we urge you to first appeal your case with the Service before you go to court.

Because people sometimes disagree on tax matters, the Service maintains a system of appeals. Most differences can be settled in these appeals without expensive and time-consuming court trials.

If you do not want to appeal your case in the Service, however, you can take it directly to court.

The following general rules tell you how to appeal your case.

Appeal Within The Service

Appeals within the Service are handled by the Office of Regional Director of Appeals. If you decide to appeal, address your request for a hearing to your District Director in accordance with our letter to you enclosing these instructions. Your District Director will forward your request to the Appeals Office, which will arrange for a hearing at a convenient time and place.

If agreement is not reached at the Appeals hearing, you may, at any stage of these procedures, take your case to court. See the last headings in this publication concerning appeals to the courts.

Written Protests

So that your case may get prompt and full consideration by the Appeals Officer, you need to file a written

protest with the District Director. However, you don't have to file a written protest if:

- (1) the proposed increase or decrease in tax, or claimed refund, does not exceed \$2,500 for any of the tax periods involved; or
- (2) your examination was conducted by correspondence or by a tax auditor.

If a written protest is required, you should submit it within the 30-day period granted in the letter transmitting the report of examination and include in it:

1. A statement that you want to appeal the findings of the examiner to the Appeals Office;
2. Your name and address;
3. The date and symbols from the letter transmitting the proposed adjustments and findings you are protesting;
4. The tax periods or years involved;
5. An itemized schedule of the adjustments with which you do not agree;
6. A statement of facts supporting your position in any contested factual issue; and
7. A statement outlining the law or other authority on which you rely.

The statement of facts, under 6 above, must be declared true under penalties of perjury. You may do this by adding to the protest the following signed declaration:

"Under penalties of perjury, I declare that the facts presented in my written protest, which are set out in the accompanying statement of facts, schedules, and other attached statements, are to the best of my knowledge and belief, true, correct, and complete."

TAUBER 43244

J.APP. 4309

CONFIDENTIAL

If your representative submits the protest for you, he or she may substitute a declaration stating:

- (1) That he or she prepared the protest and accompanying documents; and
- (2) Whether he or she knows personally that the statements of fact contained in the protest and accompanying documents are true and correct.

Representation

You may represent yourself at your Appeals hearing, or you may be represented by an attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service. Your representative must be qualified to practice before the Internal Revenue Service. If your representative attends a hearing without you, he or she must file a power of attorney or a tax information authorization before receiving or inspecting confidential information. Form 2848, Power of Attorney, or Form 2848-D, Authorization and Declaration (or any other properly written power of attorney or authorization) may be used for this purpose. You can get copies of these forms from any Internal Revenue Service office.

You may also bring witnesses to support your position.

Appeals To The Courts

If you and the Service disagree after your hearing, or if you skipped our appeals system, you may take your case to the United States Tax Court, the United States Court of Claims, or your United States District Court.

(However, if you are a nonresident alien taxpayer, you cannot take your case to a United States District Court.) These courts are independent judicial bodies and have no connection with the Internal Revenue Service.

Tax Court

If your case involves a disagreement over whether you owe additional income tax, estate or gift tax, or certain excise taxes of private foundations, public charities, and qualified pension plans, you may go to the United States Tax Court. To do this, ask the Service to issue a formal letter, called a notice of deficiency. You have 90 days from the date this notice is mailed to you to file a petition with the Tax Court (150 days if addressed to you outside the United States). If you do not file the petition within the 90-day period (or 150 days as the case may be), the law requires that we assess and bill you for the deficiency.

The Court will schedule your case for trial at a location convenient to you.

You may represent yourself before the Tax Court, or you may be represented by anyone admitted to practice before that Court.

If you dispute not more than \$5,000 for any one tax year, there are simplified procedures. You can get information about these procedures and other matters relating to the Court from the Clerk of the Tax Court, 400 Second St. N.W., Washington, D.C. 20217.

District Court and Court of Claims

You may take your case to your United States District Court or to the United States Court of Claims. Certain types of cases, such as those involving manufacturers' excise taxes, can be heard only by these courts. Generally, your District Court and the Court of Claims hear tax cases only after you have paid the tax and have filed a claim for refund. You can get information about procedures for filing suit in either court by contacting the Clerk of your District Court; or the Clerk of the Court of Claims. If we haven't acted on your claim within 6 months from the date you filed it, you can then file suit for refund. If we have disallowed your claim, a suit for refund must be filed no later than 2 years from the date of our disallowance.

LAW OFFICES OF
ROSS, MARSH & FOSTER
117 SOUTH FAIRFAX STREET
ALEXANDRIA, VIRGINIA 22314
(703) 683-7446

JOHN THORPE RICHARDS
WILLIAM L. BASCOCK, JR.
MALCOLM M. MITCHELL, JR.
JANE S. REESE

998 SIXTEENTH STREET
WASHINGTON, D.C. 20006
(202) 622-8588

310 PERPETUAL BUILDING
BETHESDA, MARYLAND 20014
(301) 656-3700

February 18, 1982

Paul L. Sloan, III, Esquire
Harwell, Barr, Martin & Sloan
P.O. Box 2960
Nashville, Tennessee 37219

Re: Lease between Jefferson
Memorial Hospital Corporation
and Health Group of
Virginia, Inc.

Dear Paul:

As I advised you by telephone on Thursday, February 18, 1982, the following is a break-down of the calculation of the purchase price pursuant to Paragraph 10(a) of the Lease:

- | | |
|---|-----------------|
| 1. Eighty percent (80%) of patient accounts receivable | \$ 2,162,298.08 |
| 2. Plus one hundred percent (100%) of the book value of the equipment purchased | 257,029.21 |
| 3. Plus one hundred percent (100%) of the cost of inventory of usable expendable supplies on hand for hospital operations and purchased by Lessee | 86,846.97 |
| 4. Plus one hundred percent (100%) of prepaid expenses | 127,327.54 |
| 5. Less one hundred percent (100%) of trade accounts payable | (885,023.46) |
| 6. Less one hundred percent (100%) of all accrued expenses assumed by Lessee | (75,850.89) |
| | \$ 1,672,627.45 |

Ex. 803
JTR 002272

J.APP. 4311

Paul L. Sloan, III, Esquire

Page Two

Re: Lease between Jefferson Memorial
Hospital Corporation and Health
Group of Virginia, Inc.

February 18, 1982

7. Plus fifteen percent (15%) of the
sum of items 1, 2, 3, 4, 5, and 6
above

\$ 250,894.11

(taxable
gain)

Purchase price

\$ 1,923,521.56

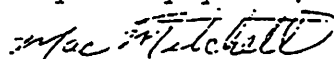
The values set forth above were taken from the Lessor's balance sheet as of January 31, 1982 which was forwarded to you by Federal Express from this office on February 17, 1982. After crediting the \$100,000.00 check of the Lessee which is currently being held by the Lessor to the purchase price, an additional sum of \$1,823,521.56 will be due to the Lessor from the Lessee on or before March 1, 1982. As of March 31, 1982 the sum of items 1 through 7 of Paragraph 10(a) will be recalculated and the purchase price paid on March 1, 1982 will be adjusted with the difference to be due and payable on May 1, 1982.

I also advised you on February 18, 1982 that the Lessor had ordered new major movable equipment a considerable time ago as part of an on-going program and that it is expected to arrive at the hospital prior to the Effective Date. The cost of the new equipment is in the \$20,000.00 to \$30,000.00 range and will be added to Exhibit B-I (the list of major movable equipment being purchased by the Lessee) and the cost will be added to the trade accounts payable for which the Lessee will be responsible.

Enclosed herewith is the non-compete side letter on which are the original signatures of Leslie P. Gondor, M.D., Roy Nicholson, M.D. and Laszlo Csatory, M.D. Another copy of that letter with the original signatures of all those listed except for doctors Gondor, Micholson and Csatory was delivered to you on February 11, 1982.

With kind regards, I am

Very truly yours,



Malcolm M. Mitchell, Jr.

MMM:jh

Enclosure

cc: Laszlo N. Tauber, M.D.

Dallas Wright, Acting Administrator

JTR 002273

J.APP. 4312

DRAFT

July 21, 1992

Dear Investor:

I enclosed three newspaper articles which reflect the present situation in reference to Jefferson Hospital. At Jefferson, we have 120 licensed beds ~~which can be increased to 150 beds by converting private rooms into semi-private ones.~~ The census dropped so much that the occupancy rate is as low as 15% to 30%. It is true that the reimbursement to hospitals has drastically changed in the last several years. The new regulations imposed on us by the Federal Government and private insurance companies make it extremely difficult to admit patients in any hospital.

Our Lease with Fairfax Hospital System ("FHS") will expire on October 5, 2005. There are no provisions in our Lease obligating FHS to send any patients to our facility from Fairfax Hospital. They have acted in good faith but were unable to persuade the doctors at Fairfax Hospital to change their long standing prejudice about Jefferson and send their overflow patients to us.

On the other side, many of our own doctors don't support the hospital as we expected them to do. I have come to the following conclusion after discussing these issues with my colleagues, both those who are actively practicing medicine and those who have retired.

We are very fortunate that we leased the Hospital rather than try to run it ourselves or we would have been out of business a long time ago. Our immediate fear is that the Commonwealth of Virginia will decide that since we don't utilize our acute beds, we don't need an acute care facility and consequently revoke our license. Our physical plant, including the office building, is assessed at approximately \$3,000,000.) The real value is the license to operate the hospital. If we loose it, we are left with a white elephant which would be a disaster. This is a single purpose building. Although we are commercially zoned, any change to the character of the building would require a great deal of investment with a very doubtful outcome.

Ex. 804
TAUBER 12417

J.APP. 4313

I feel very strongly that this is the time to take a drastic step and sell the Hospital. It is a well known statement that it is best to try to avoid getting into trouble. However, if you are in trouble, it is extremely helpful if you are connected with a larger, more powerful institution having equal or greater problems than you do. FHS's financial statements show a profit which speaks for their intelligent approach in solving problems but they have their share of problems even bigger than ours. Therefore, instead of fighting each other, we have to join our forces and come to a compromise which will be helpful to both parties.

After lengthy discussions with Mr. Knox Singleton, Chairman of FHS, and his staff we agreed on a deal which will now only requires our signatures. This deal is made on mutual trust and willingness to help each other.

A large amount of rent will be eliminated when we sell the Hospital to FHS. The sales price is \$12,700,000. At the same time, we will buy their headquarters building for the same amount, \$12,700,000. FHS will occupy only one-half of the building and any income received by FHS for sub-leasing the other half of the building will reduce FHS's rental payment to us. This amount could be zero if the economy turns around and FHS is able to sub-lease the empty space.

Our biggest problem is evaluating how financially strong FHS is. It is possible, but not likely, that this non-profit organization will have problems and dissolve itself only to be replaced by a new entity. In this case our lease would be useless. This is a business risk that each of us must take if we decide to enter into the new venture.

Yesterday I made a verbal agreement with Mr. Singleton that for certain consideration he is willing to guarantee that FHS will keep one part of Jefferson Hospital open as an acute care facility. This is contingent on Jefferson maintaining a minimum average of 35 patients in the acute section of the hospital. Another section of Jefferson, which will accommodate extended care patients, will provide the income necessary to make this feasible.

The license for 80 acute beds will be transferred to a new location in the future. The real value for them is the license, not the building or the location.

I am trying to achieve a tax free exchange and invite some of the present members to join me in this new venture. If they choose to join the new venture, they will have the same percentage interest in the new venture as they did in the old one. Some members of the old venture will not be invited to join the new venture. Their interest will be given to others who's presence is advantageous to the Hospital. This decision will be made solely at my discretion however, I have consulted with many of the investors who understand my motives and whole heartily support it.

TAUBER 12419

J.APP. 4314

Mount

For those whom I will not include in the new venture I want to give reasonable time to find another investment, independent from me, in order to create their own tax-free exchange.

You are invited to participate in the same percentage interest in the new partnership as you have in the old. If you wish to participate, please indicate your willingness by signing below and returning this letter to me no later than August 1st, 1992.

or

You will be paid \$127,000 per 1% interest in the venture. If you wish to delay this transaction until January 2, 1993 to give you time to find another investment, independent from me, in order to create a tax-free exchange, please indicate this below. If you wish to receive the cash immediately upon the closing of the deal, please indicate your intent below.

- Delay this transaction until January 2, 1993 for the reasons stated above.
- Forward the funds to me immediately upon closing the transaction.

MEMORANDUM

FROM: Laszlo N. Tauber, M.D.

TO: Jefferson Memorial Hospital Joint Venture participants

DATE: July 24, 1989

H 3381.00

	<u>Per Year</u>	<u>Per Month</u>	<u>Per 1¢/mo</u>
Yearly income	\$1,625,000.00	\$135,416.66	
Distributed to "D" (4th Floor)	375,000.00	31,250.00	312.50
Distributed to "A"	\$1,250,000.00	\$104,166.66	833.33

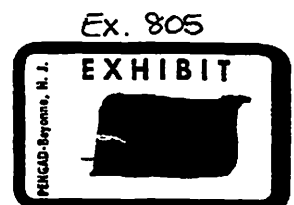
Group "A" has a yearly income of \$1,250,000. Group "A" has \$250,000 (\$20,833.33 per month) held out yearly for expenses. This leaves \$1,000,000 for distribution yearly.

Check distribution to group "A" per month will be \$833.33 per 1¢ per month. This is an increase from \$500 per month.

Proceeds from liquidation of	\$777,840.00
\$3,000,000 Zero Coupon U.S. Treasury Bond	
Cash on Hand	122,160.00

In order to purchase the remaining 50% of the land owned by Dr. Leslie Gondor and Dr. Magdolna Iranyi, a Zero Coupon U.S. Treasury Bond with the face amount of \$500,000. is being kept at Dean Witter Reynolds office in the name of JMHJV. This is due on November 15, 2005.

Immediately upon receipt of this letter and payment, please return the original Promissory Note dated October 1, 1985 for the stock purchase. If applicable, a copy is enclosed for your reference.



J.APP. 4316

The following information concerning the tax assessments was received from Inova. It reflects the total assessed value of the original Hospital building and the medical office building located on King Street to be \$3,934,641.14. We are not selling the land however Inova wants to buy it. Therefore, Inova will have the right of first refusal if we ever consider selling the land. Inova will lease the land for 99 years for \$1.00 per year and they will pay all the taxes and insurance on the land. According to the zoning regulations approximately 144 parking spaces are allocated to the property subject for sale with the understanding that there is a cooperative parking arrangement for the 317 parking spaces located on the premises.

There are two (2) components in the valuation of the Hospital:

1. The Hospital building,
2. Value of the license

The real value of the license is unknown since Inova is unable to run Jefferson as an acute care Hospital. It is very doubtful that any other operator who would come in could be successful.

Their hope is to transfer the acute beds to a better location, probably Franconia, plus other acute beds they can spare from their other three Hospitals plus one they are trying to purchase.

In order to help Inova I brought up an idea to have the tax free exchange between the Hospital and the office building they acquired recently for their headquarters building, Cambridge Court. Since the price for Cambridge Court was \$12,700,000, I took that figure and came to the conclusion that we will use the same amount in our valuation. In inform you of this so if anyone has any objection about the price of \$12,700,000 please let me know, in writing, within 30 days. Further, please let me know if you can find a buyer who would pay more and we would certainly consider it.

When we buy Cambridge Court, the rental payment will be identical to what we receive from the lease at Jefferson Hospital less \$75,000 per year which will be used to cover expenses which are part of the obligation of Jefferson Memorial Hospital Joint Venture.

Thirteen (13) years from now, according to Inova's plan, it is not likely that they will have a license to run an acute care hospital. Therefore, what is left is only the Hospital Building. I propose that we have the right to repurchase the Hospital on October 1, 2005 for the price reflected in the tax assessment at that time. Inova has the option to purchase Cambridge Court for \$20,000,000 on October 5, 2005.

These are my thoughts. I don't make any representations that I am an expert, even though I have some knowledge of real estate. Therefore, everyone should contact their lawyers or consultants for assistance before making a decision.

My concern is that the lack of use of the acute care beds might result in the void of the Certificate of Need by the authorities.

Naturally, if we pursue our legal rights, we can blame Inova for letting the Hospital rundown to the level we are at now. I am trying to avoid this as it would be a lengthy and bitter fight.

On the other side, our purchase of Cambridge Court carries some risk. Inova is a large non-profit organization. Last year they had a \$40,000,000 profit which is under careful scrutiny of the Governor of Virginia and the IRS. We don't know what can happen to Officers or the entire corporation. It could be de-funked and replaced by a new corporation. Therefore, any lease signed by Inova would not be valid and we would be stuck with white elephant. I hope that neither of my concerns will be realized but I have to inform you of the risk so I am not blamed for the possible, but unlikely problems. I would like to go ahead with the transaction as a tax free exchange and those not invited will be paid out in cash of by a Note at 8% interest for a term to be worked out with the individual investor. That would make it possible to pay taxes, if any, since 90% of the sale price is subject to taxes if the Government does not approve the tax free exchange. In any tax free exchange, we lose the depreciation. Therefore any income we realize will be fully taxable. I will try to arrange a tax deferral but I cannot guarantee it. If I don't receive an answer, in writing, within 15 days, I assume you will not participate in the new venture. If you enter into the new venture, you have to be fully informed of the deal and consequences.

As far as the Medical Office Building is concerned, we have an original agreement that as soon as it is feasible, we will convert the offices into condominiums. This is a plus for everyone. The condominium conversion will be done by Roger T. Scully, Esquire. Therefore, please direct your questions and concerns to him for explanation.

Since practically none of the investors have any money in this venture, I would like to allocate \$1,100,000 to be paid in October, 2005 to our faithful, devoted employees who's jobs are in jeopardy by our action that we agree to sell the Hospital. I certainly hope that you approve my recommendation unanimously. I will be glad to show the list of the beneficiaries but I don't want to make it public knowledge and create problems among the employees as to why the amount of compensation is different for each individual.

jmh0926.1tr

J.APP. 4318

January 2, 1976

MEMORANDUM

TO: DR. FREEDMAN, PRESIDENT
FROM: ADMINISTRATOR
RE:

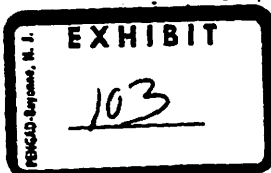
I want to report the results upon the Hospital Corporation, of action directed by the Stockholders over the last 12 months and carried out by the Board of Directors. There were 4 separate actions which were, the redemption of all Corporation stock issued in 1972, the sale of the building and land to the Joint Venture, the establishment of an employee's pension plan along with increased group life insurance, and the option of converting 20% of all outstanding stock as of December 30, 1975 to bonds.

The immediate impact of these actions has been to increase our expense by \$20,000 in the last 6 months. However, the full impact will likely be felt in 1976. Let me present what these actions mean in terms of expenses and cash flow in the months ahead. I will treat each of the 4 actions separately and then summarize them as a package.

1. Redemption of 1972 Stock Issue: The Hospital redeemed 60,000 shares of stock at \$6.00 per share with 15 year, 8% interest bearing bonds valued at \$360,000. The Hospital redeemed \$230,500 of these bonds from partners of the Joint Venture as payment for their obligation to the Hospital. This transaction left the Hospital with \$129,500 of this 1972 bond issue outstanding. Thus, the \$129,500 of this bond issue will require a yearly interest expense payment of \$10,360.

2. Sale of Building and Land to Joint Venture: The transaction with the Joint Venture did not provide any cash to the Hospital Corporation since Hospital bonds were used to pay the Venture obligation. In effect, this transaction has added \$30,000 per year of expense and increased our cash requirements by that amount. Since the agreement was a net-net lease all expenses which existed before the sale to the Joint Venture continue as Hospital expenses in addition to the \$30,000 yearly lease. I question seriously that Blue Cross will allow this \$30,000 lease payment as a part of our cost under this contract.

3. Employee Pension Plan and Increased Group Life Insurance:



TAUBER 00368

Imo EX 124
Ex. 806

JAPP. 4319

JEFFERSON MEMORIAL HOSPITAL CORPORATION

ALEXANDRIA, VIRGINIA

ANNUAL REPORT REQUIRED UNDER CONTRACT WITH
GROUP HOSPITALIZATION, INC.
FOR THE NINE MONTHS ENDED MARCH 31, 1982

DAVID E. MERMELSTEIN
CERTIFIED PUBLIC ACCOUNTANT

DAVID E. MERMELSTEIN

CERTIFIED PUBLIC ACCOUNTANT

13975 CONNECTICUT AVENUE

SILVER SPRING, MD 20906

(301) 460-6520

Group Hospitalization, Inc.
Washington, D.C. 20024

Gentlemen:

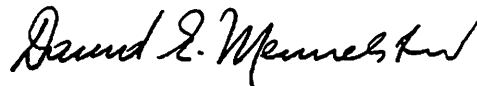
I have examined the balance sheet of Jefferson Memorial Hospital Corporation as of March 31, 1982, and the related uniform income and expense statement for the nine months then ended. My examination was made in accordance with generally accepted auditing standards and accordingly included such test of the accounting records and such other procedures as I considered necessary in the circumstances.

I have satisfied myself by adequate tests that participants of Group Hospitalization, Inc., are being charged the same rates for all hospital services as are charged all in patients.

In my opinion, the accompanying balance sheet and uniform income and expense statement present fairly the financial position of Jefferson Memorial Hospital Corporation at March 31, 1982, and the results of its operations for the nine months then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

I have reviewed the accompanying cost schedules and statistical data used therein called for under Reporting Requirements of the Hospital Cost Manual. These schedules have been prepared in accordance with instructions in the Hospital Cost Manual of the Hospital Council of the National Capital Areas, Inc., and the special requirements set forth in the Manual with regard to deductions and exclusions from the cost of services rendered participants of Group Hospitalization, Inc.

Respectfully submitted,



DAVID E. MERMELSTEIN
Certified Public Accountant

DEM/rrc

Silver Spring, Maryland
October 18, 1982

JEFFERSON MEMORIAL HospitalUNIFORM INCOME AND EXPENSE STATEMENTFor the NINE MONTHS ended MARCH 31, 1982

Account Description	Inpatients		Outpatients	Others	Total
	Adults and Children	Newborn			
Revenue from Service to Patients					
Routine Services					
Inpatient	4,651,987				4,651,987
Outpatient	XX	XX		XX	
Total	4,651,987				4,651,987
Special Services					
Operating rooms	651,220		53,426		704,646
Postoperative recovery room	112,854		6,830		119,684
Delivery rooms					
Anesthesiology	471,263		18,588		489,851
Radiology	501,777		339,018		840,795
Radiology-therapy NUC MED	126,644		34,393		161,037
Laboratory	1,035,967		190,267		1,226,234
Basal metabolism					
Electrocardiology STRESS =CHC	215,996		17,587		233,583
Electroencephalography	15,260		6,930		22,190
Physical therapy	251,273		115,153		366,426
Occupational therapy					
Oxygen (inhalation) therapy	478,636		3,156		481,792
Blood bank	116,929		349		117,278
Medical and surgical supplies	403,789		32,759		436,548
Pharmacy	1,088,763		8,477		1,097,240
Intravenous solutions	324,145		2,084		326,229
Ambulance service					
Others (list) RENAL	37,510				37,510
PULMONARY INJECTIONS	71,833		1,703		73,536
EMERGENCY	96,447		433,745		530,192
Total - SPECIAL SERVICES	6,000,306		1,264,465		7,264,771
Total gross revenue from service to patient	10,652,293		1,264,465		11,916,758

Hospital Council Cost Manual

JEFFERSON MEMORIAL Hospital
UNIFORM INCOME AND EXPENSE STATEMENT
For the NINE MONTHS ended MARCH 31, 1952

<u>Account Description</u>		<u>Total</u>
<u>Deductions from Revenue</u>		
Adjustments and allowances - contracting agencies		
Group Hospitalization, Inc.	266,333	
Medical Service of D. C. MEDICAID	315,595	
Municipal aid programs MEDICARE	523,786	
Hospital Service Agency	-	
Others	-	1,105,714
Adjustments and allowances - patients (excluding employees)		
Inpatients		
Professional	967	
Religious	-	
Charity	713	
Others	45388	47068
Outpatients		
Professional	680	
Religious	-	
Charity	109	
Others	13120	13,909
Adjustments and allowances - employees	60,977	
Inpatients	3,107	
Outpatients	1,197	
Provision for uncollectible receivables		65281
		96,463
Total deductions from revenue		<u>1,267,458</u>
<u>Other Revenue Accounts</u>		
General contributions, donations, legacies & bequests		
Grants from community chest, foundations and government agencies		
Donated Services (religious only) GAIN ON INVESTMENTS	12,323	
Net unrestricted income from investments	22,635	
Income transfers from temporary funds		
Revenue from school of nursing		
Revenue from telephone & telegraph service		
Revenue from special meals		
Revenue from rental of rooms to employees		
Revenue from supplies sold to employees & others	880	
Revenue from laundry & linen sold to employees & others		
Purchase (cash) discounts		
Revenue from meals sold in cafeterias		
Revenue from parking lot	18,059	
Revenue from sale of transcripts	4,611	
Revenue from concessions	769	
Others (list) DAY CARE CENTER 14,009	23,676	
MEDICAL EDUCATION 9,666		
Total other revenue accounts		<u>82,953</u>
Total revenue		<u>10,732,253</u>
O561H2I1P		

JEFFERSON MEMORIAL HospitalUNIFORM INCOME AND EXPENSE STATEMENTFor the NINE MONTHS ended MARCH 31, 1982

<u>Account Description</u>	<u>Salaries & Wages</u>	<u>Supplies & Expense</u>	<u>Total</u>
<u>Expense Accounts</u>			
General Service Centers			
Employee health and welfare	40,709	258,585	299,294
Administration and general	603,320	585,422	1,188,742
Collection fees paid to outside agencies	-	62,593	62,593
Motor service			
Operation of plant	11 -	251,274	251,274
Repairs and maintenance	162,962	16,340	179,302
Laundry and linen service	22,742	123,630	146,372
Housekeeping	-	177,009	177,009
Dietary and employees cafeteria less revenue	224,901	208,342	433,243
Maintenance of personnel			
Central sterile supply and IV solutions	68,581	269,032	337,613
Pharmacy	-	578,109	578,109
Interns, Residents and Medical Education	13,757	16,186	29,943
Nursing service:			
Administration and education	256,068	25,964	282,032
Medical-Surgical	1,233,249	227,095	1,460,344
Obstetrics			
Pediatrics			
Nursery			
ICU-CCU	283,578	108,447	392,025
Psychiatric			
Nursing education			
Medical records and library	81,610	15,524	97,134
Social service			
Special Service Centers			
Operating rooms	273,836	231,826	505,662
Postoperative recovery room	71,871	14,361	86,232
Delivery rooms			
Anesthesiology		54,557	54,557
Salaries and fees paid to Anesthesiologists	-	246,616	246,616

JEFFERSON MEMORIAL HospitalUNIFORM INCOME AND EXPENSE STATEMENTFor the NINE MONTHS ended MARCH 31, 1982

<u>Account Description</u>	<u>Salaries & Wages</u>	<u>Supplies & Expense</u>	<u>Total</u>
<u>Expense Accounts (continued)</u>			
Special Service Centers			
Radiology	130,269	132,810	263,079
Salaries and fees paid to Radiologists		210,119	210,119
Radiology therapy <u>NUCLEAR MEDICINE</u>	14,097	26,804	40,901
Salaries and fees paid to Therapist Physicians		40,259	40,259
Laboratory	236,936	211,727	448,663
Salaries and fees paid to Pathologists	-	95,402	95,402
Electrocardiology <u>STRESS + ECHO</u>	52,976	43,150	96,126
Salaries and fees paid to Physicians	-	58,148	58,148
Physical therapy	97,517	19,070	116,587
Salaries and fees paid to Therapist Physicians	-	93,775	93,775
Occupational and Speech therapy <u>EEG</u>	-	23	23
Salaries and fees paid to Therapist Physicians	-	11,165	11,165
Oxygen (inhalation) therapy + <u>PULMONARY</u>	-	290,228	290,228
Cardio-Pulmonary			
Blood bank	-	50,103	50,103
<u>RENAL</u>	-	16,740	16,740
Outpatient Centers			
Emergency rooms	170,146	43,210	213,356
Salaries and fees paid to Physicians		256,752	256,752
Outpatient clinics			
Salaries and fees paid to Physicians			
Other Accounts			
Depreciation	-	248,392	248,392
Interest	-	47,159	47,159
Real estate and property taxes	-	110,936	110,936
Rental of land and building	-	269,433	269,433
Parking lot expenses			

JEFFERSON MEMORIAL HospitalUNIFORM INCOME AND EXPENSE STATEMENTFor the NINE MONTHS ended MARCH 31, 1982

<u>Account Description</u>	<u>Salaries & Wages</u>	<u>Supplies & Expense</u>	<u>Total</u>
<u>Expense Accounts (continued)</u>			
Other Accounts			
Fund raising expense			
Organized research			
Gift shop			
Federal and state taxes on income			
<u>GOODWILL</u>		<u>18,533</u>	<u>18,533</u>
Total expense	<u>4,039,125</u>	<u>5,754,850</u>	<u>9,793,975</u>
Net income for period	<u> </u>	<u> </u>	<u>938,278</u>
Patient days: (Census Basis)			
Medical-Surgical			29,121
Obstetrics			
Pediatrics			
Nursery ÷ 2			
ICU-CCU			1,213
Psychiatric			
Extended care			
Total			<u>30,334</u>
ER Visits - note			8,611
Clinic visits - note			4,360

NOTE - Private out patient visits should not be included.

JEFFERSON MEMORIAL HospitalBALANCE SHEETAs at MARCH 31, 1982ASSETS

General fund assets

Cash

Accounts and notes receivable

Less Allowances for uncollectible accounts

OTHER RECEIVABLES

Inventory - supplies (at cost)

Prepaid expenses

Due from other funds

Total

Temporary fund assets

~~Cash~~ GOODWILL

Investments

Accrued interest receivable

Total

Endowment fund assets

Cash

Investments

Total

Plant fund assets

~~Land~~ LEASEHOLD IMPROVEMENTS

Buildings

Fixed Equipment

Major Movable Equipment

Minor Equipment (non-depreciable) (at cost)

Total

Less accumulated depreciation

Assets restricted for replacement and
improvement of plant

Total plant fund assets

Grand Total

848,609
686,903
<551,903>135,000
250,046
-
-1,233,655

261,551

261,551

308,167

166,483

759,034

1,233,684

<696,741>

536,943\$2032,149

JEFFERSON MEMORIAL HospitalBALANCE SHEETAs at MARCH 31, 1982LIABILITIES AND FUNDS

General fund liabilities

Accounts payable	305,781
Notes and loans payable	
Salaries, wages and fees payable	
Withholding taxes payable	
Social security taxes payable	
Accrued expenses	39,926
Deferred income ACCRUED CORPORATE INCOME TAXES	361,074
Due to other funds	
General fund	
Total	706,781

Temporary fund

Due to other funds
Temporary funds

Total

Endowment and other invested funds

Principal

For general purposes

Donated

Created by Governing Board

For restricted purposes - Donated

Total

Plant fund liabilities and capital

Bonds payable

~~Mortgages payable~~ NOTES PAYABLE

Plant fund capital

Reserve for plant improvements
and expansion

Total plant fund liabilities and capital

Grand Total

\$ 2,032,149

Hospital Council Cost ManualJEFFERSON MEMORIAL HospitalUNIFORM STATISTICAL DATA SHEETFor the month ending MARCH 31, 1982Inpatient Data
(Discharge Basis)Medical-Surgical

Bed Capacity		G.H.I.	OTHER Comm. Ins.	Medicare	Patient Guar.	MEDICAID Indigent
Admissions	4075	1183	1576	721		595
Discharges	3,932	1141	1479	718		594
Patient Days	30,630	8419	9521	8321		4369

Obstetric

Bed Capacity		G.H.I.	Comm. Ins.	Medicare	Patient Guar.	Indigent
Admissions						
Discharges						
Patient Days						

Pediatrics

Bed Capacity		G.H.I.	Comm. Ins.	Medicare	Patient Guar.	Indigent
Admissions						
Discharges						
Patient Days						

Newborn

Bed Capacity		G.H.I.	Comm. Ins.	Medicare	Patient Guar.	Indigent
Admissions						
Discharges						
Patient Days						

Total (excl. Newborn)

Bed Capacity		G.H.I.	Comm. Ins.	Medicare	Patient Guar.	Indigent
Admissions	120					
Discharges						
Patient Days						

Patient Days
(Census Basis)

Medical - Surgical
~~Obstetric~~ ICU
 Pediatric
 Newborn

29,121

1,213

()

Total (excl. Newborn)

(30,334)

J.APP. 4329

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UNIFORM STATISTICAL DATA SHEET
(Continued)

Outpatient Data

Visits

Occasions of Service

Emergency Room

8,611

Clinic

4,360

Private Ambulatory

Total

12,971

Employees

Number

Full-time

330.8

Full-time equivalent

Total

Hospital Council Cost Manual

L I N E	ACCOUNT	1	2	3	4
		TOTAL COSTS (FROM COST SCHEDULE B COLUMN 1B)	DEPRECIATION	INTEREST	REAL E STATE PROPERTY
	SPECIAL SERVICE CENTERS				
18	Operating Rooms	692 611			
19	Postoperative Recovery Room	122 261			
20	Delivery Rooms				
21	Anesthesiology	303 208			
22	Radiology	425 942			
23	Radiology - Therapy	97 676			
24	Laboratory	663 191			
25	Basal Metabolism				
26	Electrocardiology	168 073			
27	Electroencephalography	34 180			
28	Physical Therapy	277 635			
29	Occupational Therapy				
30	Oxygen (Inhalation) Therapy	311 638			
31	Blood Bank	75 902			
32	Medical and Surgical Supplies - Special	690 928			
33	Pharmacy - Special	645 569			
34	Intravenous Solutions				
35	Ambulance Service				
36	Others (List) <i>RENAL</i>	107 09			
37					
38					
39					
40					
	IN-PATIENT CENTERS				
41A	In-Patients - Non-obstetrical	4312 821			
41B	In-Patients - Obstetrical				
42	Newborn (Nursery)				
	OUT-PATIENT CENTERS				
43	Emergency Rooms	542 815			
44	Out-Patient Clinics				
45	Private Ambulatory				
	OTHER ACCOUNTS				
46	Depreciation		X X X	X X X	X X X
47	Interest		X X X	X X X	X X X
48	Real Estate and Property Taxes		X X X	X X X	X X X
49	Rental of Land and Buildings		X X X	X X X	X X X
50	Parking Lot Expenses			X X X	
51	Fund Raising Expense			X X X	
52	Organized Research and Medical Education			X X X	
53	Coffee Shop, Gift Shop, Etc.			X X X	
54	Federal and State Taxes on Income		X X X	X X X	X X X
55	Collection Fees paid to Outside Agencies	62 593	X X X	X X X	X X X
56	Others (List)			X X X	
57				X X X	
58				X X X	
59	Totals	9,476,772			

Hospital
DISTRIBUTION OF SPECIAL AND PATIENT CENTERS AND OTHER ACCOUNTS
 For the Year ended _____, 19____

3	4	5	6	7-A	7-B	8	9	10
EST	REAL EST/ AND PROPERTY T	RENTAL OF LAND AND BUILDINGS	COSTS FOR FINAL DISTRIBUTION	IN-PATIENTS			OUT-PATIENTS	
				IN-PATIENTS (ADULT AND CHILDREN)	IN-PATIENTS	NEWBORN	EMERGENCY	CLINICS
				(NON-OBSTETRICAL)	(OBSTETRICAL)			
			692 611	640 111			52 500	
			122 261	115 280			6 981	
			303 208	52 489			2 068	
			465 942					
			97 696					
			663 191					
			168 073					
			24 180					
			277 635	190 374			27 261	
			311 638	271 876			1 206	
			75 902	75 674			228	
			690 928	639 108			51 820	
			645 569	640 598			4 971	
			19 709	19 709				
			4,312,821	4 312 821				
			542 815	98 738			444 077	
xxx	xxx	xxx						
xxx	xxx	xxx						
xxx	xxx	xxx						
xxx	xxx	xxx						
xxx								
xxx								
xxx								
xxx								
xxx	xxx	xxx						
xxx	xxx	xxx	62 593					
xxx								
xx								
xx								
			9476 772	7 056 778			651 712	

COST SCHEDULE C

10				11	12	13	14	L I N E
OUT-PATIENTS						EXCLUDED COSTS AND SERVICES (GROUP HOSPITALIZATION, INC.)	NON-PATIENT COSTS AND SERVICES	
EMERGENCY	CLINICS	PRIVATE AMBULA- TORY	TOTAL				DESCRIPTION	AMOUNT
52 500								18
6 981								19
								20
2 068						2 48 651		21
						465 942		22
						97 686		23
						663 191		24
								25
						168 073		26
						24 120		27
27 261								28
								29
1 206						27 256		30
228								31
51 820								32
4 971								33
								34
								35
								36
								37
								38
								39
								40
								41A
								41B
								42
								43
42 077								44
								45
								46
								47
								48
								49
								50
								51
								52
								53
								54
						62 593		55
								56
								57
								58
51 712						1 768 282		59

JEFFERSON MEMORIAL HOSPITAL
COMPUTATION OF THE PER DIEM COST FOR GROUP HOSPITALIZATION, INC.
FOR THE YEAR ENDED MARCH 31, 1982

LINE		1	2	3
		IN-PATIENT CENTERS		
		ADULT AND CHILDREN (COL. 7-A-CS-C) (NON-OBSTETRICAL)	IN-PATIENTS (COL. 7-B-CS-C) (OBSTETRICAL)	NEWBORN (COL. 8-CS-C)
	COST OF GHI COVERED SERVICES PER COST SCHEDULE C			
	ROUTINE CARE			
41	In-Patients	4 312 821		
42	Newborn (Nursery)			
	SPECIAL SERVICES			
18	Operating Rooms	640 111		
19	Postoperative Recovery Room	115 280		
20	Delivery Rooms			
21	Anesthesiology (Materials only)	52 489		
28	Physical Therapy	190 374		
30	Oxygen (Inhalation) Therapy	271 876		
31	Blood Bank (excluding blood and plasma)	75 674		
32	Medical and Surgical Supplies - Special	639 108		
33	Pharmacy - Special	640 598		
34	Intravenous Solutions			
	RENAL	19 709		
	EMERG RM	98 738		
59	Total cost of covered services			
60	Add: Distribution of Newborn Cost			
	A. Newborn per diem cost = newborn cost (Line 59, Col. 3) \$ _____ ÷ newborn days _____ = \$ _____			
	B. Newborn days during mothers' stay _____ × per diem \$ _____ =	XXX		XXX
	C. Newborn cost after mothers' discharge (Line 59, Col. 3 minus Line B, Col. 2) =		XXX	XXX
61	Combined cost of GHI covered services (Lines 59 + 60)	7 056 778		XXX
62	Patient days	30 334		XXX
63	Newborn days occurring after mothers' discharge	—	XXX	XXX
64	Total patient days (Line 62 + 63)	30 334		XXX
65	Average Per Diem Cost of Participants of GHI (Line 61 ÷ Line 64)	232.64.		XXX

HOSPITAL COUNCIL COST MANUAL		JEFFERSON MEMORIAL				Hospital		COST SCHEDULE A														
ADJUSTMENT OF EXPENSE																						
NINE MONTHS For the Year ended <u>MARCH</u> <u>31</u> , 19 <u>82</u>																						
		1			2			3			4			5			6			7		
LINE	ACCOUNT	EXPENSES PER UNIFORM INCOME AND EXPENSE STATEMENT (UNIT CENTS)			ADJUSTMENTS			ADJUSTED EXPENSES FOR DISTRIBUTION			LINE											
		SALARIES AND WAGES	SUPPLIES AND EXPENSE	TOTAL	TRANSFERS		RECOVERIES OF EXPENSE	ADD	DEDUCT	DEDUCT												
1	GENERAL SERVICE CENTERS																					
1	Employee Health and Welfare	40,709	258,585	299,294	46,897																	
2	Administration and General	603,320	585,422	1,188,742	49,189	141,546																
2a	Motor Service																					
3	Operation of Plant		251,274	251,274																		
4	Repairs and Maintenance	162,962	16,340	179,302																		
5	Laundry and Linen Service	22,742	123,630	146,372																		
6	Housekeeping		177,009	177,009																		
7	Dietary	224,901	208,342	433,243																		
8	Employees Cafeteria	XXX	XXX	XXX	57,621																	
9	Maintenance of Personnel																					
10	Medical and Surgical Supplies				457,512																	
11	Central Sterile Supply	68,581	269,032	337,613																		
12	Pharmacy		578,109	578,109																		
13	Interns and Residents	13,757	16,186	29,943	57,861																	
14	Nursing Service	1772,895	361,506	2,134,401																		
15	Nursing Education																					
16	Medical Records and Library	81,610	15,524	97,134																		
17	Social Service				27,644																	
18	SPECIAL SERVICE CENTERS																					
18	Operating Rooms	273,836	231,826	505,662																		
19	Postoperative Recovery Room	71,871	14,361	86,232																		
20	Delivery Rooms																					
21	Anesthesiology		301,173	301,173																		
22	Radiology	130,269	342,929	473,198																		
23	Radiology-Therapy NUCLEAR MEDICINE	14,097	67,063	81,160																		
24	Laboratory	236,936	307,129	544,065																		
25	Basal Metabolism																					
26	Electrocardiology, STRESS & ECHO	52,976	101,298	154,274																		
27	Electroencephalography		11,188	11,188	9,976																	
28	Physical Therapy	97,517	112,845	210,362																		
29	Occupational Therapy																					
30	Oxygen (Inhalation) Therapy & PULMONARY		290,228	290,228																		
31	Blood Bank		50,103	50,103	10,889																	
32	Medical and Surgical Supplies - Special	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX		
33	Pharmacy - Special	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX		
34	Intravenous Solutions																					
35	Ambulance Service																					
36	Others (List) RENAL DIALYSIS		16,740	16,740																		
37																						
38																						
39																						
40																						
41	IN-PATIENT CENTERS																					
41A	In-Patients - Non-obstetrical	XXX	XXX	XXX																		
41B	In-Patients - Obstetrical	XXX	XXX	XXX																		
42	Newborn (Nursery)	XXX	XXX	XXX																		
43	OUT-PATIENT CENTERS																					
43	Emergency Rooms	170,146	299,962	470,108																		
44	Out-Patient Clinics																					
45	Private Ambulatory																					
46	OTHER ACCOUNTS																					
46	Depreciation	XXX	248,392	248,392	7,144																	
47	Interest	XXX	47,159	47,159																		
48	Real Estate and Property Taxes	XXX	110,936	110,936																		
49	Rental of Land and Buildings	XXX	269,433	269,433																		
50	Parking Lot Expense																					
51	Fund Raising Expense																					
52	Organized Research & Medical Education																					
53	Coffee Shop, Gift Shop, Etc.																					
54	Federal and State Taxes on Income	XXX																				
55	Collection Fees Paid to Outside Agencies	XXX	62,593	62,593																		
56	Others (List) GOODWILL		8,533	8,533																		
57																						
58																						
59	TOTALS	4,039,125	5,754,850	9,793,975	726,733	726,733																

LINE	ACCOUNT	A B 1 2			
		ADJUSTED EXPENSES FOR DISTRIBUTION	DEPRECIATION, INTEREST, RENTALS AND TAXES	EMPLOYEE HEALTH AND WELFARE	ADMINISTRATION AND GENERAL
a.	Statistical Units	XXX	69,796	3,960,798	6,365,554
b.	Amounts to be Distributed	XXX	541,678	333,616	1,128,979
		FROM COST SH. A COLUMN 7			
	GENERAL SERVICE CENTERS				
1	Employee Health and Welfare	332,182	1,434	XXX	XXX
2	Administration and General	1,043,320	40,315	45,344	XXX
3	Operation of Plant	221,123	110,536		39,218
4	Repairs and Maintenance	179,302	303	13,736	31,800
5	Laundry and Linen Service	146,372	3,584	1,915	25,960
6	Housekeeping	176,511	1,440		31,305
7	Dietary	375,622	14,124	17,049	66,619
8	Employees Cafeteria	57,621	8,685	1,894	10,219
9	Maintenance of Personnel				
10	Medical and Surgical Supplies	457,512		XXX	81,143
11	Central Sterile Supply	103,574	13,419	9,527	18,370
12	Pharmacy	578,109	23		102,532
13	Interns and Residents	80,138	145	1,440	14,212
14	Nursing Service	2,128,116	7,286	148,995	377,446
15	Nursing Education				
16	Medical Records and Library	92,540	8,500	6,874	16,413
17	Social Service	27,644	2,148	2,156	4,902
	SPECIAL SERVICE CENTERS				
18	Operating Rooms	420,310	39,054	23,065	74,545
19	Postoperative Recovery Room	86,232	624	6,053	15,294
20	Delivery Rooms				
21	Anesthesiology	276,063	16,888		8,769
22	Radiology	354,717	28,371	10,972	29,193
23	Radiology - Therapy NUC. MED.	81,160	1,248	1,187	10,800
24	Laboratory	510,491	16,236	18,946	77,166
25	Basal Metabolism				
26	Electrocardiology	132,367	5,818	3,675	14,606
27	Electroencephalography	21,164		788	1,773
28	Physical Therapy	205,617	9,833	8,214	21,609
29	Occupational Therapy				
30	Oxygen (Inhalation) Therapy PULMONARY	290,228	3,634		9,378
31	Blood Bank	60,992	718	1,011	10,817
32	Medical and Surgical Supplies - Special	XXX	XXX	XXX	XXX
33	Pharmacy - Special	XXX	XXX	XXX	XXX
34	Intravenous Solutions				
35	Ambulance Service				
36	Others (List) - RENAL DIALYSIS	16,740			2,969
37					
38					
39					
40					
	IN-PATIENT CENTERS				
41A	In-Patients - Non-obstetrical	XXX	210,584	XXX	XXX
41B	In-Patients - Obstetrical	XXX		XXX	XXX
42	Newborn (Nursery)			XXX	
	OUT-PATIENT CENTERS				
43	Emergency Rooms	416,734	11,862	10,785	31,921
44	Out-Patient Clinics				
45	Private Ambulatory				
	OTHER ACCOUNTS				
46	Depreciation	302,786	XXX	XXX	XXX
47	Interest	130,248	XXX	XXX	XXX
48	Real Estate and Property Taxes	63,829	XXX	XXX	XXX
49	Rental of Land and Buildings	44,815	XXX	XXX	XXX
50	Parking Lot Expenses	XXX	XXX	XXX	XXX
51	Fund Raising Expense				
52	Organized Research and Medical Education				
53	Coffee Shop, Gift Shop, etc.				
54	Federal and State Taxes on Income			XXX	XXX
55	Collection Fees Paid to Outside Agencies	62,593		XXX	XXX
56	Others (List)				
57					
58					
59	Totals	9,476,772	541,678	333,616	1,128,979

Hospital

DISTRIBUTION OF GENERAL SERVICE CENTER
 For the ~~Year~~ ^{NINE MONTHS} ended **MARCH 31, 1982**

2	3	4	5	6	7	8	9	10	11
ADMINISTRATION GENERAL	OPERATION OF PLANT	REPAIRS AND MAINTENANCE	LAUNDRY AND LINEN SERVICE	HOUSE- KEEPING	DIETARY	EMPLOYEES CAFETERIA	MAINTENAN OF PERSONNE	MEDICAL AND SURGICAL SUPPLIES	C
6,365,334	49,220	49,220	326,079	48,536	91,002	216.9		DIRECT	2
1,128,979	370,877	225,131	183,788	211,581	504,374	98,724		538,655	1
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	
39,218	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	
31,800		xxx	xxx	xxx	xxx	xxx	xxx	xxx	
35,960	3,707	2,250	xxx	xxx	xxx	xxx	xxx	xxx	
31,305	1,447	878	-	xxx	xxx	xxx	xxx	xxx	
66,619	14,166	8,999		8,195	xxx	xxx	xxx	xxx	
10,219	9,290	5,640		5,375	xxx	xxx	xxx	xxx	
81,143	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	
18,370	13,322	8,587		7,707	xxx	2,458		xxx	
102,532					xxx			xxx	
14,212					xxx	455		xxx	
377,446	6,465	3,924		3,740	xxx	56,622		xxx	
16,413	6,910	4,194		3,996	xxx	3,914		xxx	
4,902	2,298	1,295		1,330	xxx	683		xxx	
74,545	37,231	22,600	30,137	21,539	xxx	8,602		xxx	
2,294			12,940		xxx	1,912		xxx	
8,769	1,356	522		785	xxx			xxx	
29,193	12,781	10,152	1,264	9,708	xxx	3,869		xxx	
10,800	1,281	775		741	xxx	501		xxx	
77,166	12,083	8,547		8,148	xxx	9,149		xxx	
14,606	4,159	2,525		2,406	xxx	1,957		xxx	
1,773					xxx	455		xxx	
21,609	8,575	5,225	9,115	4,961	xxx	4,278		xxx	
9,378	3,843	2,327		2,223	xxx			xxx	
10,817	769	217		445	xxx	683		xxx	
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	538,655	1
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	x
					xxx			xxx	
2,969					xxx			xxx	
					xxx			xxx	
					xxx			xxx	
					xxx			xxx	
					xxx			xxx	
xxx	213,839	129,806	123,955	123,712	504,374	xxx	xxx		
xxx					xxx	xxx			
31,921	11,355	6,893	7,577	6,570	xxx	3,186		xxx	
					xxx			xxx	
					xxx			xxx	
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	x
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	x
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	x
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	x
					xxx			xxx	
					xxx			xxx	
xx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	x
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx	x
					xxx			xxx	
					xxx			xxx	
					xxx			xxx	
1,128,979	370,877	225,131	183,788	211,581	504,374	98,724		538,655	1

10	11	12	13	14	15	16	17	18	
MEDICAL AND IGICAL SUPPLIES	CENTRAL STERILE SUPPLY	PHARMACY	INTERNS AND RESIDENTS	NURSING SERVICE	NURSING EDUCATION	MEDICAL RECORDS AND LIBRARY	SOCIAL SERVICE	TOTAL COSTS (TO COST SCHEDULE C COLUMN 11)	L I N E
DIRECT	271,292	642,978	100%	DIRECT		100%	100%	XXX	a.
538,655	176,524	680,664	96,390	2732,594	-	143,341	42,556	XXX	b.
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	1
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	2
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	3
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	4
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	5
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	6
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	7
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	8
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	9
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	10
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	11
XXX		XXX	XXX	XXX	XXX	XXX	XXX	XXX	12
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	13
XXX			XXX	XXX	XXX	XXX	XXX	XXX	14
XXX			XXX	XXX	XXX	XXX	XXX	XXX	15
XXX			XXX	XXX	XXX	XXX	XXX	XXX	16
XXX			XXX	XXX	XXX	XXX	XXX	XXX	17
XX	560	14,968		XXX		XXX	XXX	692,611	18
XX		106		XXX		XXX	XXX	122,261	19
XXX				XXX		XXX	XXX		20
XXX		13,724		XXX		XXX	XXX	303,208	21
XXX	824	251		XXX		XXX	XXX	465,942	22
XXX				XXX		XXX	XXX	97,696	23
XXX	321	102		XXX		XXX	XXX	663,191	24
XXX				XXX		XXX	XXX		25
XXX	531	29		XXX		XXX	XXX	168,073	26
XXX				XXX		XXX	XXX	24,180	27
XXX	204	24		XXX		XXX	XXX	277,635	28
XXX				XXX		XXX	XXX		29
XXX				XXX		XXX	XXX	311,638	30
XXX				XXX		XXX	XXX	75,902	31
538,655	152,273	XXX	XXX	XXX	XXX	XXX	XXX	690,928	32
XXX	XXX	645,569	XXX	XXX	XXX	XXX	XXX	645,569	33
XXX				XXX		XXX	XXX		34
XXX				XXX		XXX	XXX		35
XXX				XXX		XXX	XXX	19,709	36
XXX				XXX		XXX	XXX		37
XXX				XXX		XXX	XXX		38
XXX				XXX		XXX	XXX		39
XXX				XXX		XXX	XXX		40
	14,000	2397	91,031	2,732,594		125,137	41,492	4,312,821	41A
									41B
						XXX	XXX		42
XXX	7,811	3,494	5,359	XXX		18,204	1,064	542,815	43
XXX				XXX					44
XXX				XXX					45
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX		46
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX		47
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX		48
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX		49
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX		50
XXX			XXX	XXX	XXX	XXX	XXX		51
XXX			XXX	XXX	XXX	XXX	XXX		52
XX			XXX	XXX	XXX	XXX	XXX		53
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX		54
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	62,593	55
XXX			XXX	XXX	XXX	XXX	XXX		56
XXX			XXX	XXX	XXX	XXX	XXX		57
XXX			XXX	XXX	XXX	XXX	XXX		58
538,655	176,524	1,001,111	91,200	2,732,594		143,341	42,556	7,716,784	

1 THE COURT: May Professor Dooley be excused?

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

4 (Witness excused.)

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

7 Whereupon,

8 ROBERT E. WILSON

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

12 DIRECT EXAMINATION

13 BY MR. FOX:

14 Q. Good morning, Mr. Wilson.

15 A. Good morning.

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

17 A. Robert E. Wilson.

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

19 A. Arthur Anderson.

20 Q. And Arthur Anderson is what?

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

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

Ex. 822

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. FOX:

4 Q. Mr. Wilson, for the record, you are Robert
5 Wilson?

6 A Yes.

7 Q. You testified in this case in 1996; is that
8 correct?

9 A Yes, I did.

10 Q. And at that time Judge Swersky accepted your
11 qualifications as a Certified Public Accountant?

12 A. Yes.

13 Q. Do you recall that?

14 A Yes, I do.

15 Q. Are you still engaged in that profession?

16 A Yes, I am.

17 Q. Does your engagement in that profession still
18 have a concentrated focus on the health care industry
19 including for-profit and not-for-profit hospitals?

20 A Yes, it does.

21 MR. FOX: Your Honor, I would submit that Mr.
22 Wilson remains as qualified in the prior testimony.

23 THE COURT: Does counsel wish to inquire?

1 MR. CHOCKLEY: No. I think his qualifications
2 were accepted and you permitted him to testify.

3 THE COURT: All right. Go ahead, Mr. Fox.

4 BY MR. FOX:

5 Q. Mr. Wilson, are you here today to contradict any
6 testimony that you offered previously?

7 A. No, I'm not.

8 Q. And you do reaffirm that testimony?

9 A. Yes, I do.

10 Q. Mr. Wilson, with respect to your earlier
11 testimony, you did testify concerning the financial results
12 achieved by Jefferson Memorial Hospital. Do you recall
13 that?

14 A. Yes, I do.

15 Q. Let me direct your attention to what is now
16 marked as Exhibit 611. It's a two-part series. Do you
17 recall that exhibit?

18 A. Yes, I do.

19 Q. And do you recall the second page of that
20 exhibit?

21 A. Yes, I do.

22 Q. And I don't believe this was admitted before but
23 you testified concerning the net income results of

1 Jefferson. Do you recall?

2 A Yes, I do.

3 Q. Now, just recollecting, what did you find in
4 terms of the history of the net income results of Jefferson
5 Hospital?

6 A. What I found was that, understandably, in the
7 first year or so of operation of the Hospital that it
8 operated at an operating deficit but that quickly in its
9 history it moved to a position of profitability and except
10 for one year, which I believe was 1959, exhibited net
11 income throughout its history through 1975.

12 Q. Okay. Directing your attention to part two of
13 Complainant's Exhibit 611, did you make an effort to chart
14 both the revenue and the net income growth?

15 A Yes, we did.

16 Q. What did you find there?

17 A. The revenue growth of the hospital rose
18 dramatically each year, virtually each year throughout its
19 early history.

20 Q. Is that the left part?

21 A. It's the left part. You can see almost a
22 straight-line upward trend in revenues, amounts charged to
23 patients and insurers. Net income was mixed, but still, as

1 I mentioned previously, except for two years was in a
2 profitable position throughout that first ten years of its
3 history.

4 Q. Okay. Now, let me ask you, in terms of the
5 financial statements that you reviewed, were you able to
6 tell whether those statements plus the tax returns were the
7 financial results of Jefferson post-revocation of the
8 501(c)(3) exemption or the pre -- when the 501(c)(3) was in
9 full force and effect?

10 A. The net results for operating from 1972 forward
11 were after revocation of the tax exempt status.

12 Q. With respect to the tax returns, did you find
13 that they were in fact amended returns that reflected
14 payment of tax?

15 A. They went back in time retroactively and
16 reflected tax payments.

17 Q. Now, but for the revocation of the 501(c)(3)
18 exemption, are you able to tell Judge Swersky how the
19 revocation affected the financial performance of Jefferson
20 Hospital?

21 A. The most obvious impact would be of course that
22 the Hospital began having to pay taxes and that had of
23 course a direct impact on the Hospital bottom-line each

1 year that it did that.

2 Q. Do you recall testifying about the accumulated
3 deficits before?

4 A Yes, I do.

5 Q. How, if at all, if Jefferson had to pay those
6 taxes after the revocation of the 501(c)(3) exemption,
7 would that have affected the deficit situation?

8 A. Again, the accumulated deficits were more
9 significant, were larger, as a result of the revocation of
10 tax exempt status for the Hospital.

11 Q. Do you recall in what magnitude the hospital
12 ultimately had to pay taxes?

13 A. In the aggregate?

14 Q. Either aggregate or in given years just reflected
15 in the statements?

16 A. Again, roughly. I can't give you specific dollar
17 amount but roughly 50 percent of its income that otherwise
18 would have been generated was paid to the federal
19 government.

20 Q. Now, you have had experience with not-for-profit
21 tax-exempt hospitals?

22 A Yes, I have.

23 Q. How often have you seen 501(c)(3) exemptions

1 revoked?

2 A. I personally have never encountered that with my
3 dozens of clients. I have read about it on occasion but I
4 have never personally encountered it.

5 Q. Based upon your knowledge and experience, would
6 you conclude that it's a rare circumstance, or is that
7 something that occurs with frequency?

8 A. It's extremely rare. It's written about more
9 than it actually occurs, and I think in fact there's been
10 more focus and spotlight on that issue today much more so
11 than there was 25 years ago, and even today there aren't
12 many instances where that's occurred.

13 Q. There are inquiries nevertheless from the IRS in
14 given situations?

15 A. Sure. The IRS will examine not-for-profit
16 entities' tax exempt status from time-to-time and will
17 identify issues that it deems to be -- that should be
18 corrected or modified in order to retain that status.

19 Q. In your experience, what is the typical response
20 of the not for-profit charitable?

21 A. Typically the not for-profit charitable will
22 value its tax exempt status enough to take corrective
23 action to maintain its status.

1 Q. With respect to Jefferson Hospital, did you
2 review the chronology of the IRS' investigation of
3 Jefferson that ultimately concluded in the revocation of
4 text exemption?

5 A Yes, I did.

6 Q. What, if any, evidence did you see in your review
7 of the financial records or the other records of Jefferson
8 to indicate that they made any effort to comply or to
9 change any of the incidence of inquiry made by the IRS?

10 A. I recall reading references to the issue in
11 various minutes of various board meetings, but
12 fundamentally I didn't see any evidence of any attempt to
13 rectify any situations that the IRS deemed to be
14 problematic. There was a point in time in late '70 or 71
15 where they simply gave up their dispute of that claim.

16 Q. Now, were there consequent disruptions in the
17 financial performance of Jefferson that rebounded from that
18 revocation?

19 A. The most pronounced disruption again would be the
20 fact that roughly half of the resources that would be left
21 over from operations to be put back in to enhancing the
22 services of the hospital were paid out to the federal
23 government.

1 Q. What impact, if any, would that have on the cash
2 flow profile of Jefferson?

3 A. It would have a dollar-for-dollar negative impact
4 on the cash flow of the Hospital and its ability to provide
5 services to the community.

6 Q. Now, in terms of your review previously you
7 looked at the financial results, but did you look at any of
8 the other operational aspects of Jefferson Hospital prior
9 to coming here today?

10 A. Prior to my testimony in July --

11 Q. Yes, sir.

12 A. -- I did not review any information that was
13 operational in nature. It really was primarily the
14 financial statements of the Hospital.

15 In preparation for this trial, I did have the
16 opportunity to review additional information that was
17 prepared by the management of the Hospital that gave more
18 of an operational background to the operating results.

19 Q. Now, is that something that in your role as a
20 CPA providing both auditing and management services ... are
21 those the kind of records that you would normally and
22 customarily review?

23 A. In the role of an auditor, an auditor is

1 primarily attesting to the accuracy of the financial
2 statements. But one of the procedures that an auditor
3 would go through is to do a -- really a reasonableness
4 check to make sure that the financial results are borne out
5 by what really is happening within the enterprise of the
6 hospital by looking at operating information as to revenues
7 and expenses.

8 Q. Now, I believe you testified in terms of Exhibit
9 611, page 1 -- that's the big one on the floor, Your Honor
10 -- that the revenue profile of Jefferson had grown on a
11 steady climbing uphill manner.

12 A. That's correct. It did.

13 Q. And when you reviewed that report, did that tell
14 you something about utilization of the Hospital?

15 A. It didn't tell me anything directly about
16 utilization of the Hospital. It was just -- it gave me an
17 inference of how the activities of the Hospital or revenue-
18 generating activities of the Hospital were going, but it
19 didn't directly give me that.

20 Q. It didn't give you component parts of that?

21 A. No.

22 Q. Now, let me direct your attention if I might and
23 the Court's attention to Exhibits 555 through 562.

1 Do you recognize those documents, Mr. Wilson?

2 A Yes, I do.

3 Q. How would you describe those documents
4 collectively?

5 A. Collectively they represent annual reports that
6 are filed with the Blue Cross/Blue Shield organization.
7 Each hospital files it each year, and fundamentally it's
8 comprised of both financial information similar to what is
9 included in the financial statements, but it also provides
10 additional information regarding the operating statistics
11 of the Hospital.

12 Q. Did those documents provide some of that
13 information operationally that you had not seen before?

14 A. It gave me more insight into the reasons for the
15 financial numbers I reviewed previously.

16 Q. Did those documents confirm the financial results
17 that you had reviewed previously?

18 A. They did.

19 Q. Let me show you, if I can, another chart that's
20 Exhibit 564.

21 There's one in the book as well as this blowup.

22 A. Okay. Mr. Wilson, would you tell His Honor what
23 Exhibit 564 is.

1 A Yes. When I was provided the reports that I just
2 referred to, rather than reviewing each of them
3 individually in order to be able to, in my mind, create a
4 roadmap or a story regarding what was happening financially
5 in operations of the Hospital, I had to get it all in one
6 sheet of paper so I could see trends. And this is a
7 reflection frankly of my notes that I took from my review
8 of those individual years and asked one of my staff to put
9 to it on this spread sheet.

10 Q. Most of the information is taken directly from
11 Exhibits 555 through 562; is that correct?

12 A Yes, it is.

13 Q. Now, there's some notations hear in the fifth
14 column. Says "missing."

15 A Yes.

16 Q. "1969 missing." Would you tell His Honor what
17 that notation means and what you used as a substitute?

18 A. For 1969 there wasn't one of those reports made
19 available to me for whatever reason, if it didn't exist,
20 and so I went back to the actual audited financial
21 statements and dropped in a summary of the financial
22 information that was relevant to my analysis at that point.

23 Q. Okay. And this information comes in in this

1 column directly from the audited financial statement?

2 A Yes, it does.

3 Q. Why did you plug that information in, Mr. Wilson?

4 A. Why did I do that?

5 Q. Yes, sir.

6 A. I was looking for a continuous story that would
7 tell me something about what was really happening at the
8 Hospital both finally but more importantly operationally,
9 so I needed to provide in that missing link.

10 Q. In the eighth column, June 1971 annualized, you
11 have a notation there, "Memo only."

12 Would you tell Judge Swersky with that means?

13 A. That was the year that they changed the fiscal
14 year-end from October to June, and the audited financial
15 statements only provided for eight months worth of
16 operating financial information, and that's indicated in
17 the column to the immediate left of the one that you are
18 referring to. So I simply took those numbers and
19 annualized them to make it appear like it was a
20 twelve-month period. Again, I was looking for --

21 Q. -- trends?

22 A. -- trends, and "Memo only" means that those
23 aren't the real numbers; those are the numbers that reflect

1 an annualization of the prior columns.

2 Q. And you did that on a 12-month basis?

3 A. Right.

4 Q. Going over two columns more, June '73, you have
5 made a notation "Illegible."

6 A Yes.

7 Q. Does that mean it was totally illegible or just
8 somewhat obfuscated?

9 A. It means that the copy was poor enough that I
10 couldn't decipher what the actual numbers were down to the
11 nearest dollar, but I could tell, with some difficulty,
12 what they were to the nearest thousand. So I rounded them
13 and put those numbers in there.

14 The numbers that were missing on the sheet are
15 missing because they were so illegible I couldn't determine
16 what they were.

17 Q. Okay. Now, one other question just about the
18 format. In the last two columns to the right, you have two
19 bracketed sets of numbers.

20 A Yes.

21 Q. What does that indicate?

22 A. To me it was a notation that in my mind I was
23 combining those numbers. In previous years they had been

1 combined on one single line. In 1974 and 1975 they were
2 put down in two lines. So, again, I put a bracket around
3 them to think of them as one number to compare to prior
4 years.

5 Q. In terms of your review of the Exhibits 555
6 through 562 and your compilation of Exhibit 564, were you
7 able to discern any patterns or trends operationally about
8 Jefferson Hospital?

9 A. The statistics that were provided in that
10 additional report that I looked at were very helpful
11 because it basically told me and confirmed and solidified
12 in my mind the true history of the Hospital's operation for
13 the first ten years. Clearly the Hospital lost money in
14 its first year, but by 1967 it was operating at a modest
15 profit but nevertheless in a profitable position.

16 1969 was a year where there was a significant
17 loss, but that also was a year right after when they had
18 decided to add and construct an additional 29 beds to the
19 Hospital.

20 Q. Twenty-four?

21 A. Excuse me. Twenty-four beds to the hospital.

22 But generally-speaking, again, there was a kind
23 of a strong, continuous trend of net income, even in the

1 years of 1972 and beyond when they were paying taxes on 40
2 or 50 percent of their income.

3 I think what was most telling was looking at some
4 of the operating statistics, which was new information to
5 me. It showed that the Hospital was fairly quickly in its
6 history able to operate at a very high level of capacity.
7 Eighty percent of its beds were filled on average every day
8 of the year throughout this entire 10-year period.

9 Q. Based upon your experience, is that 80 percent in
10 terms of hospital utilization equated to full occupancy?

11 A. It's very strong occupancy. I guess one might
12 say that 100 percent is full, but that's really not the
13 case for a variety of reasons. Just the logistics of
14 having patients discharged and admitted, there's some down
15 time and changeover time, as well as if you have
16 double-bedded rooms, you can't have opposite genders in the
17 same room. So there may be some issues there.

18 Q. But in terms of a benchmark, is 80 percent a
19 strong indicator of utilization?

20 A. It's very strong indicator of utilization.

21 Q. And you say they have reached that in what year
22 of its history?

23 A. They reached that by 1967. So within the second

1 year of their operations.

2 Q. And did that utilization of the bed capacity
3 remain fairly stable throughout the history that you cited?

4 A Yes, it did. It grew, up to about 1970 or so,
5 and then it stabilized and continued at about that level
6 throughout the remaining years that we looked at.

7 Q. Okay. Now, what does that level of utilization
8 tell you as a management analyst and accountant about the
9 Hospital?

10 A. What it tells me is that this Hospital had very
11 strong fundamentals from almost the time that it opened its
12 doors. It had good bones, so to speak. That is to say
13 that people were coming to the Hospital, the Hospital was
14 operating at a very high level of capacity, and the vast
15 majority of those patients were paying patients, I might
16 add, or having their bills paid by Medicare or Blue Cross
17 or other insurance programs.

18 Q. Okay. Now, you have heard it said that a
19 significant number of non-paying patients were admitted to
20 Jefferson Hospital. Does your analysis indicate that?

21 A. The analysis does not support that, at least from
22 the information that I can decipher. At least the
23 financial statements don't support that at all.

1 Q. Where would that be found on the financial
2 statements, Mr. Wilson?

3 A. Typically if a patient is admitted to the
4 hospital and is unable to pay --

5 Q. Or unwilling?

6 A. -- or unwilling to pay for lack of resources or
7 lack of willingness, that bill is written off by the
8 Hospital and that bill usually is reflected in the
9 financial statements as uncollectible or charity care
10 account.

11 Now, in reviewing the financial statements,
12 there's a line item in the financial statements that's
13 reflected in this exhibit that's labeled "Uncollectibles,"
14 and if you look at that line item, their uncollectible
15 accounts ran at, roughly-speaking one hundred to a hundred
16 fifty thousand a year each year. That represents revenues
17 that had been written off for one of those two reasons,
18 unable or unwilling to pay.

19 At the percentage of gross revenues, which is the
20 third line of numbers on this exhibit, it represents a
21 relatively small percentage.

22 Q. Roughly what?

23 A. Two percent. Three percent. Not at all out of

1 line with what hospitals generally write off in the way of
2 bad debt accounts and charity care. And if I would have
3 expected that a third of the patients to be admitted to the
4 Hospital to be charity patients, I would have expected
5 about a third of revenues to be written off.

6 Q. And you don't find that here?

7 A. No. About two or three percent.

8 Q. Do you find that that's more in the range of
9 normal bad debt write-off for both charity and non-charity
10 hospitals?

11 A. It normally runs in the two to five percent
12 range.

13 Q. Now, there really is a reason for that, isn't
14 there, Mr. Wilson, in terms of other sources of payments?
15 There are other sources of payments --

16 A. There are many other sources of payment, the
17 primary one being primary insurance, but certainly the
18 Medicare program was in place at that point and was
19 handling much of the cost of care to seniors.

20 Q. Now, if we look at this chart 564, from the
21 revenue perspective and in terms of bed utilization, are
22 you able to conclude from that study whether or not
23 Jefferson had all of the operating engines in place to do

1 business and to operate in the community?

2 A Yes, they did. You have to keep this in
3 perspective of the period of time that this Hospital was
4 operating.

5 In many respects, hospitals at that time were
6 close to being public utilities in the sense that most of
7 the revenues came from insurance companies or the Medicare
8 program or possibly Medicaid. I'm not sure how developed
9 it was in Virginia at that time.

10 And back then, those programs virtually
11 guaranteed that the hospitals would be paid their costs.
12 So it was effectively a cost-recovery program for insurance
13 payers.

14 Given the revenue, the patient-flow stream that
15 this Hospital achieved very quickly in its career, that
16 created the good structure, the good foundation, for this
17 Hospital to be otherwise financially viable. It would be
18 difficult to lose money, I think, in that environment.

19 Q. If they lost money in that environment of maximum
20 cost reimbursement, based on your experience, to what would
21 you attribute the cause of that loss to?

22 A. Primarily I would say it is a function of
23 management initiatives: managing your costs. I mean, the

1 revenue stream is largely in place. Now one must manage
2 the costs around that revenue stream, or, if costs are
3 being layered on to the Hospital's operations that are
4 unreasonable such that the insurance programs aren't going
5 to pay for them.

6 Q. In terms of your analysis, did you look at some
7 other indices to determine whether or not costs were being
8 managed effectively at Jefferson?

9 A. I did.

10 Q. Where would that be reflected?

11 A. It's in the lower third or so of that exhibit.

12 Q. May I stop you for a moment. Just so Judge
13 Swersky understands, when we talk about bed capacity at the
14 level of about 80 percent, would you tell him where the
15 numbers are for that calculation?

16 Not for each year, but one typical year.

17 A. How I calculated it?

18 Q. Yes, sir.

19 A. The bed capacity was taken off the statistical
20 report that was filed with Blue Cross. Then I wanted to
21 know what the average number of beds that were filled each
22 day, what the average occupied beds were. I took the total
23 number of patient days --

1 Q. That's 29,270?

2 A. Yes. And divided by 365. And that yielded 80
3 days. Eighty patients in the hospital on average each day
4 of the year.

5 Q. And the percentage of occupancy is 80 divided by
6 96?

7 A. Correct.

8 Q. Going on to the other statistics that you looked
9 at on the cost management side.

10 A. The primary statistics that I looked at was the
11 staffing level, how many employees the hospital had.

12 Q. What is a standard measure of how many employees?
13 Employees to what?

14 A. Full-time equivalent employees to occupied beds,
15 to patients in the hospital.

16 Q. Is there sort of an acceptable range or benchmark
17 that in your experience most hospitals sort of hover around
18 if they're well-managed?

19 A. I hesitate to say only because 25 years ago it
20 might have been a different kind of standard. What I did
21 notice was for this Hospital, it hovered in the two
22 employees to upwards of two-and-a-half employees for each
23 patient in the hospital over the course of this 10-year

1 period.

2 Q. And that statistic seems to have risen most in
3 what year?

4 A. It rose substantially in 1971 and I don't know
5 all the reasons for that. Certainly it was a year after
6 they had increased the bed capacity by 24 -- or 23 to 24
7 beds.

8 It may have been just a function of not
9 responding necessarily to changes in volumes, just
10 adjusting for staff accordingly.

11 Q. It appears, however, that after that period there
12 were some adjustments; is that correct?

13 A Yes, there were. You can see the line item that
14 says "FTEs 1971 June." They had 260 full-time employees
15 and by June of 1972 they were down to 216. They clearly
16 had made some adjustments.

17 Q. Do those adjustments go right to the bottom line?

18 A. They're taking salary costs out of the Hospital's
19 operation. That all falls to the bottom line.

20 Q. Were there any other statistical measures that
21 you looked at in terms of revenue or cost management?

22 A. Yes. A third area or another area that I looked
23 at was the management of accounts receivable. Accounts

1 receivable are the cash lifeblood of any organization and
2 most particularly hospitals. There's a time lag between
3 when patients are discharged and when payments are
4 received. That time lag is institutionalized because much
5 of the payment comes from third parties such as the
6 Medicare program, insurance companies, and they simply
7 don't process bills as quickly as one would hope.

8 Q. Now, Mr. Wilson, when you talk about accounts
9 receivable management, are we talking about the issue that
10 you previously testified to concerning ability or
11 willingness of the patient to pay?

12 A. No, I don't think so. Again, if you look at the
13 deduction from revenues for patients that are
14 uncollectibles, they are a relatively very minor component
15 of the Hospital's revenue stream or deductions from the
16 revenue stream.

17 Q. So what are we talking about?

18 A. We're talking about managing the process of
19 getting bills out on time, getting them out accurate, doing
20 accurate follow-up with third party payers, and getting the
21 cash in the door.

22 Q. What did you find in terms of Jefferson's
23 operational results in that respect?

1 A. In general their receivables were very high in
2 relation to the volume of their revenues in most years. A
3 rough standard that I would apply as a consultant to
4 hospitals is that if you've got more than three months or
5 so or a hundred days of revenues tied up in receivables,
6 you are not managing it as effectively as you could.

7 If you are down in the 80-day range, you are
8 probably doing okay. Best practice hospitals will get down
9 into the 60- to 50-day range.

10 Q. Did you see any evidence in the records of
11 Jefferson to indicate attention to management of these
12 accounts receivable?

13 A. There were periodic references to receivables
14 being too high and that creating a cash-flow difficulty,
15 and I think that there were periodic references in the
16 minutes to the level of accounts receivable.

17 Q. Do you recall a reference to a new computer
18 system that was put in place?

19 A Yes. I don't remember the year. I think it
20 might have been 1971 or so. But I do recall that
21 reference, yes.

22 Q. Now, if you are asked on behalf of a putative
23 purchaser to come in and look at Jefferson based upon the

1 study that you have just performed, operational study, what
2 would you report back to the putative purchaser about
3 Jefferson's strengths and weaknesses?

4 A. My analysis is that -- again, as I stated
5 previously -- here was a hospital that was clearly embraced
6 by the community, that roughly-speaking 80 percent of the
7 beds were full every day of the year, year-in year-out, and
8 the vast majority of those patients were -- their bills
9 were being paid by some third parties. Very little of it
10 was uncollectible or unpaid.

11 That provides a very strong foundation for
12 somebody to manage a hospital effectively in order to
13 achieve a reasonable return to be plowed back in to the
14 charitable purposes and services of that organization.

15 Q. Did Jefferson as operated achieve a reasonable
16 return?

17 A. Well, Jefferson as operated over the majority of
18 its history certainly did produce a return, and I do think
19 it was reasonable, given it's not-for-profit or charitable
20 purpose.

21 Could it have been more? Possibly. Those are
22 really management decisions that need to be addressed or
23 could have been addressed at that time.

1 Q. How about if it had remained non-profit
2 charitable with the same essential numbers, would your
3 opinion differ?

4 A. My opinion would not differ. It would only
5 confirm the fact that the Hospital would have enjoyed a
6 larger return of net revenues because of not having to pay
7 taxes on this existing revenues.

8 Q. When you reviewed these financial statements over
9 the nine or ten years presented for Jefferson, do they
10 present any value attributable to intangible assets?

11 A. No, they don't. The standard accounting
12 practices are to record revenues as amounts charged and
13 costs at actual costs and assets and liabilities at their
14 actual amounts, costs.

15 So there is no reflection in these financial
16 statements or any other financial statements prepared on
17 the basis of GAAP that would reflect intangible values,
18 although intangible values certainly do exist.

19 Q. What gets encompassed in intangible assets of any
20 given corporation including a non-profit charitable like
21 Jefferson?

22 A. Intangible values would be to some degree in the
23 eye of the beholder, but certainly the tax benefits that

1 might accrue to a purchaser of an organization would be an
2 intangible asset that isn't reflected in the balance
3 sheet. There is, I think, intrinsic value in the revenue
4 stream that an organization such as Jefferson is able to
5 generate. It isn't necessarily reflected in the recitation
6 of assets and liabilities on the balance sheet.

7 Q. In terms of your review, I think you testified
8 before that Jefferson was definitely a going concern?

9 A. In my view, it definitely was.

10 Q. Did your review of the operational statistics
11 indicate otherwise?

12 A. They did not. In fact, I think the operating
13 statistics in my mind confirmed the opinion that I had
14 previously from reviewing the financial statements.

15 Q. Now, you have indicated that Jefferson achieved a
16 relatively strong utilization in the second year. Based on
17 your experience, do you find that the norm or do you find
18 it unusual?

19 A. Very unusual. In my experience, at least in
20 working with start-up hospitals, one hospital that I can
21 recall in the State of Washington probably took five years
22 or more to get to that level of productivity or activity.

23 Q. And that would indicate to you that they had at

1 least that side of the equation wired?

2 A. They appeared to have it wired.

3 Q. You were asked in your prior testimony about
4 accumulated deficits and I believe you testified that
5 contractual adjustments had no effect on these deficits

6 A Yes, they did.

7 Q. Would you explain to Judge Swersky what
8 contractual adjustments are?

9 A. Sure. Contractual adjustments are a term that
10 really refer to the difference between what -- an example,
11 what Medicare patients would be charged on their bills and
12 what the Medicare program would actually reimburse the
13 hospital based upon certain cost formulas, so it's that
14 difference between retail and wholesale, would be a way of
15 perhaps describing it.

16 Q. Okay.

17 A. And those adjustments aren't always retroactive.
18 They're based upon the insurance company or Medicare coming
19 in and doing a thorough review of filings and cost
20 information and then those adjustments are made
21 retroactively, and in these financial statements, when
22 those adjustments were made, they were booked to deficit of
23 the Hospital generally.

1 Q. Now, what is the accounting convention on how you
2 record the reserve for those contractual adjustments?

3 A. Each year a hospital tries to estimate that kind
4 of a settlement it owes to Medicare or Medicaid or amounts
5 that might be owed to them from the program. Those are
6 reflected as estimated receivables or estimated liabilities
7 on the balance sheets and they are always recorded as
8 current assets or current liabilities.

9 Q. Not as long-term?

10 A. That's not the convention that's used today.
11 It's not the convention that was used in the 1970s.

12 Q. Now, referring to Exhibit 123, Mr. Wilson, again
13 back to the contractual adjustments issue, if you were to
14 classify these as you have called them short-term
15 liabilities as long-term liabilities, would that have the
16 effect of skewing your financial statements in one way or
17 the other?

18 A. Well, it would make it appear that those
19 liabilities are of a long-term duration, meaning that they
20 will be resolved or dispatched more than a year after the
21 balance sheet date, and certainly that classification could
22 enter into other analyses as well depending on how they are
23 portrayed and how they enter into the calculations.

1 Q. Have you ever seen them portrayed as long-term
2 liabilities?

3 A. I have never seen them portrayed as long-term
4 liabilities.

5 Q. Directing your attention to Exhibit 123, do you
6 have that in front of you?

7 A Yes, I do.

8 Q. Do you recall in Exhibit 123 there was a notation
9 that there was a change in accounting procedure as it
10 pertained to those adjustments?

11 A Yes.

12 Q. Would you explain to His Honor what that was and
13 when it was?

14 A Yes. There was a change in the accounting for
15 these adjustments in 1974, I believe. The old method
16 was --

17 Q. This is Jefferson's method?

18 A Yes. Jefferson's method prior to the change was
19 to try to record that adjustment, that discount, if you
20 will, from revenues, at the time that they received payment
21 from the third-party payor. So it could be a
22 several-months lag. So they changed to really what was
23 more prescribed as acceptable accounting; in fact, the only

1 acceptable accounting in '74 for those, and that was to try
2 to estimate what that discount would allegedly be at the
3 time that the service was rendered to the patient when the
4 patient was discharged from the Hospital.

5 Q. Now, what effect did that change in -- is it 1973
6 or 1974?

7 A. I believe it was 1974.

8 Q. What effect did that one-year change have on the
9 financial profile of Jefferson in that year?

10 A. It resulted in an adjustment being recorded in
11 the amount of around \$170,000, as I recall, to, in effect,
12 reflect discounts that should have been recorded in earlier
13 periods that weren't because of the accounting convention
14 that was used by the Hospital previously.

15 Q. And based upon your experience, would you
16 conclude that that in effect skewed the financial results
17 in that one year one way or the other?

18 A. It would have skewed it substantially; again,
19 virtually dollar-for-dollar.

20 Q. But was that a typical year in the history?

21 A Well, 1974, of course, based upon the exhibit,
22 was the year where they had a net income of only \$10,000,
23 but, again, that reflected a reduction of what otherwise

1 would have been because of this \$170,000 adjustment to
2 revenue.

3 Q. Again, Mr. Wilson, reporting back to your
4 putative purchaser or investor, based upon Jefferson's
5 financial results, would you report that Jefferson had
6 difficulty paying its bills based upon your review of the
7 financial documents?

8 A. I didn't see any evidence in the review of the
9 financial documents of any inability to pay bills in a
10 reasonably timely manner. I didn't see any reflection in
11 the report of the auditors to suggest that the Hospital was
12 not able to pay its bills and remain viable. I didn't see
13 any evidence in the notes in the financial statements that
14 indicated that they were having financial difficulty to the
15 point of not being able to pay its bills.

16 Q. In fact, you saw just the opposite, did you not,
17 in the financial statements?

18 A. Saw evidence of optimism in terms of expanding
19 the Hospital's capacity. One probably wouldn't take that
20 course of action if it were having difficulties paying its
21 employees or suppliers or vendors.

22 Q. What course of action would you take if you were
23 having trouble?

1 A. I think you would batten down the hatches and
2 consolidate and try to fix what you currently had before
3 you expanded into a new world.

4 Q. Now, let me direct your attention if I can to
5 Exhibit 583-b. Let me give you a loose copy of that and
6 maybe you can deal with it a little bit better.

7 Is that the same thing?

8 A Yes, it is.

9 Q. And it is entitled what, sir?

10 THE COURT: Repeat the question. Repeat the
11 question.

12 BY MR. FOX:

13 Q. What is it entitled, Mr. Wilson?

14 A. Respondents Second Supplemental Response to
15 Complainant's First Interrogatories to Respondents.

16 Q. The question in there is, if you allege that JMHI
17 was unable at any time to pay any of its creditors or meet
18 any of its financial obligations, identify which creditors
19 were not paid, which financial obligations were not met,
20 the date of any such occurrence, the amount of any such
21 default or unpaid obligation and all documents relating
22 thereto.

23 There follows on page 2 in bullet form -- do you

1 see those?

2 A Yes.

3 Q. -- a recitation of what someone says indicates an
4 inability to pay bills. Have you seen that?

5 A Yes.

6 Q. Do you have an opinion, Mr. Wilson, whether or
7 not any or all of those bulleted points on pages 2 and 3
8 indicate Jefferson's inability to pay anything recited in
9 there?

10 A. No, I don't. In fact, the thing that strikes me
11 most about this list is that it's obligations that JMHI had
12 to other interested parties such as JMHA, shareholders and
13 Board members.

14 But the mere existence of an obligation is not
15 evidence that it can't be paid. Every financial statement
16 of every organization that I know of always has liabilities
17 on the balance sheet: payroll, rent, supplies and others.
18 It's not uncommon and that is not an indication of the
19 inability to pay it.

20 Q. Now, in the financial statements themselves, did
21 you see an indication of the accountant's or management's
22 presentation of the reduction of liabilities in the
23 statement entitled Change in Financial Position?

1 A Yes. Yes. There is a statement that's produced
2 each year as part of the package of statements that's
3 referred to as the "Statement of Changes in Financial
4 Position."

5 Q. Let's go to 195, I believe. Now, in 195, just
6 using that as a typical financial statement --

7 MR. CHOCKLEY: Your Honor, could I ask counsel to
8 bear with me a moment?

9 THE COURT: That's the one that's in dispute
10 about whether it's been misdated.

11 MR. FOX: I don't think that page is in dispute,
12 Your Honor, that we're talking about.

13 THE COURT: All right.

14 MR. CHOCKLEY: Thank you.

15 THE COURT: All right.

16 BY MR. FOX:

17 Q. Are you with me, Mr. Chockley?

18 THE COURT: All right. Go ahead, Mr. Fox.

19 BY MR. FOX:

20 Q. Now, that financial statement, 195, is the
21 financial statement of November 1, 1970, though June 30,
22 1971; is that correct?

23 A Yes.

1 Q. Does it contain a Statement of Changes in
2 Financial Position?

3 A Yes, it does.

4 Q. What Bates number is that, sir?

5 A. DT 00094.

6 Q. Okay. Now, directing your attention to that
7 statement--

8 MR. CHOCKLEY: Sorry, Your Honor. May I have the
9 Court's indulgence for a moment?

10 Does counsel have another copy of that?

11 MR. BETTIUS: Your Honor, would this be a good
12 time to break for lunch?

13 THE COURT: Depends on how much longer you are
14 going to be on direct.

15 MR. FOX: Probably about ten minutes.

16 THE COURT: Let's finish direct.

17 MR. BETTIUS: Why don't we use yours, Fritz?
18 Let's take one out of your book.

19 What exhibit is it, Fritz?

20 THE COURT: Don't all talk at once, gentlemen.
21 Counsel can confer. Find the exhibit.

22 MR. FOX: Your Honor, it would be in Mr.
23 Chockley's series Tauber 43967.

1 MR. CHOCKLEY: Yes.

2 MR. FOX: Are you with me?

3 MR. CHOCKLEY: Yes. Thank you, Your Honor.

4 BY MR. FOX:

5 Q. Mr. Wilson, using this Statement of Changes in
6 Financial Position for the period November 1, 1970 to June
7 30, 1971, can you tell me what you can ascertain from that
8 in terms of Jefferson's history or ability to pay?

9 A Yes. This statement is sometimes referred to as
10 the Sources and Uses of Funds Statement and it's intended
11 to reflect where money came from and where it went, and in
12 looking at the funds applied, you can see that there is an
13 entry for the retirement of bonds payable in the amount of
14 \$24,500.

15 That to me indicates that one of the things that
16 the Hospital did in 1971 was to retire its pay off of bonds
17 in the amount of \$24,500.

18 Q. What is the other category, "Curtailement of Notes
19 Payable"?

20 A. I presume that that's reductions in notes
21 payable.

22 Q. Okay. Did you see any indication of a schedule
23 of a debt owed to Dr. Tauber in the financial statements?

1 A. I don't recall seeing that.

2 Q. In the magnitude of a million-and-a-half dollars,
3 I guess my question should have been.

4 Let me amend it.

5 A. If it were there, I would have noticed it in
6 reading the financial statements. I didn't see it.

7 Q. Now, if the rent had been accrued, you know, on
8 any portion of the building -- I think there's \$39,000 that
9 we're talking about -- and if bonds were given in payment
10 of that rent, how would that be reflected on the
11 statements?

12 A. Would you repeat the scenario again?

13 Q. I think there was testimony before that there was
14 a rent figure of accrued rent of \$39,000.

15 A. Yes.

16 Q. But there were, in fact -- if bonds were given
17 for that rent, how would that adjustment be made?

18 A. If I understand it correctly, you would reduce or
19 eliminate the rent liability or payable on the balance
20 sheet, but you would instead --

21 Q. Replace it?

22 A. -- replace it with bonds payable.

23 MR. FOX: Your Honor, let me confer with my

1 co-counsel and --

2 BY MR. FOX:

3 Q. I believe earlier on somewhere in your review of
4 this Jefferson history you referred to Jefferson as the
5 equivalent of "a field of dreams." What did you mean by
6 that?

7 A. What did I mean by that? Simply this: That the
8 great difficulty that hospitals have today and historically
9 is that they can't get patients, enough patients, into the
10 hospital to generate adequate revenues. This hospital
11 didn't have that problem. I mean, it was built; within two
12 years it was operating at 80 percent capacity, which for
13 all practical purposes was a profitable capacity.
14 Virtually all of those patients were paid for in some
15 fashion or another.

16 So at that point the issue becomes how do we
17 manage our operations around that given revenue stream.
18 That revenue stream is virtually given. That's a far cry
19 from a lot of hospitals who fundamentally are in the wrong
20 place at the wrong time and don't have patients coming into
21 the hospital. This hospital had every indication of the
22 prospect of success.

23 Q. Directing your attention to 564 again, there's a

1 category -- or two different categories, one of ER visits
2 and clinic visits.

3 A Yes.

4 Q. What, if any, part did that play in the
5 conclusions that you have reached and testified here today
6 about Jefferson's viability and utilization?

7 A. It was corroborative in that the trends in
8 emergency room visits also were trending upwards
9 substantially, as were clinic visits. Again, if you look
10 at emergency room visits in 1967, 5746, by 1975 they had
11 gone up by two-and-a-half times. Clinic visits same
12 thing. So, I mean, all the indicators were there, both in
13 terms of inpatient services as well as outpatient services.

14 Q. Thank you, Mr. Wilson.

15 MR. FOX: Your Honor, I need to move these
16 exhibits in at this time if I might and that would be
17 exhibits 564; 611, page one and two; Exhibits 555 through
18 563; 583, the interrogatory answers. It's 583-b, I believe
19 it's called, Your Honor.

20 I would move all of those exhibits into evidence.

21 THE COURT: Give Mr. Chockley a chance to look at
22 them.

23 MR. CHOCKLEY: Your Honor, we have no objection

1 to 564.

2 THE COURT: All right. That's in.

3 MR. CHOCKLEY: No objection to 611.

4 THE COURT: Okay. That's in.

5 MR. CHOCKLEY: No objection to 555 through 562,
6 and no objection to 583-b.

7 THE COURT: All right. They're all admitted.

8 Anything else, Mr. Fox?

9 MR. FOX: Not at this time.

10 Mr. Bono and Mr. Chockley, how long would you
11 estimate cross-examination of this witness to be, just
12 roughly?

13 MR. CHOCKLEY: I would say about 20 or 30
14 minutes.

15 THE COURT: We will recess for lunch and we
16 resume at 2:30.

17

18 (Whereupon, a luncheon recess was taken.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 THE COURT: Mr. Wilson, if you will resume the
3 stand, please.

4 MR. CHOCKLEY: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. CHOCKLEY:

7 Q. Good afternoon, Mr. Wilson.

8 A. Good afternoon.

9 Q. Mr. Wilson, having heard your direct and your
10 testimony about the trends and the field of dreams and all
11 that, it's not clear to me. Is it your view that Jefferson
12 Memorial Hospital was a well-run hospital or not?

13 A. That's hard to judge. I don't know.

14 Q. You have no opinion?

15 A. It's hard to say. I would say that the Hospital
16 was earning a reasonable margin for a not-for-profit
17 organization. So by that measure, there were some things
18 that were being done well.

19 Q. Well, do you have an opinion that the Hospital
20 was well-run or not?

21 A. I don't have an opinion.

22 Q. You did testify that it was as if it were a field
23 of dreams, however; that they built it and they were at the

1 right place at the right time essentially; is that right?

2 A. That I believe.

3 Q. And when they did build it, they achieved some
4 net income in a very rapid amount of time in your view; is
5 that right?

6 A Yes they did, compared to other hospitals in
7 similar circumstances.

8 Q. And I believe you compared it to a start-up
9 hospital that you were familiar with in the State of
10 Washington.

11 A Yes.

12 Q. As a matter of fact, that's the only start-up
13 hospital with which you have ever worked; right?

14 A. That's the only one that I have worked with
15 directly; that's correct.

16 Q. So you have as your universe of comparison
17 Jefferson and one hospital in Washington, and Jefferson
18 achieved a relatively quick profitability.

19 A. Jefferson achieved a very quick profitability.

20 Q. Let's look at the exhibits that counsel has put
21 on these blow-ups here.

22 In this first one that we have up, it's marked as
23 Trial Exhibit Number 611, page 2 of 2, and this is the one

1 -- if I may, Your Honor -- this is the one that shows the
2 revenue growth on the left-hand side in graphic format and
3 then on the right side the net income; correct, sir?

4 A Yes.

5 Q. And it would be difficult to plot a steadier
6 growth in revenue, wouldn't it, sir?

7 A. What do you mean by that?

8 Q. It's about as steady a growth in revenue as you
9 can get?

10 A. There's a consistent pattern throughout the
11 years.

12 Q. But on the contrary, that's not net income, is
13 it?

14 A. No, it's not.

15 Q. The net income bounces around all over the
16 place. I guess you could have thrown darts up there and
17 get a steadier flow than that, couldn't you?

18 A. It's up-and-down; correct.

19 Q. You start out down here. The first one is do you
20 know below a negative \$150,000 in 1965; right?

21 A Yes.

22 Q. You got another one in 1969 that's down about the
23 same level; right?

1 A. Right.

2 Q. And yet the second year it was up at plus
3 \$200,000.

4 A. Correct.

5 Q. But in fact, do you know, sir, what the total net
6 income over the Hospital's years of operation was of as of
7 1971?

8 A. No. I don't off the top of my head, no.

9 Q. Why don't we add that up?

10 A. Okay.

11 Q. Do you have some paper and pencil there, or a
12 calculator, whichever you prefer?

13 A. I could use a piece of paper.

14 Q. The first year the net income, as shown on your
15 chart, is what? A hundred --

16 A. That first year actually isn't on any information
17 that I have in front of me, so ...

18 Q. Well, we'll have to use --

19 What is this figure that you have on your chart?

20 A. Could you turn it so I could see it?

21 MR. BETTIUS: Your Honor, may I? (Holding up
22 calculator).

23 THE COURT: Uh-huh.

1 THE WITNESS: It looks to be about 160 or 170
2 loss. And in 1966 about a \$225,000 net income.

3 BY MR. CHOCKLEY:

4 Q. These figures were off of the same data that you
5 made this chart out of?

6 A. But that chart didn't include '65 or '66.

7 MR. FOX: Mr. Chockley, which are you referring?

8 MR. CHOCKLEY: I'm using Exhibit 611, two of two.

9 MR. FOX: The graph or the --

10 Your Honor, let me state an objection for the
11 record. He's making an effort to add figures from the
12 graphic illustration. Those figures are on Exhibit 611,
13 page one of two, and he won't have to guess at the exact
14 amount.

15 THE COURT: Are they totalled up?

16 MR. FOX: They're not totalled, but the precise
17 amounts are.

18 MR. CHOCKLEY: I'm not trying to hide it from
19 you.

20 BY MR. CHOCKLEY:

21 Q. Are these the figures we're looking for, 611,
22 page one of two?

23 A. Yes.

1 Q. So what is the figure that you have for the net
2 income?

3 A. For which year?

4 Q. 1965. It's a minus \$168,995, isn't it?

5 A. Yes.

6 Q. Then for 1966 it's plus 224,000.

7 Why don't we just round them. We'll call it
8 225,000.

9 A. Okay.

10 Q. '67 is plus 6,000; right?

11 A. Yes.

12 Q. '68 is a plus 15,000; right?

13 A. Yes.

14 Q. '69 is minus 170,000; about 171,000; right?

15 A. Yes. 1970 is 172,000 net income. 1971 is income
16 of 52,000, rounding. 1972 is \$208,000.

17 Q. Why don't we stop in 1971.

18 A. Okay.

19 Q. You have the figure through -- the 52,000 --

20 A. Yes.

21 Q. -- for the year ending 6/30/71.

22 A. Yes, I do.

23 Q. What is the cumulative total of the net income

1 per the financial statement?

2 A. Through that period of time?

3 Q. Yes.

4 A. By my manual calculations, cumulative net income
5 is about 131,000.

6 Q. And then if you take that figure and divide it by
7 the number of years, what is the result of that, Mr.
8 Wilson?

9 A. Approximately 19,000 or 20,000.

10 Q. Per year net income?

11 A. On average.

12 Q. It shows, does it not, that despite the growth of
13 revenue, you have to take into account expenses; isn't that
14 right?

15 A. That's right, and look at the circumstances.

16 Q. And what is critical is the net income to that
17 hospital; correct; not total gross revenue?

18 A. From what standpoint?

19 Q. To the success of the Hospital.

20 A. Over what period of time?

21 Q. Well, over any period of time.

22 A. Over just any period of time. Not in any one
23 year.

1 Q. Sure. But over a sustained period of time, isn't
2 it net income that's important?

3 A Yes, it is, taking into account a new operation,
4 it would have understandably have significant losses in the
5 first year or two or five.

6 Q. And you heard, because you were here during the
7 opening statements today -- were you not?

8 A Yes, I was.

9 Q. You heard counsel's statement that the Hospital
10 was thinly capitalized right from the start?

11 A Yes, it was.

12 Q. And that this is a hospital that would need to
13 accumulate some capital or raise some capital in order for
14 expand, would it not?

15 A. It would. Normally one would expect that would
16 come from the supporters.

17 Q. And in this particular situation, they were
18 constantly struggling, as you will see in the minutes, to
19 come up with new sources; isn't that correct?

20 A. That's correct. Any new hospital that starts
21 with virtually no capital, it's going to be mired in lack
22 of capitalization throughout the entire history. It's
23 going to be a burden around its neck forever as long as

1 there isn't a conscious decision to put capital into it up
2 front to make it successful on a sustained basis.

3 Q. And if they had donated more capital in the
4 beginning, they probably would have had a greater capital
5 base; right?

6 A. That would have been one logical source.

7 Q. Now, you were talking before on your direct
8 examination about the effect of the payment of taxes after
9 the revocation of tax exemption.

10 A Yes.

11 Q. Now, you have reviewed the tax returns, have you
12 not?

13 A. I read the tax returns, yes.

14 Q. And you saw of course that net operating losses
15 were used to reduce the taxes paid to the federal
16 government; is that right?

17 A. They appeared to have done so, yes.

18 Q. And the result of that is that that money that
19 might have otherwise been paid in the form of taxes to the
20 federal government was used for the benefit of the
21 Hospital; isn't that right?

22 A. That's correct. The for-profit organization used
23 an asset that was generated by the not-for-profit entity to

1 offset its taxes; that's correct.

2 Q. And the money was used for the benefit of the
3 Hospital; isn't that correct?

4 A. I'm not sure who benefitted from it. It's not
5 clear to me that the Hospital benefitted.

6 Q. You don't have any indication that it went to
7 anything else other than the Hospital, do you, sir?

8 A. Taxes were paid from what was at one time a
9 not-for-profit entity. I'm not sure that the Hospital
10 benefitted from that action in any way.

11 Q. What I'm getting at is the use of the net
12 operating loss carry-forward reduced the taxes that were
13 paid and so money that would otherwise go to taxes was used
14 for the benefit of the Hospital; is that correct?

15 A. Well, there was a reduction in taxes of about a
16 million-six during the period of time that the Hospital was
17 a not-for-profit entity.

18 Q. One of the other things that you testified about
19 was a change in accounting?

20 A Yes.

21 Q. Isn't that right; in 1974?

22 A. That's correct.

23 MR. CHOCKLEY: If the court will indulge me a

1 moment.

2 Your Honor, while we're digging up that exhibit,
3 may I switch?

4 BY MR. CHOCKLEY:

5 Q. You testified on direct, did you not, Mr. Wilson,
6 that the change in accounting resulted in an adjustment of
7 \$170,000; isn't that correct?

8 A. There was a change in accounting and there was an
9 adjustment and the 170 was based upon recall. I think it
10 was close to that amount.

11 Q. In fact, the amount of adjustment was \$116,000;
12 isn't that right, sir?

13 A. I would have to see a document. Show me.

14 Q. And let me show you what has been previously
15 marked as Complainant's Trial Exhibit No. 202. Let me
16 direct your attention to numbered page 11, which has the
17 Bates number DT 000056.

18 A Yes. That's the document that I have in front of
19 me.

20 Q. That's a document that you have reviewed before,
21 is it not?

22 A Yes, it is.

23 Q. And do you see in there the figure that resulted

1 from the accounting change is 116,000, not 170,000?

2 A Yes, I do see that.

3 Q. And I believe on direct you also testified that
4 the effect of the accounting change went right to the
5 bottom line in reducing income by 170,000; isn't that
6 right?

7 A. It went against the equity of the Hospital.

8 Q. In fact, it went against the retained earnings;
9 isn't that right?

10 A. May I look at the statement?

11 Q. Sure.

12 A. I can't tell from these financial statements
13 whether it went into retained earnings or into net income.

14 One assumption I made was that one of the reasons
15 for the increases in deductions from revenue was that in
16 fact that \$116,000 did in fact go against net income and I
17 don't see anything in the statements that tells me
18 otherwise.

19 Q. In fact, the notes to the financial statements
20 are an integral part of the financial statements, are they
21 not?

22 A. Yes, they are.

23 Q. The notes are prepared by the auditors, are they

1 not?

2 A Yes, they are.

3 Q. And the auditors said that in their opinion the
4 statements fairly presented the financial position of the
5 Hospital --

6 A. That's correct.

7 Q. -- did they not?

8 And they did that in conformity with GAAP; right?

9 A. Yes.

10 Q. At least they said they did; right?

11 A. Yes.

12 Q. And in the ending note it says that the
13 cumulative effect on retained earnings as of June 30, 1973
14 would be about \$116,000.

15 A. That's correct.

16 Q. It doesn't say it was applied against net income?

17 A. You have to understand that the retained earnings
18 is impacted by the net income. It is my belief, although
19 you can't tell directly from these statements, that it went
20 through net income to retained earnings as of June 30,
21 1974.

22 Q. And that belief is just based on your view?

23 A. It's based upon what would have been general

1 accounting practices back then plus the substantial
2 increase in the deductions from revenue in that year, part
3 of which would be explained by an extra \$116,000 flowing
4 through deductions down through to the bottom line and
5 reducing the bottom line by that amount.

6 Q. But in fact, sir, isn't there a line in that note
7 that says: "However, it is believed that the effect on the
8 year ending June 30, 1973 net income after giving effect to
9 income taxes would be immaterial"?

10 A. Let me read this for a second.

11 I would have to say I don't know. I'm not sure
12 at this point because that statement may reflect what the
13 pure 1973 amount related to this accounting change was. I
14 really can't tell honestly whether it went through the
15 income statement or whether it went to retained earnings.

16 Q. But we know that the auditor said back in '73,
17 the one who audited the financial statement, said that the
18 effect on net income would be immaterial; isn't that right,
19 sir?

20 A. The effect on 1973 income on a stand-alone basis
21 for that year only. I'm still not sure whether that prior
22 year adjustment went through for the current year. If I
23 had more information, I might be able to tell.

1 Q. You don't dispute what that says right there?

2 A. It does say that it's immaterial; right.

3 Q. Let's turn to the other blowup you have here,
4 Trial Exhibit 564. And I believe, Mr. Wilson, what you
5 said was that the reason you put this together was so that
6 you could look at trends in the operation of the Hospital;
7 isn't that right?

8 A Yes, that's right.

9 Q. Now, you were looking at trends in the operation
10 of the Hospital when you testified here in July, were you
11 not?

12 A. I was looking at the trends in the financial
13 information. What I didn't have available to me at that
14 time were some indicators as to the underlying reasons for
15 those trends.

16 Q. And hadn't you asked for those underlying
17 indicators in preparation for the trial?

18 A. I wasn't aware that this information existed. I
19 didn't ask for it.

20 Q. They hadn't given it to you?

21 A. It wasn't provided.

22 Q. And you have been working on the matter since
23 what? April of 1996?

1 A. Off-and-on, yes.

2 Q. And you were fully prepared to offer your
3 opinions in July of 1996, were you not?

4 A. Opinions related to accounting matters; that's
5 correct.

6 Q. But they hadn't given you these annual reports to
7 the third-party payer that you rely on now for putting
8 together this chart; correct?

9 A. They weren't made available to me.

10 Q. Now, you have them and you used them to try to
11 put together some trends, and the trends, among other
12 things, show -- for example, you were talking about the
13 FTEs.

14 A Yes.

15 Q. That's full-time equivalents; is that right?

16 A. Yes.

17 Q. And full-time equivalents per occupied bed --

18 A Yes.

19 Q. -- peaked in 1971 at 2.7; right?

20 A. That's correct.

21 Q. So they essentially trended upwards over that
22 period from '67 to '71; isn't that right?

23 A. That's right.

1 Q. And although they dipped in 1972 and 1973, they
2 started back up again and ended up in 1975 back at 2.7;
3 isn't that right?

4 A Yes.

5 Q. What that means is that there are more employees;
6 right?

7 A. Yes.

8 Q. More employees. The way you have it, more
9 employees per occupied bed?

10 A. Right.

11 Q. And that's an indicator of how many employees it
12 needs -- that the Hospital needs to take care of its
13 patients?

14 A It's how many employees they had to take care of
15 their patients.

16 Q. So, in other words, there were more employees
17 then by June of 1975.

18 A. That's right.

19 Q. Now, another one of the indicators -- this is one
20 of the these underlying indicators that you have looked at
21 is the patient days.

22 A. Yes.

23 Q. And patient days is the number of patients for

1 the entire year?

2 A. It's a tally of the number of patients -- patient
3 days. Patients in beds tallied throughout the whole year.

4 Q. Now, this figure, the patient days, peaked in
5 1970; right?

6 A. That was the highest period, yes.

7 Q. 36,716.

8 A Yes.

9 Q. 1970.

10 A Yes.

11 Q. It never reached that figure again, did it?

12 A. No, it didn't.

13 Q. In fact, there was steady downward trend year
14 after year from 1970 through 1974; correct?

15 A. A slight downward trend but not one that would
16 put the Hospital in financial jeopardy.

17 Q. You are certainly entitled to your opinions, but
18 what I'm getting at is there was a downward trend from '71,
19 from 36,715, to 35,634 in '71; right? That's down?

20 A. Correct.

21 Q. And then it goes to 34,470? That's down
22 from '71.

23 A. Right.

1 Q. And then to 34,208. That's down from '72. And
2 then 33,927 in '74. That's down from '73.

3 A. That's correct.

4 Q. That's four consecutive downward years.

5 A. But in the aggregate, not terribly significant.

6 Q. Even in 1975 when it went up a little bit, it was
7 still only the fourth highest of those six years; right?
8 '70 through '75?

9 A Right. As I said earlier, there's a level of
10 activity that represents more or less a threshold over
11 which the Hospital should be able to run profitably. It's
12 a matter of managing your costs up or down to make
13 adjustments for the relatively minor fluctuations in
14 patient activities, which are going to be natural.

15 Q. On Exhibit 564, one of your other indicators is
16 the clinic visits.

17 A Yes.

18 Q. Those figures reached 6,541 in '63; right?

19 A Yes, they did.

20 Q. But, again, those fell in '74 and '75; correct?

21 A. That's right.

22 Q. So in '75 it was way down to 3,845.

23 A. Right, but still higher than every other year

1 except 1973.

2 Q. One of the things, another one of the indicators
3 that you looked at was accounts receivable days.

4 A Yes.

5 Q. You said that a well-run hospital would be at
6 about one hundred?

7 A. I didn't say that. I said that one hundred days
8 of accounts receivable would represent an alarm, a wake-up
9 call. You are clearly in the red zone at that point. In
10 my view, a well-run hospital would be more in the 50 to
11 seven, below 80 days.

12 Q. But anything over one hundred is in the red zone;
13 is that right?

14 A. That's a strong cautionary flag.

15 Q. One way to reduce that figure would be to exclude
16 patients who didn't pay; isn't that right?

17 A. Possibly, although that wouldn't be appropriate
18 accounting.

19 Q. Well, let's use common sense. If your accounts
20 receivable are not being paid over time, you are not going
21 to get -- you are going to improve if you only take
22 patients who pay; isn't that right?

23 A. I'm not sure I'm following your point.

1 Q. The ultimate way to reduce your receivables would
2 be to write them off to zero. Would that be reasonable
3 from an accounting standpoint?

4 A. No. With some prudence, if you determine that
5 there isn't going to be any cash coming from those sources.

6 Q. What we're talking about here is accounts
7 receivable; that is, time to collect money; is that right?

8 A. Right.

9 Q. And people who are not paying at all are going to
10 be stretching that figure out considerably, are they not?

11 A. Depending on how active the Hospital was in
12 identifying those accounts and writing them off.

13 Q. In addition, you would do better, would you not,
14 if you only took patients who only had insurance and that
15 paid on a regular basis; isn't that right?

16 A. Are you saying if I had a choice between selling
17 to somebody who had money and somebody who didn't, would I
18 sell to somebody who did? Sure. Obviously.

19 Q. And you know that this Hospital never turned away
20 a patient?

21 A. I don't know that.

22 Q. Have you heard that argued this morning by
23 counsel?

1 A. I heard it stated this morning for the first
2 time; right.

3 Q. Do you know that testimony will show that
4 one-third of the Hospital's patients didn't pay?

5 A. I have no basis for knowing that. The financial
6 information that I have seen wouldn't bear that out unless
7 there's something that I haven't seen yet.

8 Q. Let me take you over some financial statements.
9 If the Court will bear with me for a moment.

10 THE COURT: All right.

11 BY MR. CHOCKLEY:

12 Q. Let me show you, Mr. Wilson, what is marked as
13 Trial Exhibit No. 193. I'll direct your attention to the
14 page that has Bates number DT 000136 and indicate note 6;
15 there's a note to the financial statement. And that's the
16 financial statement for the year ending October 1969; is
17 that right?

18 A. Sorry. What was your last statement?

19 Q. That's the financial statement for the year
20 ending October 1969?

21 A Yes, it is.

22 Q. Turning your attention to that note to the
23 financial statement, note 6 --

1 A Yes.

2 Q. -- doesn't that indicate that the Hospital is
3 accruing rent in excess of \$11,000 per year to pay for the
4 addition that was put on the Hospital?

5 A Yes, it does.

6 Q. And in fact didn't they continue to accrue
7 additional rent in the years immediately following that
8 one? For example, 1970, didn't they accrue an additional
9 11,000 for the next year?

10 A. I believe so. At least in my recollection of the
11 financial statements.

12 Q. In fact, you testified this morning about your
13 review of those answers to interrogatories; right?

14 A. Yes.

15 Q. And in there it described the accrual of
16 additional rent, did it not?

17 A. Yes.

18 Q. From year-to-year. In fact, they didn't pay
19 anything for this additional rent in 1969, 1970 or 1971,
20 did they?

21 A. Not to my knowledge.

22 Q. So that by 1971 they had accrued three times that
23 11,000 and some change amount?

1 A. Correct.

2 Q. So it's in excess of 33,000 they accrued for this
3 rent; isn't that right?

4 A. That's correct, yes. The Hospital accrued
5 amounts owed to the partnership from whom they were leasing
6 the building and which was populated, the directors of
7 which hospital were one and the same people in many
8 respects. So it's not uncommon for there to be
9 manipulation of what amounts are paid between the two
10 organizations.

11 Q. In fact, that was a debt that was on the books
12 that was not paid; isn't that right, sir?

13 A. Yes it was. It in no way reflects the ability to
14 pay it or not.

15 MR. CHOCKLEY: If the Court will bear with me for
16 a moment.

17 BY MR. CHOCKLEY:

18 Q. Mr. Wilson, you mentioned a moment ago you have
19 been working on this matter since April?

20 A. Correct.

21 Q. April of '96?

22 A. Yes.

23 Q. And others from Arthur Anderson have worked on it

1 as well?

2 A Yes.

3 Q. And Arthur Anderson hasn't been paid for its
4 services, has it?

5 A. Correct.

6 Q. And fees that are owed to Arthur Anderson
7 approximate \$100,000?

8 A. Roughly speaking, that's right.

9 Q. And in fact, if the Attorney General loses this
10 case, Arthur Anderson is not going to get paid, is it?

11 A. That's not my understanding.

12 MR. FOX: He knows that's not true and counsel is
13 constrained not to ask questions that he knows are untrue.

14 THE COURT: Objection overruled. You may answer.

15 THE WITNESS: This is in no way a contingent
16 relationship or contingent arrangement. It simply is not.

17 BY MR. CHOCKLEY:

18 Q. Has the Attorney General told you that they plan
19 to seek an appropriation from the General Assembly to pay
20 your fee?

21 A. No.

22 Q. Have they told you that if they do not succeed
23 and prevail in this case that they will be forced to seek

1 an appropriation for payment?

2 A. I have no knowledge of that. We have an
3 agreed-upon arrangement with the Commonwealth of Virginia.

4 Q. And the fees have gone unpaid now for --

5 A. We haven't rendered a bill to the Commonwealth of
6 Virginia. Basically, just to button things up, we have a
7 full understanding of what our level of effort is.

8 Q. Let me get it straight. So as of today after you
9 have invested nine months of time you have not sent them a
10 bill?

11 A. We agreed that we would wait until we brought it
12 to conclusion so we could tally up the hours spent. The
13 time that was spent was over a long period of time and we
14 haven't rendered a bill but we will as soon as the case is
15 concluded, probably as of today because probably today we
16 will know what our level of effort and hours are.

17 Q. Does the fee arrangement provide that you can
18 make an adjustment for success fee?

19 A. No.

20 Q. Thank you.

21 THE COURT: Any redirect?

22 MR. FOX: Yes, Your Honor.

23 REDIRECT EXAMINATION

1 BY MR. FOX:

2 Q. Mr. Wilson, that note that Mr. Chockley had you
3 look at part of in Exhibit 193 at page 000126 --

4 A Yes.

5 Q. -- do you see that?

6 A Yes.

7 Q. Note 6, doesn't it say that they haven't
8 determined a precise amount of rent to be paid for the
9 addition?

10 A. You will have to direct me. I must have the
11 wrong document in front of me.

12 Q. Exhibit 193, page 000136. I'm sorry. It's note
13 6. "Lease agreement, building, '68 addition."

14 A Yes.

15 Q. What does it say? Just read it.

16 A. The Hospital leases a 20-bed addition completed
17 in 1968. No final leasing agreement has been entered into
18 at this time. However, the Hospital, based upon the best
19 information available, is accruing \$11,232 dollars per
20 annum to cover the amount when finally determined.

21 Q. So it indicates that no lease agreement has been
22 put into place for it?

23 A. That's correct. That's how it appears to read.

1 Q. And the Hospital, as a matter of prudent
2 accounting, was accruing an arbitrary amount in the event
3 that rent is finally determined?

4 A Yes.

5 Q. Does it indicate that the Hospital can't pay even
6 the \$11,000 that they're accruing?

7 A. There's no indication of that. In fact there's
8 indication that they were paying their other obligations.

9 Q. Okay. Let me ask you. Mr. Wilson, Mr. Chockley
10 seemed to suggest that your testimony regarding Jefferson's
11 start-up years and measuring it against hospitals was based
12 on only one start-up hospital. Have you had experience
13 with other hospitals in their history?

14 A. Yes.

15 Q. Their financial history?

16 A. Sure.

17 Q. Was your testimony based upon your experience
18 with other hospitals that you've been involved with and
19 which you know the start-up history of?

20 A Right. Both through other organizations that
21 Arthur Anderson has worked with and my general discussions
22 with my counter-parts and colleagues within the firm plus
23 general health care business reading. It's very, very

1 common for hospitals that start up from scratch to have a
2 multi-year start-up period where they do not generate
3 positive bottom lines.

4 Q. It wasn't based on this one hospital?

5 A. No. It was general knowledge of the industry.

6 Q. Thank you, sir. When Mr. Chockley was asking you
7 about the variable net income of Jefferson Hospital and I
8 asked you about payment of taxes, would they have had to
9 pay taxes had they not lost their exemption?

10 A. No, they would not.

11 Q. And I believe your testimony earlier was that,
12 being relieved of that obligation, that went to the bottom
13 line?

14 THE COURT: We've been through that, Mr. Fox.

15 MR. FOX: He asked a question on
16 cross-examination.

17 THE COURT: I think we've been over that.

18 BY MR. FOX:

19 Q. Now, when you testified about the change in the
20 accounting procedure, Mr. Chockley's question to you was
21 based on a note in the financial statement.

22 In reviewing Exhibit 123 -- do you have that?

23 A. No, I don't.

1 Q. Let me supply that to you. Let me direct you to
2 Exhibit 123, paragraph A, I believe it is, sir. 6-A on
3 page 2, and that would be Tauber Bates 00603.

4 What does Mr. Ritter, the in-house accountant,
5 say about that change in accounting policy?

6 A. I need to take a moment and read it.

7 Q. Okay. What is the date of that, sir?

8 A. The date is May 22, 1974.

9 Q. It's Minutes of the Board of Directors?

10 A Yes, it is. Okay.

11 Q. What does Mr. Ritter say?

12 A What Mr. Ritter is saying is that there was this
13 change in accounting policy which we discussed earlier and
14 that the financial reports showed a loss of \$105,000, but
15 that the effect of that accounting policy change -- if we
16 hadn't taken that into account in the current financial
17 reports of the Hospital, we would have in fact had \$180,000
18 profit.

19 Q. Okay. And did it indicate how the Board felt
20 about that report?

21 A. The Board was pleased with the controller's
22 report.

23 Q. Thank you. With respect to your examination of

1 FTEs on Exhibit 564, in the year that the employee level
2 was highest, Mr. Wilson, did Jefferson earn a profit that
3 year?

4 A Yes, they did.

5 Q. In spite of that?

6 A Yes, they did.

7 Q. When they trimmed, the FTEs increased?

8 A Yes, they did.

9 Q. Now, these NOLs they talked about, is that net
10 operating losses?

11 A Yes. NOLs are a tax concept. They are in effect
12 losses generated for tax purposes -- tax losses, if you
13 will -- and those losses can be, in certain circumstances,
14 applied to income of the same organization.

15 Q. To what?

16 A. Applied against taxable income of the same
17 organization in prior years or subsequent years.

18 Q. But if you are a tax-exempt organization, the
19 concept of NOLs has no place, does it?

20 MR. CHOCKLEY: Your Honor, again, this is now
21 repetitive of back in July.

22 MR. FOX: No. I'm looking at my notes. It says
23 NOLs used for the benefit of the Hospital.

1 THE COURT: I already testified to that. All
2 he's doing now is just testifying to what he testified to
3 previously.

4 BY MR. FOX:

5 Q. How would the use of NOLs benefit the Hospital if
6 it had remained a non-profit?

7 A. If it had remained a not-for-profit, the concept
8 doesn't apply. It would have had no beneficial impact on
9 JMHI, the not-for-profit Hospital.

10 Q. Okay. Mr. Wilson, are you aware that they bought
11 back stock in 1974 that they had previously issued at \$4?

12 A. Yes.

13 MR. CHOCKLEY: Objection, Your Honor. This is
14 beyond the scope of cross-examination.

15 THE COURT: Tell me how that's redirect.

16 MR. FOX: It's covered in general in the sense
17 that they were trying to indicate that the Hospital was
18 struggling during that period.

19 THE COURT: Objection sustained.

20 MR. FOX: I have no further questions.

21 THE COURT: May Mr. Wilson be excused?

22 MR. FOX: Yes.

23 THE COURT: Thank you, sir. You are free to go

1 or stay in the courtroom.

2 (Witness excused.)

3 Who's next?

4 MR. BETTIUS: I call Mr. Reilly, Your Honor.

5 Your Honor, we have five minutes so we can get
6 Mr. Fox's --

7 MR. CHOCKLEY: May I approach the witness box to
8 get that?

9 THE COURT: All right. We'll take a court recess
10 while Mr. Reilly gets the papers in order.

11 (Whereupon, a recess was taken.)

12 BAILIFF: Remain seated, please, and come to
13 order. Court is again in session.

14 Whereupon,

15 ROBERT F. REILLY

16 witness, was called for examination by counsel for
17 Complainant, and, after having been first duly sworn, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FOX:

21 Q. Mr. Reilly, would you state your full name for
22 the court record, please?

23 A. My name is Robert F. Reilly, R-e-i-l-l-y.

1 THE COURT: May Professor Dooley be excused?

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

4 (Witness excused.)

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

7 Whereupon,

8 ROBERT E. WILSON

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

12 DIRECT EXAMINATION

13 BY MR. FOX:

14 Q. Good morning, Mr. Wilson.

15 A. Good morning.

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

17 A. Robert E. Wilson.

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

19 A. Arthur Anderson.

20 Q. And Arthur Anderson is what?

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

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

1 A. Washington, D.C.

2 Q. And by training education and training, what is
3 your profession, sir?

4 A. I'm a Certified Public Accountant; trained as an
5 accountant.

6 Q. And what is your educational background?

7 A. I have a Bachelor of Arts degree in business
8 administration from the University of Washington. I have a
9 Master's in business administration from California State
10 University, Los Angeles, with an emphasis in accounting and
11 finance.

12 Q. For how long have you been an accountant, a
13 practicing accountant?

14 A. I've been a practicing accountant for over 22
15 years.

16 Q. Do you hold any professional licenses?

17 A Yes, I do.

18 Q. In what jurisdictions?

19 A. I was originally licensed as a CPA in the State
20 of California; I have an active license in the State of
21 Washington; and I have applications pending in the
22 jurisdictions of Maryland, Virginia and the District of
23 Columbia.

1 Q. Now, Mr. Wilson, over the course of your practice
2 as an accountant have you developed what we might call a
3 specialty or a subspecialty in accounting?

4 A Yes. For approximately 15 years or so, the bulk
5 of my work has been in working with not-for-profit and
6 specifically not-for-profit health care organizations.

7 Q. And would you give Judge Swersky some examples of
8 the health care organizations that you have provided
9 accounting services to?

10 A Yes. Most of my work in providing services for
11 accounting services -- excuse me. Most of my work
12 providing services for not-for-profit organizations has
13 been in the State of Washington since I have only been here
14 for something more than a year.

15 I can mention some names. They may not be
16 familiar to you. Virginia Mason Medical Center, Valley
17 Medical Center in Seattle, Providence Medical Center, a
18 number of other related not-for-profit organizations such
19 as foundations, research centers.

20 Q. And have you been involved in providing services
21 of that nature for hospitals in the Washington Metropolitan
22 area in the last year-and-a-half?

23 A Yes, I have, although my focus has been more in

1 providing financial consulting services rather than pure
2 accounting or auditing services in this area. But I have
3 worked with organizations such as Children's National
4 Medical Center in the District of Columbia, Helix Health
5 System in Baltimore, Riverside Health System in Newport
6 News, and several others.

7 Q. During the course of your practice have you also
8 been an auditor?

9 A Yes.

10 Q. Tell Judge Swersky what an auditor does.

11 A Well, an auditor's responsibility really runs to
12 rendering an opinion on the fairness of the presentation of
13 a set of financial statements of an organization, and the
14 auditor's responsibility is to do sufficient testing and
15 verification work to satisfy himself that the financial
16 statements in fact do fairly present the financial results
17 of the organization.

18 Q. In the first instance, whose statements are
19 financial statements?

20 A. The financial statements are the primary
21 responsibility of management and the preparers of the
22 financial statements.

23 Q. To conduct an audit, what is required to look

1 behind those representations?

2 A. There are professional standards that the
3 accounting profession is required to follow in performing
4 an audit. Some of those standards are fairly broad and
5 some are more specific than that, but fundamentally it's
6 the auditor's responsibility to verify through looking at
7 underlying documentation and as much as possible
8 independently verifying through records and documents and
9 parties external to the organization under audit to
10 corroborate the fairness of balances presented in the
11 balance sheets and other financial statements.

12 MR. FOX: Your Honor, I submit that Mr. Wilson is
13 qualified as a Certified Public Accountant to offer
14 opinions for which he has been designated both in his
15 deposition and in the answers to interrogatories.

16 THE COURT: Any questions about the
17 qualifications?

18 MR. CHOCKLEY: Yes, Your Honor.

19 MR. FOX: I would ask him one other question.

20 BY MR. FOX:

21 Q. Mr. Wilson, have you testified in court before?

22 A Yes, I have.

23 Q In the State of Virginia?

1 A. No.

2 Q In what courts, sir?

3 A. A court in the State of Washington.

4 VOIR DIRE EXAMINATION

5 BY MR. CHOCKLEY:

6 Q. Let's start with that, Mr. Wilson. When you
7 testified in the State of Washington, that was not as an
8 expert witness, was it?

9 A. No, it was not.

10 Q. That was a matter of a lawsuit against Arthur
11 Anderson?

12 A Yes.

13 Q. And you were a fact witness in that case, were
14 you not?

15 A Yes, I was.

16 Q. And, as a matter of fact, in that case it was a
17 professional negligence action against Arthur Anderson, was
18 it not?

19 A. Correct.

20 Q. And there was a finding against Arthur Anderson.

21 A Yes.

22 Q. And a judgment in the amount of about a million
23 dollars was paid.

1 A. Correct.

2 Q. Now, I just want to ask you in terms of your
3 qualifications because your designation about an accountant
4 seemed to me to be a little broad and I want to be sure I
5 understand the scope of your qualifications.

6 You don't claim to be a valuation expert, do you,
7 sir?

8 A. No, I'm not an expert in that discipline.

9 Q. Nor do you claim to be an expert in tax within
10 your profession, do you?

11 A. I'm familiar with tax regulations generally, but
12 I am not an expert in that area.

13 MR. CHOCKLEY: With those limitations, Your
14 Honor, I don't object to his qualifications as an
15 accountant.

16 THE COURT: All right.

17 BY MR. FOX:

18 Q. Mr. Wilson, what were you asked to do relative to
19 this case?

20 A. I was asked to review and read the financial
21 information made available to me for the various entities
22 associated with Jefferson Memorial Hospital during roughly
23 the period from inception through about 1975 or 1976.

1 Q. What documents did you review, sir?

2 A. I reviewed the audited financial statements for
3 the various entities during that period, as well as the tax
4 returns for the same periods of time.

5 I also reviewed minutes of the Boards of
6 Directors, shareholders meetings, and other correspondence
7 that was made available to me through the process.

8 Q. Okay. Now, you did not conduct an examination as
9 an accountant would, did you, sir?

10 A. No, I did not.

11 Q. Would you explain to Judge Swersky the
12 distinction between what you did and what an examination
13 is?

14 A Yes. Referring back to my earlier response, an
15 examination really is performed by an auditor on an
16 independent basis to do sufficient analytical and
17 verification work in order to render an opinion on the
18 fairness of those financial statements. That requires a
19 lot of rigor and analysis and reviewing invoices and other
20 kinds of verification to do that.

21 What I did was really to take the financial
22 statements as really the end result, if you will, of a
23 picture of the company's operations for that annual period

1 and read them and reviewed them and really for the purpose
2 of giving an overall understanding of what was transpiring
3 with the Jefferson organizations during that period.

4 Q. Okay. By that I take it that you mean that you
5 accepted the numbers in the financial statements as
6 presented?

7 A Yes, I did, although I found some inconsistencies
8 in those numbers.

9 Q. Mr. Wilson, based upon your review of the records
10 in this case, can you tell Judge Swersky in general what
11 story those financial statements and tax returns tell
12 commencing in the period 19- -- well, let's start with the
13 inception of hospital in 1965. Take the initial period '65
14 through '70.

15 A Well, there really were -- as I saw it, it came
16 to my -- three distinct periods of time, I think.

17 Q. What were those periods?

18 A Well, roughly from about the inception 1962 or
19 '63 when really there was the assemblage of land and
20 related assets through the early start-up years, as I would
21 characterize them, of the operation of the hospital until
22 about 1970 or 1971.

23 Q. Okay. Then what occurred after that?

1 A. 1970 and 1971 really was somewhat of a watershed
2 years, it looked like from reviewing the financial
3 information. There were events and discussions that led up
4 to specific transaction that was attempted in 1971 and
5 then --

6 So that's sort of a second point in time.

7 And then a third phase, if you will, that came to
8 appear was the period from then through about 1975, early
9 1975, when there was another watershed series of events
10 that occurred relative to the organization of the
11 hospital.

12 Q. Let me take you back to what you have
13 characterized as phase one. Would you tell from an
14 accountant's viewpoint what stories those records tell?

15 A. During that first phase, of course, there was the
16 assemblage of the land underneath the hospital owned by
17 private investors through the partnership. Although it
18 changed names, I think in substance it was the same
19 partners or partnership, King Street Joint Venture; the
20 opening of the hospital in roughly October of '64. And
21 during that period of time what I saw was the -- well, I
22 guess also I should mention about October or September of
23 1964 there was a rechartering of Jefferson Memorial

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1 Hospital, Inc. from a stock corporation in the State of
2 Maryland to a non-stock charitable institution.

3 Then the hospital operated over that roughly
4 five-or-so year period experiencing many of same things
5 that I would have expected to see, some losses in the first
6 year but fairly quickly moving into a period of reasonable
7 profitability.

8 Q. Let me ask Ms. Crawford to show you Exhibits 190
9 through 194. Do you have those, Mr. Wilson?

10 A Yes, I do.

11 Q. 190 through 194. Mr. Wilson, what are those
12 exhibits?

13 A. Those exhibits represent the annual financial
14 statements of Jefferson Memorial Hospital for 1965, 1967,
15 '68 and '69.

16 Q. Okay. Now, you mentioned a moment ago that there
17 was a rechartering whereby JMHI became a non-stock
18 charitable corporation?

19 A Yes. I believe that happened roughly coincident
20 with the opening of the hospital.

21 Q. From an accounting perspective, does that create
22 any different accounting methodology?

23 A. I think it certainly has an impact on the

1 stakeholders in the organization from the standpoint of not
2 only does the operation of the hospital -- is it beholding
3 to the shareholders or other investors, but by changing its
4 status to a charitable organization, one that is really
5 driven by the benefit or public welfare.

6 MR. CHOCKLEY: I've got to object. Move to
7 strike the answer as not responsive.

8 THE COURT: Objection overruled.

9 BY MR. FOX:

10 Q. Your answer is responsive. You may continue.

11 A. So I think once that this hospital changed its
12 designation to one of a charitable or what I would call a
13 public entity in the sense of being created or its purpose
14 was primarily for the public welfare, I think from an
15 accounting standpoint there are others who have a invested
16 interest in the operations of the hospital, how the
17 business of the hospital is conducted, and those others
18 would include, I believe, the jurisdiction in which that
19 charitable trust was granted as well as the public
20 at-large.

21 Q. Now, Mr. Wilson, from a pure financial statement
22 standpoint, is there a different presentation of the
23 operational results of a charity than you would expect in a

1 for-profit corporation?

2 A Yes, there is. By definition, a charitable
3 organization, a non-profit organization, does not reflect
4 profit. That's not to say that a charitable organization,
5 a not-for-profit hospital, shouldn't generate "X" surplus
6 funds or an excess of revenues over expenses, but for an
7 entirely different purpose.

8 For-profit organizations, commercial enterprises,
9 are profit-driven by-and-large and reflect in their
10 financial statements net profit.

11 Q. Can you give the Court a simple analogy to maybe
12 a small business or non-commercial enterprise?

13 A Well, one analogy might be personal finances, I
14 suppose.

15 Q. Let's try that.

16 A. I don't perceive that I'm necessarily -- my
17 personal finance is a profit-making organization but
18 certainly over a long period of time I've got to have
19 adequate resources to take care of my personal needs and
20 that of my family.

21 Q. So not-for-profit organizations still operate as
22 a business with the same realities that a for-profit
23 corporation would?

1 A. Same realities, although the excess funds that
2 should be generated really are for an entirely different
3 purpose and that is to sustain the institution in keeping
4 with the charitable mission of the organization, not
5 necessarily for the benefit of private individuals or
6 investors, which would be the case of a for-profit
7 organization.

8 Q. Mr. Wilson, given your long history of accounting
9 for health care organizations involved in rendering care in
10 a not-for-profit atmosphere, what would we expect to see --
11 or when you look at any assignment like this, what would
12 you expect to see in terms of capitalization of a
13 charitable not-for-profit corporation, sort of a standard
14 check-list in your mind as an accountant?

15 A. Well, I have looked at dozens of not-for-profit
16 organizations, mainly not-for-profit health care
17 organizations, over the years.

18 It would be rare for a not-for-profit hospital to
19 not have ownership interest in its fundamental asset base,
20 the hard assets, the operating assets, through which it
21 achieves its mission, its public welfare purpose.

22 That's not the case with what I saw with this
23 particular organization.

1 Q. Now, in terms of revenue sources in charitable
2 not-for-profit hospitals, what is a typical array of
3 revenue sources?

4 A. The typical array of resources that are available
5 to charitable organizations, not-for-profit organizations,
6 are varied and in some ways there are more of them than
7 for-profit organizations.

8 Q. For example?

9 A. Certainly patient revenues and revenues from
10 insurance companies and the Medicare and Medicaid programs
11 would be a primary source.

12 There are others that not-for-profit
13 organizations take advantage of. Seeking funds from the
14 community through charitable donations, fund drives,
15 capital drives, that sort of thing. And in some cases and
16 for hospitals, many hospitals during that 1960 era, there
17 were special funds that were available from the federal
18 government. Hillburton funds, as they were referred to,
19 under some circumstances to defray some of the construction
20 costs of building hospitals.

21 Q. As you look at the revenues sources over this
22 1965 through 1970 period of Jefferson Memorial Hospital,
23 Inc., do you find that they meet the typical profile or is

1 it atypical in any respect?

2 A Well, this hospital appears -- I didn't see any
3 evidence that it sought sources of revenues other than from
4 billing patients for services rendered.

5 Q. Were there some Medicaid?

6 A. Medicaid and Medicare. There were other payers
7 for patient services.

8 Q. Did you find any fund raising?

9 A I didn't see any evidence of fund-raising or any
10 other kind of donation-seeking.

11 Q. Any grant money?

12 A. No grant money.

13 Q. Now, let's look if we can at the financial
14 history performance of JMHI for that same period, phase one
15 as you have described it. Will you tell His Honor what the
16 net income was per the financial statements for each of
17 those periods?

18 A Yes. I can tell you based on recall that the
19 first year of operation, 1965, there was a loss, and then
20 the hospital recognized excess of revenues over expenses
21 for several consecutive years until I believe 1970 or
22 something. But I'll look at the exhibit and give you
23 specific numbers if you would like.

1 Q. Okay. You have a little exhibit that you
2 prepared that summarizes those?

3 A. Yes, I do, although I don't have it on the stand.

4 Q. Let me ask that you come down to the easel there
5 and see how well you can --

6 You can bring the exhibits or you can refer to
7 summaries, which I'll give counsel one of.

8 MR. CHOCKLEY: May I have a moment. This is a
9 document that I have never seen before.

10 MR. FOX: It's merely to refresh his
11 recollection.

12 MR. CHOCKLEY: I would like an opportunity to
13 look at it.

14 MR. FOX: We won't use it. I apologize for
15 throwing that --

16 THE COURT: Let's get on with it, Mr. Fox.

17 MR. CHOCKLEY: If the witness is referring to an
18 exhibit for the numbers --

19 BY MR. FOX:

20 Q. Referring to Exhibit 190 --

21 A. Exhibit 190 from 1965, the hospital had expenses
22 in excess of revenues -- this is cut off -- \$140,829
23 140,829. And I'll put the losses in brackets, if that's

1 okay.

2 Then Exhibit 191, which is 1967, the hospital had
3 excess revenues over expenses of \$6,211.

4 Q. Exhibit 192?

5 A. In 1968 the hospital had excess revenues of
6 \$15,358.

7 Q. Exhibit 193?

8 A. This is somewhat of an illegible copy. Is
9 that --

10 Q. That's 682, I believe.

11 A. The hospital in 1969 had a net income of
12 \$170,682.

13 Q. Exhibit 194?

14 MR. CHOCKLEY: I just object. If the witness is
15 reading from the document, the document says that it's a
16 net loss.

17 THE COURT: You can cross-examine him on that.

18 MR. CHOCKLEY: Okay.

19 BY MR. FOX:

20 Q. 1969, is that a loss?

21 A. No. Looking at this copy, that is a loss.

22 Q. Will you so indicate, sir?

23 A. So that was a loss for 1969. And then in 1970

1 the hospital had net income of \$172,192.

2 Q. Okay. And for Exhibit 195 up through June 30 of
3 1971?

4 A. Again, my copy -- I think this is the right
5 number. 1971, which was an eight-month period.

6 Q. Mr. Wilson, I don't have 1966. Do you have that
7 figure anywhere with you?

8 A. We had summarized that. I believe -- if I could
9 perhaps look at the summary.

10 Q. To refresh your recollection?

11 A. It was a net income in that year and I'm not sure
12 why we don't have the statements.

13 Q. Are these your notes on the income figures?

14 A. Yes, it is.

15 Q. Okay. Does that refresh your recollection as to
16 what 1966 was?

17 A Yes. 1966 was \$187,485.

18 MR. CHOCKLEY: I object to that one. There's no
19 foundation.

20 THE COURT: You can cross-examine him on that.

21 BY MR. FOX:

22 Q. Now, going to 1971, eight months, is there a
23 method by which accountants would annualize that year if

1 you were trying to compare apples to apples?

2 A. One approach you could use would be assume that
3 net income was roughly generated fortunately each month
4 throughout the year. That may not be entirely accurate.
5 It's one way of looking at it from the standpoint of an
6 overall benchmark. But if this represents eight months
7 worth of income, it's possible income for the full
8 equivalent of twelve months period would have been about
9 \$75,000.

10 Q. Would you put that figure down there,
11 annualized. It's just straight ratios, is it not?

12 A. Right.

13 Q. Okay. Now, given your experience as an
14 accountant, looking at that profile of a start-up business
15 through its early phase, are you able to express an opinion
16 to a reasonable certainty as an accountant and a consulting
17 accountant as to whether those would be results you would
18 anticipate in a start-up business?

19 A Yes, I do have an opinion.

20 MR. CHOCKLEY: Objection.

21 THE COURT: You have to speak up if you are going
22 to make an objection.

23 MR. CHOCKLEY: I wasn't sure whether the witness

1 was going to say anything other than "yes." He was
2 supposed to answer "yes" or "no."

3 BY MR. FOX:

4 Q. Do you have an opinion?

5 What is your opinion?

6 THE COURT: Wait one second, Mr. Wilson.

7 MR. CHOCKLEY: I object to that, Your Honor. The
8 question was incomprehensible and vague as to what --

9 MR. FOX: Let me rephrase.

10 THE COURT: All right. Rephrase.

11 BY MR. FOX:

12 Q. Based upon your experience as an accountant, can
13 you tell His Honor what you would expect -- in the absence
14 of this information, what kind of profile you would expect
15 in a start-up business in terms of its income generated?

16 A Yes.

17 MR. CHOCKLEY: And my objection -- if you are
18 going to ask a follow-up question, I'll hold off. If the
19 witness is going to stop there, I'll hold off.

20 BY MR. FOX:

21 Q. Go ahead, Mr. Wilson.

22 MR. CHOCKLEY: Well then, I object, and the
23 reason I object is that it's irrelevant.

1 THE COURT: What about that, Mr. Fox?

2 MR. FOX: Your Honor, I think it is relevant that
3 an accountant can testify whether it was something -- and
4 I'm not talking about the precise numbers, but what kind of
5 pattern of income you would expect in a start-up business.
6 I think it's highly relevant.

7 THE COURT: When you say "business," you're
8 talking about a not-for-profit health care organization.

9 MR. FOX: Yes.

10 THE COURT: I'll permit it.

11 BY MR. FOX:

12 Q. Go ahead, Mr. Wilson.

13 A. I do have an opinion on that from my experience
14 and I have worked with at least one start-up hospital.
15 What I would have expected to see sort of in usual
16 circumstances certainly would have been losses in at least
17 the first year, possibly more than the first year, as the
18 hospital attempts to get the volume of revenue or patients
19 up to the level of its costs that it has had to put in
20 place to have a basic level of services.

21 What strikes me as unusual is that this hospital
22 began to turn around very quickly and generated excess
23 revenues over expenses in year two of operations and in

1 most years subsequent to that, with the exception of 1969.
2 I find that exceptional.

3 I don't know what the underlying reasons are but
4 it's atypical.

5 Q. Now, Mr. Wilson, in terms of revenue growth -- do
6 you want to flip your chart over -- are you also able to go
7 to the financial statements and chart the revenue growth of
8 Jefferson Memorial Hospital during that start-up phase?

9 A Yes, I can do that.

10 Q. Okay. Would you do that for His Honor?

11 A. Would you prefer that I list them all or take
12 them one-by-one?

13 Q. Let's go ahead and list them all and then come
14 back.

15 (Witness marking).

16 Q. Do you have a figure for '66, referring to your
17 chart?

18 A. I think 1966 might be a short year.

19 Q. Now, let's review, this is gross revenue.
20 Actually you don't mean in thousand dollars anymore, do
21 you?

22 A Yes. I have rounded to the nearest thousand.

23 Q. For 1965 you had gross revenue of what amount?

1 A. 618,000.

2 Q. Is that before, or after, the taxable allowance?

3 A. It's before deductions for govern discounts and
4 bad debts.

5 Q. 1966?

6 A. \$1,162,000.

7 Q. 1967?

8 A. \$1,682,000. 1968, \$2,091,000. 1969, \$2,295,000.
9 1970, \$3,706,000. 1971, for that eight-month period,
10 \$2,816,000, and I have annualized that for the full
11 12-month period for approximately \$4,200,000.

12 Q. Are you similarly able to express an opinion as
13 you did with reference to net income based on revenue
14 growth start-up not-for-profit hospital as to whether those
15 results were something that you would have expected from a
16 not-for-profit charitable hospital in a start-up phase?

17 MR. CHOCKLEY: I object, same basis.

18 THE COURT: Overruled. He can answer the
19 question.

20 THE WITNESS: I do have an opinion, although
21 probably less exacting because I think there are many
22 factors that influence how a hospital grows and how quickly
23 it grows related to the community around it, the

1 demographics and so forth. But clearly Jefferson Hospital
2 was on a track of good, strong revenue growth throughout
3 this period.

4 BY MR. FOX:

5 Q. Now, with reference to this income profile and
6 its revenue growth during that period, do you find those
7 results acceptable, especially in light of some of the
8 transactions that you reviewed regarding the internal
9 workings of these corporations, the related corporations
10 and partnerships?

11 A. I would have to ask you to rephrase the question.

12 Q. Let me rephrase. Who owned the building in the
13 start-up phase?

14 A. In the start-up phase the building was owned by
15 the King Street Joint Venture.

16 THE COURT: Do you need him to look at the
17 chart?

18 MR. FOX: I don't need the chart.

19 THE COURT: If you would return to your seat,
20 please.

21 BY MR. FOX:

22 Q. In the start-up phase, who owned the building?

23 A. The building was owned by King Street Joint

1 Venture.

2 Q. Which later became?

3 A. Jefferson Memorial Hospital Associates.

4 Q. Were you able to determine how the lease rate was
5 derived?

6 A. In looking at the financial statements and Board
7 of Director minutes, it appeared that the lease was
8 structured in a way that the underlying costs of the
9 building, the mortgage interest, the mortgage itself and
10 taxes were covered, as well as some level of income return
11 to the partners of the joint venture, around 10 percent, I
12 believe.

13 Q. Now, given that background, are you able to
14 express an opinion regarding the acceptability or the
15 normalcy of the net income stream and the gross revenue
16 growth in light of some of these transactions that involved
17 related parties?

18 MR. CHOCKLEY: I object, Your Honor. It's
19 irrelevant.

20 THE COURT: Overruled.

21 THE WITNESS: Based on reading the financial
22 statements, it looks to me -- my opinion is that the
23 hospital itself, the operating entity, was likely operating

1 under a particular financial burden in that it didn't own
2 the assets that it operated that were in effect its
3 financial life blood as well as its mission life blood and
4 in fact was paying payments out in leases that created
5 expenses more or greater to the hospital than if they had
6 owned the building outright and were responsible for the
7 building and the mortgage underneath that building.

8 Q. Did you, in reviewing documents, see any evidence
9 that the management of the hospital, that is Inc., had
10 different motivations other than let me call it "earning
11 surplus"?

12 MR. CHOCKLEY: I object, Your Honor. The
13 documents say what they say.

14 THE COURT: Objection sustained.

15 BY MR. FOX:

16 Q. Did you review a letter written by Mr. Reeves in
17 1970?

18 A Yes, I did.

19 Q. Let me direct your attention to Exhibit 374 and
20 also Exhibit 119. Did you review those documents, Mr.
21 Wilson?

22 A. Did I review them? Yes, I did.

23 Q. And in terms of the profit motivation, if you

1 will, of JMHI, did those documents shed any light on
2 whether the hospital was a profit-motivated organization?

3 A Yes, they do.

4 Q. What did you conclude?

5 MR. CHOCKLEY: I object, Your Honor. The
6 documents speak for themselves.

7 THE COURT: Objection sustained. He's an
8 accounting expert, not on personal motivation.

9 MR. FOX: I understand that, but it's probably
10 relevant to an accountant when he's looking at something.
11 I would submit that he's not looking only at the record.
12 He's looking at corroborating information.

13 THE COURT: Objection sustained.

14 BY MR. FOX:

15 Q. Mr. Wilson in trying to review the history,
16 financial history of the company, what, if any, relevance
17 do corroborating corporate documents have such as minutes,
18 correspondence?

19 A Well, an auditor would regularly review the
20 minutes of all the Board meetings and shareholder meetings,
21 yet again as a corroboration of intent and resolutions that
22 are brought forth by the governing body of that
23 organization.

1 Q. Okay. If the issue were presented to you as
2 though JMHI was a struggling corporation in this early
3 phase of its health care life and you were asked to discern
4 as an accountant perhaps reasons for why they had not
5 achieved their best results, to what information would you
6 resort after the financial statements?

7 A. If I may rephrase your question and make sure I
8 understand it?

9 Q. Yes.

10 A. You are asking me what kind of evidence would
11 there be to indicate something regarding the financial
12 health of a hospital?

13 Q. Yes.

14 A Well, I think there are several things that I
15 would look to as the auditor in this case. I would look
16 for any evidence that the hospital --

17 MR. CHOCKLEY: I object to what he would look to
18 as an auditor in this case. He has already testified that
19 he did not conduct an audit.

20 THE COURT: Overruled.

21 BY MR. FOX:

22 Q. Go ahead, Mr. Wilson.

23 A. As an auditor or a reviewer of these financial

1 statements, I would look to evidence such as the inability
2 to pay its current bills, judgments against the hospital by
3 vendors or other credit holders.

4 I would look for evidence that the hospital was
5 unable to sustain its operations from a cash flow
6 standpoint, and, as a reader of the financial statements,
7 the role that I have taken on in this case, if there was
8 significant difficulties related to the hospital, I
9 certainly would have expected the auditors to make some
10 mention of that in their notes to the financial statements
11 as well as in their opinions.

12 Q. Did you see any such notes?

13 A. There were none.

14 Q. Did you see any evidence in any of the Board
15 members or related correspondence that the hospital was
16 struggling and unable to pay its bills?

17 MR. CHOCKLEY: I object, Your Honor. This is the
18 question that you already sustained an objection to.

19 MR. FOX: No, it's not, Your Honor. This issue
20 has never been touched upon.

21 THE COURT: Overruled.

22 THE WITNESS: I didn't see any evidence in
23 reviewing the minutes to the Board meetings of any

1 references to sustained kind of financial difficulties by
2 any means.

3 BY MR. FOX:

4 Q. Now, Mr. Wilson, you talked about notes on a
5 financial statement. If the company was encountering the
6 kinds of difficulties that you just testified to, what kind
7 of financial statement notes would you expect to find?

8 A. In response to that, let me just say that the
9 auditor is responsible as part of his professional duty to
10 be aware of evidence that would suggest that a company is
11 having difficulty as a going concern and the fact it may
12 not survive, and if there's evidence to suggest that there
13 is significant uncertainty about that and the auditor has a
14 responsibility to be aware of those kinds of conditions and
15 indicators, if the auditor determined that there is a
16 significant uncertainty about the going concern of the
17 company, there would be a footnote and a reference in the
18 opinion of the auditor, and I can sort of craft a
19 hypothetical one in my mind if you would like.

20 Q. Would it be obscure?

21 A. It would be very precise and it would indicate
22 the conditions that the auditor had found and those
23 conditions might be illiquidity, judgments against the

1 organization, continuing operating deficits, financial
2 projections that suggest that the hospital itself realizes
3 that it is having financial difficulty and in fact may not
4 have means to turn it around.

5 Those would be spelled out in as much detail
6 possible, and then in the note the auditor would make some
7 kind of reference that says, because of these factors, it
8 is uncertain as to whether the company will be able to be a
9 going concern.

10 Q. Did you see any evidence in this case that the
11 organization was not a going concern?

12 A. No. There was no evidence of that.

13 Q. On the contrary, was there evidence that it was a
14 going concern?

15 A. There was every indication that this was a viable
16 entity, that it was surviving financially. I think the
17 financial record as depicted on the chart earlier indicates
18 that. In fact, the Board minutes reflect that.

19 I believe in that period of time there was Board
20 discussion regarding expansion and addition to the
21 hospital's capacity.

22 So I didn't see anything to suggest that there
23 were any pervasive financial difficulties.

1 Q. Okay. Now, let me lead you, if I can, to the
2 next phase. I think you said 1971 stood out --

3 A Yes.

4 Q. -- as sort of a separate era to you?

5 A. Right.

6 Q. From an accounting standpoint, why did that stand
7 out as a separate era?

8 A. In 1971 the owners of this business or the
9 operators of the business attempted to accomplish a
10 transfer of assets and a corporate reorganization, and
11 that's what is significant about 1971.

12 I think it is pivotal for this organization and I
13 think it was -- well, I'll stop there.

14 Q. From an accountant's perspective, do you have an
15 opinion as to why they were attempting to do this, in
16 simply reviewing the statements?

17 A. The only thing I can surmise is that --

18 MR. CHOCKLEY: I object, Your Honor. What he
19 surmises is irrelevant.

20 BY MR. FOX:

21 Q. State with reasonable certainty as an
22 accountant.

23 A. Well, my opinion is from reading the footnotes

1 and the financial statements that there was a period of
2 time leading up to 1971 where the IRS was questioning the
3 tactics and status of Jefferson Memorial Hospital, Inc.

4 I believe that began around 1966, or '67 perhaps,
5 they were questioning various transactions and so forth and
6 by 1970 had in fact issued a letter intending to revoke the
7 tax exempt status of the hospital.

8 Q. Is it unusual for a charitable hospital to lose
9 its charitable exemption?

10 A. It's very unusual. Even in the late '80s and
11 '90s where there's much more scrutiny by the IRS on tax
12 exempt organizations, there are fewer of than a handful of
13 organizations in this country that have had their tax
14 exempt status revoked.

15 Q. Have you ever been involved in your 22 or 23
16 years of practice with one that has had its exemption
17 revoked?

18 A. I have not.

19 Q. What was the financial result, if you will, or
20 what is evidenced in the financial statements of this
21 intent to transfer assets?

22 A. Right. This is where the financial statements
23 become almost incomprehensible because there are so many

1 inconsistencies in what transpired and when it transpired,
2 and there are three basic entities involved here:
3 Jefferson Memorial Hospital Associates, the partnership
4 that owned the bricks and mortar of the hospital itself up
5 until 1971; then there was the operating company, the
6 not-for-profit charitable corporation, Jefferson Memorial
7 Hospital, Inc.; and then there was a new stock corporation
8 incorporated in the State of Delaware that was incorporated
9 called Jefferson Memorial Hospital Corporation. And in
10 reviewing the financial statements for the fiscal year
11 ended June 30, 1971, here are some of the inconsistencies
12 that I found.

13 In reviewing the tax return for the partnership
14 as of that date, there is a note and a reference in the tax
15 return that says that on June 30, 1971 the assets of the
16 partnership, in fact the partnership itself, was liquidated
17 and all the assets and liabilities were transferred to
18 Jefferson Memorial Hospital, Inc.

19 Q. Let's turn to that exhibit. That would be the
20 tax return for what year?

21 A. The 1972 tax return, I believe, which is for the
22 year ended June 30, 1971.

23 Q. Is that 235? You're referring to the partnership

1 return, 230.

2 A. 230.

3 MR. FOX: Your Honor, do you want to see any of
4 those notes?

5 THE COURT: I'm doing fine.

6 BY MR. FOX:

7 Q. Mr. Wilson, have you turned to that note in the
8 1971 JMHA statement?

9 A. Yes.

10 Q. What does it say, sir?

11 A. On the tax return balance sheet there's a
12 handwritten note that says that the partnership was
13 liquidated on June 30, 1971; all assets and liabilities
14 were transferred to Jefferson Memorial, Inc. in exchange
15 for stock representing an excess of 80 percent ownership in
16 the Corp by the partners of this venture.

17 Q. Why do you find to be inconsistency?

18 A. It's inconsistent in several ways. In reviewing
19 the June 30, 1971 financial statements for Jefferson
20 Memorial Hospital, Inc., there's no reflection of the
21 transfer of those assets from Associates to Inc. as of that
22 date. There is a footnote that talks about another
23 transaction that was pending between Jefferson Memorial

1 Hospital Inc. and a newly-formed stock corporation called
2 Jefferson Memorial Hospital Corporation, but no reference
3 to the liquidation of this partnership that held the brick
4 and mortar and other assets and other liabilities of the
5 hospital.

6 The other thing that I found unusual is in
7 reviewing this note of the tax return in tandem with the
8 financial statements for Jefferson Memorial Hospital, Inc.
9 as of the same date, is that Jefferson Memorial Hospital,
10 Inc. is a non-stock corporation, and I don't know how you
11 can have a transaction that exchanges assets for stock in a
12 non-stock corporation. I didn't understand that.

13 Q. Okay. Did you see any evidence that that
14 transaction was in fact completed?

15 A. I didn't see any evidence in fact, other element
16 of inconsistency is a year later when this new corporation,
17 Jefferson Memorial Hospital Corporation, in its financial
18 statements indicated that in fact it was the one that had
19 the assets of the partnership transferred to it.

20 Q. The bricks and mortar?

21 A. The bricks and mortar primarily, and that in fact
22 that had taken place on July 1st of 1971, a day later and
23 that it represented the exchange of, I believe, 60,000

1 shares of stock in this new corporation.

2 Having said that, I didn't see anything outside
3 of Board minutes and the financial statements to
4 corroborate the fact that that transaction had taken place.

5 Q. Okay. Now, from an accounting perspective, what
6 level of corroborating background documentation would be
7 required for such transactions?

8 A Well, in the case of the --

9 Q. Or for you to note such transactions in a
10 financial statement. Excuse me.

11 A Yes. Yes. Auditors by necessity have to rely
12 upon representations made to him by management.. That's a
13 given. Management is should and generally should be
14 intimately familiar with the operations of the
15 organization. But the audit needs to go beyond management
16 representations and corroborate externally wherever
17 possible from some independent source.

18 As an example, in the case of the so-called
19 merger and exchange of stock between the non-stock Inc.
20 Corporation and the stock, Jefferson Memorial Hospital
21 Corporation, I didn't see any evidence that that had
22 occurred. But were I the auditor back then, I would have
23 been looking for something that reflected the dissolution

1 of the non-stock corporation that should have been some
2 kind of legal documentation, probably would have been
3 confirmation with the legal counsel of the company that in
4 fact the transaction had taken place and probably some
5 filings with the jurisdictions involved to evidence that.

6 Q. Now, in terms of this era 1971, I think you have
7 already testified that you thought that the IRS situation
8 was driving this transaction.

9 MR. CHOCKLEY: I object, Your Honor.
10 Mischaracterizes his testimony.

11 THE COURT: Rephrase that.

12 BY MR. FOX:

13 Q. That the transaction a reaction to the IRS?

14 A. I believe that's the case.

15 MR. CHOCKLEY: I object and move to strike. I
16 believe he sustained my objection to his going into
17 motivation for doing that.

18 THE COURT: Not to that question.

19 MR. FOX: I don't think so, Your Honor. I think
20 the question was what it was in reaction to.

21 THE COURT: I understand. Go ahead, Mr. Fox.

22 BY MR. FOX:

23 Q. Go ahead, Mr. Wilson.

1 A. I mean, again, in reading the financial
2 statements, here's the story that I see painted. The
3 corporation, the non-stock corporation, by that point in
4 time was in clear danger of losing its tax exempt status
5 and in fact in the IRS's mind it had already been revoked.
6 The company was challenging it. There was a point in time
7 in early calendar 1971 they gave up and accepted the fact
8 that they were going to lose their tax status with the IRS
9 and I believe at that point in time, my opinion is that
10 there was really no other rationale that would have made
11 sense for trying to in effect recreate this non-stock
12 charitable organization in the closing of a for-profit
13 corporation called Jefferson Memorial Corporation
14 organization and move forward operating essentially as it
15 had been before in a new corporate shell. In effect they
16 behaved that way with respect to how they managed the
17 company. I didn't see anything that changed by looking at
18 the financial statements or reading commentary in the notes
19 or the minutes of the new corporation going forward that
20 was really any different in tenor from the old.

21 They behaved at that point as a tax-paying
22 entity. They went back and filed tax returns and utilized
23 tax benefits that purportedly were available to them for

1 the losses that were generated by this not-for-profit
2 charitable organization in 1965 through 1970.

3 Q. How could they do that, Mr. Wilson? Under what
4 circumstances?

5 MR. CHOCKLEY: I object to that. He has already
6 testified that -- he was not qualified as a tax
7 specialist. He's getting into opinion about taxes

8 THE COURT: Objection sustained.

9 MR. FOX: I'll lay a foundation for it.

10 BY MR. FOX:

11 Q. Mr. Wilson, are you familiar with the concept of
12 net operating losses?

13 THE COURT: Let me ask you how much longer you're
14 going to be on direct. I don't want to cut you off.

15 MR. FOX: An hour and forty minutes.

16 THE COURT: Okay. We'll take a recess.

17 BAILIFF: All rise.

18 (A recess was taken at 11:02 a.m.)

19 BY MR. FOX:

20 Q. Mr. Wilson, I was asking you if you were familiar
21 with the concept of net operating losses?

22 A. Yes, I am.

23 Q. Are you familiar with the treatment of net

1 operating losses? As an accountant are you familiar with
2 the treatment of net operating losses for tax purposes?

3 A. Yes.

4 Q. How are you so familiar?

5 A. In functioning as a CPA and as an auditor over
6 the years, I have worked for-profit organizations as well
7 as not-for-profit so I have a basic understanding of that.

8 Q. In the ordinary context, what may be done with
9 net operating losses?

10 A. Essentially operating losses is a tax concept.
11 Taxable losses generated by tax-paying corporations can be
12 used to offset tax liability in other years going back in
13 time for several years.

14 Q. How far back?

15 A. I believe it's five years back and three years
16 forward, so it's basically used to offset losses in one
17 year which can be used by the same corporation to offset
18 tax liability in another year with some limitations.

19 Q. In reviewing the records in this case, did you
20 see any indication that any of the Jefferson Hospital
21 related entities made use of net operating losses?

22 A Yes, they did. Jefferson Memorial Hospital
23 Corporation -- let me backtrack.

1 Jefferson Memorial Hospital, Inc. filed tax
2 returns and went back for the period 1966 through 1970 and
3 filed tax returns and utilized net operating losses going
4 back in time. Going forward, Jefferson Hospital
5 Corporation, in its first year and perhaps its second year
6 as a tax paying tax filing corporation, utilized some of
7 the tax losses generated by Inc.

8 Q. Okay. Now, did your review indicate to you when
9 those net operating losses generated by JMHI were
10 exhausted?

11 A. They were by-and-large exhausted in the first
12 year that the corporation filed tax return. That would be
13 1971. I think there was a small amount of unused losses
14 that were utilized in 72. Excuse me. Yes. 1972.

15 Q. Now, are you familiar with IRS code regulations
16 on the use of net operating losses carry-back and
17 carry-forward?

18 A. I'm familiar with that.

19 Q. Under what circumstances may you use those net
20 operating losses?

21 MR. CHOCKLEY: Your Honor, I object. The
22 witness testified on voir dire that he was not a tax
23 specialist and he has not been qualified in that area by

1 the Court.

2 MR. FOX: I don't think it's required. He's an
3 accountant. I have laid a foundation. He said that he's
4 familiar with their use. He has already testified they may
5 be used by a corporation and this question goes to whether
6 they may be used by separate and distinct corporations.

7 MR. CHOCKLEY: I further note it's a legal
8 conclusion.

9 THE COURT: Objection overruled.

10 BY MR. FOX:

11 Q. Go ahead, Mr. Wilson.

12 A. My knowledge of tax net operating loss
13 carry-forward and how they can being utilized, first and
14 foremost they can be utilized by the corporation that
15 generates them. They can also be utilized in some limited
16 circumstances in the case of a merger between two tax
17 paying organizations that the surviving corporation can in
18 some circumstances utilize losses generated by the
19 corporation that's dissolved or that is merged into the
20 surviving corporation.

21 MR. FOX: May the witness be shown Exhibit 235?

22 BY MR. FOX:

23 Q. While she's doing that, do those net operating

1 losses have value to an acquirer?

2 A Yes, they do. I mean, they're an economic asset
3 just like any other asset. They in fact are a means of
4 reducing the liability, tax liability, of a corporation
5 that through a merger is able to acquire, acquires another
6 entity, as well as those tax assets or tax attributes.

7 Implicitly the value associated with those tax
8 benefits would enter into any kind of arm's length merger
9 or acquisition transaction between two third parties.

10 Q. 235. Mr. Wilson, are you familiar with Exhibit
11 235? Yes, I am.

12 Q. What is that, sir?

13 A. It is the US income tax return for Jefferson
14 Memorial Corporation for the year ended June 30, 1972.

15 Q. Yes, sir. And what representations are made in
16 that tax return regarding the relationship, if any, between
17 JMHI and JMHC?

18 MR. CHOCKLEY: The document speaks for itself,
19 Your Honor.

20 THE COURT: It does, doesn't it, Mr. Fox?

21 MR. FOX: It does speak for itself, but he's
22 doing it as an accountant and I think he can testify as to
23 what it shows and where it is.

1 THE COURT: All right. Go ahead.

2 BY MR. FOX:

3 Q. Go ahead.

4 A. Would you repeat the question?

5 Q. I was asking you what the tax return represented
6 insofar as a relationship between the taxpayer there, JMHC,
7 and JMHI.

8 A. There's no explicit representation or indication
9 of any relationship between JMHC and JMHI on the tax
10 return. There is, however -- and I believe this was one of
11 the years where the employer identification number of JMHI
12 was used on the JMHC tax return.

13 Q. Now, as an accountant, what message does that
14 send, Mr. Wilson, in your opinion?

15 MR. CHOCKLEY: I object to that. What message
16 does it send to whom?

17 THE COURT: Objection sustained.

18 BY MR. FOX:

19 Q. What message does that send to the Service or any
20 reader of that statement who understands tax returns?

21 MR. CHOCKLEY: Objection.

22 THE COURT: What difference does it make what
23 message it sends?

1 MR. FOX: I'll rephrase.

2 BY MR. FOX:

3 Q. Under what circumstances, if any, Mr. Wilson, may
4 ONE party use the tax ID number of another party?

5 A. I'm not aware of any circumstances where one can
6 use the tax ID for another, just as I can't use your Social
7 Security number when I file my tax return.

8 Q. Now, there are attachments to that tax return?

9 A Yes, there are.

10 Q. What are the attachments, sir?

11 A. There are a series of handwritten analyses or
12 schedules related to cost of operations, other income,
13 basically supporting schedules for the tax return itself.
14 In addition to that, there's a plan, an agreement of
15 reorganization, for the merger of JMHI and JMHC.

16 Q. Okay. Now, that's attached as part of the tax
17 return?

18 A. I'm assuming so, yes. I mean, since this is a
19 single exhibit. They were attached when they were filed.

20 Q. In terms of that plan that is attached, we know
21 now that it never occurred; is that correct?

22 A. I don't believe it occurred.

23 Q. Okay. Now, in your review of the tax returns

1 and/or the financial statements of JMHC and/or JMHI, were
2 you ever able to determine whether the representations made
3 by that plan were retracted from the tax authority, the
4 IRS?

5 A. I didn't see any evidence by reviewing subsequent
6 tax returns that there was any representation that this
7 merger didn't take place.

8 Q. Okay. Now, going back to the NOLs, I think it's
9 a subsidiary question: Are those NOLs transferrable from
10 one corporation to another in the absence of a merger?

11 A. No.

12 Q. Mr. Wilson, if it were later determined that that
13 merger did not take place, do you have an opinion as to
14 whether the taxpayer was under an obligation to file an
15 amended return?

16 MR. CHOCKLEY: I object, Your Honor. It's
17 irrelevant.

18 THE COURT: What is the purpose of that, Mr.
19 Fox?

20 MR. FOX: I think it shows, in light of what
21 we're dealing with here, they have alleged that laches
22 applies, and while we say it doesn't apply, it hovers over
23 this case. And I think it shows that there were active

1 misrepresentations, concealment in a continuing fashion
2 that pervades this case and that if the Court is called
3 upon to determine that issue on a factual basis -- and we
4 don't think you ever get there because we think you are
5 legally precluded from finding it -- but if you are called
6 upon or the Court is inclined to rule on a factual basis,
7 we believe that the continuing representations are an
8 important aspect of that.

9 THE COURT: The failure to file an amended
10 return with the IRS is evidence of concealment?

11 MR. FOX: No. The question is concealment, duty
12 to disclose once they discern that there's an error, and
13 the same representations, for example, were made to the
14 Commonwealth of Virginia.

15 THE COURT: Objection sustained.

16 MR. FOX: Note our exception to that ruling.

17 THE COURT: Surely. We abolished that section
18 in about 1970.

19 MR. FOX: My great and humble apologies to you,
20 sir.

21 THE COURT: That was abolished 20 years ago.

22 MR. FOX: Interestingly, now you have to note on
23 your orders why you are excepting. So says the

1 intermediate court of appeals.

2 BY MR. FOX:

3 Q. Let me turn you, Mr. Wilson, in 235 on page
4 number tagged 002911.

5 A. Would you repeat the number again?

6 Q. 002911, entitled Jefferson Memorial Hospital
7 Corporation, Alexandria, Virginia, statement of something,
8 fiscal year ended 6/30/72.

9 A Yes.

10 Q. Have you reviewed that page of the tax return?

11 A Yes.

12 Q. There's a reference on page 002911, it says: On
13 June 30, 1971, Jefferson Memorial Hospital, Inc., a
14 Maryland corporation, underwent a, quote, "F
15 reorganization" through a mere change of place of
16 organization and change of name to Jefferson Memorial
17 Hospital Corporation, a Delaware corporation being the
18 surviving corporation.

19 Can you tell Judge Swersky what an "F
20 reorganization" is?

21 A. Well, the IRS code is actually very succinct
22 about what an F reorganization is and in fact they've
23 almost chosen verbatim language out of the code. It's a

1 mere change in location or name of an organization.

2 Q. Is it the same entity or two different entities?

3 A. A single entity is reorganized under the code,
4 section F, as a mere change in name or change in location
5 of the organization. Same organization.

6 Q. Mr. Wilson, moving into the 1974-75 timeframe,
7 can you tell His Honor what the financial records and
8 corroborating information convey to you as an accountant?

9 A Yes. The operating performance of the hospital
10 operating company, under whichever name we chose, was again
11 profitable, seemed to be financially viable and relatively
12 healthy.

13 It seemed to me, in reading the minutes of the
14 Board of Directors of JMHC throughout 1972 and '73 and
15 into '74 that there was almost a pervasive discussion and
16 dialogue around how to reorganize Jefferson Memorial
17 Hospital Corporation again, with the primary intent of
18 finding ways to bring financial gain or return to the
19 original investors or to the investors in the corporation.

20 Q. Did you review any minutes where it was indicated
21 that there were some assets of JMHI that had not been
22 conveyed to JMHC?

23 A. In around October -- there was no mention of JMHI

1 from any documents that I looked at from the point of time
2 of around October of 1972 where there was discussion by
3 legal counsel at one of the Board meetings that said
4 basically that the merger hadn't taken place, that there
5 were some tax difficulties around that, and that it was
6 either pending or was an unconsummated transaction.

7 About that point -- again, that was October of
8 1972, thereabouts -- until around December of '75 -- excuse
9 me. Let me recall the date again -- about 1975, I believe,
10 I didn't see any reference in any documents provided to me
11 of JMHI. It was as if it didn't exist.

12 Q. Now, could you mean December of 1974?

13 A. I stand corrected. I could verify that if I
14 could --

15 Q. Okay. Now, in terms of the financial performance
16 of the hospital after this what you called bellweather year
17 of '71, what was the net income in '72, '73 and 74?

18 A. Net income in 1972 was \$208,000, again, rounding
19 to the nearest thousand. In '73 it was \$140,000, and in
20 '74 it was \$10,000.

21 Q. What about through the end of year of 1975,
22 fiscal year '75?

23 A. In 1975 net income was \$122,000.

1 Q. Did you see any evidence in the financial records
2 in the Fall of '74 through the winter of 1975 that the
3 hospital was in financial distress?

4 A. No, I didn't. There was periodic discussion
5 regarding some cash flow difficulties, but, again, those
6 were -- I didn't see any evidence of follow-up or ongoing
7 discussion to the point of despair or concern about the
8 ongoing viability of the hospital.

9 Q. Did you see any evidence of the directors of the
10 corporation pushing any kind of panic button about "We have
11 to bail out of this organization"?

12 A. No. There was no discussion regarding pushing a
13 panic button or having to bail out of this investment.
14 There was lots of discussion about how to reconvey the
15 assets of the hospital into some kind of a different
16 structure, particularly a partnership in a way that would
17 return -- that would be in the best interest of the
18 investors.

19 Q. Did you understand from a reading of the minutes
20 what they were trying to accomplish from an accounting
21 standpoint in transferring the assets to another entity?

22 A. During that period of time?

23 Q. Yes, sir.

1 A. I believe that they were trying to -- my opinion
2 is that they were trying to accomplish a couple things.

3 One was to structure the transaction between a
4 newly-formed partnership-like entity whereby the hard
5 assets, the bricks and mortar assets, building and
6 equipment primarily, would be reconveyed to the partnership
7 through a sale transaction and then in turn the hospital
8 operating company, JMHC, in this case would lease those
9 assets back under terms that in effect would reap a
10 substantial return to the shareholder partners in the new
11 partnership.

12 I think that the other -- in my opinion, the
13 other corollary reason for looking at that kind of a
14 transaction was to put the depreciable assets back into a
15 partnership so that the partners would be able to sustain
16 depreciation deductions on their partnership tax returns.

17 Q. Do you recall that there was a stock transaction
18 in or about this time?

19 A. There was issuance of 60,000 shares in 1973.

20 Q. '72 - '73?

21 A. '72- '73, at \$4 a share.

22 Q. How were the investors to buy into the new
23 venture in the '75 era?

1 A. Again, back in that '72 - '73 period there was
2 issuance of 60,000 shares at \$4 a share. In '75 the
3 transaction that was contemplated in effect allowed the
4 shareholders, the purchasers of those 60,000 shares, to
5 convert those shares into debt instruments issued by the
6 hospital, bonds specifically, and there was a conversion
7 ratio of \$6 a share, which in effect resulted in a premium
8 benefit to the shareholders.

9 Q. Let me can ask you, were you able to determine
10 whether from a perspective of the hospital operating
11 entity, which at that time they called JMHC, were you able
12 to determine whether or not that conversion scenario,
13 conversion of the stock to bonds, retired any short-term
14 debts and provided infusion of capital into the hospital
15 operating company?

16 MR. CHOCKLEY: I'll object at this point to the
17 relevance of this inquiry. This does not have any
18 relevance to whether or not these particular respondents
19 breached a fiduciary duty back in 1971.

20 THE COURT: Objection overruled.

21 THE WITNESS: The 1975 transaction, as I
22 understand it in reading the financial statements and
23 minutes and another other related documents, attempted to

1 do this: It was to take the operating assets of the
2 hospital out of the corporation we called C into a
3 partnership. In return, the consideration going the other
4 direction was in effect cash on the part of partners, the
5 new partners in this new joint venture. Where did they get
6 the cash? They got the cash by converting some of the
7 stock that they owned into bonds and then reconverted that
8 to cash.

9 Q. And the investors received the cash? Investors?

10 A. The investors received the cash. So in effect,
11 as I recall the transaction, the hospital assets were
12 conveyed to the partnership through in effect the
13 retirement of those bonds that were issued for the stock
14 and the assumption of a mortgage -- I don't recall the
15 exact amount of the mortgage. It's approximately \$300,000,
16 but I would need to verify that.

17 Q. Now, Mr. Wilson, going back to 1971, are you able
18 to express an opinion as to whether or not JMHI, the
19 hospital operating entity, was a viable going concern?

20 A. I can. I believe, again, that there were no
21 indications that I could ascertain that would suggest that
22 the hospital was not a viable operating entity. It in fact
23 was operating, and from everything that I have reviewed, it

1 operated successfully after 1971 in much the same manner,
2 under the same direction as it had before. I saw no change
3 in continuity of the operation of the hospital both before
4 and after.

5 Q. What about 1975?

6 A. My conclusions would be the same.

7 Q. Okay. Could you entertain an opinion that in
8 either of those years the hospital had zero value?

9 A. No.

10 MR. CHOCKLEY: Objection, Your Honor. The
11 witness very clearly stated that he not was a valuation
12 expert and at his deposition he testified that he was not
13 going to give opinions about value and counsel represented
14 at deposition that he was going to give no opinions about
15 value.

16 MR. FOX: That's not a value opinion, Your Honor.

17 THE COURT: Objection sustained.

18 MR. FOX: Your Honor, I would note that in his
19 designation, we designated him -- says "Expects to testify
20 as to the fair and reasonable value was exchanged for
21 assets in 1971."

22 THE COURT: He's already testified about that.

23 MR. FOX: Okay.

1 THE COURT: Your question was broader. It had to
2 do with the overall value of the corporation.

3 MR. FOX: Let me just confer, if I might.

4 THE COURT: All right.

5 MR. FOX: Thank you, Mr. Wilson.

6 CROSS-EXAMINATION

7 BY MR. CHOCKLEY:

8 Q. Mr. Wilson, you went through the gross revenue
9 and the net income for the organization JMHI during the
10 period of -- I guess it was what you called at one point
11 "phase one" or the period beginning with the operation of
12 hospital up until about 1970, and you went through those
13 figures from the exhibits and put them up there.

14 What I would like you to do if you could is tell
15 me what the comparable annual figures are for the deficit,
16 the accumulated deficit, at the conclusion of each of those
17 years as reflected on the same financial statements, and I
18 believe that starts with Respondents' Exhibit No. 190.

19 A. Would you like me just to read them?

20 Q. If you would, hang on one second and I will go up
21 there and mark them down.

22 (Telephone ringing in courtroom) .

23 THE COURT: The next time it happens, the bailiff

1 is going to own it.

2 MR. BETTIUS: That's my fault and I apologize. I
3 didn't know this thing --

4 THE COURT: Does anybody else have a beeper or
5 cellular phone? Turn on off right now.

6 MR. BETTIUS: That's uncalled for. I totally
7 apologize. It is rude and shouldn't happen.

8 THE COURT: Yes, it is.

9 BY MR. CHOCKLEY:

10 Q. Mr. Wilson, do you have Exhibit 195 there in
11 front of you?

12 Sorry. 190.

13 A Yes. The fund deficit was -- again, this is as
14 of October 31, 1965, and I believe at the end of the first
15 10 months of the hospital's operations. Do you want this
16 to the nearest thousand?

17 Q. Why don't you give me exact numbers?

18 A. It's \$25,685.

19 Q. And that's designated at what line there, Mr.
20 Wilson?

21 A. It's called "fund deficit" or "fund capital" in
22 brackets deficit on the balance sheet.

23 Q. Is this what you refer to as the operating

1 deficit?

2 A No.

3 Q. What I would like is operating deficit, Mr.
4 Wilson.

5 A. I don't see any caption in this financial
6 statement with that indication.

7 MR. CHOCKLEY: Bear with me a second.

8 BY MR. CHOCKLEY:

9 Q. Let's just go on to Exhibit 191, which would be
10 for the following year.

11 Do you see the report of the operating deficit?

12 A Yes, I do. And the operating deficit in October
13 31, 1967 -- oops. This exhibit does not include -- I don't
14 think there is anything on the '66 exhibit here.

15 Q. So this is through '67?

16 A. Through '67.

17 Q. In any event, it's 191?

18 A. Exhibit 191.

19 Q. Would you give me the operating deficit?

20 A. \$305,802.

21 Q. And from that number can you give me the net
22 operating deficit, or the net deficit?

23 A. \$285,751.

1 Q. All right. And then for the next year, 1968,
2 which will be Exhibit 192.

3 A. \$251,930.97, and, of course, that's a cumulative
4 number.

5 Q. So this would be the cumulative operating
6 deficit. It would reflect the earlier years as well?

7 A. That's right. It's not on top of the 305,000.

8 Q. Right. It's 252,000 in 1968. What is the net
9 deficit?

10 A. 231,946.

11 Q. All right. Go on to the next year, which would
12 be Exhibit 193.

13 A. It is slightly illegible, but I believe it's
14 579,000 -- I can't read the last three digits.

15 Q. That's okay. Let's call 579. What about the net
16 deficit?

17 A. 559, and just round to thousands there.

18 Q. This is the cumulative operating deficit,
19 579,000, after these years of operating of the hospital?

20 A. Correct.

21 Q. And 559,000 is the accumulated net deficit
22 through those years; isn't that right?

23 A Yes.

1 Q. Will you go on to the next year, please, sir,
2 Exhibit 194.

3 A. Unfortunately this exhibit doesn't have a balance
4 sheet, so I can't tell you.

5 Q. Let's see if I can supply you with one. Can you
6 turn to -- I believe it's Tauber 43921 of that Exhibit 194,
7 please. Isn't this a schedule entitled Operating Deficit?

8 A Yes, it is.

9 Q. What is the figure shown at that point for the
10 operating deficit?

11 A. 406,433.

12 Q. So it went down a little bit, but again, that's
13 the cumulative operating deficit for those years.

14 A Yes.

15 Q. What is the net deficit shown for that year?

16 A. There again, I can't -- without the balance
17 sheet, I'm not sure.

18 Q. And then, sir -- let me search for a more
19 complete copy, but in the meantime, what about the next
20 year? I believe that would be Exhibit 195. What is the
21 accumulated operating deficit shown there?

22 A. Are we at Exhibit 195.

23 Q. I believe that's the one.

1 MR. FOX: Is that the one that we supplemented,
2 Your Honor?

3 MR. CHOCKLEY: It should be. I believe we did
4 supplement it. I'm hoping we did.

5 MR. BETTIUS: Your Honor, can I approach the
6 witness?

7 THE COURT: All right.

8 MR. BETTIUS: Mr. Wilson, see if this doesn't
9 help you out.

10 BY MR. CHOCKLEY:

11 Q. Did you find an Exhibit A to that, 195?

12 A Yes. 412,619.

13 Q. Do you find a showing for the net deficit?

14 A. 392,658.

15 Q. Now, deficit means that there is no surplus;
16 isn't that right?

17 A. Deficit means that the reported liability exceeds
18 the reported assets by that amount.

19 Q. Yes. And it means that they're essentially in
20 the whole by that amount; isn't that right?

21 A. It means that the recorded liabilities are in
22 excess of the assets reported at cost by that amount. I'm
23 not sure what you mean by "in the hole."

1 Q. Well, at this point the company JMHI had
2 liabilities in these amounts in excess of their assets;
3 isn't that right?

4 A. Assets as stated at cost, yes.

5 Q. Now, while you've got Exhibit 195 in front of
6 you, I would like you to take a look at Exhibit A which is
7 what you were referring to a moment ago. While you've got
8 that in front of you, you were talking about -- before when
9 you were talking about what you would look for in terms of
10 evidence of financial problems or insolvency, financial
11 distress, that sort of thing.

12 A Yes.

13 Q. Do you remember that?

14 A Yes.

15 Q. Wouldn't one of the things you would look for be
16 whether or not they were paying their rent?

17 A. Whether they were able to pay the rent?

18 Q. Yes.

19 A Yes.

20 Q. Wouldn't that be evidence of financial distress
21 if they were not paying their rent?

22 A. Possibly one indicator if they were unable to pay
23 their rent.

1 Q. Isn't there a listing on Exhibit A for accrued
2 rent in the amount of 41,852 as of June 1971?

3 A Yes, there is.

4 Q. Isn't that some indicator or sign that there's
5 some financial distress, not paying the rent?

6 A. No.

7 Q. They owe somebody \$41,000 for rent, do they not?

8 A. If I rent an apartment and I pay my rent on the
9 first of the month, at the end of month I have a liability
10 to my landlord. Does that mean that I can't or I won't
11 pay? No.

12 There are other liabilities on the balance sheet
13 as well. To me that doesn't indicate that they are
14 necessarily unable to or unwilling to pay.

15 Q. Wouldn't it suggest to you that you ought to dig
16 a little deeper to find out whether they were in fact
17 paying their rent?

18 A. If I was the auditor auditing the financial
19 statements, I would look for an indication of their
20 inability to pay rent.

21 Q. So that would at least be a red flag that you
22 ought to look in to whether or not they have been able to
23 pay rent?

1 A. It would be one factor. One among many.

2 Q. Did you make any investigation of that number
3 yourself, as to what that comprised in that rent?

4 A. I wasn't asked to re-audit these financial
5 statements.

6 Q. So you don't know whether that's the annual rent
7 or monthly rent or whatever that is?

8 A. Based upon -- yes, I do, because based on a
9 reading of the footnote, this rent most likely was due to
10 related parties.

11 Q. But the question was, you don't know whether it's
12 annual or monthly, do you?

13 A. I could investigate and determine that, but I
14 don't know off-hand, no.

15 Q. And doesn't that Exhibit A also show accrued
16 expenses for real estate taxes in the amount of \$72,802?

17 A. Yes, it does. And accrued expenses for interest
18 in the amount of \$6,696?

19 A Yes, it does.

20 Q. Again, aren't those indicators that you ought to
21 look to see if the company had the ability to pay those
22 amounts?

23 A. Based upon if I were the auditor?

1 Q. If you are looking to determine whether or not
2 the company has a financial distress, wouldn't you look at
3 their accrued expenses?

4 A. It is very, very common. I have never seen a
5 balance sheet that doesn't have liabilities reflected on
6 it, if for no other reason by virtue of timing. It's not a
7 reflection particularly of the inability to pay.

8 Q. You don't know whether they did or didn't pay
9 that amount of rent in 1971 or owed that amount of rent in
10 1971.

11 MR. FOX: Objection. Your Honor. That's been
12 asked and answered.

13 THE COURT: Overruled. Objection overruled.

14 THE WITNESS: I didn't perform an audit or
15 examination of these financial statements.

16 BY MR. CHOCKLEY:

17 Q. So the answer is you don't know?

18 A. I don't know whether they paid it or not?

19 Q. Yes.

20 A. I don't know specifically whether they paid it or
21 not.

22 MR. FOX: Can we have our copy back, Your Honor?

23 THE COURT: Are you finished with it, Mr.

1 Chockley?

2 MR. CHOCKLEY: Yes. I appreciate counsel letting
3 us use their exhibit. I understood that the Court copy was
4 going to be substituted and we better check that at a
5 recess.

6 Now, Your Honor, if I might come up here for a
7 moment and flip the chart again.

8 BY MR. CHOCKLEY:

9 Q. I believe, Mr. Wilson, that you gave figures for
10 net income and the gross revenue for the years '71 and
11 '75. There's one written down up there in your testimony
12 earlier, did you not?

13 A. For 1971?

14 Q. Through '75. Did you also run through that on
15 your direct testimony?

16 A. I don't recall whether I did or not. That
17 information is available, you know.

18 Q. Do you know the gross revenue in the years 1972
19 through 1975?

20 A. Yes, I do.

21 Q. And that gross revenue was increasing, was it
22 not?

23 A. Yes, it was.

1 Q. Starting with about four-and-a-half million in
2 '72 to about six million, a little over six million, in
3 1975?

4 A Yes.

5 Q. On the other hand, the net income was not
6 growing; isn't that right, sir?

7 A. It was relatively flat.

8 Q. And, as a matter of fact, in 1972 the net income
9 was about \$208,000; is that right?

10 A Yes.

11 Q. In 1973 the net income was about \$139,000?

12 A Yes.

13 Q. And the net income in 1974 was about \$10,000, was
14 it not?

15 A Yes.

16 Q. And in 1975 it was up to about 122,000?

17 A Yes.

18 Q. So, in fact, the increase in gross revenue
19 doesn't necessarily result in an increase in the net
20 income, does it?

21 A. That's correct.

22 Q. And the fact that the net income may have
23 increased in the late 60s doesn't mean it was going to

1 continue to increase in the 70s, does it?

2 A. No. There's no guarantee and I think you have to
3 look at what the purpose of the organization was; was it
4 essential to grow net income every year.

5 Q. Well, you would be seeking to grow the net income
6 in order to invest additional money into the facility,
7 would you not? Isn't that what a non-profit would do?
8 Didn't you indicate before that even though it's
9 non-profit, it still would be seeking to make money for the
10 purposes of improving the service?

11 A Yes. You would want to have a sustained record
12 of excess revenues being generated, but it would vary from
13 year to year. You have to look at it in the long run.

14 Q. And incidentally, Mr. Wilson, you didn't provide
15 any report to the complainant, did you?

16 A. No, I did not.

17 Q. And you don't have any objection to the financial
18 statements of this organization prior to 1971, do you?
19 Nothing wrong with the financial statements prior to 1971,
20 is there?

21 A. Based upon my reading, again -- and I want to
22 emphasize it was not an examination or an audit -- I didn't
23 see the same kind of blatant inconsistencies that emerged

1 in 1971.

2 Q. And in fact you testified at your deposition that
3 there was nothing wrong with the financial statements prior
4 to 1971; is that correct?

5 A. I would have to clarify my deposition and make
6 sure that it's understood that I didn't perform an audit or
7 examination nor did my staff. It was simply based upon an
8 informed reading of the financial statements based upon 22
9 years of experience.

10 Q. Now, with respect to the so-called blatant
11 inconsistencies, isn't the inconsistency that you point to
12 the question whether or not the note that indicates whether
13 assets were transferred to -- whether Associates' assets
14 were transferred to Inc. or Corp? Isn't that what you
15 refer to when you talk about blatant inconsistencies?

16 A. I would say that there are either two, possibly
17 three, versions of the truth as to what happened at that
18 point in time and I honestly can't tell from reading this
19 financial statements.

20 Q. Isn't the inconsistency that troubled you the
21 note in one or two of the financial statements that say the
22 assets were transferred to Inc.?

23 A. It had to do with whether the assets were

1 transferred out of Associates to Inc. or to JMHC, whether
2 or not in fact that transaction of took place, and also,
3 even if it did, when did it happen.

4 There were various versions of all of those
5 things.

6 Q. In the financial statements where there's an
7 indication that assets of JMHA, the partnership, were
8 transferred to Inc., if that statement said they were
9 transferred to Corp, there would no inconsistency, would
10 there?

11 MR. FOX: Objection, Your Honor. Speculation.

12 THE COURT: Objection overruled.

13 THE WITNESS: Would you rephrase the question for
14 me or read it back?

15 BY MR. CHOCKLEY:

16 Q. I'll re-ask it. If the note which indicated that
17 JMHA's assets were transferred to Inc. had said instead
18 that they were transferred to Corp, there would be no
19 inconsistency, would there?

20 A. There would still be inconsistency regarding when
21 that took place. Did it take place on June 30th or July
22 1st?

23 There would be inconsistency regarding --

1 Are you referring to the transaction between
2 Associates and Inc. or the merger between Inc. and C?

3 Q. Well, I think that I was referring to the
4 transaction that took place among the three organizations
5 and I think you answered my question about it. But with
6 respect to the date, you're saying that that is a blatant
7 inconsistency as to whether it was June 30 or July 1?

8 A. Absolutely, because the tax return that was filed
9 indicated that the transaction took place on June 30. It's
10 reflected in the tax return. The financial statements
11 don't reflect that. One or the other has to be wrong or
12 false.

13 Q. Now, it is a matter of fact that from
14 time-to-time accountants, as well trained and qualified as
15 they are, they do make mistakes, do they not?

16 A. Humans make mistakes. This was an error. It was
17 an error and either the auditors -- the combination --
18 didn't independently verify what was represented to them by
19 management or somehow overlooked the inconsistency between
20 the tax returns and the statements of the various entities.

21 Q. Accountants make errors as well, do they not?

22 A Yes, they do.

23 Q. And I believe one of the things you said was that

1 the financial statements are statements of management, not
2 accountants?

3 A. It's the primary responsibility of management.

4 Q. And I believe also you were saying that when
5 there's a reflection that there's a merger that you would
6 want -- as an auditor, you would go back and look for
7 additional evidence such as talking to legal counsel and
8 looking for legal documents and evidence of the merger?

9 A. Yes.

10 Q. Is that right?

11 A. Yes.

12 Q. And do you have an opinion one way or another as
13 to whether the accountants here did talk to legal counsel?

14 MR. FOX: That's so highly speculative that I
15 don't see how anybody could even conceive an answer to it.
16 An opinion as to whether they talked to them --

17 THE COURT: You can ask him if in his examination
18 he saw anything that reflected that.

19 BY MR. CHOCKLEY:

20 Q. In your review, did you find any indication that
21 the accountant had consulted with legal counsel?

22 A. We didn't have any access to the working papers
23 of the auditors for the audit so it was impossible.

1 However, I would say that the auditors had a responsibility
2 to do that, but also it is the responsibility of management
3 not to send the auditors on some kind of a blind hunt
4 either.

5 Q. When you're reviewing the work of another
6 auditor, you would want to talk to the auditor, wouldn't
7 you?

8 A. It would depend upon the scope of what I've been
9 asked to do.

10 Q. Wouldn't it be beneficial to you to talk to the
11 auditor who conducted this particular audit?

12 A. If I had a chance to talk to the auditor, I would
13 probably know more than I do now. But I wasn't asked to do
14 that.

15 Q. So you didn't make any attempt to contact the
16 auditor?

17 A. I wasn't authorized to do that.

18 Q. Wouldn't you also find it beneficial to talk to
19 legal counsel who prepared the merger papers?

20 A. There may be information that legal counsel could
21 provide, but, again, my role was not to re-audit those
22 financial statements.

23 Q. But if you were the auditor back at that time,

1 then you as that auditor would have contacted legal
2 counsel, wouldn't you?

3 A. I probably would have and I don't know that they
4 weren't.

5 Q. Now, Mr. Wilson, I believe that you have
6 indicated that you can't tell what happened here.

7 A. Regarding what.

8 Q. In 1971 that you can't tell from the financial
9 statements what happened.

10 A. There's more than one version in published
11 reports that describes what happened. I'm not sure which
12 one, if either or any, actually occurred.

13 Q. Isn't it in fact very simple what happened and
14 that is that one for-profit corporation acquired the assets
15 and liabilities of a non-profit corporation and acquired at
16 the same time the assets of the partnership?

17 A. I don't think it is so simple and I don't know
18 that for a fact. Again, as an accountant, not a trained
19 lawyer by any means unfortunately, but based on a reading
20 of those footnotes, I don't understand how you can
21 consummate a transaction between a non-stock charitable
22 organization and a stock corporation.

23 To me, the existence of stock in a non-stock

1 corporation can't happen, so I don't understand.

2 Q. But that's something you would have expected the
3 auditors at the time to pick up, wouldn't you?

4 A. I would have expected management to pick that up
5 and make sure the financial statements probably reflected
6 what happened.

7 Q. I'm asking about the auditors. You would expect
8 the auditors to pick up the fact --

9 A. They would also have the responsibility, but
10 management would have the primary responsibility.

11 Q. Apparently the auditors here didn't pick it up;
12 is that right?

13 A. Somebody didn't pick it up.

14 Q. The auditor did not; isn't that right?

15 A. I think the auditors and management didn't pick
16 it up, or maybe they did. Maybe they knew.

17 Q. And so in that situation the auditors would have
18 violated their duties under their professional -- under
19 your profession, that is, the AICPA duties; isn't that
20 right?

21 A. There's a prescribed set of procedures that guide
22 us. There are some rules of conduct and broad guidelines
23 regarding the audit process. Without having a complete

1 knowledge of what the auditors did and didn't do, it's hard
2 for me to assess whether or not what they did was
3 sufficient and complete and in accordance with the
4 professional standards or not.

5 All I can say is that the end product is an
6 erroneous financial statement.

7 MR. CHOCKLEY: I bet the Court's indulgence for a
8 moment.

9 BY MR. CHOCKLEY:

10 Q. Now, Mr. Wilson, in reference to -- in response
11 to one of my earlier questions, I believe you talked about
12 your staff, they asked or didn't ask something.

13 In any event, you have a staff who assisted on
14 this matter?

15 A Yes, I do.

16 Q. And there were a number of people from Arthur
17 Anderson who worked on this engagement with you on behalf
18 of the Attorney General; isn't that right, sir?

19 A Yes.

20 Q. Among them there was an another gentleman by the
21 name of Craig Kettler?

22 A. Yes.

23 Q. You didn't supervise Mr. Kettler's work, did you?

1 A. I did not.

2 MR. CHOCKLEY: I have no further questions.

3 THE COURT: Any redirect?

4 MR. FOX: Just briefly.

5 REDIRECT EXAMINATION

6 BY MR. FOX:

7 Q. Mr. Wilson, addressing that issue of accrued
8 monthly rental on the statement, I believe it was 195, does
9 the fact that that accrual is noted on the statement but no
10 adverse remark or note made about it by the auditor tell
11 you as an accountant anything?

12 A. As a trained accountant and reader of those
13 financial statements, the absence of any description
14 regarding any unusual nature of those liabilities or the
15 inability of the hospital to discharge those obligations,
16 my interpretation would be that in the absence of that kind
17 of commentary, there was no unusual aspect to those
18 liabilities or, again, the ability of the hospital to pay
19 them.

20 Q. Do you recall in reviewing the chronology of the
21 corporation, that is, JMHI, that JMHI was responsible --
22 even as a tenant was responsible for the building costs and
23 any access building costs?

1 A Yes, they were.

2 Q. Do you recall that there were at one time bonds
3 issued for construction overrun?

4 A Yes, there was.

5 Q. About 39,000 or so?

6 A Yes.

7 Q. If those bonds had been issued by the company for
8 that rent, would the offsetting entry on the company's
9 books be accrued rental?

10 MR. CHOCKLEY: I object, Your Honor. It's
11 leading.

12 MR. FOX: I'll rephrase it.

13 BY MR. FOX:

14 Q. How would that bond transaction be reflected if
15 those bonds were issued for rent?

16 A. It would be reflected as accrued liability, rent
17 liability, on the balance sheet.

18 Q. Now, in terms of the exercise that you went
19 through with Mr. Chockley where he outlined the operating
20 deficit and capital deficit, can you distinguish for His
21 Honor the difference between capital deficit and the
22 operating deficit?

23 A. The capital deficit -- is that that page there

1 that you have?

2 Q. No.

3 A. Or was it the page prior?

4 Q. Can you see that?

5 A Yes. Thank you. The operating deficit that's
6 reflected on that sheet it's important to note is really a
7 reflection of if JMHI were a stockholder company of
8 shareholders equity; shareholders deficit in this case. It
9 represents in a bookkeeping sense the difference between
10 tallying up all the liability of the organization and all
11 the assets of the organization which are all reflected as
12 costs, not necessarily what their value is, but at cost,
13 and even depreciated costs.

14 So it's, true enough, there was a shareholder
15 deficit or in this case enough a deficit for several of
16 those years. That's not necessarily a reflection of the
17 true worth or value of that organization.

18 Q. Is it a reduction in capital?

19 A. It's in effect what the capital account would be
20 at any point in time and it happened to be in a deficit
21 position.

22 But alongside that you have to look at what the
23 net income was of the organization each year, income or

1 loss, and that's a better reflection in my view of the
2 ongoing operations of the hospital and its sustainable life
3 as an organization.

4 Q. Now, you say that the assets that are on the book
5 are receivables, but the liabilities are at current face
6 value; is that correct?

7 A Yes.

8 MR. FOX: I don't have any further questions,
9 Your Honor.

10 THE COURT: Anything based on that?

11 MR. CHOCKLEY: No, thank you.

12 THE COURT: May the witness be excused?

13 MR. BETTIUS: Yes, Your Honor.

14 THE COURT: Thank you, sir. You are excused and
15 free to go.

16 MR. BETTIUS: Could we have just one moment?
17 There's one thing I wanted to look at. We reserve the
18 right to recall Mr. Wilson.

19 MR. CHOCKLEY: He has already been excused,
20 Judge.

21 THE COURT: You will have to get him back if you
22 want him back. He's not excused from the rule on witnesses
23 if you intend to call him back. You can't discuss with him

1 the testimony of anyone else in court.

2 MR. CHOCKLEY: It occurs to me that perhaps we
3 ought to notify Mr. Wilson of that because he heard he was
4 excused a moment ago.

5 MR. FOX: He's out there.

6 THE COURT: All right. What is next?

7 MR. FOX: Your Honor, would the Court entertain
8 breaking for lunch now?

9 THE COURT: Who is the next witness?

10 MR. FOX: Mr. Kettler.

11 THE COURT: How long is he going to take?

12 MR. FOX: He's going to take an hour-and-a-half
13 or so.

14 Total of direct -- I would think direct 45 or 50
15 minutes.

16 THE COURT: All right. 1:30.

17 BAILIFF: All rise.

18

19 (Whereupon, a luncheon recess was taken.)

20

21

22

23

**Circuit Court of Alexandria
Virginia**

Judges

DONALD HALL KENT

DONALD M. HADDOCK

ALFRED D. SWERSKY



FRANKLIN P. BACKUS
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Re: Commonwealth of Virginia, ex rel. v. Tauber, et al.
Chancery No. CH961241

Dear Counsel,

This matter is before the Court for a decision on the merits after trial. Upon consideration of the testimony, the exhibits filed, and the argument of counsel, the Court concludes that Complainant is entitled to the relief sought in the Bill of Complaint. The Court will enter a declaratory judgment that the assets of Jefferson Memorial Hospital, Inc. (JMHI) remain in the hands of Respondents as trustees; a custodian will be appointed to administer the assets; an accounting will be ordered; and a constructive trust imposed on all assets of JMHI. The relief sought by way of money damages will be denied.

Ex. 823

The issues presented are dealt with as follows under the laws of Virginia:

I. STANDING OF COMPLAINANT TO BRING ACTION.

The Court has previously ruled in the pretrial proceedings that the Attorney General has standing and authority to bring this action both at common law and pursuant to Title 13.1, Code of Virginia, §909(B). The Commonwealth's Attorney for the City of Alexandria is a proper party to the claims based upon Title 55, Code of Virginia, §29.

In view of the express provisions of §13.1-909(B), the fact that JMHI was incorporated in Maryland does not bar the Attorney General from bringing this action in Virginia. Respondents' reliance on the prohibition against the Commonwealth from regulating the "organization and internal affairs of a foreign corporation" found in §13.1-923(C) is misplaced as this action does not seek to regulate any organization nor any internal affairs of JMHI.

Therefore, the Court concludes that this action is properly brought.

II. BURDEN OF PROOF.

In view of the Court's finding that the transactions shown were void (as set forth later herein), the Court has allocated the burden of proof as follows:

A. The burden rests upon Complainant to prove that the transactions are void as a breach of trust by Respondents by a preponderance of the evidence. Baylor v. Beverly Book Co., 216 Va. 22 (1975); Giannotti v. Hamway, 239 Va. 14 (1990). Since there is an indication by way of dicta in Willson v. Kable, 177 Va. 668 (1941) that the proof must be "clear, strong, and cogent", the Court also finds that Complainant has carried such a burden.

B. Respondents have argued that the nature of transactions places this case in the line of authority that makes the transactions voidable not void. Hence, they argue they are entitled to show the fairness of the transactions. See, Owens v. Owens, 196 Va. 966 (1955). While the Court does not agree that the transactions are merely voidable, in such circumstances Complainant would be required to make a prima facie showing of misdealings and the burdens of going forward and ultimate persuasion would rest upon Respondents to show the fairness

by convincing evidence. Owens, supra, at 972.

III. FACTS.

There is no real conflict in the evidence as to the facts surrounding the transactions and they are amply supported by the documents admitted into evidence.

After the acquisition of real estate by deed and lease by the King Street Joint Venture (KSJV) during 1962, 1963, and 1964, held by Respondent Tauber as trustee for the joint venture, a for-profit corporation was formed to transact the business of operating a hospital. The for-profit corporation was chartered in Maryland in 1963 and authorized to do business in Virginia in the same year.

In 1964, the corporate charter was amended to a "Section 501(c)(3) charitable, non-profit corporation" and JMHI did business as such until 1971. The Internal Revenue Service began investigating the possible revocation of the tax-exempt status of JMHI in 1969, culminating in the revocation in 1971. The Board of JMHI had retained counsel but withdrew its protests to IRS and accepted the revocation. Counsel was retained, according to the uncontradicted evidence, to make recommendations regarding the conversion of the corporation to for-profit status with an eye to a public sale of stock.

A Delaware for-profit corporation, Jefferson Memorial Hospital Corporation (JMHC) was formed in 1971 and a putative merger was arranged. The merger, referred to as a "F" merger, was reported on tax returns filed in 1972. The record is devoid of documents to support the merger but Respondents contend that the merger had occurred "in the minds of the directors." No evidence has been presented to show that at that time due diligence was used to protect the interests of the beneficiaries of the charitable hospital.

Efforts were made later in 1971 and again in 1973 to effectuate the merger. Documents indicate that JMHC assumed all of the liabilities of the charity in return for its assumption of JMHI assets. The charity was to receive 5,000 shares of stock in JMHC. No transfer of the stock has been made.

There are numerous transactions shown, some of-record and some not, dealing with the real estate, the equipment, the leases, and the use of tax benefits. The transactions show an entire course of self-dealing by the directors of the charity.

They were able to acquire interests in the real estate, the equipment and lease, and were able to use tax benefits belonging to the former charity to enhance the gain of the for-profit corporation. The record is replete with discussions among Respondents as to their personal profits and gains with no reference to the best interests of the beneficiaries nor of the charitable corporation. The result was the total obliteration of the non-profit corporation.

As one example, the subdivision of the real estate in 1970 in which JMHI had a 65% undivided interest resulted in the loss of this interest. In its place, JMHI obtained a 20% interest consisting of an allocated parcel. No explanation is offered. In 1973, the non-profit corporation was dissolved by the State of Maryland for failure to file necessary property taxes and filing fees. In spite of this, Respondents caused to be filed a certificate with the Commonwealth that the corporation remained in good standing.

The record reveals that the interests of the charitable corporation (and hence, the beneficiaries of the charity) were given no consideration by the directors who were operating out of motives of self-gain and inurement.

The transactions are convoluted and complex with off-record real estate transactions conflicting with the state of the title as shown on-record. Net operating losses were used as tax deductions by JMHC that had become deductions as a result of the revocation of JMHI's tax exempt status. When Respondents had exhausted these deductions, they began seeking ways to benefit their own tax status through a complicated series of notes and bonds, and while some personal risk was taken, the Respondents and others were participating in the venture in basically a risk-free manner.

Respondents claim that JMHI had no value at the time it was changed to a for-profit corporation and, therefore, the transactions by which they assume control of the corporate assets by the assumption of its liabilities were fair.

The evidence as to the valuation of this entity is conflicting. The experts have disagreed not only in their conclusions but with the methodology employed. The Court finds that in 1971, the time of the change to for-profit, the corporation (JMHI) had value. It had value as a "going concern" with growing revenues but an erratic pattern of net earnings. However, Respondents' experts are the more persuasive and the Court finds that Respondents have carried their burden of

showing that the value of the corporation did not exceed its liabilities.

However, this does not constitute a defense to the claims made here for reasons that follow.

IV. TRUSTS.

As used in this opinion, the term "void" is construed to mean voidable at the election of the cestui que trust.

The directors of a not-for-profit corporation hold the assets in trust for the beneficiaries and their duties are identical to those imposed on trustees of a trust. Adelman v. Conotti Corp., 215 Va. 782, 789 (1975).

In Rowland v. Kable, 174 Va. 343 (1940), the Court drew a distinction between those cases where the directors profit from the property of their corporation, in which event the transaction is void, and those cases where the director deals with the corporation with its consent, in which event the transaction is merely voidable if unfair. The Court, quoting Deford v. Ballentine Realty Corporation, 164 Va. 436, 440 (1935), said in stating the majority rule:

There is a distinction to be made between transactions occurring directly between a trustee and his cestui que trust and those transactions in which the trustee deals with himself in respect to the trust estate. The latter class of transactions are voidable by the cestui que trust at his election without giving any reason or alleging any fraud, or any advantage or inadequacy of price. Rowland, supra, at 368-69.

The actions of these directors are voidable at the option of the beneficiaries of the trust imposed upon them without proof of an actual injury. See, Rowland, supra, at 366; See also, Kessler v. Commonwealth Doctors Hospital, 212 Va. 497 (1971). In the case of a charitable non-profit corporation, the public as represented by Complainant are the beneficiaries of the trust.

At common law, then, Respondents hold the assets of JMHI in trust for the public.

In addition, it is clear under Virginia law (Maryland law being similar) that directors of a dissolved corporation become formal trustees upon dissolution and hold for the benefit of the creditors and shareholders if for-profit or for the public if non-profit. Since the Court finds that no merger of JMHI and JMHC has occurred and that the transactions by directors of JMHI are void, the assets remained in JMHI until its dissolution. At the time of dissolution, these assets passed into and remain in the hands of Respondents as trustees.

Under Title 13.1, Code of Virginia, §909(B), this Court has the authority to liquidate the assets and business of JMHI at any time after termination of its existence and whether the corporation was domestic or foreign. The corporation (JMHI) has property and interests located here and no where else. Section 13.1-910 provides the method for liquidation by appointing receivers to manage, wind up and liquidate the corporation.

Pursuant to Title 55, Code of Virginia, §29, where trustees of any trust such as that imposed on directors of a non-profit corporation refuse to act then the Court may, in an action against the trustees, appoint trustees to execute the trust. Here there is little doubt that the trustees, the directors of JMHI, have refused to execute the trust; thus, this Court may appoint substitute trustees.

V. LACHES AND GOOD FAITH.

Respondents claim that an undue delay, some twenty-four (24) years from the date of the initial transaction complained of, coupled with the death and disability of witnesses and parties, has resulted in prejudice to their ability to present a defense. Complainant argues that laches, as raised by Respondents, does not apply to the Commonwealth and that the real party in interest is the Commonwealth.

The Court ruled at pretrial that Respondents would not be barred from presenting evidence on this issue; relying on authorities that seemed to hold that laches may apply in cases of a charitable corporation but that equity was reluctant to apply the doctrine in such cases. See, Bogert, The Law of Trusts & Trustees, §411, 948 and 949 (1984).

It has been said that Courts of equity are less inclined to apply the doctrine to a charitable trust or against a government. Mount Vernon Mortgage Corp. v. United States, 236 F2d 724, (D.C. Cir. 1956), Cert. Denied, 77 S. Ct. 386 (1957).

In Virginia, neither the statute of limitations nor laches may be asserted as a defense in an equitable proceeding to bar the state from asserting a claim on behalf of the public. Supervisors v. N.&W.R. Co., 119 Va. 763, 790 (1916), as cited in City of Manassas v. Board of Supervisors, 250 Va. 126 (1995). The Court concludes that this cause is brought by the Commonwealth "on behalf of the public" and not to protect private interests as argued by Respondents. Hence, laches does not apply.

Even if the doctrine could be asserted, Respondents have not carried their burden of showing that the doctrine should bar this action. While the passage of time is significant, no evidence of substantial prejudice has been shown. The transactions questioned by Complainant are clearly documented and are basically not in dispute.

No showing has been made as to what evidence Respondents have been prevented from presenting as a result of the deaths and disabilities alleged. There is one example in which JMHC was identified by an accountant who has since died as JMHI well after the purported merger. Respondents argue that this would have been shown to be a mistake by the accountant. The circumstances surrounding the document are evidence from which the Court could conclude such an error and no prejudice results to Respondents.

In addition, there is no persuasive evidence that the Commonwealth had such notice of the change in the corporate structure as to trigger its right to act. The documents reveal at best confusion and at worst an intent to mislead the authorities as to the structure of the hospital. The continued use of JMHI's tax identification number, the off-record transactions, the use of JMHI's operating license to operate the hospital, the attempts to "clean up" the transaction in later years, and failure to record and file proper documents all serve to indicate a lack of notice to Complainant. With the heavier burden resting on Tauber's shoulders because of the nature of the claim, it is clear that there has been no showing of laches in this case.

Respondents argue that they were operating in good faith and argue that many of the transactions were done with advice of counsel. In view of the Court's finding that the nature of the transactions renders them void not voidable, the good faith of Respondents, even if shown, would not be a defense and the transactions are voided at the election of the cestui que trust. Kessler, supra, at 503.

In any event, the record reflects a failure on Respondents part to give full and

complete information to counsel when advice was sought and, therefore, the advice could not be asserted as a defense. If this defense was available, it would require a showing of acting in good faith on advice of reputable counsel after full disclosure of the facts. Edwards v. Carey, 219 Va. 90 (1978)(a case dealing with an action for malicious prosecution).

VII. RES JUDICATA.

Respondents in 1994 filed a bill in this Court to quiet title to the real property at issue in this case. Service was had by publication against unknown parties claiming an interest. The Commonwealth was not identified as a party nor served with process.

Respondents now claim that Complainant is barred by its failure to intervene and respond in that suit to protect its interests. Res judicata would not apply under these circumstances. O'Hara v. Pittston Co., 186 Va. 325, at 344-346 (1947).

Respondents failed to join the Commonwealth when they knew of the existence of the potential claim and they now assert that the Commonwealth was a necessary party to the quiet title action so that it is bound by the judgment. Having failed to join a known party whom they claim to be necessary to an adjudication of the issues, the Respondents cannot now be heard to complain of the failure of the Commonwealth to respond.

VIII. REMEDIES.

Having granted the relief sought the Court must fashion the remedy. Counsel should schedule a prompt hearing to discuss the possible methods for carrying out the Court's ruling including appointment of a Commissioner in Chancery, substitute trustees, or custodians.

Counsel may also wish to consider whether judicial economy is best served by an appeal pursuant to Title 8.01, Code of Virginia, §670(B)(3), if they are so advised.

In Re: Chancery No. 961241

February 7, 1997
Page Nine

Complainant shall prepare for presentation a decree embodying the ruling of the Court.

Very truly yours,



Alfred D. Swersky

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

COMMONWEALTH OF VIRGINIA, et als.,

Complainants

v.

CHANCERY NO. CH961241

LASZLO N. TAUBER, et al.,

Respondents

ORDER

This cause came to be heard upon the merits at a trial commencing on January 21, 1997, until its conclusion; upon the testimony, exhibits and argument of counsel. It appearing to the Court for the reasons stated and fully set forth in its opinion letter dated February 7, 1997, which letter is incorporated herein, it is

ORDERED, ADJUDGED and DECREED that a declaratory judgment be, and it hereby is, entered that the assets and liabilities of Jefferson Memorial Hospital, Inc., be, reside and remain with Respondents as trustees and further that a constructive trust be and it hereby is imposed on such assets and liabilities; further, it is

ORDERED, ADJUDGED and DECREED that a custodian, the identity to be determined by this Court, be appointed with exclusive jurisdiction to hold and administer the said assets and liabilities in whatever form and wherever located; further, it is

ORDERED, ADJUDGED and DECREED that the Respondents shall prepare and submit under oath a full and complete accounting of all assets and

Ex. 824 0971

J.APP. 4507


liabilities that are the subject of this Decree within sixty (60) days hereof and Complainant shall respond within thirty (30) days of the receipt, which accountings shall disclose all rents, issues, profits, accretions, and benefits, tangible and intangible, which have accrued therefrom and further proceedings shall be had and further evidence taken, if necessary, by this Court; further, it is

ORDERED, ADJUDGED and DECREED that Respondents shall not convey any property, real, personal, tangible, or intangible, without approval by decree of this Court and Complainant shall cause a copy of this Decree to be spread among the land records of the City of Alexandria or any other jurisdiction wherein such property may be located; further, it is

ORDERED, ADJUDGED and DECREED that the custodian appointed by this Court shall submit for approval by this Court a plan for the use or disposition of the assets and liabilities of Jefferson Memorial Hospital, Inc., and further, it is

ORDERED, ADJUDGED and DECREED that Complainants' claim for monetary damages be and it hereby is denied.

Entered this 3 day of March, 1997.


Alfred D. Swersky, Judge

The objections of all parties as noted in the record are hereby preserved.

Copies to all Counsel of Record

01972

255 Va. 445, 499 S.E.2d 839 TAUBER V. COMMONWEALTH (S. Ct. 1998) 1998 Va. Lexis 58

LASZLO N. TAUBER, ET AL.
vs.
COMMONWEALTH OF VIRGINIA, ETC., ET AL.

Record No. 971155
 SUPREME COURT OF VIRGINIA
 255 Va. 445, 499 S.E.2d 839, 1998 Va. LEXIS 58
 April 17, 1998, Decided

FROM THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA. Alfred D. Swersky, Judge.

Certiorari Denied November 2, 1998, Reported at: 1998 U.S. LEXIS 6910.

COUNSEL

Gaspare J. Bono (Frederick W. Chockley; James M. Burns; Baker & Hostettler, on briefs), for appellants.

Marc E. Bettius (Richard Cullen, Attorney General; Claude A. Allen, Deputy Attorney General; Frank Seales, Jr., Senior Assistant Attorney General; Lawrence H. Herman, Assistant Attorney General; S. Randolph Sengel; Krista G. Boucher; Ina C. Charvet; Lawson & Frank, on brief), for appellees.

Amicus Curiae: Touro College (Stephen D. Rosenthal; Mays & Valentine, on brief), in support of appellants.

Amici Curiae: American Council on Education; National Association of State Universities and Land Grant Colleges (Sheldon E. Steinbach; Michael L. Gassman; Mark L. Pelesh; Whitney L. Ellenby; John R. Przypyszny; Drinker, Biddle & Reath, on brief), in support of appellants.

JUDGES

OPINION BY JUSTICE A. CHRISTIAN COMPTON.
 AUTHOR: COMPTON

OPINION

{*448} Present: All the Justices

OPINION BY JUSTICE A. CHRISTIAN COMPTON

In this chancery suit, the Attorney General of Virginia and a commonwealth's attorney jointly assert jurisdiction in the name of the Commonwealth over assets located in Virginia held by trustees in dissolution of a foreign charitable corporation. The trustees had been directors of the corporation, which operated a hospital in this State.

A brief summary of the relevant business activities of the hospital directors will set the stage for this discussion. Jefferson Memorial Hospital, Inc. (JMHI), was chartered originally as a for-profit, stock corporation in Maryland in 1963. In 1964, the corporation amended its charter to become a nonprofit, nonstock charitable entity; it began operations as an acute-care hospital in

Alexandria on March 15, 1965.

{*449} In April 1969, the federal Internal Revenue Service began an investigation leading to revocation of JMHI's tax-exempt status, retroactive to November 1, 1965. In 1971, the corporation's directors attempted to "merge" JMHI into a for-profit Delaware corporation, Jefferson Memorial Hospital Corporation (JMHC). There was an effort to dissolve JMHI and to transfer its assets and liabilities to JMHC, of which JMHI's directors would serve as directors.

In April 1973, Maryland ordered JMHI's corporate charter forfeited "for failure to file the necessary corporate personal property report or failure to pay any late filing penalties due."

In 1974, the directors retained counsel "to represent the Hospital in looking after and insuring that the Hospital Corporate structure for the past, present, and for the immediate future, be handled so as to insure that everything is legally correct and in keeping with the best interest of the investors of the Hospital," according to JMHC's minutes. Counsel testified that he was "asked to rectify the problem that had arisen because a supposed merger in '71 had not been done."

Unaware that Maryland had revoked JMHI's charter, counsel had the directors declare JMHI insolvent and approve transfer of JMHI's assets to JMHC. In January 1975, JMHC's directors authorized purchase of the assets and assumption of the liabilities. The directors of JMHC, believing they had assembled all the assets of the former charity into the for-profit corporation, agreed to transfer all JMHC's "assets" to appellant Laszlo N. Tauber as trustee for appellant Jefferson Memorial Hospital Joint Venture (JMHJV), a partnership in which those assets apparently still reside. The directors also agreed to lease back from the partnership the transferred assets.

In July 1996, the present suit was instituted by the Commonwealth of Virginia, *ex rel.* the Attorney General of Virginia and the Commonwealth's Attorney for the City of Alexandria. The defendants are Tauber and nine other named physicians, "each individually and as a former director of [JMHI] . . . and/or as partners in Jefferson Memorial Hospital Associates, or [JMHJV], and/or directors or shareholders of [JMHC] (a Delaware Corporation now known as 'Jefferson Corporation of Alexandria')"; Jefferson Memorial Hospital Associates; JMHJV; and Jefferson Corporation of Alexandria. A prior suit had been commenced by the Attorney General against the same defendants in April 1995, but was nonsuited during trial.

In the present suit, the plaintiffs filed a 112-paragraph, 40-page, three-count bill of complaint. They alleged that funds and assets received by the defendants as directors and trustees of a charitable corporation "were misappropriated and diverted" contrary to law that requires such funds to be used only for charitable purposes, "and not for private inurement." The plaintiffs then recited in detail the defendants' alleged business activities in connection with the hospital.

In count one, the plaintiffs alleged the "purported merger between JMHI and JMHC in 1971 never took place," and the "subsequent purported transfers of the property of JMHI were likewise {*450} null and void." Asserting "JMHI was and is a non-stock foreign corporation whose assets are located in the Commonwealth" and are subject to the trial court's jurisdiction, the plaintiffs asked the court: to declare "that the purposes for which JMHI was created have been frustrated

and are no longer capable of being accomplished by virtue of" the defendants' conduct; to declare that legal title to JMHI's assets remain in JMHI; to order that an appropriate custodian gather the assets of the former JMHI and administer them under the court's supervision; to require that defendants account for the money or other value received in the transactions and that defendants be surcharged for the charitable assets they usurped in the amount of at least \$ 40 million; and to enter judgment against defendants as a result of "their conversion, misappropriation, or appropriation of the charitable assets" described.

In count two, the plaintiffs sought similar relief and also asked the court "to impose a constructive trust upon the Hospital, its land, equipment and any other assets," as well as upon settlement proceeds being paid by an entity which, in 1985, negotiated with JMHIJV to buy the right to operate the hospital and its assets as a going concern.

In count three, the plaintiffs asked the court to declare that "the corporate opportunities of JMHI have been usurped" by the defendants; that the defendants be required "to account for and disgorge all sums usurped;" that the court impress upon any future sums defendants may receive "an appropriate judgement or trust to secure the interests of the beneficiaries of JMHI, and, if necessary, to refer the matter to a Commissioner in Chancery for an appropriate accounting and charging order against JMHIJV."

After the chancellor overruled their demurrer and plea in bar, defendants answered the bill of complaint. They generally denied the allegations, asserting the plaintiffs are not entitled to the relief prayed for, or to any other relief.

The cause was heard ore tenus in January 1997. The parties had stipulated that the trial in the present suit was to commence where the prior trial terminated, and that the record of all proceedings in the prior suit is to be a part of the present record.

Following the trial, the chancellor filed a memorandum opinion ruling that the plaintiffs are entitled to relief sought in the bill of complaint. In a March 1997 decree, from which we awarded defendants this appeal, the court declared that the assets and liabilities of JMHI "be, reside and remain with [defendants] as trustees and further {**451*} that a constructive trust be . . . imposed on such assets and liabilities."

The court also ordered that a custodian "be appointed with exclusive jurisdiction to hold and administer the said assets and liabilities." Additionally, the court ordered defendants to submit "a full and complete accounting of all assets and liabilities that are the subject of this Decree." Finally, the court denied the plaintiffs' "claim for monetary damages."

On appeal, defendants contend the trial court erred "when it concluded that the Attorney General has authority to bring this suit." The chancellor ruled "that the Attorney General has standing and authority to bring this action both at common law and pursuant to" Code § 13.1-909(B). The trial court is correct.

We need address only the common law. This Court long ago recognized the common law authority of the Attorney General to act on behalf of the public in matters involving charitable

assets. **Clark v. Oliver**, 91 Va. 421, 427-28, 22 S.E. 175, 177 (1895). Indeed, this authority has received legislative recognition as recently as last year. During its 1997 session, the General Assembly granted the Attorney General additional specific powers with respect to the disposition of assets by nonprofit health care entities. Acts 1997, ch. 615. These powers were granted "in order that the Attorney General may exercise his common law and statutory authority over the activities of these organizations." Code § 55-532.

Next, defendants argue the chancellor erred in ruling that Code § 55-29 provides authority for the Commonwealth's Attorney of the City of Alexandria to be a proper party to the claims asserted. We disagree.

Code § 55-29 (1995 Repl. Vol.) provides, as pertinent:

"When any such gift, grant or will is recorded and no trustee has been appointed, or the trustee dies or refuses to act, the circuit court . . . of the city in which the trust subject or any part thereof is, in the case of a gift or grant, or in which the will is recorded, may, on motion of the attorney for the Commonwealth in such court (whose duty it shall be to make such motion), appoint one or more trustees to carry the same into execution. . . . In enforcing the execution of any such trust a suit may be maintained against the trustees in the name of the Commonwealth when there is no other party capable of prosecuting such suit. The term 'trustees' as herein used shall be construed to mean the persons, or governing body, charged {*452} with the execution of the trust, whether designated as 'trustees,' 'directors' or otherwise. . . ."

The phrase "any such gift, grant or will" refers to Code § 55-26.1, which provides, "Every gift . . . made hereafter for charitable purposes, whether made in any case to a body corporate or unincorporated . . . shall be as valid as if made to or for the benefit of a certain natural person. . . ."

The foregoing provisions are not limited to express trusts arising by virtue of written instruments, as defendants argue, but apply, as here, when the assets of JMHI passed automatically to its directors as formal trustees of the charitable organization in liquidation. Thus, the Commonwealth's Attorney is a proper party to this litigation.

Parenthetically, because the defendants seem to raise this issue on brief, we note that use of the word "recorded" in the first clause of the first sentence of § 55-29 refers to recorded wills, and not to any requirement that gifts or grants also be recorded. This is made clear later in the same sentence where there is specific reference to "in which the will is recorded."

Next, we shall turn to the merits. A detailed recitation of the evidence gleaned from this record would serve no useful purpose. On appeal, the defendants primarily seek to have us annul factual findings of the chancellor. The evidence, except for opinions of experts, was not in dispute; defendants urge us to invalidate the legitimate inferences drawn by the trial court from those proven facts. This tactic will not succeed upon appellate review.

The findings of a chancellor, hearing evidence ore tenus, carry the weight of a jury verdict. **Giannotti v. Hamway**, 239 Va. 14, 23, 387 S.E.2d 725, 730 (1990). A judgment based upon

such findings will not be annulled on appeal "unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it." Code § 8.01-680. And, the plaintiffs' burden is to prove these allegations by a preponderance of the evidence. **Baylor v. Beverly Book Co.**, 216 Va. 22, 24, 216 S.E.2d 18, 19 (1975).

Upon review we shall recite the facts, including the legitimate inferences flowing from those facts, in the light most favorable to the plaintiffs, who prevailed below. In the early 1960s, following acquisition of real estate by deed and lease by King Street Joint Venture, held by defendant Tauber as trustee, JMHI was formed to transact the business of operating a hospital. This Maryland corporation was authorized to do business in Virginia in 1963. Following the March 1965 opening, the hospital experienced "problems all the time," { *453 } although an expansion allowing addition of 24 beds occurred in 1968.

In 1970, during the Internal Revenue Service investigation, an attorney was retained to review "the current corporate status of the hospital." Counsel recommended "a complete reorganization of the hospital and its affiliates," establishment of "a new profit corporation with the same name," and "that the old non-profit corporation be merged into it."

The Delaware for-profit corporation, JMHC, was formed in 1971 and a supposed merger was arranged. This merger was reported on tax returns filed in 1972, but the record is devoid of documents to support such a transaction. However, Dr. Tauber, who mainly orchestrated the myriad transactions involved in this case, testified, "In my own mind, [the merger] was completed." The chancellor said no evidence had been presented to show due diligence was used at that time to protect the interests of the beneficiaries of the charitable hospital.

The basis of the 1972 Internal Revenue Service ruling revoking JMHI's tax-exempt status was: "The hospital sold 8% bonds to various doctors and individuals in exchange for their 6% demand notes and did not enforce collection of such demand notes. Other hospital bonds were sold to the general public at 8% for cash. Some of the doctors receiving the 8% bonds in exchange for their 6% demand notes were officers, directors, and staff members of the hospital. Issuance of 8% bonds to these doctors and failure to enforce collection of the demand notes received in exchange resulted in **inurement of income to private individuals.**" This was a violation of the applicable provision of the Internal Revenue Code allowing exemption of charities from federal income taxation.

In 1974, after another attorney had been retained "to rectify the problem that had arisen" because of the putative merger, documents indicate that JMHC assumed the charity's liabilities in return for receipt of JMHI's assets. The charity was to receive 5,000 shares of JMHC stock, but no such transfer was made.

The record amply supports the following findings of the chancellor. "There are numerous transactions shown, some of-record and some not, dealing with the real estate, the equipment, the leases, and the use of tax benefits. The transactions show an entire course of self-dealing by the directors of the charity. They were able to acquire interests in the real estate, the equipment and lease, and were able to use tax benefits belonging to the former charity to enhance the gain of the for-profit corporation. The record is replete with discussions { *454 } among [defendants] as to

their personal profits and gains with no reference to the best interests of the beneficiaries nor of the charitable corporation. The result was the total obliteration of the non-profit corporation."

A transaction illustrative of the foregoing conclusions involves a subdivision of the hospital's real estate in 1970. The charity's 65% undivided interest was lost and, in its place, the charity obtained a 20% interest consisting of an allocated parcel. Also, after the nonprofit corporation was dissolved by Maryland authorities in 1973, defendants caused the filing of an annual report with the State Corporation Commission of Virginia that JMHI remained in good standing.

As the chancellor found, deals were "convoluted and complex with off-record real estate transactions conflicting with the state of the title as shown on-record. Net operating losses were used as tax deductions by JMHC that had become deductions [as] a result of the revocation of JMHI's tax exempt status. When [defendants] had exhausted these deductions, they began seeking ways to benefit their own tax status through a complicated series of notes and bonds, and while some personal risk was taken, the [defendants] and others were participating in the venture in basically a risk-free manner."

Defendants claimed in the trial court that JMHI had no value in 1971 and, thus, the transactions by which they assumed control of its corporate assets by the assumption of its liabilities were "fair." Responding, the chancellor determined that JMHI "had value as a 'going concern'" when the effort was made to change to a for-profit corporation. But the court concluded that defendants' expert testimony was more persuasive than plaintiffs' and that "the value of the corporation did not exceed its liabilities." "However," the chancellor ruled, "this does not constitute a defense to the claims made here."

The defendants' contentions regarding the merits of the suit, including the arguments advanced by amici curiae supporting defendants, are premised upon several erroneous conclusions. For example, defendants believe the trial court recognized that a legally valid "transaction" of some sort occurred in 1971.

Defendants' description of the nature of this binding "transaction" has evolved from "merger," to "reorganization," and finally, during oral argument of the appeal, to "acquisition." Also, defendants and their supporters think this case involves the improper meddling by the Commonwealth into the internal affairs of a Maryland corporation, contrary to settled law and violative of the Full {455} Faith and Credit, Due Process, and Commerce Clauses of the United States Constitution. This case involves none of the above.

The trial court determined that no transaction in the nature of a merger or reorganization took place in 1971. The chancellor ruled that "no merger of JMHI and JMHC has occurred and that the transactions by directors of JMHI are void, the assets remained in JMHI until its dissolution. At the time of dissolution, these assets passed into and remain in the hands of [defendants] as trustees." This ruling is fully supported by the applicable law and the uncontradicted evidence, most of which was created by defendants.

Because the 1971 "transaction" never occurred, the 1973 revocation of JMHI's corporate charter converted its directors by operation of law to trustees in dissolution under Maryland law.

Md. Code Ann., Corporations Art. 23, § 78(a) (1957); **Cloverfields Improvement Ass'n v. Seabreeze Properties, Inc.**, 280 Md. 382, 373 A.2d 935, 939-40 (Md. 1977). Virginia law was and is the same. See former Code § 13.1-254 (1973 Repl. Vol.); present Code § 13.1-915 (1993 Repl. Vol.).

The charter revocation terminated JMHI's corporate existence and powers, and it could no longer function as a corporation. **Cloverfields Improvement Ass'n v. Seabreeze Properties, Inc.**, 32 Md. App. 421, 362 A.2d 675, 679 (Md. App. 1976). From that day forward, the defendants' actions purportedly taken as corporate officers, and not done to wind up or liquidate the business, were without effect because there was no corporation for which to act. The corporate assets had automatically transferred to the directors as trustees. **Cloverfields**, 362 A.2d at 679.

Under Maryland law, property of a charitable corporation is held in trust for the public. **Inasmuch Gospel Mission, Inc. v. Mercantile Trust Co. of Baltimore**, 184 Md. 231, 40 A.2d 506, 510 (Md. 1945). Virginia law is the same. "The corporation was organized for charitable or benevolent or literary purposes. Contributions made to it and the assets realized therefrom were dedicated to those purposes and stamped with a public interest by the charter, the laws of this State, sound reason and public policy. The members acquired no property rights in, nor were they equitably entitled to such assets, either during the lifetime of the corporation or upon dissolution. To hold otherwise would convert the public nature and purpose of the corporation into a vehicle for the personal pecuniary gain of the members." **Hanshaw v. Day**, 202 Va. 818, 824, 120 S.E.2d 460, 464 (1961). Thus, the defendants' contentions that this litigation, dealing with appropriation {456} of charitable assets by directors for their personal gain, involves impermissible interference by Virginia with the internal affairs of a foreign corporation, or that a "fairness" doctrine should be applied to the 1971 activities, are without merit.

Accordingly, the circuit court properly exercised its authority to insure that these assets, now held by the defendants as trustees in liquidation, are distributed in accord with the charitable purposes to which they should have been devoted. This power to liquidate the assets and business of a nonstock corporation may be exercised over the property within the court's jurisdiction "of a foreign corporation that has ceased to exist." Code § 13.1-909(B). See former Code § 13.1-257(e) (1973 Repl. Vol.). The corporate facilities were located solely within this State in Alexandria.

Thus, we hold the trial court did not err in taking charge of the liquidation of the assets of this dissolved foreign corporation, and in providing the relief outlined in the order from which this appeal was taken. This record clearly demonstrates that the directors of JMHI, now trustees in dissolution, have failed and refused to execute the trust.

Finally, we have considered, and reject, defendants' other arguments. Only one of those contentions merits discussion. Defendants argue the trial court erred in not sustaining its plea based on the doctrine of laches.

Laches may not be pled successfully as a defense in an equitable proceeding to bar the State

from asserting a claim on behalf of the public. **Board of Supervisors of Tazewell County v. Norfolk and W. Ry. Co.**, 119 Va. 763, 790, 91 S.E. 124, 133 (1916). **Accord City of Manassas v. Board of Supervisors of Prince William County**, 250 Va. 126, 132, 458 S.E.2d 568, 571 (1995). See **Dick Kelly Enter. v. City of Norfolk**, 243 Va. 373, 381, 416 S.E.2d 680, 685 (1992). As we already have said, this cause is brought by the Commonwealth on behalf of the public to hold and administer charitable assets. Hence, laches does not apply.

Consequently, we will affirm the judgment appealed from, an interlocutory decree adjudicating the principles of the cause, and we will remand the cause to the trial court for further proceedings.

Affirmed and remanded.

DISPOSITION

Affirmed and remanded.

CONFIDENTIAL

DEED OF TRUST NOTE

US \$1,400,000.00

Arlington, Virginia

April 23, 1979

FOR VALUE RECEIVED the undersigned promise to pay FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF ARLINGTON, or order, the principal sum of ONE MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS, with interest on the unpaid principal balance from the date of this Note, until paid, at the rate of nine percent per annum. The principal and interest shall be payable at the Main Office of First Federal Savings and Loan Association of Arlington, or such other place as the holder hereof may designate in writing in consecutive monthly installments of Twelve Thousand Five Hundred Ninety-Seven and No/100 Dollars (US \$12,597.00) on the 1st day of each month beginning June 1, 1979, (herein "amortization commencement date"), until the entire indebtedness evidenced hereby is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on January 1, 1984.

If any installment under this Note is not paid when due, the entire principal amount outstanding hereunder and accrued interest thereon shall at once become due and payable, at the option of the holder hereof. The holder hereof may exercise this option to accelerate during any default by the undersigned regardless of any prior forbearance. In the event of any default in the payment of this Note, and if the same is referred to an attorney at law for collection or any action at law or in equity is brought with respect hereto, the undersigned shall pay the holder hereof all expenses and costs, including, but not limited to attorney's fees.

If any installment under this Note is not received by the holder hereof within fifteen (15) calendar days after the installment is due, the undersigned shall pay to the holder hereof a late charge of four percent (4%) of such installment, such late charge to be immediately due and payable without demand by the holder hereof. If any installment under this Note remains past due for fifteen (15) calendar days or more, the outstanding principal balance of this Note shall bear interest during the period in which the undersigned is in default at a rate of nine percent per annum, or, if such increased rate of interest may not be collected from the undersigned under applicable law, then at the maximum increased rate of interest, if any, which may be collected from the undersigned under applicable law.

On and after, but not prior to April 23, 1979 ("prepayment permitted date") only full prepayment of principal may be made provided that the undersigned gives the holder hereof written notice at least thirty (30) days prior to such prepayment and provided further that the undersigned pays to the holder hereof together with such prepayment (including prepayment occurring as a result of the acceleration by the holder hereof of the principal amount of this Note, but excluding prepayment occurring because of the application by the holder hereof of insurance or condemnation awards or proceeds pursuant to a Mortgage or Deed of Trust securing this Note) a prepayment premium. The prepayment premium shall be an amount equal to one percent of the prepayment.

From time to time, without affecting the obligation of the undersigned or the successors or assigns of the undersigned to pay the outstanding principal balance of this Note and observe the covenants of the undersigned contained herein, without affecting the guaranty of any person, corporation, partnership or other entity for payment of the outstanding principal balance of this Note, without giving notice to or obtaining the consent of the undersigned, the successors or assigns of the undersigned or guarantor and without liability on the part of the holder hereof, the holder hereof may, at the option of the holder hereof, extend the time for payment of said outstanding principal balance or any part thereof, reduce the payments thereon, release anyone liable on any of said outstanding principal balance, accept a renewal of this Note, modify the term and time of payment of said outstanding principal balance, join in any extension or subordination agreement, release any security given herefor, take or release other or additional security, and agree in writing with the undersigned to modify the rate of interest or period of amortization of this Note or change the amount of the monthly installments payable hereunder.

FIRST FEDERAL SAVINGS & LOAN ASSOCIATION

SUCCESSOR IN INTEREST TO

FIRST FEDERAL SAVINGS & LOAN ASSOC OF ARLINGTON

GEORGE J. DECKER,
Vice President

Ex. 826
TAUBER 22216

J.APP. 4517

CONFIDENTIAL

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This Note shall be the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

The indebtedness evidenced by this Note is secured by a Mortgage or Deed of Trust dated April 23, 1979, and reference is made thereto for rights as to acceleration of the indebtedness evidenced by this Note. This Note shall be governed by the law of the jurisdiction in which the Property subject to the Mortgage or Deed of Trust is located.

JEFFERSON MEMORIAL HOSPITAL JOINT VENTURE

By: Laszlo N. Tauber
Laszlo N. Tauber, General Partner
and Managing Joint Venturer

Laszlo N. Tauber
Laszlo N. Tauber, Trustee

PAYMENT GUARANTEED:

Laszlo N. Tauber
Laszlo N. Tauber

This is to certify that this is the Note described in and secured by a Deed of Trust dated April 23, 1979, on six (6) contiguous parcels of real property located in the City of Alexandria, Virginia, which is the site of Jefferson Memorial Hospital.

My Commission Expires:

March 2, 1981

Jordan L. Blum
Notary Public

PAID AND CANCELLED
CONTINENTAL FEDERAL SAVINGS
& LOAN ASSOCIATION

SUCCESSOR IN INTEREST TO
FIRST FEDERAL SAVINGS & LOAN ASSOC OF ALEXANDRIA

BY George J. Decker
GEORGE J. DECKER
VICE PRESIDENT

CONFIDENTIAL

DEED OF TRUST NOTE

FIRST FEDERAL SAVINGS AND
LOAN ASSOCIATION OF ARLINGTON

AND

JEFFERSON MEMORIAL HOSPITAL
JOINT VENTURE et al

CREGGER & KLEIN, P. C.
ATTORNEYS AT LAW

2054 N. 14TH STREET
ARLINGTON, VIRGINIA 22216

TAUBER 22218

JAPP. 4519

CONFIDENTIAL

DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

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THIS DEED OF TRUST (herein "Instrument") is made this 23rd day of April, 1979, among the Trustor/Grantor LASZLO N. TAUBER, Trustee, JEFFERSON MEMORIAL HOSPITAL JOINT VENTURE; LESLIE P. GONDOR and MAGDOLNA I. GONDOR, his wife; SAMUEL BURTOFF, divorced and not remarried, TAUBER FOUNDATION, INC., a Maryland Corporation, and JEFFERSON MEMORIAL HOSPITAL CORPORATION, a Delaware Corporation, (herein "Borrower"), FIRST ARLINGTON SERVICE CORPORATION, a Virginia Corporation, Trustee (herein "Trustee"), and the Beneficiary FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF ARLINGTON, a Corporation organized and existing under the laws of the United States, whose address is 4020 University Drive, Fairfax, Virginia 22030 (herein "Lender").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the leasehold estate pursuant to a Memorandum of Lease (herein "ground lease") dated October 8, 1962, between GERARD T. HOPKINS and HELEN C. HOPKINS, his wife, and L & L CORPORATION, a Maryland Corporation, recorded in Deed Book 563, at Page 166, said leasehold estate being assigned by Assignment of Lease dated August 14, 1963, between L & L CORPORATION and LASZLO N. TAUBER, Trustee, recorded in Deed Book 583, at Page 32; being further assigned by Deed dated December 29, 1964, between LASZLO N. TAUBER, Trustee, and JEFFERSON MEMORIAL HOSPITAL, INC., recorded in Deed Book 616, at Page 475, and being further assigned by Assignment of Lease dated June 1, 1975, between LASZLO N. TAUBER, Trustee, and JEFFERSON MEMORIAL HOSPITAL, INC. and LASZLO N. TAUBER, Trustee, recorded in Deed Book 941, at Page 265, in and to the following described property located in the City of Alexandria, Commonwealth of Virginia:

PARCEL ONE:

Beginning at a point in the southwesterly line of King Street (approximately 40.8 feet from the centerline of said street), said point being the northerly corner of Parcel 3822-01; thence with the northwesterly line of said Parcel 3822-01 South 60° 11' 50" West, 271.33 feet to a point in the northerly line of Parcel 3821-03; thence with said northerly line North 85° 42' 10" West,

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104.80 feet; and North 85° 08' 10" West, 12.00 feet to a point in the easterly line of Parcel 3822-04; thence with said easterly line North 4° 51' 50" East, 192.78 feet to a point; thence through Parcel 3822-03, a 12 foot right of way, and Parcel 3822-02 South 37° 29' 10" East, 188.46 feet; and North 53° 36' 00" East, 225.00 feet to a point in the southwesterly line of King Street; thence with said southwesterly line South 38° 27' 40" East, 63.95 feet to the point of beginning, containing 27,561 square feet or 0.6327 acres.

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys, in fee simple, to Trustee, in trust, with power of sale, the following described properties located in the City of Alexandria, Commonwealth of Virginia:

PARCEL TWO:

Beginning at a point on the southeasterly side of Beauregard Street (60 feet wide), said point being South 68° 32' 40" West, 216.54 feet from the intersection of the southwesterly line of King Street (Route #7, 80 feet wide), with the southeasterly line of Beauregard Street (60 feet wide); thence departing from the point of beginning South 4° 51' 50" West, 358.83 feet to a corner of Newport Village (formerly Washington Forest); thence with a line of Newport Village North 83° 35' 00" West, 233.40 feet to the southeasterly line of Beauregard Street; thence running with the new southeasterly line of Beauregard Street North 26° 19' 48" East, 167.09 to a point of curvature; thence along the arc of a curve to the right whose radius is 382.00 feet and whose chord and chord bearing are North 46° 07' 15" East, 261.05 feet respectively, an arc distance of 266.42 feet to the point of beginning. Containing 53,256 square feet or 1.2226 acres.

PARCEL THREE:

Parcel No. 3821-03-01 of the subdivision known and designated as "Subdivision of the Property of Jefferson Memorial Hospital, Inc." as the said subdivision appears duly dedicated, platted and recorded in Deed Book 707 at Page 584, among the City of Alexandria, Virginia land records.

PARCEL FOUR:

Parcel 3821-03-02 of the Subdivision of the Property of Jefferson Memorial Hospital, Inc., as the same is duly dedicated, platted and recorded in Deed Book 707 at Page 584, among the Land Records of the City of Alexandria, Virginia.

PARCEL FIVE:

Parcel No. 3821-03-04 of the subdivision known and designated as "Subdivision of the Property of Jefferson Memorial Hospital, Inc." as the said subdivision appears duly dedicated, platted and recorded in Deed Book 707 at Page 584, among the land records of the City of Alexandria, Virginia.

CONFIDENTIAL

PARCEL SIX:

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Parcel No. 3821-03-03 of the subdivision known and designated as "Subdivision of the Property of Jefferson Memorial Hospital, Inc." as the said subdivision appears duly dedicated, platted and recorded in Deed Book 707 at Page 584, among the City of Alexandria, Virginia Land Records.

TOGETHER with all buildings, improvements and tenements now or hereafter erected on the property, and all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, rents (subject however to the assignment of rents to Lender herein), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, on or, or used, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, panelling, rugs, attached floor coverings, furniture, pictures, antennas, trees and plants, and all medical and hospital equipment of any type whatsoever now owned or hereafter acquired

; all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this instrument; and all of the foregoing, together with said property (or the leasehold estate in the event this instrument is on a leasehold) are herein referred to as the "Property".

To SECURE TO LENDER (a) the repayment of the indebtedness evidenced by ~~TAUBER~~ note dated April 1979 (herein "Note") in the principal sum of One Million Four Hundred Thousand and No/100 Dollars, with interest thereon, with the balance of the indebtedness, if not sooner paid, due and payable on January 1, 1984; and all renewals, extensions and modifications thereof; (b) the repayment of any future advances, with interest thereon, made by Lender to Borrower pursuant to paragraph 31 hereof (herein "Future Advances"); ~~XXXXXX~~ (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this instrument; and (d) the performance of the covenants and agreements of Borrower herein contained.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant, convey and assign the Property (and, if this instrument is on a leasehold, that the ground lease is in full force and effect without modification except as noted above and without default on the part of either lessor or lessee thereunder), that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

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Uniform Covenants. Borrower and Lender covenant and agree as follows:

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and late charges provided in the Note and all other sums secured by this Instrument.

2. **FUNDS FOR TAXES, INSURANCE AND OTHER CHARGES.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly installments of principal or interest are payable under the Note (or on another day designated in writing by Lender), until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of (a) the yearly water and sewer rates and taxes and assessments which may be levied on the Property, (b) the yearly ground rents, if any, (c) the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Property as Lender may require pursuant to paragraph 5 hereof, (d) the yearly premium installments for mortgage insurance, if any, and (e) if this Instrument is on a leasehold, the yearly fixed rents, if any, under the ground lease, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Lender of a requirement that Borrower pay such Funds may be revoked by Lender, in Lender's sole discretion, at any time upon notice in writing to Borrower. Lender may require Borrower to pay to Lender, in advance, such other Funds for other taxes, charges, premiums, assessments and impositions in connection with Borrower or the Property which Lender shall reasonably deem necessary to protect Lender's interests (herein "Other Impositions"). Unless otherwise provided by applicable law, Lender may require Funds for Other Impositions to be paid by Borrower in a lump sum or in periodic installments, at Lender's option.

The Funds shall be held in an institution(s) the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said rates, rents, taxes, assessments, insurance premiums and Other Impositions so long as Borrower is not in breach of any covenant or agreement of Borrower in this Instrument. Lender shall make no charge for so holding and applying the Funds, analyzing said account or for verifying and compiling said assessments and bills, unless Lender pays Borrower interest, earnings or profits on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Instrument that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires interest, earnings or profits to be paid, Lender shall not be required to pay Borrower any interest, earnings or profits on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds in Lender's normal format showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Instrument.

If the amount of the Funds held by Lender at the time of the annual accounting thereof shall exceed the amount deemed necessary by Lender to provide for the payment of water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, such excess shall be credited to Borrower on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty days after notice from Lender to Borrower requesting payment thereof.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any Funds held by Lender at the time of application (i) to pay rates, rents, taxes, assessments, insurance premiums and Other Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by this Instrument. Upon payment in full of all sums secured by this Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

3. **APPLICATION OF PAYMENTS.** Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the following order of priority: (i) amounts payable to Lender by Borrower under paragraph 2 hereof; (ii) interest payable on the Note; (iii) principal of the Note; (iv) interest payable on advances made pursuant to paragraph 8 hereof; (v) principal of advances made pursuant to paragraph 8 hereof; (vi) interest payable on any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the amounts of interest payable on the Future Advances in such order as Lender, in Lender's sole discretion, may determine; (vii) principal of any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the principal balances of the Future Advances in such order as Lender, in Lender's sole discretion, may determine; and (viii) any other sums secured by this Instrument in such order as Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to paragraph 8 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this paragraph 3.

4. **CHARGES; LIENS.** Borrower shall pay all water and sewer rates, rents, taxes, assessments, premiums, and Other Impositions attributable to the Property at Lender's option in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof, or in such other manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph 4, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Instrument to be perfected against the Property.

5. **HAZARD INSURANCE.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Lender against loss by fire, hazards included within the term "extended coverage", rent loss and such other hazards, casualties, liabilities and contingencies as Lender (and, if this Instrument is on a leasehold, the ground lease) shall require and in such amounts and for such periods as Lender shall require. All premiums on insurance policies shall be paid, at Lender's option, in the manner provided under paragraph 2 hereof, or by Borrower making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender. If this Instrument is on a leasehold, Borrower shall furnish Lender a duplicate of all policies, renewal notices, renewal policies and receipts of paid premiums if, by virtue of the ground lease, the originals thereof may not be supplied by Borrower to Lender.

In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and empowers Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action hereunder. Borrower further authorizes Lender, at Lender's option, (a) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the Property or (b) to apply the balance of such proceeds to the payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in paragraph 3 hereof (subject, however, to the rights of the lessor under the ground lease if this Instrument is on a leasehold).

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amounts of such installments. If the Property is sold pursuant to paragraph 27 hereof or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

6. **PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS.** Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all

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or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the cost of such restoration or repair, (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances therein in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (f) shall provide for professional management of the Property by a residential rental property manager satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing, (g) shall generally operate and maintain the Property in a manner to ensure maximum rentals, and (h) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

If this Instrument is on a leasehold, Borrower (i) shall comply with the provisions of the ground lease, (ii) shall give immediate written notice to Lender of any default by lessor under the ground lease or of any notice received by Borrower from such lessor of any default under the ground lease by Borrower, (iii) shall exercise any option to renew or extend the ground lease and give written confirmation thereof to Lender within thirty days after such option becomes exercisable, (iv) shall give immediate written notice to Lender of the commencement of any remedial proceedings under the ground lease by any party thereto and, if required by Lender, shall permit Lender as Borrower's attorney-in-fact to control and act for Borrower in any such remedial proceedings and (v) shall within thirty days after request by Lender obtain from the lessor under the ground lease and deliver to Lender the lessor's stoppage certificate required thereunder, if any. Borrower hereby expressly transfers and assigns to Lender the benefit of all covenants contained in the ground lease, whether or not such covenants run with the land, but Lender shall have no liability with respect to such covenants nor any other covenants contained in the ground lease.

Borrower shall not surrender the leasehold estate and interests herein conveyed nor terminate or cancel the ground lease creating said estate and interests, and Borrower shall not, without the express written consent of Lender, alter or amend said ground lease. Borrower covenants and agrees that there shall not be a merger of the ground lease, or of the leasehold estate created thereby, with the fee estate covered by the ground lease by reason of said leasehold estate or said fee estate, or any part of either, coming into common ownership, unless Lender shall consent in writing to such merger; if Borrower shall acquire such fee estate, then this Instrument shall simultaneously and without further action be spread so as to become a lien on such fee estate.

7. USE OF PROPERTY. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

8. PROTECTION OF LENDER'S SECURITY. If Borrower fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorney's fees, (ii) entry upon the Property to make repairs, (iii) procurement of satisfactory insurance as provided in paragraph 5 hereof, and (iv) if this Instrument is on a leasehold, exercise of any option to renew or extend the ground lease on behalf of Borrower and the curing of any default of Borrower in the terms and conditions of the ground lease.

Any amounts disbursed by Lender pursuant to this paragraph 8, with interest thereon, shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the Note unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this paragraph 8 shall require Lender to incur any expense or take any action hereunder.

9. INSPECTION. Lender may make or cause to be made reasonable entries upon and inspections of the Property.

10. BOOKS AND RECORDS. Borrower shall keep and maintain at all times at Borrower's address stated below, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Upon Lender's request, Borrower shall furnish to Lender, within one hundred and twenty days after the end of each fiscal year of Borrower, a balance sheet, a statement of income and expenses of the Property and a statement of changes in financial position, each in reasonable detail and certified by Borrower and, if Lender shall require, by an independent certified public accountant. Borrower shall furnish, together with the foregoing financial statements and at any other time upon Lender's request, a rent schedule for the Property, certified by Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable and the rent paid.

11. CONDEMNATION. Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender subject, if this Instrument is on a leasehold, to the rights of lessor under the ground lease.

Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the Property or to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in paragraph 3 hereof, with the balance, if any, to Borrower. Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

12. BORROWER AND LIEN NOT RELEASED. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from the lien of this Instrument any part of the Property, take or release other, or additional security, recover any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this paragraph 12 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

13. FORBEARANCE BY LENDER NOT A WAIVER. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages under paragraphs 5 and 11 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

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14. **EXTORTION CERTIFICATE.** Borrower shall within ten days of a written request from Lender furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Instrument.

15. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in paragraph 27 of this Instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in paragraph 27 of this Instrument.

16. **LEASES OF THE PROPERTY.** As used in this paragraph 16, the word "lease" shall mean "sublease" if this Instrument is on a leasehold. Borrower shall comply with and observe Borrower's obligations as landlord under all leases of the Property or any part thereof. Borrower will not lease any portion of the Property for non-residential use except with the prior written approval of Lender. Borrower, at Lender's request, shall furnish Lender with executed copies of all leases now existing or hereafter made of all or any part of the Property, and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. All leases of the Property shall specifically provide that such leases are subordinate to this Instrument; that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; and that Lender may, at Lender's option, accept or reject such attornments. Borrower shall not, without Lender's written consent, execute, modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter made of all or any part of the Property providing for a term of three years or more, permit an assignment or sublease of such a lease without Lender's written consent, or request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this Instrument. If Borrower becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Borrower shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (ii) notify Lender thereof and of the amount of said set-off, and (iii) within ten days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

Upon Lender's request, Borrower shall assign to Lender, by written instrument satisfactory to Lender, all leases now existing or hereafter made of all or any part of the Property and all security deposits made by tenants in connection with such leases of the Property. Upon assignment by Borrower to Lender of any leases of the Property, Lender shall have all of the rights and powers possessed by Borrower prior to such assignment and Lender shall have the right to modify, extend or terminate such existing leases and to execute new leases, in Lender's sole discretion.

17. **REMEDIES CUMULATIVE.** Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

18. **ACCELERATION IN CASE OF BORROWER'S INSOLVENCY.** If Borrower shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by paragraph 27 of this Instrument. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Instrument pursuant to paragraph 8 hereof.

19. **TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER; ASSUMPTION.** On sale or transfer of (i) all or any part of the Property, or any interest therein, or (ii) beneficial interests in Borrower (if Borrower is not a natural person or persons but is a corporation, partnership, trust or other legal entity), Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by paragraph 27 of this Instrument. This option shall not apply in case of

- (a) transfers by devise or descent or by operation of law upon the death of a joint tenant or a partner;
- (b) sales or transfers when the transferee's creditworthiness and management ability are satisfactory to Lender and the transferee has executed, prior to the sale or transfer, a written assumption agreement containing such terms as Lender may require, including, if required by Lender, an increase in the rate of interest payable under the Note;
- (c) the grant of a leasehold interest in a part of the Property of three years or less (or such longer lease term as Lender may permit by prior written approval) not containing an option to purchase (except any interest in the ground lease, if this Instrument is on a leasehold);
- (d) sales or transfers of beneficial interests in Borrower provided that such sales or transfers, together with any prior sales or transfers of beneficial interests in Borrower, but excluding sales or transfers under subparagraphs (a) and (b) above, do not result in more than 49% of the beneficial interests in Borrower having been sold or transferred since commencement of amortization of the Note; and
- (e) sales or transfers of fixtures or any personal property pursuant to the first paragraph of paragraph 6 hereof.

20. **NOTICE.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Instrument or in the Note shall be given by mailing such notice by certified mail addressed to Borrower at Borrower's address stated below or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Instrument or in the Note shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

21. **SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 19 hereof. All covenants and agreements of Borrower shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

22. **UNIFORM ~~SECURITY~~ INSTRUMENT; GOVERNING LAW; SEVERABILITY.** This form of ~~XXXXXX~~ instrument combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property and related fixtures and personal property. This Instrument shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this

J.APP. 4525

deemed to be collected from Borrower is interpreted so that any charge provided for in this Instrument or in the Note, whether considered separately or together with other charges levied in connection with this Instrument and the Note, violates such law, and Borrower is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Lender in excess of the amounts payable to Lender pursuant to such charges as reduced shall be applied by Lender to reduce the principal of the indebtedness evidenced by the Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all indebtedness which is secured by this Instrument or evidenced by the Note and which constitutes interest, as well as all other charges levied in connection with such indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.

23. WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

24. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

25. CONSTRUCTION LOAN PROVISIONS. Borrower agrees to comply with the covenants and conditions of the Construction Loan Agreement, if any, which is hereby incorporated by reference in and made a part of this Instrument. All advances made by Lender pursuant to the Construction Loan Agreement shall be indebtedness of Borrower secured by this Instrument, and such advances may be obligatory as provided in the Construction Loan Agreement. All sums disbursed by Lender prior to completion of the improvements to protect the security of this Instrument up to the principal amount of the Note shall be treated as disbursements pursuant to the Construction Loan Agreement. All such sums shall bear interest from the date of disbursement at the rate stated in the Note, unless collection from Borrower of interest at such rate would be contrary to applicable law in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law and shall be payable upon notice from Lender to Borrower requesting payment therefor.

From time to time as Lender deems necessary to protect Lender's interests, Borrower shall, upon request of Lender, execute and deliver to Lender, in such form as Lender shall direct, assignments of any and all rights or claims which relate to the construction of the Property and which Borrower may have against any party supplying or who has supplied labor, materials or services in connection with construction of the Property. In case of breach by Borrower of the covenants and conditions of the Construction Loan Agreement, Lender, at Lender's option, with or without entry upon the Property, (i) may invoke any of the rights or remedies provided in the Construction Loan Agreement, (ii) may accelerate the sums secured by this Instrument and invoke those remedies provided in paragraph 27 hereof, or (iii) may do both. If, after the commencement of amortization of the Note, the Note and this Instrument are sold by Lender, from and after such sale the Construction Loan Agreement shall cease to be a part of this Instrument and Borrower shall not assert any right of set-off, counterclaim or other claim or defense arising out of or in connection with the Construction Loan Agreement against the obligations of the Note and this Instrument.

26. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. As part of the consideration for the indebtedness evidenced by the Note, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Borrower hereby authorizes Lender or Lender's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Lender or Lender's agents; provided, however, that prior to written notice given by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower, to apply the rents and revenues so collected to the sums secured by this Instrument in the order provided in paragraph 3 hereof with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this paragraph 26 as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only; provided, however, that the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such rents. Borrower agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant of the Property shall make such rents payable to and pay such rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Borrower.

Borrower hereby covenants that Borrower has not executed any prior assignment of said rents, that Borrower has not performed, and will not perform, any act or has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this paragraph 26, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents of the Property for more than two months prior to the due dates of such rents. Borrower covenants that Borrower will not hereafter collect or accept payment of any rents of the Property more than two months prior to the due dates of such rents. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this paragraph 26.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Instrument pursuant to paragraph 8 hereof. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

B001 941 Paul 2/18

Non-Uniform Covenants. Borrower and Lender further covenant and agree as follows:

27. **ACCELERATION; REMEDIES.** Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, including, but not limited to, the covenants to pay when due any sums secured by this Instrument, Lender at Lender's option may declare all of the sums secured by this Instrument to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided herein. Borrower acknowledges that the power of sale herein granted may be exercised by Lender without prior judicial hearing. Borrower has the right to bring an action to assert the non-existence of a breach or any other defense of Borrower to acceleration and sale. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorney's fees and costs of documentary evidence, abstracts and title reports.

If Lender invokes the power of sale, Lender or Trustee shall give to Borrower a copy of a notice of sale in the manner prescribed by applicable law. Trustee shall give public notice of sale in the manner prescribed by applicable law and shall sell the Property in accordance with the laws of Virginia. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale or by advertising in accordance with applicable law. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold with special warranty of title. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including, but not limited to, Trustee's fees of 5% of the gross sale price, attorney's fees and costs of title evidence; (b) to the discharge of all taxes, levies and assessments on the Property, if any, as provided by applicable law; (c) to all sums secured by this Instrument in such order as Lender, in Lender's sole discretion, directs; and (d) the excess, if any, to the person or persons legally entitled thereto, including, if any, holders of liens inferior to this Instrument in order of their priority, provided that Trustee has actual notice of such liens. Trustee shall not be required to take possession of the Property prior to the sale thereof or to deliver possession of the Property to the purchaser at such sale.

28. **RELEASE.** Upon payment of all sums secured by this Instrument, Lender shall request Trustee to release this Instrument and shall surrender all notes evidencing indebtedness secured by this Instrument to Trustee. Trustee shall release this Instrument. Borrower shall pay Trustee's reasonable costs incurred in releasing this Instrument.

29. **SUBSTITUTE TRUSTEE.** Lender may from time to time in Lender's discretion remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

30. **IDENTIFICATION OF NOTE.** The Note is identified by a certificate on the Note executed by any Notary Public who certifies an acknowledgment hereto.

31. **FUTURE ADVANCES.** Upon request of Borrower, Lender, at Lender's option so long as this Instrument secures indebtedness held by Lender, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Instrument, not including sums advanced in accordance herewith to protect the security of this Instrument, exceed the original amount of the Note (US \$ 1,400,000.00) plus the additional sum of US \$ NONE

IN WITNESS WHEREOF, Borrower has executed and sealed this Instrument or has caused the same to be executed and sealed: representatives thereunto duly authorized.

TAUBER FOUNDATION, INC.
Laszlo N. Tauber
 President

Laszlo N. Tauber
 Laszlo N. Tauber, Trustee

JEFFERSON MEMORIAL HOSPITAL CORPORATION
Leslie P. Gondor
 President

Leslie P. Gondor
 Leslie P. Gondor

Magdalena I. Gondor
 Magdalena I. Gondor

Samuel Burtoff
 Samuel Burtoff

JEFFERSON MEMORIAL HOSPITAL JOINT VENTURE

Borrower's Address:

Laszlo N. Tauber
 Laszlo N. Tauber, General Partner
 and Managing Joint Venturer

4600 King Street

Alexandria, Virginia 22304

VIRGINIA:

In the Clerk's office of the Circuit Court City of Alexandria this deed was received and the taxes imposed by Sec. 58 54.1 in the amount of \$ have been paid & with the Annexed certificate admitted to record on

4-27-79 1:57 PM

Frederick L. Johnson
 Clerk

COMMONWEALTH OF VIRGINIA, CITY OF ALEXANDRIA, ss:
The foregoing instrument was acknowledged before me this 23rd day of April, 1979, by Laszlo N. Tauber, M.D., President of Taubert Foundation, Inc., a corporation of the state of Maryland.
Commission Expires: March 2, 1981
Notary Public

INDIVIDUAL ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA, CITY OF ALEXANDRIA, ss:
The foregoing instrument was acknowledged before me this 23rd day of April, 1979, by Samuel Burtoff.
Commission Expires: March 2, 1981
Notary Public

INDIVIDUAL JOINT TENANCY ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA, CITY OF ALEXANDRIA, ss:
The foregoing instrument was acknowledged before me this 23rd day of April, 1979, by Leslie P. Gondor and Magdolna I. Gondor, his wife.
Commission Expires: March 2, 1981
Notary Public

TRUSTEE JOINT TENANCY ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA, CITY OF ALEXANDRIA, ss:
The foregoing instrument was acknowledged before me this 23rd day of April, 1979, by Laszlo N. Tauber, Trustee.
Commission Expires: March 2, 1981
Notary Public

STATE OF Virginia, City of Alexandria, to-wit:

The foregoing instrument was acknowledged before me this 23rd day of April, 1979, by Leslie L. Peters, President of Jefferson Memorial Hospital, aware Corporation, on behalf of the Corporation.

Commission Expires: March 2, 1981

STATE OF Virginia, City of Alexandria, to-wit:

The foregoing instrument was acknowledged before me this 23rd day of April, 1979, by Laszlo N. Tauber, General Partner and Managing Joint Venturer of Jefferson Memorial Hospital Joint V. c.

Commission Expires: March 2, 1981

14-17881-0
January 12, 1984

CERTIFICATE OF SATISFACTION (B)

Place of Record: Clerk's Office of the Circuit Court of the ^{City} ~~County~~ of AlexandriaDate of Deed of Trust April 23, 1979Deed Book 941, Page 271, Instrument No. 4154Face Amount Secured \$ 1,400,000.00Name(s) of Grantor(s) Laszlo N. Tauber, Trustee, Leslie P. Gondor and Magdolna I. Gondor
and Samuel BurtoffName(s) of Trustee(s) First Arlington Service CorporationBrief Description of Property One through Six Parcels, City of Alexandria. See attached.Maker(s) of Note Laszlo N. Tauber, Trustee, Leslie P. Gondor and Magdolna I. Gondor
and Samuel BurtoffDate of Note April 23, 1979; Face Amount of Note \$ 1,400,000.00

The undersigned, holder of the above-mentioned note(s) secured by the above-mentioned Deed of Trust to be produced before the Clerk herewith, do hereby certify that the same has/have been paid in full.

Given under my hand this 27th day of January, 19 84.
Continental Federal Savings and Loan Association, Successor in
Interest to: First Federal Savings and Loan Association of
Arlington

Noteholder

By Maxine Compton
Maxine Compton, Assistant Secretary

COMMONWEALTH OF VIRGINIA,

COUNTY/CITY OF Fairfax

To-wit:

The foregoing instrument was acknowledged by (name and title) _____

Maxine Compton, Assistant Secretary

of Continental Federal Savings and Loan Associationa Corporation, on behalf of the Corporation this 27th day of January, 19 84.My commission expires My Commission Expires January 30, 1987

Notary Public

I certify that the note(s) mentioned in the foregoing certificate duly cancelled was/were produced before the Clerk.

Attest:

by _____ D.C.

VIRGINIA:

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE ^{City} ~~County~~ OF Alexandria

This certificate was presented, and with the Certificate annexed, admitted to record on _____

at _____ o'clock _____ M. Clerk's Fee \$ _____ has been paid.

Attest:

Clerk

PARCEL ONE:

Beginning at a point in the southwesterly line of King Street (approximately 40.8 feet from the centerline of said street), said point being the northerly corner of Parcel 3822-01; thence with the northwesterly line of said Parcel 3822-01 South 60° 11' 50" West, 271.33 feet to a point in the northerly line of Parcel 3821-03; thence with said northerly line North 85° 42' 10" West,

4154

4/27/79

at 159 p.m.

104.80 feet; and North 85° 08' 10" West, 12.00 feet to a point in the easterly line of Parcel 3822-04; thence with said easterly line North 4° 51' 50" East, 192.78 feet to a point; thence through Parcel 3822-03, a 12 foot right of way, and Parcel 3822-02 South 37° 29' 10" East, 188.46 feet; and North 53° 36' 00" East, 225.00 feet to a point in the southwesterly line of King Street; thence with said southwesterly line South 38° 27' 40" East, 63.95 feet to the point of beginning, containing 27,561 square feet or 0.6327 acres.

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys, in fee simple, to Trustee, in trust, with power of sale, the following described properties located in the City of Alexandria, Commonwealth of Virginia:

PARCEL TWO:

Beginning at a point on the southeasterly side of Beauregard Street (60 feet wide), said point being South 68° 32' 40" West, 216.54 feet from the intersection of the southwesterly line of King Street (Route #7, 80 feet wide), with the southeasterly line of Beauregard Street (60 feet wide); thence departing from the point of beginning South 4° 51' 50" West, 358.83 feet to a corner of Newport Village (formerly Washington Forest); thence with a line of Newport Village North 83° 35' 00" West, 233.40 feet to the southeasterly line of Beauregard Street; thence running with the new southeasterly line of Beauregard Street North 26° 19' 48" East, 167.09 to a point of curvature; thence along the arc of a curve to the right whose radius is 382.00 feet and whose chord and chord bearing are North 46° 07' 15" East, 261.05 feet respectively, an arc distance of 266.42 feet to the point of beginning. Containing 53,256 square feet or 1.2226 acres.

PARCEL THREE:

Parcel No. 3821-03-01 of the subdivision known and designated as "Subdivision of the Property of Jefferson Memorial Hospital, Inc. as the said subdivision appears duly dedicated, platted and recorded in Deed Book 707 at Page 584, among the City of Alexandria Virginia land records.

PARCEL FOUR:

Parcel 3821-03-02 of the Subdivision of the Property of Jefferson Memorial Hospital, Inc., as the same is duly dedicated, platted and recorded in Deed Book 707 at Page 584, among the Land Records of the City of Alexandria, Virginia.

PARCEL FIVE:

Parcel No. 3821-03-04 of the subdivision known and designated as "Subdivision of the Property of Jefferson Memorial Hospital, Inc. as the said subdivision appears duly dedicated, platted and recorded in Deed Book 707 at Page 584, among the land records of the City of Alexandria, Virginia.

PARCEL SIX:

Parcel No. 3821-03-03 of the subdivision known and designated as "Subdivision of the Property of Jefferson Memorial Hospital, Inc." as the said subdivision appears duly dedicated, platted and recorded in Deed Book 707 at Page 584, among the City of Alexandria, Virginia Land Records.

JEFFERSON MEMORIAL HOSPITAL CORPORATION

ANNUAL STOCKHOLDERS MEETING
OCTOBER 7, 1981

AGENDA

- I. CALL TO ORDER
- II. DETERMINATION OF STOCKHOLDERS PRESENT IN PERSON AND BY PROXY
- III. ANNOUNCEMENT OF QUORUM
- IV. READING OF THE MINUTES OF THE PREVIOUS STOCKHOLDERS MEETING
- V. PRESIDENT'S REPORT
- VI. ELECTION OF BOARD OF DIRECTORS
- VII. OTHER BUSINESS
- VIII. ADJOURNMENT

TAUBER 03991

Trial Exhibit —
No. 832

J.APP. 4532

M I N U T E S

JEFFERSON MEMORIAL HOSPITAL CORPORATION
ANNUAL STOCKHOLDERS MEETING
WEDNESDAY, OCTOBER 7, 1981

- I. DATE: October 7, 1981
- II. TIME & PLACE: 1:00 P.M., Suite 2C
- III. CALL TO ORDER:

1. Dr. Peters, Hospital President, called the Stockholder's Meeting to order at 1:00 P.M. He welcomed the Stockholders to the Annual Meeting and stated that the agenda would be followed as presented.

2. The President stated that the first order of business would be to call the Role of Stockholders present and to verify the proxies given to determine if a quorum is present. As of this date, there are 217,017 shares issued to our Stockholders. The President asked Mr. Carl E. Linton, Hospital Administrator, to call the role of stockholders. The following Stockholders and number of shares they represent are listed below and present:

Leslie L. Peters, M.D.	155
Tony Butera, D.P.M.	281
Magdolna Iranyi, M.D.	33604
A.A. Coster, D.P.M.	3043
Michael Davidov, M.D.	8057
Melvin Small, M.D.	2
Nils Antezana, M.D.	507
W. Morgan Delaney, M.D.	974
Narendra Desai, M.D.	400
Reginald P, McManus, M.D.	3953.5
Richard F. Sappington, M.D.	11099
Harold J. Goald, M.D.	1010
Laszlo N. Tauber, M.D.	<u>69251</u>

Total 132336.5

Shares given in Proxy to Dr. Tauber:	57,491
Total Shares and Proxies:	189,827.5

Others Present:non-voting:
Carl E. Linton, Administrator
Dallas P. Wright, Assistant Administrator

The President, Dr. Leslie L. Peters, announced that there was a quorum present, there being 189,827.5 shares held by Stockholders present and the meeting is hereby offically in session.

TAUBER 03992

MINUTES
STOCKHOLDERS MEETING
PAGE TWO
OCTOBER 7, 1981

3. The President called upon the Secretary, Dr. Tauber, for the reading of the minutes of the previous Stockholders Meeting. A motion was made by Dr. Davidov and seconded by Dr. Iranyi to waive the reading of the minutes. Motion carried unanimously. The President stated that since no objections were being raised from the floor, the reading of the minutes would be waived as ordered.

4. Dr. Peters, Hospital President, read and presented each Stockholder present, the President's Annual Report, copy attached hereto these minutes. Following his report, the Stockholders thanked Dr. Peters for his guidance and support as Chairman of the Board and Hospital President.

5. The President stated that the next item for consideration on the Agenda was the election of Directors to serve during the forthcoming year on the Hospital Board. Dr. Peters presented the nominees of management as follows:

Leslie L. Peters, M.D.	Chairman
Samuel Burtoff, M.D.	
Laszlo N. Tauber, M.D.	
Richard F. Sappington, M.D.	
Lucio Luccioli, M.D.	
Michael Vlahos, M.D.	
Harold J. Goald, M.D.	
Reginald P. McManus, M.D.	
Leslie P. Gondor, M.D.	
Arthur Coster, D.P.M.	
Michael Davidov, M.D.	
Tony Butera, D.P.M.	
Bruce Burtoff, M.D.	
Magdolna Iranyi, M.D.	

The President then asked if any other Stockholder had a slate or wish to nominate any other person to be a Director. There were no nominations from the floor and the President declared the nominations closed. A motion was made by Dr. Delaney and seconded by Dr. McManus that the slate of Directors as presented by Dr. Peters in nomination be elected by acclamation. Motion carried unanimously.

6. Dr. Peters thanked the Stockholders for his re-election as Chairman of the Board and reported that the Board of Directors would elect the Officers of the Corporation at their next meeting.

7. Dr. Peters then called for Item #7 on the Agenda, "Other Business", and said that this is the time for any business which Stockholders may wish to bring from the floor. Dr. Tauber reported on a proposal that he had received from a firm to purchase the hospital. The President of the Company also expressed an interest in leasing the hospital under a lease/management arrangement if the hospital was not for sale. Dr. Tauber stated he presented the proposal to the Board at a special

TAUBER 03993

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MINUTES
STOCKHOLDERS MEETING
PAGE THREE
OCTOBER 7, 1981

meeting on September 23, 1981, and the Board rejected the sale but approved Dr. Tauber to negotiate further to see what kind of lease/management arrangement the company proposed. Dr. Tauber stated that any actions recommended would be presented to the Stockholders for approval.

8. There being no further business, the meeting was adjourned at 2:00 P.M.

Respectfully submitted:

Laszlo N. Tauber

LASZLO N. TAUBER, M.D.
Secretary

TAUBER 03994

J.APP. 4535

JEFFERSON MEMORIAL HOSPITAL

4600 KING STREET. ALEXANDRIA. VIRGINIA 22302
TELEPHONE: 703/831-2800

MANAGEMENT'S SLATE

Listed below are the names of Nominees of Management to serve as Directors until the next annual meeting of the Stockholders:

Leslie L. Peters, M.D.	Chairman
Samuel Burtoff, M.D.	
Laszlo N. Tauber, M.D.	
Richard F. Sappington, M.D.	
Lucio Luccioli, M.D.	
Michael Vlahos, M.D.	
Harold J. Goald, M.D.	
Reginald P. McManus, M.D.	
Leslie P. Gondor, M.D.	
Arthus Coster, D.P.M.	
Michael Davidov, M.D.	
Tony Butera, D.P.M.	
Bruce Burtoff, M.D.	
Magdolna Iranyi, M.D.	

TAUBER 03995

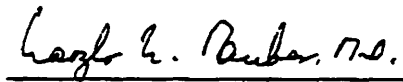
JEFFERSON MEMORIAL HOSPITAL

4600 KING STREET, ALEXANDRIA, VIRGINIA 22302
TELEPHONE: 703/931-2800

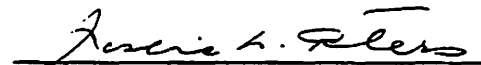
NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

The Annual Meeting of the Stockholders of Jefferson Memorial Hospital Corporation will be held at the Registered Office of Business, 4600 King Street, Alexandria, Virginia on Wednesday, October 7, 1981 at 12:30 P.M. for the following purposes:

1. To elect a Board of Directors:
 - a. Nominations from Management
 - b. Nominations from the Floor
2. To transact such other business as may properly come before the meeting.



LASZLO N. TAUBER, M.D.
Secretary



LESLIE L. PETERS, M.D.
President

Alexandria, Virginia
September 17, 1981

PROXY STATEMENT

The attached proxy is furnished in connection with the solicitation of proxies by Management for use at the Annual Meeting of Stockholders to be held on October 7, 1981. You can insure that your shares are voted at that meeting by signing and returning the attached proxy in the envelope provided. Sending in the signed proxy will not affect your right to attend this meeting and vote in person. A Stockholder who gives a proxy may revoke it at anytime before it is exercised.

TAUBER 03996

JEFFERSON MEMORIAL HOSPITAL

4600 KING STREET, ALEXANDRIA, VIRGINIA 22302
TELEPHONE: 703/931-2800

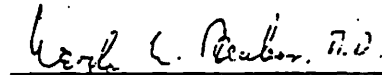
September 24, 1981

TO: JEFFERSON MEMORIAL HOSPITAL CORPORATION STOCKHOLDERS
RE: REVISED MEETING TIME FOR ANNUAL MEETING

The Annual Meeting of the Jefferson Memorial Hospital Corporation Stockholders scheduled for October 7, 1981, will be held at 1:00 P.M. instead of 12:30 P.M.

The Board of Director's Meeting will immediately follow the Stockholder's Meeting.

Respectfully,



LASZLO N. TAUBER, M.D.

Secretary

Jefferson Memorial Hospital Corp.

September 24, 1981

LNT:pc .

TAUBER 03997

J.APP. 4538

Proxies to Dr. Tauber:

Dr. Csatory	5665.5	.0261063
Sam Bialek	5242	.0241548
Dr. Davidov	8057	.0371261
Dr. Gondor	33604	.1548450
Dr. Nicholson	8617	.0397066
Dr. Miller	50	.0002304
Dr. Kauffman	259.5	.0011958
Ted Bialek	5242	.0241548
Dr. Pulizzi	10	.0000461
Dr. Spund	333	.0015344
Dr. Burtoff	18554	.0854956
Dr. Freedman	4641	.0213854
Dr. Coster	3043	.0140219
Dr. Bottnick	333	.0015344
Dr. Sappington	11099	.0511435
Dr. Luccioli	8544	.0393702
Dr. Peters	155	.0007142
Dr. Coald	<u>2025</u>	.0093311
Total	115,474	
Dr. Tauber	<u>69,251</u>	(85.12%)
	184,725	

TAUBER 03998

JEFFERSON MEMORIAL HOSPITAL

4600 KING STREET. ALEXANDRIA, VIRGINIA 22302
TELEPHONE: 703/931-2800

PRESIDENT'S REPORT TO STOCKHOLDERS AT THEIR ANNUAL MEETING OCTOBER 7, 1981

I am pleased as your President, to report that our Hospital continued to reflect excellent growth during the past year. In fact, Jefferson Memorial Hospital had its greatest number of patient census days since the Hospital was founded 16 years ago. In FY-81 the Hospital had a total of 39,224 patient days, an occupancy rate of almost 90%. This was an increase of 6% over the 1980 occupancy rate of 84%. As a matter of fact, Jefferson Memorial Hospital had in FY-81 the highest percentage of occupancy of any of the Northern Virginia Hospitals.

The increased inpatient days have been reflected in the workload of most of the ancillary departments. For instance, X-ray procedures increased 8% over the prior year, Nuclear Medicine procedures were up over 15%, Physical Therapy up 23%, EMG's up 21%, EEG's up 10% and Laboratory procedures for inpatients up over 17%, while Laboratory procedures for outpatients were up 52% reflecting the utilization of our Hospital Laboratory by Physician's offices in the new building.

Financial Operations. The Hospital gross revenue for the year just ended was \$14,053,093, an increase of 24.6% over the prior year revenue of \$11,281,157. Expenses for the year were \$11,675,840, up 22.5% from the previous year of \$9,534,100. However, we charged off to bad debts over \$100,000 more than our formula of previous years would have provided which lowered our taxable income before taxes to \$129,464 in the year just ended compared to \$219,422 the prior year. This provided retained earnings per share of 44¢ compared to 72¢ the previous year.

TAUBER 03999

PRESIDENT'S REPORT CONTINUED

PAGE -2-

(HOSPITAL BUILDING AND FACILITIES PROGRAMS: Newly re-modeled and improved parts of the Hospital include: Central Supply Room (CSR), which was moved from its prior 3rd floor location to the 2nd floor where all new equipment and shelving has been provided. The expanded floor space gives the CSR 948 sq. ft. compared to 406 sq. ft. in the old area. Medical Records was moved to new and completely renovated space next to CSR on the 2nd floor with 917 sq. ft. compared to 546 sq. ft. in the old area. Other projects involving 2nd floor space include expansion and moving of Chemistry, Bacteriology, and the Pathology Office. For the first time a dedicated office space is provided for the Chief Lab Technologist. Total area gained by the Laboratory will be 440 sq. ft. Remodeling and refinishing these 2nd floor areas has been done for a cost of \$45,060. In addition, the primary radiology room was renovated at a cost of \$6,603 and a new \$100,000 x-ray unit was installed. Other minor improvements were done to the building at a cost of \$35,174.04. Total payments for renovations and remodeling of the departments came to \$86,838.04 for the year.

New medical and medical Ancillary equipment purchased by the Hospital during the year came to \$73,577.96. Total building improvements to include renovations, came to \$160,416.

The new Electric Hill Rom Bed Program has continued this Fiscal Year and 20 new Electric Beds were added.

(Inspections: JCAH Accreditation was conducted during June 1981, and the Hospital received a 2-year accreditation, the 5th such approved accreditation in a row. In addition, the Hospital was also inspected by the State Licensure Agency and had no major violations. Further, the Hospital was recertified for participation in the Medicare and Medicaid Programs.

Respectfully submitted,

(LESLIE L. PETERS, M.D.
President

TAUBER 04000

J.APP. 4541

BOARD OF DIRECTOR'S MEETING
JEFFERSON MEMORIAL HOSPITAL

December 12, 1979

AGENDA

I. OLD BUSINESS:

- | | |
|--|----------------|
| 1. Radiology Ad Hoc Committee Report | Dr. Sappington |
| 2. Requested Change in In-Patient E.R. Fees | Mr. Linton |
| 3. Approval of Reappointment of Department of Surgery Members | Dr. Peters |
| 4. Acceptance of Promissory Note in Lieu of Mal-Practice Insurance | Dr. Peters |

II. NEW BUSINESS:

- | | |
|--|-----------------------|
| 1. Hospital Financial Status | Mr. Linton |
| 2. Progress Care Telemetry and Holter Monitoring | Dr. Davidov |
| 3. Report on Cost of New Building | Dr. Tauber |
| 4. Assumption of Bank Loan by Hospital | Dr. Tauber/Dr. Peters |
| 5. Georgetown Lab | Dr. Tauber |
| 6. Parking Structure | Dr. Tauber |
| 7. Medical Staff Committee Report | Dr. Davidov |
| 8. Administrator's Report | Mr. Linton |

TAUBER 01507

Ex. 835

J.APP. 4542

JEFFERSON MEMORIAL HOSPITAL
BOARD OF DIRECTORS MEETING
DECEMBER 12, 1979

1. The meeting was called to order by the Chairman at 6:00 P.M.

a. The Roll was called and the following Directors were present:

Leslie L. Peters, M.D.	Chairman
Samuel Burtoff, M.D.	Vice Chairman
Laszlo N. Tauber, M.D.	Secretary
Michael Davidov, M.D.	Member
A.A. Coster, D.P.M.	Member
Harold J. Goald, M.D.	Member
Leslie Gondor, M.D.	Member
Magdolna Iranyi, M.D.	Member
Lucio Luccioli, M.D.	Member
Reginald P. McManus, M.D.	Member
Michael Vlahos, M.D.	Member
Richard F. Sappington, M.D.	Member
Carl E. Linton	Hospital Administrator

Absent: None

b. The Chairman announced that 12 Directors are present and that is a quorum.

c. The Chairman introduced guests present:

Walter L. Scheetz, M.D.	Director, Emergency Medicine
Mr. David Mermelstein	Hospital Auditor

d. The Agenda was read. There being no request to add or change any item, the Agenda was approved.

2. The Secretary read the minutes of the previous meeting. A motion was duly made and seconded that the minutes be approved. The motion carried unanimously.

3. OLD BUSINESS:

a. The Chairman asked the Chairman of the Radiology Ad Hoc Committee for the Committee's report. Dr. Sappington reported that the Committee continued its efforts. The Committee has met twice to set general goals and objectives. Then the Committee met with Dr. Sheely. Then as Chairman, I along with the Hospital Administrator, met with Dr. Cornell and Dr. Sheely. At these meetings, the Committee set forth the improvements we felt should be made in the Radiology Department. Dr. Sheely's response has been to promise to come-up with a plan to make the improvements we have suggested. However, he is very much prone to feel the X-Ray Department should not expand too much. The

TAUBER 01508

J.APP. 4543

first thing should be economy. In addition, Mr. Linton has met with Dr. Greene of the Alexandria Group. They are interested but do not want to compete with Dr. Sheely's group. Basically they would orient the Jefferson's Radiology Service along the same lines they run the Alexandria Hospital Radiology Department. The one thing they did mention was that they would want to bill separately for Radiology. That is, they would bill for the radiology professional service and the Hospital would bill for the x-ray room service. Dr. Sappington stated that the Committee would continue to work at getting the information on what the Medical Staff wanted and what could be made available to improve the X-Ray and Radiology Service. The Committee thanked Dr. Sappington for his report.

b. Dr. Peters, Chairman, asked Dr. Scheetz to discuss his request for an increase in fees paid by the Hospital to the E.R. doctors for inpatient house coverage. Dr. Scheetz stated that the E.R. doctors have provided house physician coverage for inpatients during hours when the House Doctors are not available. They do this in addition to their main job of taking care of E.R. patients. Recently they came to me at our monthly meeting and were very upset about the low fees they were being paid by the hospital for inpatient coverage. I agreed with them that the fees were the same as they were in 1973. So I asked them to come up with the fee increases they felt were needed. They did this and I submitted the request to Mr. Linton. I see that you have the proposed fees before you so you know what they are asking for. While I do feel some of the fees are too high, they could be negotiated. The Chairman thanked Dr. Scheetz for his presentation and asked if any Director had any questions and discussion on the proposed increases. In summary, it was felt that E.R. doctors are paid to serve the hospital and the inpatient fees are high enough. There were several suggestions made and a lengthy discussion on a number of alternatives. A motion was duly made and seconded that Dr. Peters, Dr. Tauber and Mr. Linton look into this matter to determine why the E.R. doctors are so insistent on being given an increase for house coverage fees, to see if an alternative can be set-up to provide house coverage. Further, to determine how much the hospital is paying for E.R. physician service and why that amount is not adequate to pay the doctors. The Committee is to determine how much is being paid to the E.R. doctors and how much is being paid to the Director for his service. The Committee is to report back at the next Board meeting with its recommendations. The motion was carried unanimously.

c. Dr. Peters reviewed the Executive Committee's recommendations for reappointment of the Department of Surgery members. Dr. Davidov added that the Executive Committee determined that 6 members had no continuing medical education credit hours and therefore the Executive Committee is recommending to the Board that the following physicians not be reappointed to the Medical Staff:

William Gazale, M.D.
William Glover, M.D.
Evangelos Kotselas, M.D.

Bernard Teunis, M.D.
John Keshishian, M.D.
Leonard Levine, M.D.

Following a lengthy discussion, it was the Board's decision in accordance with the Executive Committee that reappointment take place for all members with the following changes:

(1) Status change from Active to Courtesy:

Dr. Rida Azer
Dr. Laszlo Csatory
Dr. Jerome Dovberg
Dr. Richard Ferris
Dr. Arcadius Hakim
Dr. Hampton Jackson
Dr. Medhat Kamel
Dr. Burton Katzen
Dr. Victor Liszka
Dr. Hamid R. Quraishi

(2) Status changes from Active to Consultant: Dr. Chalon Rodriguez

(3) Reduction in surgical privileges as outlined on the delineation sheet for Drs. Sam Novak, Theodore Tamariz and Medhat Kamel.

(4) Dr. O'Kails privileges were expanded as outlined on Delineation of privileges sheet.

A motion was duly made and seconded that reappointment take place as indicated above. Motion carried unanimously.

d. Dr. Davidov presented the Medical Staff Officers for 1980 as elected by the Medical Staff at their quarterly meeting:

Dr. Michael Davidov, President
Dr. Lucio Luccioli, Vice President
Dr. Young Moon, Secretary
Dr. Walter L. Scheetz, Treasurer

A motion was duly made and seconded to approve the Medical Staff officers for 1980 as read. Motion carried unanimously.

e. Dr. Davidov, Chairman of the Executive Committee reported that the Executive Committee had recommended that all members of the Medical Staff be required to have mal-practice insurance of \$100,000 to \$300,000. That no exceptions be permitted as had been previously recommended by the Executive Committee for members who preferred to furnish acceptable "Promissory Note" in lieu of the mal-practice insurance. There was a lengthy discussion of this issue. A motion was duly made and seconded that the Hospital President, Medical Staff President along with the Hospital Corporation Executive Vice President for Medical Affairs study this matter and report back to the next meeting at which time the issue will again be considered. (Attachment)

4. NEW BUSINESS:

a. The Chairman asked if it were agreeable to take up items 3,4,5 and 6 on the Agenda first because Mr. Mermelstein is present to present these items and he could then be excused. There was no objection and Dr. Peters asked Dr. Tauber, Trustee of the Joint Venture to begin the discussion with a report on the cost of the new building.

b. Dr. Tauber said the total cost of the new building had now been totaled up and he would like Mr. Mermelstein to report his findings. Mr. Mermelstein reported the total cost for the building was \$2,700,000. The doctors have paid the \$25 per gross square foot shell cost, and that resulted in \$1,345.00. In addition, a mortgage of \$1,100,000 was secured which was also used to pay off the old mortgage of \$ on the old building with the remaining \$ being used to pay for the new building. This leaves \$ which must be paid. Dr. Tauber thanked Mr. Mermelstein and asked if he could go in to the 4th item on the agenda "Assumption of Bank Loan by Hospital". He was told to proceed. The amount unpaid and which as Trustee, I still have notes outstanding which are \$223,000. The doctors have paid for their offices and the only one left owing any thing is the Joint Venture. They do not want to assume this amount. So I have asked the Hospital to assume this \$223,000. There was a brief discussion on this item. Both Mr. Linton and Mr. Mermelstein pointed out that the Hospital is paying the mortgage which a large part has been used to pay for the building and is also paying \$11,760 which was the agreed to cost of the 3rd floor for hospital use. Mr. Linton pointed out that he felt it would likely be in conflict with the "Virginia Certificate of Need" law to assume this \$223,000 note regardless of what they were for and he would recommend against it. There was a lengthy discussion on the issue. A motion was duly made and seconded that the Hospital will assume the notes totaling \$223,000. The motion was carried unanimously. Mr. Mermelstein was excused.

c. Dr. Tauber reported that work would begin shortly on the Georgetown Lab and they expected to move in by the middle of March.

d. Dr. Tauber said as Trustee of the Joint Venture, he would propose to proceed with the building a new parking structure. He has a firm that builds a prefab structure. There are approximately 200 parking spaces on the grounds now. They have given me two proposals. Proposal 1 would be for a 140 car structure at a cost of about \$300,000. Since we would build the structure on about 40 existing spaces, we would wind up with 300 parking spaces. Proposal 2 would have 220 parking spaces which would provide a total of about 400 spaces with the existing 200 spaces. This will cost about \$600,000. We need the parking very badly. I would propose that the Hospital be allowed to charge its visitors for parking thus reducing its cost. The doctors could do the same if they choose to do so. We would ask all users for \$1.00 per square foot yearly. The Hospital would thus be assessed around \$65,000 a year for its fee. The Doctor's offices about \$55,000. There was a long discussion on the issue. A motion was duly made and seconded to have the Hospital to indicate its desire to participate and further to take steps to amend its lease with the Joint Venture.

to such an effect. The motion carried unanimously.

e. The Chairman asked Mr. Linton if he would include the financial report with the Administrator's Report which he agreed to do. The Chairman asked Dr. Davidov to discuss the telemetry and Holter Monitoring requirements. He reported that the Holter Monitoring recorders and tape scanners was old and are out of order frequently and they need replacement. The cost will amount to about \$25,000 to \$35,000. He proposed getting the same type as he has in his office so that if one of the recorders or scanners goes out of order, the Hospital could use his or vice versa. He reported the telemetry was needed as approved by the Board at the last meeting. We would plan to set-up two semi-private rooms near ICU, on the East Nursing Station. This progressive unit will be a real back-up to the ICU and is really needed for cardiac patients. Mr. Linton stated the rooms or beds equipped with telemetry would likely be set at about \$200 a day instead of the \$116 a day, based on 50-75% occupancy they would generate enough income above today's room rate to pay for the equipment \$22,000 in about 2 years. He reported that the Holter Monitor equipment was needed and that with any kind of increase in their use which the new doctor's building ought to provide, would allow for or should pay for themselves in 15 to 18 months. There was a lot of discussion both pro and con. A motion was duly made and seconded that the Progressive Care beds be designated and the telemetry equipment be leased. The motion was carried unanimously. A motion was duly made and seconded that 3 Holter recorders and 1 tape scanner be leased. The motion was unanimously carried.

f. Dr. Peters asked Dr. Davidov to report on the Medical Staff Executive Committee. Dr. Davidov presented the applications and recommendation of the Executive Committee for delineation of privileges for the following physicians:

Panos Koutrouvelis, M.D. - Radiology
Alicia Heron, M.D. - General Surgery
Suk Kew Kim, M.D. - Anesthesiology
Ronald Footer, D.P.M. - Podiatry

Gerald Bell, M.D. - Internal
Medicine
Monira Rifaat, M.D. - Pathology

Review was then made of each credential file. A motion was duly made, seconded and unanimously carried to grant these practitioners clinical privileges as delineated on the application form and be appointed to the Provisional Staff.

g. Dr. Davidov advised the Board of the Ambulatory Care Project by Blue Cross/Blue Shield which will become effective on January 1, 1980. It was the recommendation of the Executive Committee that no change be made in the method in which Jefferson handles out-patients.

h. Dr. Davidov presented amendments and changes to the Bylaws, Rules and Regulations. The amendments and changes were thoroughly discussed after which time a motion was made, seconded and carried that they be adopted. (See Attached).

i. The Chairman asked Mr. Linton to present the Administrator's Report. He reported that November was not a good month for operations. Occupancy was 76% (average of 91 patients a day), compared to 82% in October and 82% FY year to date. Admissions were 385 for November, down from 452 in October. However, FY-to-date we are running about 300 admissions ahead of FY-1979. We do not have our financial operating statement for November, but for October 31st. We had total revenue of \$963,821 with \$3,601,000 for the 4 months of the FY. This is up from \$500,000 for the same 4 months of last year. Total operating expenses were \$750,760 as compared to \$721,312 last month and \$2,900,000 FY year to date. The Operating expenses of \$2.9 million over the past 4 months is up about \$400,000. The Hospital net income before adjustments and taxes for October is \$87,000 with a FY to date of \$175,673 as compared to \$166,186 for the same period last year. Our Accounts Receivables continues to be running extremely high at \$2,000,000. This is up about \$200,000 over the previous month and nearly \$500,000 over the previous year. Accounts payable are at \$785,765 up about \$100,000 from September. I might add that in November we have received some payments from Blue Cross for year end settlements and will in December receive payments from Medicare and Medicaid which will greatly improve our accounts payable position. The report has been passed out to each of you so I will not go into further detail unless you have questions. There was a brief discussion of the report and questions asked were answered. Mr. Linton said he would also like to advise the Directors that he recommends a drastic slow down in expenses, especially for leasehold improvements. The rates we charge patients are fairly well locked in place by the Virginia Rate Review Commission for the rest of this fiscal year (June 30, 1980). We have budgeted very tightly and we simply do not have the ability to do a lot of things which we would like to do at this time. Let me point out that our Capital Expenditures Budget comes primarily from our profit after taxes. Even us leasing equipment, there is a limit on how much we can spend or obligate the Hospital for in any given year. Your decision to pay for certain cost on the new building from profits (not to ask or pass this expenses to 3rd party payors) is going to put a terrific strain on the hospital's ability to have any funds available for capital improvements. Therefore, I suggest that every item be carefully watched for the rest of this accounting or fiscal year. That concludes my report. The Chairman thanked the Administrator for his report and asked if there were any further questions. There was a lengthy discussion of the problems presented and an agreement by all members that the financial condition be watched much closer as recommended by the Administrator. (Attachments).

j. Safety Committee Report: Mr. Linton reported that there was no report from this Committee; the meeting is to be held later this month.

k. Next, Dr. Peters asked Mr. Mermelstein to present his topic on "Interpretation and Analysis of the Balance Sheet". Following Mr. Mermelstein presentation, the Board thanked Mr. Mermelstein for his report.

(L. There being no further business, the meeting was adjourned.

Respectfully submitted:

Laszlo N. Tauber, M.D.
LASZLO N. TAUBER, M.D.
Secretary

TAUBER 01514

J.APP. 4549

SPECIAL MEETING
BOARD OF DIRECTORS
JEFFERSON MEMORIAL HOSPITAL CORPORATION

I. A special meeting of the Board of Directors was held at 1:00 P.M. Wednesday, September 23, 1981.

II. The following members were present:

PRESENT:

Leslie L. Peters, M.D.	Chairman
Laszlo N. Tauber, M.D.	Secretary
Samuel Burtoff, M.D.	Member
A.A. Coster, D.P.M.	Member
Magdolna Iranyi, M.D.	Member
Reginald McManus, M.D.	Member
Lucio Luccioli, M.D.	Member
Michael Vlahos, M.D.	Member
Tony Butera, D.P.M.	Member
Richard F. Sappington, M.D.	Member
Dallas P. Wright	Acting Administrator

ABSENT:

Harold J. Goald, M.D.	Member
Leslie Gondor, M.D.	Member
Michael Davidov, M.D.	Member

III. OLD BUSINESS: None to come before the meeting

IV. NEW BUSINESS:

1. Dr. Tauber reported on a proposal that he had received from a firm to purchase the hospital. The President of the company also expressed an interest in leasing the hospital under a lease/management arrangement if the hospital was not for sale.

There was a discussion by the various board members, and all were in agreement that the hospital should not be sold. However, since the details of a lease arrangement had not been formally delineated, there were several questions that the board members needed an answer to in order to know what action to take. A motion was made, duly seconded and passed that the offer to purchase the hospital be rejected and that Dr. Tauber be authorized to negotiate further to obtain a specific proposal for a lease/management arrangement which could be considered by the Board after the details are known.

2. Next, Dr. Peters stated that the Board is required to present a slate for Board of Directors to the Stockholders at their annual meeting scheduled for October 7, 1981. A slate was presented by management and the following list of nominees was recommended as follows:

TAUBER 01929

EX. 856

J.APP. 4550

SPECIAL MEETING
BOARD OF DIRECTORS
PAGE TWO

Leslie L. Peters, M.D.	Chairman
Samuel Burtoff, M.D.	Vice Chairman
Laszlo N. Tauber, M.D.	Secretary
Richard F. Sappington, M.D.	Member
Michael Davidov, M.D.	Member
Harold J. Goald, M.D.	Member
Lucio Luccioli, M.D.	Member
Tony Butera, D.P.M.	Member
Leslie Gondor, M.D.	Member
Magdolna Iranyi, M.D.	Member
A.A. Coster, D.P.M.	Member
Reginald P. McManus, M.D.	Member
Michael Vlahos, M.D.	Member
Bruce Burtoff, M.D.	Member

Following a review of the slate, a motion was made, duly seconded and carried that the nominees presented above will be recommended to the Stockholders for the coming year.

3. There being no further business, the meeting was adjourned at 2:00 P.M.

Respectfully submitted:

Laszlo N. Tauber

LASZLO N. TAUBER, M.D.
Secretary

TAUBER 01930

J.APP. 4551

BOARD OF DIRECTORS MEETING
JEFFERSON MEMORIAL HOSPITAL
SEPTEMBER 23, 1981

ATTENDANCE LIST

(Please Sign In)

[Signature]

Nephele A ✓

[Signature]

[Signature]

[Signature]

✓ *[Signature]*

[Signature]

[Signature]

[Signature]

TAUBER 01931

J.APP. 4552

JEFFERSON MEMORIAL HOSPITAL
BOARD OF DIRECTORS MEETING

DECEMBER 2, 1981

A G E N D A

I. OLD BUSINESS:

1. Emergency Room Physicians - Private Practice

II. NEW BUSINESS:

1. Human Research Committee Legal Support
2. Housekeeping Service for Medical Office Building Increase in Cost (\$.92 to \$1.00)
3. Increase in Land Rent
4. Report on Negotiations for Lease
5. Rental of Auditorium - Lucille Shandloff, Ph.D. Request for Rescession of Decision of Board of Directors

III. OTHER:

Cost of Living Raise for Hospital Employees.

IV. COMMITTEE REPORTS:

1. Medical Staff Executive Committee Report
2. Administrator's Report

V. ADJOURNMENT:

TAUBER 01911

EX. 858

J.APP. 4553

JEFFERSON MEMORIAL HOSPITAL
BOARD OF DIRECTORS MEETING

DECEMBER 2, 1981

ATTENDANCE LIST

(Please sign in)

Leslie A. Dean
Michael W. Mahab

AO. Cost

W. Sander

R. F. Haggins

W. J. Haggins

W. J. Haggins

W. J. Haggins

W. J. Haggins

W. J. Haggins

W. J. Haggins

W. J. Haggins

W. J. Haggins

W. J. Haggins

TAUBER 01912

J.APP. 4554

MINUTES
JEFFERSON MEMORIAL HOSPITAL
BOARD OF DIRECTORS

- I. DATE: December 2, 1981
- II. TIME AND PLACE: 6:00 P.M.
- III. ATTENDANCE:

PRESENT:

Leslie L. Peters, M.D.	Chairman
Samuel Burtoff, M.D.	Vice Chairman
Laszlo N. Tauber, M.D.	Secretary
Michael Vlahos, M.D.	Member
A.A. Coster, D.P.M.	Member
Michael Davidov, M.D.	Member
Richard F. Sappington, M.D.	Member
Harold J. Goald, M.D.	Member
Bruce Burtoff, M.D.	Member
Reginald P. McManus, M.D.	Member
Tony Butera, D.P.M.	Member
Magdolna Iranyi, M.D.	Member
Lucio Luccioli, M.D.	Member
Leslie Gondor, M.D.	Member
Carl E. Linton	Administrator
Dallas P. Wright	Assistant Administrator

- IV. CALL TO ORDER: Dr. Peters announced that there are 14 members present which constitutes a quorum and the meeting would proceed with its business.
- V. READING OF THE MINUTES: Dr. Peters asked Dr. Tauber to read the minutes from the previous meeting. A motion was made, seconded and unanimously carried to waive the reading of the minutes.
- VI. OLD BUSINESS:

1. EMERGENCY ROOM PHYSICIANS PRIVATE PRACTICE: Dr. Peters stated that the decision of the Board to forbid full time E.R. physicians to have a private practice after January 1, 1982 had been put on the agenda for reconsideration and that Dr. Alfonso and Dr. Quincoses were invited to the meeting for the reconsideration of their case. Dr. Tauber stated that he thought it was unfair to forbid the physicians to have a private practice because we put a 90-day termination clause in their contracts with the hospital. He said that if we put this restriction on their private practice, then we would have a moral obligation to give them a long term contract for their own job security.

TAUBER 01913

MINUTES
BOARD OF DIRECTORS
DECEMBER 2, 1981
PAGE 2

After a discussion of the preference of having a 90-day termination clause, a motion was made and duly seconded that the Board's previous action to forbid Emergency Room Physicians to have a private practice after January 1, 1982 be rescinded. There followed another discussion and a request was made that the motion be amended to "Grandfather in" the present physicians but make the restriction apply to physicians who are employed in the future. Dr. Tauber stated that his objections were valid for future physicians also. He said that, of course it is worse to change the rules after employing them, but it is still unfair to have such a restriction if we were not going to give them long-term job security. It was the consensus of opinion that it was more desirable to have the 90-day termination clause and the request to amend the motion was withdrawn. The motion before the Board was then voted on and passed unanimously.

II. NEW BUSINESS:

1. Dr. Peters introduced the subject of whether or not the hospital should pay for the legal support of the Human Research Committee. He asked Mr. Wright to report on the costs involved. Mr. Wright reported that the bills from the lawyer member of the committee were submitted to the Hospital based on the number of hours that he spent on the committee work, and the hospital has been paying them along with the other hospital attorney's bills. He said that bills received after the past 14 or 15 months have exceeded \$2,000. A question was raised as to whether or not it was necessary for a lawyer to be on the Committee. Dr. Sappington stated that it was necessary to have both a lawyer and minister on the committee, but only the lawyer has been billing for the time and work involved. A motion was made, duly seconded and passed that the costs of the lawyer member on the Human Research Committee be billed to the physicians whose protocols and research are reviewed by the Committee.

2. Dr. Peters introduced the next subject of increasing the contract for housekeeping service for the Medical Office building from 92¢ to \$1.00 per square foot. A discussion followed and most members expressed agreement that the increase was reasonable in view of the increase in labor and supply costs this past year. Dr. Tauber said he would prefer the increase be deferred another month even though the amount was reasonable. A motion was made, seconded and passed to defer an increase in Housekeeping Services and the issue will be reconsidered at a future Board meeting.

TAUBER 01914

J.APP. 4556

MINUTES
BOARD OF DIRECTORS MEETING
DECEMBER 2, 1981
PAGE THREE

3. Dr. Peters introduced the subject of increase in land rent and asked Mr. Wright to provide the background for this proposed increase. Mr. Wright reported that the original lease for land underlying the hospital building was for \$15,600 per year with \$975 going to Dr. Burtoff, \$9,750 to Dr. Gondor and \$4,875 to the Tauber Foundation for their respective ownership of the parcel involved. There was a provision in the lease that the rent was to be increased after 10 years based on the change in the wholesale price index for the 10-year period January 1966 to January 1976. This increase would have been effective for the year 1976 but everyone forgot about the provision until the auditors picked it up when auditing the accounts. Based on the formula prescribed in the lease, the new rent would have increased to \$28,376.40 per year in 1976. The Hospital has prepared checks for the year 1981 but has not made any retroactive payments for the years 1976 through 1980. A discussion followed. Dr. Tauber made a motion that in lieu of retroactive increased rent, that the hospital be authorized to amend the lease to pay a total of \$30,000 annual Basic Rent starting January 1, 1982 and increase each year by an amount equal to 1% of the Annual Basic Rent (that is, \$300 per year). The motion was duly seconded and passed unanimously.

4. Dr. Peters asked Dr. Tauber if he would report to the Board on the negotiations for lease of the Hospital. Dr. Tauber reported that the amount of rental payments had been tentatively agreed upon as a total of \$1 million per year which included \$240,000 per year for land and building rent which the hospital now pays. He covered in detail other provisions which were being discussed and negotiated. He reminded the Board that he had asked all members to provide their desires and recommendations on specific provisions they would like to see incorporated into the lease, but so far he had not gotten very much input. The Board members reaffirmed their support in the negotiations as reported by Dr. Tauber and assured him that he should proceed with the negotiations.

5. Dr. Peters presented to the Board a letter from Lucille G. Shandloff, Ph.D., requesting reconsideration of the October 2, 1981 billing of \$200 for use of the Auditorium and cafeteria on September 23 and 30, 1981. A discussion followed and the chronology of events were reviewed for the Board. Since Dr. Shandloff had been notified of the Board's decision to charge for the use of the facilities prior to signing up individuals for the first session, and she chose to contest the actions of the Board and utilized the facilities after having been informed that the Board rejected her verbal appeal, the members felt that she should be required to pay the \$200 as billed. A motion was made, duly seconded and passed that Lucille G. Shandloff, Ph.D. be charged for the use of the facilities as billed and that her request for recinding the bill be denied.

TAUBER 01915

J.APP. 4557

MINUTES
BOARD OF DIRECTOR'S MEETING
DECEMBER 2, 1981
PAGE FOUR

III. OTHER BUSINESS:

1. Dr. Peters stated that he and Mr. Wright had reviewed the employees wages, the payroll expenses and the cost of living increase as measured by the U.S. Consumer Price Index for the past year and were recommending a raise of 8%. A motion was made, duly seconded and passed that an across-the-board raise of 8% be approved for employees effective the pay period beginning December 28, 1981.

IV. COMMITTEE REPORTS:

1. Medical Staff Executive Committee Report: Dr. Davidov presented the following issues for the Board's review and approval:

A. Dr. Small's Application for Reappointment: After review of all materials and information requested regarding the reapplication of Dr. Small, a motion was made, seconded and carried to appoint him to provisional staff.

B. New Applications: The following applications for appointment to the medical staff were reviewed and determination for each made as outlined.

Harold Facen - Internal Medicine/Pulmonary Medicine: A motion was made, seconded and carried to appoint Dr. Facen to the Provisional staff.

Kamlesh Gupta, M.D. - Internal Medicine/Oncology: A motion was made, seconded and carried to appoint Dr. Gupta to the Provisional staff.

David Harvan, M.D. - Ophthalmology: A motion was made, seconded and carried to appoint Dr. Harvan to the Provisional staff.

Moon Lee, M.D. - Anesthesiology: A motion was made, seconded and carried to appoint Dr. Lee to the Provisional staff.

Sohini Patel, M.D. - Physical Medicine/Rehabilitation: A motion was made, seconded and carried to appoint Dr. Patel to the provisional staff.

Joseph Afram, M.D. - General Surgery: A motion was made, seconded and carried to appoint Dr. Afram to the Provisional Staff.

Teddy Cohen, D.P.M. - Podiatry: A motion was made, seconded and carried to appoint Dr. Cohen to the Provisional Staff.

David I. Tossman, D.P.M. - Podiatry: A motion was made, seconded and carried to appoint Dr. Tossman to the Provisional Staff.

TAUBER 01916

J.APP.4558

MINUTES
BOARD OF DIRECTOR'S MEETING
DECEMBER 2, 1981
PAGE FIVE

C. PROMOTION OF PROVISIONAL STAFF: The following files were presented as each physician has completed his/her one year of provisional staff membership:

Charles Emich, M.D. - Orthopaedic Surgery - Courtesy Staff
Janet Hutcheson, M.D. - Radiology - Active Staff
Ian Shenk, M.D. - Internal Medicine/Gastroenterology - Active Staff
Richard Robbins, D.P.M. - Podiatry - Courtesy Staff
Jorge Modino, M.D. - Orthopaedic Surgery - Courtesy Staff
Roger Wigton, M.D. - Internal Medicine/Pulmonary Medicine - Courtesy Staff

A motion was made, duly seconded and carried to promote the above physicians to their respective staff status as indicated above.

D. NO PROMOTION TO STAFF STATUS: The following files were presented with a Nonreappointment Status for the reasons stated below:

Robert Quinn, M.D. - General Practice- Due to health reasons, Dr. Quinn did not wish to be reappointed.

Jamal Aria, M.D. - A motion was made, seconded and carried not to promote Dr. Aria as he had not enough admissions/consults.

Ek S. Lou, M.D. - A motion was made, seconded and carried not to promote Dr. Lou as he had not enough admissions/consults.

E. ADDITIONAL DELINEATION OF PRIVILEGES: Raymundo Alfonso, M.D. - Emergency Medicine. The additional privileges of Dr. Alfonso to include Emergency Medicine were reviewed, and a motion was made, seconded and carried to approve as requested.

F. REAPPOINTMENT OF DEPARTMENT OF SURGERY MEMBERS: Dr. Davidov submitted the recommendation as submitted by the Chief of Surgery for reappointment of members of the Department of Surgery. Dr. Davidov read the recommendation in which there will be removal from the staff of approximately 40 physicians for failure to utilize the Hospital, as well as other physicians being removed for other reasons. The Board reviewed the recommendations, a motion was made, duly seconded and unanimously carried to approve the recommendations as submitted on Attachment.

TAUBER 01917

J.APP. 4559

MINUTES
BOARD OF DIRECTOR'S MEETING
DECEMBER 2, 1981
PAGE SIX

G. Dr. Davidov advised the Board of the 1982 Medical Staff Officers elected. They are as follows:

Dr. Michael Davidov	President
Dr. Lucio Luccioli	Vice President
Dr. N. Desai	Secretary
Dr. R. Ware	Treasurer

H. PROPOSED REVISION OF ARTICLE 5 OF THE MEDICAL STAFF BYLAWS:
Dr. Davidov presented the proposed revision of Article 5 of the Medical Staff Bylaws, Rules and Regulations as approved by the Executive Committee and Medical Staff. Following a lengthy review of the proposed amendments, a motion was made, duly seconded and unanimously carried to approve the amendments attached hereto these minutes.

I. DEPARTMENT OF SURGERY CHIEF'S RECOMMENDATION REGARDING DR. NOVAK: Dr. Davidov read a letter from Dr. Tauber who recommended a revision in Dr. Samuel Novak's clinical privileges. Dr. Davidov advised the Board that the Executive Committee approved the recommendation and asked the Board for their approval. Following a discussion concerning the recommendation, a motion was made, duly seconded and carried to revised Dr. Novak's privileges as recommended on Attachment.

J. ROTATION OF CHIEF OF OPHTHALMOLOGY SECTION: Dr. Tauber made a recommendation to rotate the Chairmanship of the Ophthalmology Section of the Department of Surgery. Following a discussion, a motion was made, duly seconded and carried that effective January 1, 1982, the Chairmanship will rotate to another member of the Ophthalmology Section.

2. ADMINISTRATOR'S OPERATION SUMMARY REPORT: Mr. Wright submitted the Administrator's Operation Summary Report for the months of September, October and November. Following a review of the reports, the Board thanked Mr. Wright.

3. SAFETY COMMITTEE REPORT: Mr. Wright submitted the report from the October Safety Committee attached hereto these minutes. The Board discussed Item II, Section A. The Board agreed that due to existing parking problems that overnight parking for Hospital patients will not be permitted.

4. QUALITY ASSURANCE: Mr. Wright presented the Fourth Quarterly Report from the Quality Assurance Committee which defined problem areas and action taken by the Committee. Several questions were asked concerning Problem 2. Mr. Wright informed the Board that he has been advised of the recommendation, but since the hospital is considering a lease arrangement, we do not want to add personnel to the payroll.

TAUBER 01918

MINUTES
BOARD OF DIRECTOR'S MEETING
DECEMBER 2, 1981
PAGE SEVEN

5. There being no further business, the meeting was adjourned at 7:30 P.M.

Respectfully submitted:

Laszlo N. Tauber, M.D.
LASZLO N. TAUBER, M.D.
Secretary

TAUBER 01919

J.APP.4561

M I N U T E S

JEFFERSON CORPORATION OF ALEXANDRIA
ANNUAL STOCKHOLDERS MEETING
AND
BOARD OF DIRECTORS MEETING

- I. DATE: JANUARY 12, 1983
- II. TIME AND PLACE: 1:00 P.M., SUITE 2-C
4600 King Street
Alexandria, Virginia

II. ATTENDANCE:

Stockholders:

Nils Antezana, M.D.
Samuel Burtoff, M.D.
Tony Butera, DPM
Michael Davidov, M.D.
Narendra Desai, M.D.
Magdolna Iranyi, M.D.
Reginald McManus, M.D.
Leslie L. Peters, M.D.
R. F. Sappington, Jr., M.D.
Judith Small
Laszlo N. Tauber, M.D.

Others present:

Bruce Burtoff, M.D.
Roger Scully, Esquire
Dallas P. Wright

IV. CALL TO ORDER:

Dr. Peters called the meeting to order at 1:00 p.m. He welcomed the stockholders to the annual meeting and stated that the agenda to be followed was on the table before everyone. The Secretary determined that from the attendance list and proxies on hand that 88.8 % of the shares were represented. The Secretary verified the number of shares to be voted by each stockholder present, in person and by proxy, from the attached list. The proxies held by Dr. Tauber are attached hereto.

V. READING OF THE MINUTES.

Dr. Peters called for the reading of the minutes from the last meeting. A motion was made, seconded and passed to waive the reading of the minutes.

VI. ELECTION OF THE BOARD OF DIRECTORS AND OFFICERS OF THE CORPORATION:

Dr. Peters stated that the next item for consideration on the agenda was the election of Directors to serve during the forthcoming year. Dr. Peters presented the nominees of management as follows:

Leslie L. Peters, M.D. Chairman
Samuel Burtoff, M.D.
Laszlo N. Tauber, M.D.
R. F. Sappington, Jr., M.D.
Lucio Luccioli, M.D.
Michael Vlahos, M.D.

TAUBER 06586
EX. 860

Reginald R. McManus, M.D.
Leslie P. Gondor, M.D.
Abraham A. Coster, M.D.
Michael Davidov, M.D.
Tony Butera, DPM
Bruce Burtoff, M.D.
Magdolna Iranyi, M.D.

Dr. Peters then asked if any other stockholder had a slate or wished to nominate any other person to be a Director. There were no nominations from the floor and the Chairman declared the nomination closed. A motion was made by Dr. Sappington and seconded by Dr. Samuel Burtoff that the slate of directors as presented by management be elected by acclamation. The motion carried unanimously. Dr. Peters thanked the stockholders for his re-election as Chairman and stated that there would be a meeting of the Board of Directors immediately following this meeting for the purpose of electing officers of the corporation. Dr. Tauber requested that the Board meeting be combined with the stockholders meeting, and Dr. Peters asked if any one present objected. All present signified their approval. Dr. Peters then said that on the table before everyone was a list of the officers of the past year. Dr. Tauber made a motion that the same officers be nominated to serve another year as follows:

Leslie L. Peters, M.D.	President
Samuel Burtoff, M.D.	Vice President
Laszlo N. Tauber, M.D.	Secretary
R.F. Sappington, Jr., M.D.	Vice President for Medical Affairs
Lucio Luccioli, M.D.	Treasurer

Dr. Davidov seconded the motion. Motion carried unanimously.

VII. OTHER BUSINESS:

1. Dr. Peters stated that the By-laws were in need of technical corrections to be consistent with the new status of the hospital under the lease arrangement. He said that the basic By-laws had several amendments which were directed at specific aspects of the operation of the hospital and were either no longer necessary or no longer consistent with the responsibilities of the Corporation under the lease arrangement. A motion was made, seconded and passed to amend the By-laws as presented in draft form which essentially suspends the previous amendments for the duration of the lease agreement.

2. Dr. Tauber reviewed for the stockholders and Board of Directors the construction activities of the past year and plans for the coming year. He reported that the Annex off Beauregard Street had been completed and he believed it to be a profitable addition to the hospital. He stated the first level contained three offices for physicians or groups of physicians. One was occupied by Dr. Freedman and his group, another occupied by Doctors Won Ro and Kyung Lee, and the other by Dr. Desai. The other two levels contained 64 parking spaces. In addition, several other parking spaces were added to the outside parking areas. Dr. Tauber explained that the building had been financed by the Joint Venture partnership but it was of major interest to the Corporation stockholders as its presence strengthens the value of the lease of the hospital by providing needed parking facilities and providing space for physicians who are committed to the utilization of the hospital.

3. Dr. Tauber said that he also plans to build an addition over the East-West nursing wing which would provide enough space to move cardiology, Physical Therapy, and some offices from the Medical Office Building so as to free some space that could be used to bring in some more physicians who would utilize the hospital. He said that the remainder of the building had not been firmly

TAUBER 06587

J.APP. 4563

committed but it would have the capacity to be converted to 50 or 60 beds if a certificate of need could be obtained. He said that he was pursuing two or three other options for use of the hospital or other possible uses if these were not possible. Dr. Tauber said that although he had informed the stockholders and Board previously, he would appreciate having their continued support of continuing the building as originally envisioned at the time of the lease of the hospital. A motion was made, seconded and passed to give Dr. Tauber support for construction of the addition over the present nursing wing. Dr. Tauber thanked them for their support and said that he believed it was in the best interest of the stockholders to complete the project as envisioned in the over-all lease arrangements.

4. Dr. Tauber said that Dr. Kirschner had rented space in the Medical Office Building for his group's private radiological practice and was operating a CAT scan which was more convenient for the hospital patients than other scans in the area and that Dr. Kirschner was interested in also contracting with Health Group to run the radiology service for the hospital. He said that the Group was very highly qualified and would commit themselves to maintain the latest state-of-the-art equipment. He said that the present radiology group had several months yet to go on the present contract with Health Group, but he would like the support of the Board and stockholders for him to recommend to Health Group that Dr. Kirschner's group take the contract at the expiration of the present contract. A motion was made by Dr. Iranyi and seconded by Dr. Samuel Burtoff that the Board recommend to Health Group that Dr. Kirschner and his Group be selected to take the contract for running the Radiology Service of the Hospital at the expiration of the present contract. The motion passed unanimously. It was further recommended that Dr. Caldwell be allowed to continue with the new group if he desired to do so.

5. Dr. Tauber said that there had been some individuals recommending to him that the Emergency Room physicians not be allowed to have a private practice. There was some discussion as to the merits or lack of merit of the proposal. Dr. Iranyi made a motion that it be recommended to Health Group that the Emergency Room physicians not be allowed to accept patients in a private office. Dr. Tauber said that he thought that those who now have a private practice should not be required to give up their practice since there is no guarantee that the ER position will continue indefinitely and it could be a very real hardship on the physician if he gave up his private practice and then lost his ER position also. Dr. Iranyi then modified the motion to apply only to future ER physicians hired in a full time status. Motion was seconded and passed.

6. There being no further business, the meeting adjourned at 2:30 p.m.

Respectfully submitted,

Laszlo N. Tauber, M.D.
Secretary

TAUBER 06588

AMENDMENT XI.

This amendment will be added immediately following Amendment X.

Amendments I through X are suspended for the duration of the lease agreement with Health Group, Inc, dated 11th of February 1982 . In the event of termination of the lease agreement, and if Jefferson Corporation resumes operation of the Jefferson Memorial Hospital, these amendments will be reinstated and become effective immediately upon resumption of the operation of the hospital.

This amendment was adopted at the Board of Directors Meeting on January 12, 1983.

LASZLO N. TAUBER, M.D.
Secretary

TAUBER 06589

J.APP. 4565

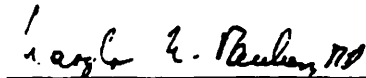
JEFFERSON CORPORATION OF ALEXANDRIA

4600 KING STREET, ALEXANDRIA, VIRGINIA 22302
TELEPHONE 703/931-2800

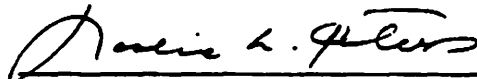
NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

The annual meeting of the stockholders of Jefferson Corporation of Alexandria will be held at the Registered Office of Business, 4600 King Street, Alexandria, Virginia on Wednesday, January 12, 1983 at 1:00 p.m. for the following purposes:

1. To elect a Board of Directors:
 - a. Nominations from Management
 - b. Nominations from the floor
2. To transact such other business as may properly come before the meeting.



LASZLO N. TAUBER, M.D.
Secretary



LESLIE L. PETERS, M.D.
President

Alexandria, Virginia
December 17, 1982

PROXY STATEMENT

The attached proxy is furnished in connection with the solicitation of proxies by Management for use at the Annual Meeting of Stockholders to be held on January 12, 1983. You can insure that your shares are voted at that meeting by signing and returning the attached proxy in the envelope provided. Sending in the signed proxy will not affect your right to attend this meeting and vote in person. A Stockholder who gives a proxy may revoke it at anytime before it is exercised.

TAUBER 06590

J.APP. 4566

JEFFERSON CORPORATION OF ALEXANDRIA

4600 KING STREET, ALEXANDRIA, VIRGINIA 22302
TELEPHONE 703/831-2600

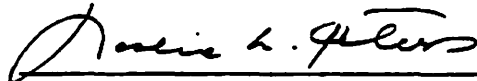
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LASZLO N. TAUBER, M.D.
Secretary



LESLIE L. PETERS, M.D.
President

Alexandria, Virginia
December 17, 1982

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TAUBER 06591

J.APP. 4567

JEFFERSON CORPORATION OF ALEXANDRIA

ANNUAL STOCKHOLDERS MEETING
January 12, 1983

AGENDA

- I. CALL TO ORDER
- II. DETERMINATION OF STOCKHOLDERS PRESENT IN PERSON AND BY PROXY
- III. ANNOUNCEMENT OF QUORUM
- IV. READING OF THE MINUTES OF THE PREVIOUS STOCKHOLDERS *meeting*
- V. ELECTION OF BOARD OF DIRECTORS *unanimous*
- VI. OTHER BUSINESS
- VII. ADJOURNMENT

TAUBER 06592

J.APP. 4568

BOARD OF DIRECTORS MEETING
JEFFERSON CORPORATION OF ALEXANDRIA
January 12, 1983

AGENDA

- I. OLD BUSINESS:
 - 1. None
- II. NEW BUSINESS:
 - 1. Election of ~~aospital~~ Corporation Officers Dr. Peters
- III. OTHER BUSINESS:
- IV. ADJOURNMENT:

TAUBER 06593

J.APP. 4569

JEFFERSON MEMORIAL HOSPITAL CORPORATION
SPECIAL STOCKHOLDER'S MEETING
JANUARY 15, 1982

AGENDA

- I. CALL TO ORDER
- II. DETERMINATION OF STOCKHOLDERS PRESENT
- III. VERIFICATION OF PROXIES
- IV. BUSINESS:
 1. Consideration and vote by the Stockholders on a resolution of the Board of Directors approving the terms and conditions of a Lease Agreement covering Jefferson Memorial Hospital between the corporation as Lessor and the Health Group of Virginia, Inc. as Lessee, and ratifying the execution of said Lease Agreement by the President.
 2. Consideration and vote by the stockholders on a resolution of the Board of Directors approving the amendment of the corporation's Certificate of Incorporation so as to change its corporate name to Jefferson Corporation of Alexandria, and authorizing the President to execute all instruments necessary to effect said amendment.
- V. ADJOURNMENT

TAUBER 03989

Ex. 861

J.APP. 4570

JEFFERSON MEMORIAL HOSPITAL CORPORATION
SPECIAL STOCKHOLDER'S MEETING
JANUARY 15, 1982

AGENDA

- I. CALL TO ORDER
- II. DETERMINATION OF STOCKHOLDERS PRESENT
- III. VERIFICATION OF PROXIES
- IV. BUSINESS:
 1. Consideration and vote by the Stockholders on a resolution of the Board of Directors approving the terms and conditions of a Lease Agreement covering Jefferson Memorial Hospital between the corporation as Lessor and the Health Group of Virginia, Inc. as Lessee, and ratifying the execution of said Lease Agreement by the President.
 2. Consideration and vote by the stockholders on a resolution of the Board of Directors approving the amendment of the corporation's Certificate of Incorporation so as to change its corporate name to Jefferson Corporation of Alexandria, and authorizing the President to execute all instruments necessary to effect said amendment.
- V. ADJOURNMENT

TAUBER 03959

J.APP. 4571

MINUTES
SPECIAL MEETING OF THE
STOCKHOLDERS
JEFFERSON MEMORIAL HOSPITAL

- I. Date: January 15, 1982
- II. Time and Place: 12:30 P.M.
- III. Attendance:

a. Present:

Leslie L. Peters, M.D.	President
Samuel Burtoff, M.D.	Vice President
Laszlo N. Tauber, M.D.	Secretary
Richard F. Sappington, M.D.	
Tony Butera, D.P.M.	
Lucio Luccioli, M.D.	
Reginald P. McManus, M.D.	
A.A. Coster, D.P.M.	
Harold J. Goald, M.D.	
Walter L. Scheetz, M.D.	
Nils Antezana, M.D.	
Melvin Small, M.D.	
George Ware, M.D.	
Stanley Spund, D.P.M.	
Narendra Desai, M.D.	

b. Guests Present:

Bruce Burtoff, M.D.
Ken Bialek
J. Thorpe Richards, Esquire
Malcolm Mitchell, Esquire
Dallas Wright, Acting Administrator

- IV. CALL TO ORDER: The special meeting of the Stockholders was called to order at 12:30 P.M. on January 15, 1982 in the Jefferson Memorial Hospital Board Room, Suite 2C, by the Secretary, Dr. Laszlo N. Tauber. The Secretary determined from the signed Stockholder attendance list and proxies on hand that a quorum was present. The Secretary verified the number of shares to be voted by each Stockholder present, in person and by proxy, from the attached list. The Secretary also noted those stockholders and the shares owned by each who had given their proxies to John Thorpe Richards. The aforesaid proxies held by Mr. Richards are attached hereto.

TAUBER 03960

V. BUSINESS DISCUSSED:

1. Dr. Tauber introduced Mr. Richards who read the first Resolution to the stockholders concerning the leasing of the hospital by Jefferson Memorial Hospital Corporation to Health Group of Virginia, Inc. Following a discussion, a motion was made by Dr. Sappington, seconded by Dr. Luccioli to adopt the resolution. Following another

MINUTES
SPECIAL STOCKHOLDER'S MEETING
JANUARY 15, 1982
PAGE TWO

discussion, a vote was taken. Mr. Richards voted the proxies assigned to him in favor of the resolution. Dr. Scheetz voted "no" and Dr. Goald abstained from voting. All other Stockholders present in person voted in favor of the resolution. The resolution was therefore adopted as read and attached hereto.

2. Mr. Richards read the second resolution to the Stockholders concerning the amendment of the Corporation's Certificate of Incorporation so as to change its corporate name to Jefferson Corporation of Alexandria, and authorizing the President to execute all instruments necessary to effect said amendment. A motion was made by Dr. Sappington and seconded by Dr. Small to adopt the resolution. Mr. Richards explained the reason and need to change the name. Following a discussion, a vote was taken. Mr. Richards voted the proxies assigned to him in favor of the resolution. Dr. Scheetz abstained from voting and all other Stockholders present in person voted in favor of the resolution. The resolution was therefore adopted as read and attached hereto.

3. The affidavit showing that notice of this meeting was timely mailed is attached hereto.

VI. There being no further business, the meeting was adjourned at 1:30 P.M.

Respectfully submitted:

Laszlo N. Tauber, M.D.
LASZLO N. TAUBER, M.D.
Secretary

TAUBER 03961

J.APP. 4573

JANUARY 15, 1982

(Please sign in)

George William Ward
Emily Spencer
Nesbitt

Coming Selling

! *Handwritten signature*

Butter

Amelia

H. H. Munson

A. A. Carter

Ben Burkh

1000

H. Galor

W. J. Street, Jr.

W. H. B. (H. B. B.)

Hubert M. Allen

TAUBER 03962

J.APP. 4574

JUNE 30, 1961

STOCKHOLDERS

	SHARES OF STOCK	PERCENT OF STOCK	PROXY REC'D	PRESENT
Als Antezana, M.D. <i>Als Antezana</i>	507	.0023362		
Dhas Bashier, M.D.	2,744	.0126442		
Jim Bialek <i>Bialek</i>	5,242	.0241548	X	
Ed Bialek	5,242	.0241548		
Clwyn Lottinick, D.P.M.	333	.0015344		
Samuel Burtoff, M.D., Trust <i>Burtoff</i>	18,554	.0854956	X	
Donny C. Butera, D.P.M. <i>Butera</i>	281	.0012948	X	
L. Corrado, M.D.	16,467	.0758788		
J. A. Coster, D.P.M., Ltd., Retirement Trust <i>Coster</i>	3,043	.0140219	X	
Leszlo Csatory, M.D.	5,665.5	.0261063	X	
Michael Davidov, M.D., and Associates, Ltd., Employee Benefit Trust	8,057	.0371261	X	
J. Morgan Delaney, M.D.	974	.0044881		
Preendra G. Desai, M.D. <i>Desai</i>	400	.0018432		
Win Freedman, M.D.	4,641	.0213854	X	
Gold Gould, M.D. <i>Gold Gould</i>	1,010	.0046540		
Gold Gould, M.D., Ltd., Employee Benefit Trust Fund	1,015	.0046771		
Ellie Gindler, M.D.	33,604	.1548450	X	
Li and Tzu-Min Kao, M.D.	750	.0034560	X	
Stephen Kauffman, M.D.	259.5	.0011958	X	
Israel Kogan, M.D. <i>Kogan</i>	1,667	.0076814		
Leo Lucciolli, M.D. <i>Lucciolli</i>	8,544	.0395702	X	
W. and P. R. McManus, M.D. <i>McManus</i>	3,953.5	.0182175	X	
El Miller, D.P.M.	50	.0002304	X	
J. Nicholson, M.D.	8,617	.0397066	X	
Ellie Peters, M.D. <i>Peters</i>	155	.0007142	X	

MINUTES

SPECIAL MEETING OF THE
BOARD OF DIRECTOR'S MEETING
JEFFERSON MEMORIAL HOSPITAL

- I. Date: January 15, 1982
- II. Time and Place: 12:00 Noon
Suite 2C
- III. Attendance:
- a. Present:
- | | |
|-----------------------------|-------------------------|
| Leslie L. Peters, M.D. | Chairman |
| Laszlo N. Tauber, M.D. | Secretary |
| Samuel Burtoff, M.D. | Vice Chairman |
| Bruce Burtoff, M.D. | Member |
| Richard F. Sappington, M.D. | Member |
| Reginald P. McManus, M.D. | Member |
| A.A. Coster, D.P.M. | Member |
| Tony Butera, D.P.M. | Member |
| Lucio Luccioli, M.D. | Member |
| Harold J. Goald, M.D. | Member |
| Michael Vlahos, M.D. | Member |
| J. Thorpe Richards | Attorney |
| Malcolm Mitchell | Attorney |
| Dallas P. Wright | Assistant Administrator |
- b. Absent:
- | | |
|-----------------------|--------|
| Leslie Gondor, M.D. | Member |
| Magdolna Iranyi, M.D. | Member |
| Michael Davidov, M.D. | Member |
- IV. CALL TO ORDER: Dr. Peters announced that there are 11 members present which constitutes a quorum and the meeting would proceed with business.
- V. BUSINESS DISCUSSED:
1. Dr. Peters introduced Mr. Mitchell and requested Mr. Mitchell to read the attached Resolution to the Board concerning the leasing of Jefferson Memorial Hospital to the Health Group of Virginia, Inc. Following a discussion, a motion was made, duly seconded and carried to adopt the Resolution.
 2. Waivers of Notice of this meeting signed by all members of the Board are attached hereto.
 3. There being no further business, the meeting was adjourned at 12:20 P.M.

Respectfully submitted:

Laszlo N. Tauber

LASZLO N. TAUBER, M.D.
Secretary

TAUBER 01887

Ex. 862

J.APP. 4576

RESOLUTION OF THE BOARD OF DIRECTORS
OF JEFFERSON MEMORIAL HOSPITAL CORPORATION

RESOLVED that the leasing of Jefferson Memorial Hospital to the Health Group of Virginia, Inc. for a term of ten years for an annual rental of not less than \$635,000.00 for years one-two, \$760,000.00 for years three-five, and for the years six-ten: the greater of (i) \$1,000,000.00 per year or (ii) \$760,000.00 per year plus an amount equal to \$760,000.00 multiplied by one-half of the CPI increase from January, 1982 to December, 1986 plus whatever additional rent the Board considers best for the corporation is deemed expedient and for the best interests of the corporation and, accordingly, be and the same hereby is approved; that the Board of Directors recommends the Stockholders approve the leasing of the Hospital and that the lease be approved with such definitive terms and conditions as the Board of Directors may later determine are in the best interests of the corporation.

TAUBER 01888

J.APP. 4577

RESOLUTION OF THE BOARD OF DIRECTORS
OF JEFFERSON MEMORIAL HOSPITAL CORPORATION

RESOLVED that the leasing of Jefferson Memorial Hospital to the Health Group of Virginia, Inc. for a term of ten years for an annual rental of not less than \$635,000.00 for years one-two, \$760,000.00 for years three-five, and for the years six-ten: the greater of (i) \$1,000,000.00 per year or (ii) \$760,000.00 per year plus an amount equal to \$760,000.00 multiplied by one-half of the CPI increase from January, 1982 to December, 1986 plus whatever additional rent the Board considers best for the corporation is deemed expedient and for the best interests of the corporation and, accordingly, be and the same hereby is approved; that the Board of Directors recommends the Stockholders approve the leasing of the Hospital and that the lease be approved with such definitive terms and conditions as the Board of Directors may later determine are in the best interests of the corporation.

TAUBER 01889

JEFFERSON MEMORIAL HOSPITAL CORPORATION
BOARD OF DIRECTOR'S MEETING
JANUARY 15, 1982

ATTENDANCE LIST

(Please sign in)

R. F. Jennings

Robert L. ...

...

...

...

...

...

...

TAUBER 01890

J.APP. 4579

I. DATE: FEBRUARY 8, 1982

II. TIME AND PLACE: 12:30 P.M.
4600 King Street, Suite 2-C
Alexandria, Virginia

III. ATTENDANCE:

IV. CALL TO ORDER: The special meeting of the Stockholders and Board of Directors was called to order at 12:30 p.m., February 8, 1982, in the Boardroom Suite 2-C, 4600 King Street, Alexandria, Virginia, by the Chairman/President Leslie L. Peters. The Secretary, Dr. Tauber, determined from the attendance list that 85.4 % of the shares were represented by those present and that a quorum of the stockholders was present. Dr. Peters announced that nine members of the Board of Directors were present which constitutes a quorum for conducting business by the Board.

VI. BUSINESS DISCUSSED: Dr. Peters requested Dr. Tauber to report on the negotiations underway for leasing the hospital. Dr. Tauber reported that the negotiations were proceeding with Health Group, Inc., of Nashville, Tennessee and that there was general agreement on the major provisions of the lease and that the attorneys on both sides were putting it together in legal terms so that we can go over it point by point and paragraph before submitting it to the Board of Directors and Stockholders for final approval. Dr. Tauber then reviewed the major provisions of the lease and answered several questions from attendees who had missed previous meetings or who had specific questions about the arrangements. Dr. Tauber explained that the Corporation would have certain continuing responsibilities such as the monitoring of the activities for compliance with the provisions of the lease, maintaining the official records

J.APP. 4580

and paying interest on the bonds. He stated that Dallas Wright had agreed to continue to serve as Acting Administrator during the transition and then resign from the hospital and work part time for the corporation. Dr. Peters will continue to oversee the activities as President of the Corporation. Dr. Tauber explained that there were over half a million dollars in long term bonds outstanding which pay 8% interest and require regular payments into a sinking fund to pay of the bonds at maturity. Dr. Tauber said that he estimated that these continuing functions together with auditing services, etc., would require approximately \$100,000.00 in expenses each year which would be provided from the on-going lease payments from Health Group, Inc. A motion was made, duly seconded and passed to approve continuation of the negotiations and to give Dr. Tauber and Dr. Peters authority to finalize all the details of agreement with Health Group, Inc., and the JMH Joint Venture for submitting to the stockholders for final approval.

Dr. Tauber provided attendees additional information on the plans for the proposed new building which he said would be a combination medical office building and parking structure. At least one floor would be physicians' offices. He said that Dr. Freedman and Associates would lease approximately 5,000 square feet of the building leaves approximately 4,000 square feet for other medical offices and that he (Dr. Tauber) will search for others to bring in.

Dr. Tauber explained that the Corporation's lease of the land and buildings from the JMH Joint Venture would be assumed by Health Group and he envisioned an amendment to the lease wherein the Joint Venture would waive it's right to cancel the lease for the duration of the lease with Health Group and additionally would include an obligation for the Joint Venture to build the new building which was planned and also to build an additional floor over the nursing wing if a permit can be obtained. He further said that the Joint Venture would obligate itself to pay off the mortgage on the land and buildings of more than \$1,250,000 when it balloons in January 1984 for which the Corporation had pledged additional collateral. He said that for simplicity, each member of the Joint Venture would be assessed \$12,500 for each one percent ownership in order to pay off the mortgage. For those who will pay now, he would put the money into a Certificate of Deposit paying around fourteen or fifteen percent interest so that \$925,000 now into the CD would be almost enough to pay off the mortgage at maturity. Dr. Tauber proposed that stockholders who want to either join in the financing of the new building or to pay into a CD for paying off their share of the mortgage be authorized to have shares of stock in the Corporation redeemed at \$7.00 per share. Dr. Tauber said that he was also considering some methods of prepaying the sinking fund for bonds that were outstanding to provide some assurance of paying off the bonds at maturity. One method Dr. Tauber said that he was considering was also putting money into a CD in an arrangement where the CD's would mature coinciding with the maturity date of the bonds. However, this was only one of several ways to provide for this and it was only tentative, and he would like some flexibility at this time in order to work out an arrangement to the best interests of the stockholders. Dr. Tauber asked if there was enough interest by the stockholders to proceed in the plan to offer redemption of stock. Several said definitely yes; some said probably yes. Dr. Scheetz said that he was undecided. A motion was made by Dr. Burtoff that the Corporation be authorized to redeem stock at \$7.00 per share upon request with the priorities as follows: first priority to those shareholders who are not members of the Joint Venture and who want to participate in the Venture. Second priority those with less than 5% interest in the Venture and want to participate. Third, those who have between 5 and 10 percent interest and want to participate. Fourth, all others. The motion was seconded by Dr. Sappington. A discussion followed. A question was raised as to those who would put money into a CD for paying of the mortgage. It was explained that they would be in the fourth priority "all others". After further discussion, the President/Chairman called for a vote. Dr. Scheetz abstained. All others voted yes. Dr. Peters declared the motion passed.

Dr. Tauber discussed a possible recapitalization of the Corporation where there would be both voting and non-voting stock. He said that if it became desirable to sell some non-voting stock that he would present it to the Board of Directors at the appropriate time and it would then be presented to the stockholders for approval. This was not resolved and was left for future consideration.

VII. There being no further business, the meeting adjourned at 2:45 P.M.

Respectfully submitted,

Laszlo N. Tauber, M.D.
Secretary

TAUBER 01880

J.APP. 4582

Mr. Wright,

These are attachments
for the February 8th
Board and Stockholders
Meeting.

Thanks.
Peggy

TAUBER 01881

J.APP. 4583

January 27, 1982

MEMORANDUM:

TO: BOARD OF DIRECTORS AND STOCKHOLDERS OF JEFFERSON MEMORIAL HOSPITAL
RE: SPECIAL MEETING OF BOARD OF DIRECTORS AND STOCKHOLDERS

This is to advise you that a Special Meeting of the Board of Directors and Jefferson Memorial Hospital Corporation Stockholders will be held on Monday, February 8, 1982 at 12:30 P.M., in Suite 2C. All Board members and Stockholders are requested to attend this important meeting.

The Agenda for the meeting is:

1. Sale versus Lease of Jefferson Memorial Hospital Corporation.

Any Board member or Stockholder may request advance information on the issue by contacting Mr. Wright, Acting Administrator.

Thank You,

Laszlo N. Tauber, M.D.

LASZLO N. TAUBER, M.D.
Secretary

LNT:pc

TAUBER 01882

J.APP. 4584

February 8, 1982

STOCKHOLDERS

<u>NAME</u>	<u>SHARES OF STOCK</u>	<u>PERCENT OF STOCK</u>
Nils Antezana, M.D. <i>Nils Antezana</i>	507	.0023362
Abbas Bashier, M.D.	2,744	.0126442
Sam Brulek <i>Sam Brulek</i>	5,242	.0241548
Ted Brulek <i>Ted Brulek</i>	5,242	.0241548
Selwyn Bottinick, D.P.M.	333	.0015344
Samuel Bortoff, M.D., Trust <i>S. Bortoff</i>	18,554	.0854956
Tony C. Butera, D.P.M. <i>T. Butera</i>	281	.0012943
M. Corrado, M.D. <i>M. Corrado</i>	16,467	.0755788
A. A. Coster, D.P.M., Ltd., Retirement Trust	3,043	.0140219
Laszlo Csatory, M.D.	5,665.5	.0261063
Michael Davidov, M.D., and Associates, Ltd., Employee Benefit Trust <i>M. Davidov</i>	8,057	.0371261
W. Morgan Delaney, M.D.	974	.0044887
Marandra G. Desai, M.D. <i>M. Desai</i>	400	.0018432
Irvin Freedman, M.D.	4,641	.0213884
Harold Gail, M.D.	1,010	.0046340
Harold Gail, M.D., Ltd., Employee Benefit Trust Fund	1,015	.0046771
Leslie Gander, M.D. <i>Leslie Gander</i>	33,604	.1548450
Funel and Lou-Min Kao, M.D.	750	.0034560
Stephen Kauffman, M.D.	259.5	.0011959
Israel Kogan, M.D.	1,067	.0048814
James Macerotti, M.D. <i>James Macerotti</i>	8,544	.0389762
E. M. and F. R. McManus, M.D. <i>E. M. and F. R. McManus</i>	3,933.5	.0182111
Joel Miller, D.P.M.	50	.0002314
Ray Nicholson, M.D. <i>Ray Nicholson</i>	8,017	.0367984
Robert L. P. ... <i>Robert L. P. ...</i>	155	.0007041

STOCKHOLDERS, CONTINUED:

<u>NAME</u>	<u>SHARES OF STOCK</u>	<u>PERCENT OF STOCK</u>
John Pulizzi, M.D.	10	.0000461
Richard F. Sappington, Jr., M.D., Inc. <i>Trust</i>	11,099	.0511435
W. and J. Scheetz, M.D.	507	.0023362
Michael Small and Trust	1	.0000046
Michele Small and Trust	1	.0000046
Stanley Spund, D.P.M.	333	.0015344
Tauber Foundation, Inc. <i>by Hazel G. Tauber, M.D.</i>	17,260	.0795329
Laszlo Tauber, M.D. <i>Hazel G. Tauber, M.D.</i>	51,991	.2395711
George W. Ware, M.D.	4,039.5	.0186138
	<hr/> 217,017.0	<hr/> 100.0000000

TAUBER 01884

J.APP. 4586

TO: BOARD OF DIRECTORS

RE: ADMINISTRATOR'S OPERATION SUMMARY REPORT FOR
PERIOD ENDING December 1981

DESCRIPTION

	REPORT MONTH	PRIOR MONTH	FY TO DATE	PRIOR FY TO DATE
	DEC	NOV	1981	1980
I. <u>PATIENT CENSUS DATA:</u>				
A. Percent Occupancy	78.2%	88.0%	91.4%	85.2%
B. Average Daily Census	94	106	110	102
C. Number of Admissions	410	453	2733	2487
D. Average Length of Stay	7.5	7.2	7.4	7.5
II. <u>REVENUE AND EXPENSES:</u>				
A. Total Patient Charges	1,158,286	1,219,786	7,992,871	6,876,354
B. Deductions from Pt. Charges	85,351	196,874	1,203,837	1,117,248
C. Net Patient Charges	1,072,935	1,022,912	6,789,034	5,759,106
D. Total Hospital Operat. Expenses	1,071,076	1,019,877	6,446,660	5,480,781
E. Net Income Before Adjustments	1,859	3,035	342,374	278,325
III. <u>RECEIVABLES, PAYABLES, COLLECTIBLES:</u>				
A. Total Pt. Accts. Receivable	2,415,931	2,464,913	--	2,416,633
B. Discharged Pt. Accts. Receivable	1,967,531	1,959,451	--	1,977,850
C. Accounts Payable	717,588	614,451	--	637,602
D. Cash Collections	1,108,565	1,128,048	6,755,106	977,529
E. Last 60 Day Average Collections	37,276	39,614	--	33,716
IV. <u>CASH ACCOUNTS ON DEPOSIT</u>				
A. Cash in Checking Account	21,534	(135,301)	--	(124,479)
B. Cash on Deposit-Reserve	--	--	--	----
C. Cash on Deposit, Bond Redempt.	138,819	135,494	---	87,515

TAUBER 01885

J.APP. 4587