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**Volume XX**

Volume VI - February 8, 2000 - Oral Argument regarding expert testimony of Thomas E. Reed

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

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COMMONWEALTH OF VIRGINIA, et al., :

Complainants, :

v. :

LASZLO N. TAUBER, et al., :

Respondents. :

In Chancery

No.: 96-1241

VOLUME VI

- - - - -x

Alexandria, Virginia

Tuesday, February 8, 2000

The above-entitled matter came on for hearing  
before the Honorable Alfred P. Swersky, Judge, in and  
for the Circuit Court of the City of Alexandria,  
Virginia, 520 King Street, Courtroom 4, Alexandria,  
Virginia, beginning at 2:00 p.m., before Eva M.

Bridget, Verbatim Reporter, when there were present on  
behalf of the respective parties:

APPEARANCES:

On Behalf of the Complainants:

MARC E. BETTIUS, ESQ.

DEBRA FITZGERALD-O'CONNELL, ESQ.

INA C. CHARVET, ESQ.

Lawson & Frank

6045 Wilson Boulevard, Suite 100

Arlington, VA 22205

RICHARD S. SCHWEIKER, JR., ESQ.

Assistant Attorney General

Office of the Attorney General

900 Main Street

Richmond, VA 23219

ANTHONY J. TRENGA, ESQ.

Miller & Chevalier, Chartered

655 15th Street, Suite 900

Washington, DC 20005

On Behalf of the Respondents Tauber, et al.:

STEPHEN G. COCHRAN, ESQ.

JAMES KINSEL, ESQ.

The Jefferson Law Firm, P.L.C.

6862 Elm Street, 7th Floor

McLean, VA 22101

GASPARE J. BONO, ESQ.

Long, Aldridge & Norman, L.L.P.

701 Pennsylvania Avenue, N.W.

Suite 600

Washington, DC 20004

BARBARA BEACH, ESQ.

Beach and Associates

416 Prince Street

Alexandria, VA 22314

PHILIP HIRSCHKOP, ESQ.

Hirschkop & Associates

108 North Columbus Street

Alexandria, VA 22314

KEVIN M. O'DONNELL, ESQ.

Henry & O'Donnell, P.C.

4103 Chain Bridge Road, Suite 100

Fairfax, VA 22030

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

MR. HIRSCHKOP: If Your Honor, please,  
Mr. O'Donnell is not here. I did see him in the hall.  
Do you want me to step out to see if I can find him?

THE COURT: Mr. O'Donnell has a matter in  
front of Judge Haddock. He talked with me earlier and  
he's agreed to allow this matter to proceed. He'll be  
in as quickly as he can.

Mr. Bettius?

MR. BETTIUS: I call Mr. Reed.

MR. COCHRAN: Your Honor, before he calls  
Mr. Reed, I have an objection to his testifying at all.  
I'd like to pass up a scheduling order which was  
entered in this case.

Mr. Reed was identified by the deadlines set  
forth in that scheduling order. His existence was  
identified. What he was going to say was not  
identified, and that was required by the terms of that  
order, the identification under Rule 4:1(B). So I  
would object on that basis to any testimony that he  
would have to offer.

MR. BETTIUS: May I be heard, Your Honor?

THE COURT: Yes, sir.

1 MR. BETTIUS: Both parties --

2 THE COURT: Just a minute, please.

3 Mr. Reed, would you step outside for just a  
4 moment, please?

5 MR. BETTIUS: We don't have a rule, Your  
6 Honor.

7 THE COURT: Go ahead, Mr. Bettius.

8 MR. BETTIUS: Your Honor, both parties have  
9 been working on a stipulation. The -- we have not  
10 exchanged reports in anticipation that both parties  
11 would testify. If this is a violation of that  
12 understanding, I'm going to tell you I frankly feel  
13 totally spun if they're going to prevent this witness  
14 from testifying. Up until two or three days ago,  
15 everybody's been working on a stipulation. We've had  
16 the experts working together trying to come to a  
17 stipulation. Their witness has been working with my  
18 witness and my witness has been working with their  
19 witness.

20 If you want to go by the scheduling order,  
21 Your Honor, they may be right. But I'm going to tell  
22 you it violates everything that's been going on between  
23 counsel. It violates everything that's been going on

1 between the witnesses.

2 THE COURT: Mr. Cochran?

3 MR. COCHRAN: Your Honor, if the Court  
4 please, I had every reason and I'm sure Mr. Bettius had  
5 reason to think we were going to work out a  
6 stipulation. As I said at the end of the day  
7 yesterday, we had been asking for whatever the proposed  
8 stipulation would be. We didn't get it until last  
9 night when it was handed to me. It's dated February 1.

10 Perhaps if we had gotten it last week, we  
11 could sit down with our appraiser and say, okay, are  
12 there problems here. The problem is that you've got so  
13 many different parcels owned by so many different  
14 parties, and you've got some of it leased. It's  
15 exceedingly difficult to sit down overnight with an  
16 expert and figure out whether -- do we agree that even  
17 these parcels are at issue in this case. We didn't get  
18 it. I would have been happy to do it. If we had  
19 gotten it last week, we wouldn't have this problem.  
20 But we didn't get it and I have to object on that  
21 basis.

22 THE COURT: Have you seen the appraisal,  
23 Mr. Cochran?



1 MR. COCHRAN: I've seen his report, which is  
2 not an appraisal. It's a valuation, kind of a  
3 short-form, two-page valuation. So he concedes in the  
4 report that it's not a formal appraisal.

5 MR. BETTIUS: They also had his deposition  
6 scheduled and canceled it, Your Honor. Up until the  
7 time we started this trial, that's where this issue  
8 was. I've given them the report. My witness has been  
9 working with his witness on a day-by-day basis. I  
10 don't know if they've been in touch with their witness  
11 or not.

12 Hold me to the scheduling order. I don't  
13 know what the scheduling order says with respect to  
14 this, Your Honor. It is a total spin.

15 THE COURT: What's the purpose of his  
16 testimony, Mr. Bettius?

17 MR. BETTIUS: Your Honor, there's been some  
18 testimony that the value of the hospital was 12.7 in  
19 1992. It wasn't. In addition, Your Honor, the issue  
20 of the value of what was returned to the Respondents  
21 and who owns what, I think, is of some interest to the  
22 Court.

23 If it doesn't aid the Court's inquiry, what

1 the property was worth -- this isn't my accounting. I  
2 think the Respondents continually forget that. This is  
3 their accounting. If they don't want these assets  
4 accounted for, I mean, I can understand that.

5 But they're the ones who commingled the  
6 assets. If they didn't want the Court to know it,  
7 Your Honor, it may actually operate to my benefit.  
8 I've wondered overnight if we should put the testimony  
9 on.

10 I think my purpose here is to inform the  
11 Court and not to obfuscate the facts. If these people  
12 don't want the value of the assets determined, that's  
13 fine, because I don't think they've done it yet.

14 There are two aspects to this accounting,  
15 Your Honor, and we own two-thirds of the property, I  
16 believe. I think it helps the Court to have a complete  
17 picture. If they don't want the Court to have any idea  
18 -- and I don't know if they're going to call their  
19 witness or not -- but I couldn't, in good conscience,  
20 having practiced law before this Court as many years as  
21 I have, had two witnesses working together up until  
22 yesterday or the day before to try to come to some  
23 stipulation, have the witnesses' depositions scheduled

1 and canceled, and not have the Court want to know.

2 Your Honor, I'm going to be guided by what  
3 you want to do in this matter.

4 THE COURT: As I understand it, Mr. Cochran,  
5 Mr. Reed's name was on the list, but they just didn't  
6 spell out --

7 MR. COCHRAN: They didn't say what his  
8 testimony would be. Your Honor, his deposition was  
9 canceled, at least in part, because I was told he  
10 didn't have a report ready. As you can see or will  
11 see, he's done a report as of just a week ago.

12 I mean, I don't know what the purpose is here  
13 for the appraiser. If I thought that this was a big  
14 issue, I would certainly do everything I could to find  
15 a happy compromise. I don't think it is.

16 If this Court has to conclude or does  
17 conclude that some portion of this is already owned by  
18 the charity, I expect we're looking at a partition suit  
19 before you can go any further. And I don't know what  
20 an appraisal is going to do to guide us or assist us in  
21 that regard.

22 Perhaps we can have some discussion that has  
23 a broader range of values. But the problem is that

1 there's leased land here and we can't tell, and  
2 probably will have some difficulty in telling, even  
3 after Mr. Reed testifies -- as to how he is treating  
4 that. I mean, his numbers aren't so far off what we  
5 think are appropriate numbers.

6 But we are really prejudiced by the fact that  
7 we were handed this last night. And I understand  
8 Mr. Bettius' concerns, and I hate to stand up here and  
9 say I object. But I didn't get it last week. I could  
10 have gotten it last week and this would not be a  
11 problem.

12 MR. BETTIUS: I never got a rebuttal report  
13 from Mr. Cobb, either, Your Honor. I just want to know  
14 what's sauce for the goose, I hope, is sauce for the  
15 gander. I never saw Mr. Cobb's rebuttal report.

16 THE COURT: I'm going to sustain the  
17 objection. One of the things we have done with as much  
18 consistency as any Court could do among the three  
19 judges here is to enforce these pretrial orders. Maybe  
20 it would have been in an abundance of caution,  
21 Mr. Bettius, to have identified what Mr. Reed was going  
22 to -- the purpose of his testimony, as is required.  
23 But I'm going to adhere to the consistency in this case

1 and I will sustain the objection.

2 MR. BETTIUS: Yes, sir. I totally  
3 understand. There will be a similar objection to  
4 Mr. Cobb's rebuttal.

5 THE COURT: All right.

6 MR. BETTIUS: Your Honor, that's our case and  
7 we're moving in our exhibits. I apologize to Mr. Reed.

8 THE COURT: All right. Mr. Cochran?

9 MR. COCHRAN: Your Honor, if Mr. Bettius is  
10 resting, probably more for the record than to hear  
11 myself talk for about two minutes, I would move to  
12 strike his evidence on two bases.

13 Number one, Mr. Wilson testified yesterday  
14 that the income that was generated from '65 through '82  
15 was necessary to reinvest in the operations of the  
16 hospital. That's contrary to what Ms. Moore says, and  
17 she bases her calculations upon his accounting.

18 So to the extent that the accounting contains  
19 \$13 million as the present value of the net income for  
20 that period of time, you know, I think it has got to  
21 fall, because even Mr. Wilson doesn't accept the theory  
22 that it's being predicated upon.

23 In a more significant way, Your Honor, is his



1 testimony about the license. I'm sure the Court  
2 noticed where we were coming from in our objections and  
3 our questions. But that was a valuation determination.  
4 And as a valuation determination, he is not competent  
5 to have offered it.

6 So his accounting and his testimony as to the  
7 value to be placed upon the Inova settlement simply has  
8 no expert foundation. We would object on that basis  
9 and move to strike the entire accounting.

10 THE COURT: Does other counsel join in, I  
11 assume? Mr. Bono, Ms. Beach?

12 MR. BONO: Yes, Your Honor.

13 THE COURT: I'll join in for Mr. O'Donnell.  
14 The motion will be denied.

15 MR. BETTIUS: Your Honor, I have a motion as  
16 well.

17 THE COURT: All right.

18 MR. BETTIUS: I would like at this time to  
19 renew my motion to strike their accounting. I think  
20 it's apparent, at this point in time, that no  
21 accounting's been rendered.

22 As I said at the outset, this is a motion for  
23 a new trial. There have been hypothetical --

1           THE COURT: Let me interrupt you for a  
2 minute. Mr. Cochran, do you intend to call Mr. Cobb in  
3 rebuttal?

4           MR. COCHRAN: I do.

5           THE COURT: I'll hear the rebuttal evidence  
6 first, and then I'll consider your motion.

7           MR. BETTIUS: I'm going to object to him,  
8 Your Honor. I've seen no report from him as to his  
9 rebuttal. There has been no indication of what his  
10 rebuttal testimony's going to be. The testimony was,  
11 prior to this, that he had never reviewed the report.  
12 As far as I'm concerned, Your Honor, there's no  
13 designation that indicates that he's going to rebut  
14 that I've seen. If it goes for Mr. Reed, it goes for  
15 Mr. Cobb.

16           MR. COCHRAN: Your Honor, rebuttal testimony  
17 has traditionally not been the subject of any  
18 disclosure. I don't have to disclose what my rebuttal  
19 is.

20           THE COURT: It is in this Court, but  
21 sometimes you can't do it until you call him. I'll  
22 allow you to call him.

23           I'll note your objection, sir.

1 MR. COCHRAN: I'd like to call Mr. Cobb.

2 THE COURT: Mr. Cobb, if you would come to  
3 the stand, you're still under oath, sir.

4 Let me characterize it, Mr. Cochran, by  
5 saying I would not let you call an unidentified expert  
6 in rebuttal.

7 MR. BETTIUS: That's exactly what he is, Your  
8 Honor.

9 THE COURT: He's been deposed, probably a  
10 number of times.

11 MR. BETTIUS: When he was deposed --

12 THE COURT: All right, Mr. Bettius.

13 MR. BETTIUS: May I state it for the record,  
14 Your Honor?

15 THE COURT: Yes, sir.

16 MR. BETTIUS: When he was deposed, he  
17 indicated he had not done rebuttal.

18 THE COURT: Go ahead, Mr. Cochran.  
19 Whereupon,

20 ARTHUR H. COBB  
21 was re-called as a witness and, after having been  
22 previously duly sworn by the Clerk of the Court, was  
23 examined and testified as follows:

1 REDIRECT EXAMINATION

2 BY MR. COCHRAN:

3 Q Mr. Cobb, as part of your work on this case  
4 did you analyze the hospital facilities?

5 A I did.

6 Q What did you do in that regard?

7 A Starting back in 1966, I made consideration  
8 of the hospital facilities, visited the facilities,  
9 I've toured the facilities, made considerations of size  
10 by square footage of the various operations, and  
11 ancillary services provided within the facility.

12 Q And did you also evaluate the staff of  
13 Jefferson Memorial Hospital?

14 A I did.

15 Q And what did you do in that regard?

16 A Starting back three years ago, I made  
17 considerations of the size of the medical staff, the  
18 specialties represented, the admitting patterns. There  
19 was testimony at the last trial regarding the nature of  
20 the physician group and practices in Northern Virginia,  
21 so I had considered the inter-dynamics, if you will, of  
22 the medical staff and their practices at Jefferson.

23 Q What did you do, if anything, to analyze the

1 service area of Jefferson Memorial Hospital?

2 A I'd identified a primary and a secondary  
3 service area -- and that included descriptions of that  
4 in my first report -- the primary service area being  
5 the City of Alexandria and Arlington County, the  
6 secondary service area being Fairfax County. I was  
7 also aware of other admissions from the Commonwealth of  
8 Virginia, greater Commonwealth, and from the  
9 Washington, D.C. Metropolitan Area.

10 I made considerations of populations,  
11 demographics, and then in relation to that, looking at  
12 other hospitals, I made considerations of admission  
13 patterns and utilization patterns.

14 Q And in that regard did you also look at  
15 competitors in the marketplace for health care  
16 services?

17 A I did.

18 Q And what did you do in that regard?

19 A I identified other hospitals, Jefferson,  
20 Alexandria, Arlington, National Orthopedic, Northern  
21 Virginia Doctors, Commonwealth in Fairfax. I got  
22 statistics regarding beds, admissions, occupancy  
23 measures starting in 1971 and going through, as I



1 recall, about 1995.

2 MR. BETTIUS: Your Honor, I'm going to  
3 object. He's not going to put in a value that he  
4 didn't put in in the case in chief.

5 MR. COCHRAN: No, sir.

6 MR. BETTIUS: That's exactly what it appears  
7 he's going to do. There was no testimony that he  
8 valued the staff or the value of the work force in  
9 place. Trying to put that in now and saying that he  
10 analyzed it, unless it comes to zero, this testimony  
11 has no value at all, because he's now supplying  
12 testimony that should have come in in the case in  
13 chief.

14 THE COURT: Let me permit it. If it's not  
15 appropriate, Mr. Bettius, I'll strike it. I've got to  
16 hear it.

17 BY MR. COCHRAN:

18 Q Mr. Cobb, did either Ms. Moore or Mr. Wilson  
19 do any of the analyses that you've just reviewed?

20 A Not that I've identified or shows in their  
21 reports.

22 Q Did you see anything in either one of their  
23 reports that suggested they did any of their analyses?

1 MR. BETTIUS: They never claimed to, Your  
2 Honor, and we'll stipulate they didn't.

3 THE COURT: All right.

4 BY MR. COCHRAN:

5 Q Were you present yesterday during Ms. Moore's  
6 testimony?

7 A I was.

8 Q She indicated that net income would generally  
9 be a lower number than cash in the bank at the end of  
10 the fiscal year. Is that an accurate statement as far  
11 as it applies to the net income reflected either on  
12 your accounting or that of Mr. Wilson?

13 MR. BETTIUS: Your Honor, I'm going to object  
14 to him saying what she said and then having this  
15 witness respond to it. It's not appropriate to quote  
16 another witness' testimony as if it's quoted from the  
17 record and then have the witness respond to it. He can  
18 ask him whether this net income was less or not, but  
19 that's a very improper question.

20 THE COURT: Rephrase the question.

21 BY MR. COCHRAN:

22 Q Do you recall what this witness said  
23 yesterday?

1 MR. BETTIUS: I'm going to object that, Your  
2 Honor.

3 THE COURT: Just ask him the question about  
4 whether or not net income is less than the cash in the  
5 bank that he saw.

6 BY MR. COCHRAN:

7 Q Is, in fact, net income, as it's reflected on  
8 either your accounting or Mr. Wilson's accounting, more  
9 or less than the cash in the bank?

10 A It depends by year. There are a number of  
11 years where it is lower, the net income is lower than  
12 the cash, and that's because the cash is being, in  
13 effect, absorbed or not coming through due to increases  
14 in accounts receivable and then the cash is being  
15 applied to various purchases such as supplies,  
16 equipment and the like.

17 Q As part of your accounting, did you do a cash  
18 summary?

19 A In effect, yes. It's included in the balance  
20 sheet analysis that we did where we took the beginning  
21 balance sheet, we took the earnings amount and made the  
22 various postings to identify the changes that had been  
23 made year to year in the balance sheet accounts.

1           Q     If Ms. Moore had wanted to present value  
2 actual net --

3           MR. BETTIUS: I'm going to object to him  
4 referring to Ms. Moore's testimony and having this  
5 witness do it this way. He can ask direct questions  
6 about whether something's true or not.

7           THE COURT: Finish the question, Mr. Cochran.

8           MR. COCHRAN: If the Court please, Mr.  
9 Bettius did this all day long for about three days, but  
10 I'll rephrase the question.

11          BY MR. COCHRAN:

12          Q     Mr. Cobb, could you -- I take it based upon  
13 your testimony you could have established how much cash  
14 was in the bank at the end of each fiscal year?

15          A     It was reported in the various financial  
16 statements as to how much was for JMHC. In my analysis  
17 I've gone through '82, similar to Mr. Wilson, and have  
18 identified hospital operation amounts and then have  
19 brought those forward in the balance sheets, which  
20 allowed calculation estimation of the cash balances  
21 related to operations.

22          MR. BETTIUS: I'm going to object to  
23 estimations, Your Honor. This is precisely the point.

1 He creates balance sheets and creates income  
2 statements. They have no reflection to the actual  
3 income statements or balance sheets. It's  
4 hypothetical.

5 When he adjusts his hypothetical, he can make  
6 the cash come out any way he wants to.

7 THE COURT: Objection's overruled.

8 BY MR. COCHRAN:

9 Q Is there anything hypothetical about the  
10 analysis that you've just discussed, Mr. Cobb?

11 A As I use the word hypothetical, yes.

12 Q How is it hypothetical?

13 A What I set out to do, at least through '82,  
14 and what Mr. Wilson set out to do, is to make  
15 determinations of the earnings of JMHI under the  
16 assumption or the presumption that JMHI and JMHA had  
17 never gone together. Those amounts can, in effect, be  
18 extracted from JMHC's financial statements.

19 So we have a resulting -- I'll use the income  
20 statements. We have resulting income statements, mine  
21 or Mr. Wilson's, that are, in effect, operating  
22 statements or JMHI statements. But JMHI, no one  
23 prepared JMHI's statements in concurrent time periods.



1           So to that extent I would characterize, and  
2    -- I don't know how legally the word flows back and  
3    forth, but I would characterize the statements that I  
4    prepared, that Mr. Wilson prepared, as being  
5    hypothetical.

6           MR. BETTIUS: Your Honor, I object. It just  
7    runs contrary to the total operations of the hospital  
8    and that magic figure of non-cash expenditures, because  
9    they were taking deductions -- the actual operations in  
10   terms of creation of these balance sheets has nothing  
11   to do with the way the hospital actually operated its  
12   deductions, its expenses or its actual cash in the bank  
13   based on -- and its available funds throughout the year  
14   based on non-cash expenditures. It's totally  
15   hypothetical.

16           THE COURT: Objection's overruled.

17           MR. COCHRAN: Thank you, Your Honor.

18           BY MR. COCHRAN:

19           Q    If JMHC had invested all of its net income  
20   each year outside of ongoing operations, what, if  
21   anything, would have happened to its ability to  
22   continue to operate?

23           MR. BETTIUS: Speculative.

1 THE COURT: Objection's overruled.

2 THE WITNESS: The information indicates that  
3 it's only -- likely that it would have had to cease  
4 operations earlier than it did in 1982.

5 BY MR. COCHRAN:

6 Q Are you familiar with hospitals that are set  
7 up with a separate ownership entity and a separate  
8 operating entity?

9 A Yes.

10 Q Where could we find these kinds of -- sources  
11 for these kinds of information?

12 A There are many places. The -- for example,  
13 the financial statements for the hospital companies  
14 that were considered in the last trial by myself, by  
15 Mr. Kettler, by Mr. Riley, include disclosures of  
16 acquisitions, of hospitals that were made by Extended  
17 Care, HCA and the like.

18 Those very financial statements in that time  
19 period include disclosures of hospitals that had  
20 operating companies that leased and operated  
21 facilities, that leased and operated facilities on top  
22 of land.

23 MR. BETTIUS: Two objections. Foundation,

1 we're not dealing with charities here, we're dealing  
2 with private hospitals. My second objection, Your  
3 Honor, this doesn't rebut anything that was put on  
4 yesterday. It doesn't rebut our case in chief. The  
5 witness is now trying to buttress his previous  
6 testimony issued in direct. It has nothing to do with  
7 previous testimony.

8 THE COURT: How is this rebuttal?

9 MR. COCHRAN: If the Court please, Mr. Wilson  
10 testified with some degree of absoluteness that he had  
11 never heard of any such structure or if he had, it was  
12 awfully unusual. So it's appropriate rebuttal to his  
13 testimony.

14 MR. BETTIUS: Your Honor, not many charities  
15 are publicly traded, and that's my objection.

16 THE COURT: Objection's overruled.

17 BY MR. COCHRAN:

18 Q Did you finish your answer, Mr. Cobb?

19 A No, but I forgot where I was and I was pretty  
20 much done anyway.

21 Q How much equipment did JMHC lease in the 1965  
22 through 1982 time period, in general?

23 A The footnotes to the JMHC June 30, 1980

1 financial statements, for example, show leases with RCA  
2 for television and remote patient units, with General  
3 Electric for x-ray equipment, lessors, monitoring  
4 equipment for intensive care, a contract with Kenneth  
5 R. Fox, M.D. for ophthalmic equipment, and a lease with  
6 First Virginia Bank leasing department and Continental  
7 Bank of Illinois that included 11 leases for various  
8 types of hospital equipment.

9 So there were equipment leases that covered  
10 various of the departments, various of the equipment  
11 used by the hospital.

12 Q How apparent, if at all, from the financial  
13 statements were these numerous equipment leases?

14 A They're disclosed in the footnotes starting  
15 in the early '70s through '81, '82.

16 Q Is there anything unusual about a hospital  
17 leasing equipment like this?

18 A Not at all.

19 Q If we assume that JMHC should have received  
20 all of the income from HGV and Inova, what are the tax  
21 implications?

22 A If we assume which entity received the  
23 payments?

1 Q JMHC.

2 A JMHC, as a taxable entity, would have had to  
3 report those amounts --

4 MR. BETTIUS: Objection, theoretical and,  
5 Your Honor, speculative. And I want to get into this  
6 issue with him. They're going to open it up. I really  
7 want to talk about it, Your Honor, because JMHC paid no  
8 taxes on this money. This is a theoretical analysis.

9 All taxes paid were actually honored. This  
10 is the largest red herring in the case. They're  
11 setting themselves up now as the taxing authority, if  
12 you listen to them. They're not saying -- they're  
13 saying if they had done what they should have done,  
14 they would have paid taxes.

15 The issue is, all taxes have been accounted  
16 for and they're now setting up a taxing authority and  
17 asking for credit, Your Honor, for money that they  
18 never distributed, and if they did distribute it, they  
19 distributed it to individuals or they expensed it  
20 within the company.

21 So they're creating a hypothetical tax and  
22 withdrawing it.

23 THE COURT: I'll overrule the objection.



1 That's your argument as to what weight, if any, I  
2 should give to that evidence, Mr. Bettius.

3 THE WITNESS: JMHC, as a taxpaying entity,  
4 the revenues that they received would have been subject  
5 to taxes.

6 BY MR. COCHRAN:

7 Q What was the tax rate that Mr. Riley applied  
8 to such revenues at the first trial?

9 A Mr. Riley looked at hospital revenues and he  
10 had a tax rate, I believe, and he changed it, of about  
11 49 percent that he carried forward for all years.

12 Q How does your number as to net income through  
13 1982 compare to that of Mr. Wilson's, now that all of  
14 the revisions have been done?

15 A There's not a great dollar difference. There  
16 are some -- I think the biggest conceptual difference  
17 is Mr. Wilson's position that there would not be  
18 incremental taxes, because Mr. Wilson's honoring only  
19 the taxes that have been paid.

20 I'm looking at JMHC, JMHI as a taxable entity  
21 and then I'm taxing them. So in concept I think that's  
22 a big difference. In dollars and cents, at least  
23 through 1982, it's not a big difference. It is

1 thereafter.

2 Q After Mr. Wilson includes the \$700,000 in  
3 lease payments, does his number end up being lower or  
4 greater than your number?

5 A I don't follow your question.

6 MR. BETTIUS: What number?

7 MR. COCHRAN: As of 1982.

8 MR. BETTIUS: Your Honor, the question is  
9 nonsensical, with all due respect.

10 THE COURT: Do you understand the question,  
11 Mr. Cobb?

12 THE WITNESS: No.

13 THE COURT: All right. Repeat it.

14 BY MR. COCHRAN:

15 Q What is the total net income that you believe  
16 had accrued as of 1982?

17 A The summation of it?

18 Q The summation.

19 A I'd have to add that up, because I took the  
20 net incomes and took them through the balance sheet. I  
21 can do that for you.

22 Q Let me pass up, if I might, Exhibit EE in  
23 which you listed what those figures were.

1           A     All right.

2           Q     You describe it as equity. What is that  
3 equity number on EE, Mr. Cobb?

4           A     As I said when we were looking at the slides,  
5 I started with the June 30, 1971 Jefferson Memorial  
6 Hospital, Inc. balance sheet. I then made the  
7 determinations regarding income in a similar fashion to  
8 Mr. Wilson's year to year to year for '72 through '82.

9                   I took those earnings and looked at the  
10 changes those earnings would cause and the other  
11 balance sheet amounts and went through the accounting  
12 cycle of debits and credits so that I had not only  
13 annual operating statements, income statements, but  
14 annual balance sheets.

15                   The equity amount, that would be the total  
16 assets minus the total liabilities, and I've considered  
17 each of the total assets and the total liabilities, the  
18 net amount of those is referred to as equity. So for  
19 June 30, 1973, the equity indicated is \$224,517, and  
20 that becomes a balance sheet amount.

21                   I also made considerations, as we went  
22 through a little bit with Mr. Bono, of the market  
23 values for those amounts. I also had previously, in

1 the last trial, made determinations about the fair  
2 market value as of June 30, 1971, June 30, 1973 and  
3 June 30, 1975.

4 Q Mr. Wilson describes his number as adjusted  
5 net income. Is there any significant difference in  
6 your two approaches?

7 A Through 1982 -- Mr. Wilson started with the  
8 income statements in 1965. I started with the balance  
9 sheet in 1971. The 1971 balance sheet has, in effect,  
10 an accumulation of the losses before. So although  
11 we're different in how we approach 1965 through 1971,  
12 by the time you get to 1971 through the accounting  
13 model, there's not a large dollar difference.

14 We then made similar adjustments, and as I  
15 said, the biggest conceptual adjustment, at least in my  
16 opinion, is the different treatment of taxes.

17 The only other now remaining difference is  
18 the \$221,000 common stock in the -- JMHC. There  
19 couldn't have been common stock in JMHI, so we treated  
20 it as debt and assigned a cost to that debt --

21 MR. BETTIUS: Your Honor, this is all --

22 THE COURT: I've heard this, Mr. Cochran.

23 BY MR. COCHRAN:

1 Q We don't have to get into that, Mr. Cobb.

2 Do you have an opinion as to whether or not  
3 rents, maintenance -- and maintenance costs after 1994  
4 are appropriate to deduct from any income that JMHC  
5 made in the --

6 MR. BETTIUS: Your Honor, that's also been  
7 asked and answered. He's really now putting his case  
8 back on.

9 THE COURT: I just don't recall that. I  
10 don't have that kind of memory, number one, and was it  
11 gone into before?

12 MR. COCHRAN: It was gone into somewhat. It  
13 was also gone into by Mr. Wilson, Your Honor.

14 MR. BETTIUS: But in addition --

15 THE COURT: Is it the same as his direct  
16 testimony?

17 MR. COCHRAN: Yes, sir.

18 THE COURT: I have that. All right.

19 BY MR. COCHRAN:

20 Q By using 1971 as a starting point for the  
21 valuation, in what ways, if any, does Ms. Moore's  
22 report inflate the total amount that she claims is due?

23 A Ms. Moore started with income streams from

1 1971. That does not take into consideration the lost  
2 stream from 1965 coming forward, and doesn't take into  
3 account, and this is similar, the negative equity that  
4 existed in 1971.

5 Q And does that inflate or deflate the number  
6 that she comes up with?

7 A It makes the number higher.

8 Q Did your office analyze the fees and costs  
9 incurred in the litigation between the hospital and  
10 Inova that resulted in the 1994 agreement?

11 MR. BETTIUS: Objection, there's no  
12 foundation in reasonableness for any of these fees.  
13 They haven't been testified to, the reasonableness of  
14 them hasn't been established. It's all hypothetical,  
15 Your Honor, and I'm going to object to it.

16 There's no supporting evidence put in in his  
17 case in chief. He's now trying to put in evidence of  
18 what these expenses were when it wasn't put in in his  
19 case in chief and I object to it.

20 THE COURT: What is it rebuttal to, Mr.  
21 Cochran?

22 MR. COCHRAN: Your Honor, number one, my case  
23 in chief and my testimony through Mr. Cobb only went

1 through 1982 in the first place, the Complainants have  
2 put on their accounting claiming it should go through  
3 2005. I think it's appropriate for him to testify as  
4 to whether or not the fees and costs incurred in the  
5 litigation are appropriate and correct deductions to  
6 take from any income.

7 MR. BETTIUS: Your Honor, his accounting went  
8 through 2005. Counsel elected to cut it off at 1982.  
9 If Your Honor has any doubt about that, you can look at  
10 it.

11 In addition, I took the year 2005 all through  
12 his testimony. He was asked direct questions about  
13 whether these were legitimate expenses. We're coming  
14 up now for five days. If he elects to cut the  
15 presentation off in his case in chief, he has no right  
16 to come back at this point in the trial and start to  
17 put in objective evidence of what costs are to be  
18 considered by this Court as legitimate parts of his  
19 accounting and I object to it.

20 Put on the support of his accounting in his  
21 case in chief. He can't put support for his accounting  
22 on in the rebuttal, Your Honor.

23 THE COURT: Would you say, Mr. Cochran, that

1 because of the manner in which you presented your case  
2 in chief and the manner in which the Commonwealth  
3 presented its case that you can now come back and offer  
4 rebuttal evidence on everything from '82 through 2005?

5 MR. COCHRAN: Your Honor, I think that I  
6 could. The accounting that Mr. Cobb did only carried  
7 through 1992, and these are 1994 expenses. So it would  
8 not have been appropriate. It would be beyond his  
9 accounting for me to get into those. We don't agree  
10 that the accounting should extend beyond '73, Your  
11 Honor. That's where we predicated our case and we put  
12 forth some of the alternate scenarios.

13 But I think since they have clearly advanced  
14 this to 2005, it's an appropriate rebuttal question.

15 MR. BETTIUS: In his case in direct often he  
16 asked this very witness were there substantial expenses  
17 incurred, and he can't offer objective evidence that  
18 he's going to ask the Court to consider as part of his  
19 accounting in his case in rebuttal, Your Honor. It's  
20 just beyond the pale and we object to it.

21 THE COURT: I'll overruled the objection.

22 MR. BETTIUS: Your Honor, in addition I'd  
23 like to point the Court to his accounting which has



1 operations through 2005.

2 THE COURT: I understand. Go ahead, Mr.  
3 Cochran.

4 MR. COCHRAN: Thank you, Your Honor.

5 MR. BETTIUS: Again, Your Honor, by way of  
6 foundation, there's no foundation as to the  
7 reasonableness of these expenses.

8 THE COURT: I understand.

9 MR. BETTIUS: They've not been presented.

10 THE COURT: These are actual expenses?

11 MR. COCHRAN: These are actual bills, Your  
12 Honor.

13 (Whereupon, Respondents'  
14 Exhibit No. W was marked  
15 for identification.)

16 BY MR. COCHRAN:

17 Q Mr. Cobb, let me hand to you Exhibit W. Are  
18 those the bills for attorneys fees and expenses  
19 incurred in the Inova litigation that your office  
20 reviewed or analyzed?

21 MR. BETTIUS: They are, at best, hearsay,  
22 Your Honor. There's no documentation --

23 THE COURT: Almost everything in the

1 accounting is hearsay, Mr. Bettius.

2 MR. BETTIUS: Your Honor.

3 THE COURT: That's one of the things experts  
4 can consider.

5 MR. BETTIUS: Well, Your Honor, they may have  
6 spent \$4 million in legal fees. That doesn't mean  
7 they're reasonable and that they're appropriate.

8 THE COURT: I understand. Go ahead, Mr.  
9 Cochran.

10 BY MR. COCHRAN:

11 Q Are those the bills that you analyzed, Mr.  
12 Cobb?

13 A These are the bills that were provided that  
14 we summarized, yes.

15 Q What is your opinion as to whether these are  
16 appropriate expenses to deduct from any income received  
17 after 1994?

18 MR. BETTIUS: How can he have such an  
19 opinion, Your Honor, as to whether they were  
20 appropriate or not?

21 THE COURT: You're talking about appropriate  
22 from an accounting standpoint?

23 MR. COCHRAN: Yes, sir.

1 THE COURT: As opposed to the reasonableness  
2 of the charges?

3 MR. COCHRAN: That's correct, Your Honor.

4 MR. BETTIUS: I object, Your Honor. I don't  
5 think it's appropriate.

6 THE COURT: Objection's overruled.

7 THE WITNESS: I think it would be appropriate  
8 to reduce amounts for the costs incurred to generate  
9 those amounts, including legal costs.

10 BY MR. COCHRAN:

11 Q Did the Complainant's accounting identify  
12 assets and liabilities of JMHI at any point in time?

13 A No.

14 Q If you don't identify assets and liabilities,  
15 how, if at all, can you calculate the measure of  
16 accretion on those assets?

17 A I'm not sure that you can. You can calculate  
18 earnings on those assets, but that may not show all of  
19 the pluses and minuses.

20 MR. BETTIUS: Your Honor, that's not  
21 rebuttal. That came out in his original testimony that  
22 he didn't do it.

23 THE COURT: I thought I heard some of that,

1 didn't I, Mr. Cochran?

2 MR. COCHRAN: Your Honor --

3 THE COURT: I can't remember all of the  
4 specifics over the last five or six days.

5 MR. COCHRAN: No, sir.

6 MR. BETTIUS: I asked him on the stand in  
7 cross-examination did he do accretions. He pulled out  
8 the order and said he'd never been shown the order.

9 THE COURT: I recall that. Go ahead, Mr.  
10 Cochran.

11 BY MR. COCHRAN:

12 Q Did your accounting identify and value assets  
13 and liabilities of JMHI?

14 A Yes.

15 Q In what way did you do that?

16 A We started with the opening balance sheet of  
17 JMHI and then we looked at operations related to JMHI  
18 and brought forward balance sheets --

19 MR. BETTIUS: It's reiteration of --

20 THE COURT: I've heard this, I know.

21 MR. COCHRAN: Your Honor, but I don't think  
22 you heard the additional testimony that this is  
23 evidence of assets and liabilities and accretions

1 thereon.

2 MR. BETTIUS: The witness tried to say that  
3 his hypothetical would reach this by his valuation.  
4 That's exactly what he said in direct, Your Honor.

5 THE COURT: I'll let you go a little bit, Mr.  
6 Cochran, but we're not going to repeat it all.

7 MR. COCHRAN: Okay, Your Honor.

8 BY MR. COCHRAN:

9 Q Very briefly, Mr. Cobb, what do those balance  
10 sheets reflect?

11 A They reflect the assets and the liabilities  
12 on an annual basis from our accounting, which would be  
13 attributable to JMHI hospital operations.

14 Q How did they reflect any accretions in the  
15 assets?

16 A They reflect the increases in assets as they  
17 occurred, reported in JMHC's balance sheets, and then  
18 thereafter based on earnings.

19 Q Do the balance sheets reflect net or gross  
20 assets?

21 A Both.

22 Q As part of the work that you undertook to do,  
23 did you calculate approximately how much space was

1 covered by the 1966 lease?

2 MR. BETTIUS: That was asked and answered,  
3 Your Honor, and then he went into how he apportioned  
4 them based --

5 THE COURT: I recall that. I could almost  
6 give you the numbers, I suspect.

7 BY MR. COCHRAN:

8 Q Could either the HGV or the Inova leases have  
9 been done if the additions that were built after 1966  
10 were not included?

11 MR. BETTIUS: Asked and answered, Your Honor.  
12 This is all part of his case in direct. It's all part  
13 of his apportionment of rents.

14 MR. COCHRAN: Your Honor, I don't think the  
15 question was asked at any point on direct.

16 MR. BETTIUS: It was, Your Honor. He asked  
17 him how he got, after 1982, apportioning the fourth  
18 floor. He asked him what was built, what wasn't built,  
19 what was under the '66 lease. Mr. Cobb's testimony was  
20 it wasn't under the '66 lease, because obviously they  
21 didn't exist at the time of the '66 lease.

22 They're retrying their case.

23 THE COURT: Go ahead, Mr. Cochran.

1 BY MR. COCHRAN:

2 Q Can you remember the question, Mr. Cobb?

3 A No.

4 Q Could either the HGV or Inova leases have  
5 been concluded if the additions built after 1966 were  
6 not included?

7 A Not to my knowledge.

8 Q Was Mr. Wilson's testimony that the \$35  
9 million --

10 MR. BETTIUS: I'm going to object to him  
11 repeating the testimony of Mr. Wilson and asking him to  
12 opine on it.

13 MR. COCHRAN: Your Honor, I --

14 THE COURT: Go ahead and finish the question.

15 MR. COCHRAN: Let me finish the question. I  
16 would ask Mr. Bettius both not to interrupt me and  
17 please don't make objections during the middle of  
18 answer. If he has an objection, he should make it --

19 THE COURT: He knows how. Go ahead and  
20 finish the question.

21 MR. COCHRAN: Thank you.

22 BY MR. COCHRAN:

23 Q Is Mr. Wilson's testimony that the \$35

1 million in payments from Inova entirely attributable to  
2 the license an accounting conclusion or a valuation  
3 conclusion?

4 A I think it has to do with valuation.

5 Q What did you value the license at as of 1994?

6 A The indications of value as of 1994 stem from  
7 the losses that Inova had reported since it had taken  
8 over operations --

9 MR. BETTIUS: Your Honor, he testified at  
10 length that Inova's motivation for doing the  
11 transaction with continuing declinations in revenue. He  
12 testified to a study that was done by Inova. We're  
13 really trying the case again, Your Honor.

14 MR. COCHRAN: Your Honor, if the Court  
15 please, it's awfully difficult to do rebuttal testimony  
16 -- please sit down, Mr. Bettius.

17 THE COURT: Stand there, Mr. Bettius.

18 I'll control the courtroom, Mr. Cochran.

19 MR. COCHRAN: Excuse me, Your Honor. I  
20 apologize.

21 THE COURT: You all may not like the way I do  
22 it, but I can do it.

23 MR. COCHRAN: It's pretty difficult to put on



1 rebuttal testimony that has any flow or any  
2 comprehension to it if you don't repeat a little bit of  
3 this and put it in context, Your Honor. That's all  
4 that we're doing here.

5 THE COURT: I thought he went into this, but  
6 I'll permit it.

7 Go ahead, Mr. Cobb.

8 THE WITNESS: I looked at the factors  
9 generated by the significant losses generated by Inova  
10 during the time period for which it operated JMH, the  
11 hospital. It changed the name to Jefferson Hospital.  
12 I looked at the Inova information that indicated that  
13 Inova anticipated additional losses into the future  
14 totalling some \$81 million.

15 I looked at Inova information that identified  
16 that utilization was down, admissions were down,  
17 patient days were down, use of various of the ancillary  
18 services were also down. That indicated that the  
19 operating license in place would allow an operator to  
20 generate significant losses, and therefore,  
21 indicated --

22 MR. BETTIUS: I object. That is his  
23 testimony.

1 THE COURT: That's what he said on direct.  
2 Do you have a follow-up question?

3 MR. COCHRAN: I'll go on, Your Honor.

4 BY MR. COCHRAN:

5 Q Did either you or Mr. Wilson make any  
6 allowance for the Tauber Foundation's 25 percent  
7 interest in the land or its 9.33 interest in the Joint  
8 Venture?

9 A No.

10 MR. BETTIUS: Again, I have a Handshaw  
11 objection, Your Honor. The testimony is that was based  
12 on a stock contribution by Dr. Tauber and there has  
13 been absolutely no -- it's contrary to Handshaw, but in  
14 addition there's absolutely no foundation by way of the  
15 Tauber foundation serving -- I understand it's for  
16 Holocaust survivors. This is a hospital that serves  
17 Alexandria. That foundation hasn't been laid, Your  
18 Honor, and I object.

19 THE COURT: Objection's overruled.

20 BY MR. COCHRAN:

21 Q Did either you or Mr. Wilson make an  
22 allowance for the Tauber Foundation's interest in the  
23 land or the Joint Venture?

1           A       No, not that I'm aware of.

2           Q       Do you have an opinion as to whether these  
3 are appropriate charitable contributions?

4           MR. BETTIUS: Your Honor, not in rebuttal,  
5 please. I object to that. If he was going to put that  
6 on, he had to put that on in his case in chief. That  
7 happened in 1975.

8           THE COURT: You're talking about from an  
9 accounting standpoint?

10          MR. COCHRAN: Well, from an accounting  
11 standpoint is it a charitable -- is it an appropriate  
12 charitable deduction.

13          MR. BETTIUS: That's a matter of law, Your  
14 Honor. The Court will decide that. It should have  
15 been put on in the case in chief.

16          THE COURT: I'll permit him to answer.

17          THE WITNESS: Would you ask the question  
18 again?

19          BY MR. COCHRAN:

20          Q       Do you have an opinion as to whether or not  
21 these are appropriate charitable contributions, the  
22 land and the interest in the Joint Venture?

23          MR. BETTIUS: Your Honor, that's a conclusion

1 of law, and it is one of the issues that, Your Honor,  
2 he's not permitted to opine on. I know that the rule  
3 has been relaxed with respect to what experts can  
4 testify to, but not as to issues such as this.

5 THE COURT: Objection's overruled.

6 MR. HIRSCHKOP: I would object to the  
7 obstreperous comments of counsel.

8 THE COURT: Please, please, Mr. Hirschkop.  
9 You know, one of the things I have told the other  
10 judges is how wonderfully you all have been getting  
11 along in this case considering what's at stake and how  
12 long we've been here.

13 We're just not going to start that now. Mr.  
14 Bettius has been acting that way for five days, Mr.  
15 Hirschkop.

16 MR. HIRSCHKOP: And I just commented.

17 THE COURT: I mean, come on. We're near the  
18 end. You all are doing just great. Everybody in this  
19 room has been a big help to me and I don't want to see  
20 it start now. Please don't start it now.

21 Go ahead, Mr. Cochran.

22 MR. COCHRAN: Thank you, Your Honor.

23 BY MR. COCHRAN:

1 Q After having sat -- have you sat through  
2 the -- essentially the entirety of the trial, Mr. Cobb?

3 A I have.

4 Q Have you heard anything that changes your  
5 opinion that April 18, 1973 is the correct cutoff date?

6 A No.

7 Q At my request did you do present value  
8 calculations through 2005, reflecting both a 9 percent  
9 and a 13.3 percent rate of return?

10 A Yes and no.

11 Q Do you have that document there? Let me hand  
12 it to you.

13 MR. COCHRAN: Your Honor, I would ask that  
14 this be EE1.

15 (Whereupon, Respondents'  
16 Exhibit No. EE1 was marked  
17 for identification.)

18 MR. BETTIUS: Do you have a copy for me?

19 MR. COCHRAN: I gave it to you.

20 MR. BETTIUS: Is this it?

21 MR. COCHRAN: No.

22 MR. BETTIUS: Where is it?

23 MR. COCHRAN: I handed it to you.

1 BY MR. COCHRAN:

2 Q Can you explain to the Court the calculations  
3 that are reflected on EE1?

4 A Yes. I went through with Mr. Bettius, as I  
5 recall, and put on a flip chart calculations that I had  
6 made through September 30, 2005. And those are the  
7 first amounts under each of these two grids. So my  
8 calculations based on 9 percent through September 30,  
9 2005 would be \$8,215,672 and at 13.35 percent, it would  
10 be \$14,954,571.

11 You asked if I would make calculations,  
12 taking that from September 30th to October 1st, October  
13 1st being the date of the \$10 million payment. So I  
14 took the \$10 million payment, I tax-affected it as a  
15 capital gain, and then calculated the present value of  
16 \$10 million from October 1, 2005 to December 31, 1999.

17 At a 9 percent rate I got \$4,505,379 and at a  
18 13.35 percent rate I got \$3,594,861.

19 MR. COCHRAN: Your Honor, I would move that  
20 exhibit into evidence.

21 THE COURT: Any objection?

22 MR. BETTIUS: It is their theory of the case,  
23 Your Honor.

1 THE COURT: All right.

2 (Whereupon, Respondents' Exhibit  
3 No. EE1 was received in evidence.)

4 MR. COCHRAN: I have nothing further of Mr.  
5 Cobb, Your Honor.

6 THE COURT: Mr. Bono?

7 MR. HIRSCHKOP: For the record, Your Honor,  
8 may we get a number on that Exhibit?

9 THE COURT: EE1.

10 REDIRECT EXAMINATION

11 BY MR. BONO:

12 Q Did Ms. Moore, in her analysis, create a  
13 statement of cash flows?

14 A No.

15 Q Do you -- is it your opinion that such an  
16 analysis would have been appropriate?

17 MR. BETTIUS: Objection to what may have been  
18 appropriate, Your Honor.

19 THE COURT: Objection's overruled.

20 THE WITNESS: I believe so.

21 BY MR. BONO:

22 Q After -- strike that.

23 Did Mr. Wilson make any allocations in his

1 net income analysis between operations and physical  
2 plant?

3 A I think he did through 1982.

4 Q After 1982, did Mr. Wilson make any  
5 allocations as to net income between operations and  
6 physical plant?

7 A Primarily, no.

8 Q Did Mr. Wilson allocate 100 percent of the  
9 post-1982 income to the value of the license?

10 MR. BETTIUS: Your Honor, we know what he  
11 did.

12 MR. BONO: It's a predicate --

13 MR. BETTIUS: It doesn't do us any good to  
14 find out what Mr. Wilson did. If there's rebuttal, I  
15 think it's appropriate --

16 THE COURT: You have to lay a foundation, I  
17 assume, Mr. Bono, for your next question?

18 MR. BONO: Yes.

19 THE COURT: Go ahead.

20 THE WITNESS: Generally speaking, yes.

21 BY MR. BONO:

22 Q And is it your opinion that that was not  
23 appropriate?



1 A Yes.

2 Q That it's not appropriate?

3 A It's my opinion that that's not appropriate.

4 Q Now, Mr. Wilson also testified several times  
5 that assets were commingled?

6 A Yes.

7 Q Now, did Mr. Wilson make any pro rata  
8 allocation with respect to those allegedly commingled  
9 assets between JMHI's assets and private assets that  
10 have been contributed?

11 A I don't follow your question.

12 MR. BETTIUS: Did he trace, is that question?

13 THE COURT: I'll let Mr. Bono ask the  
14 question, Mr. Bettius.

15 MR. BONO: I'll rephrase the question, Mr.  
16 Cobb.

17 BY MR. BONO:

18 Q With respect to the commingled assets --

19 A All right.

20 Q -- did Mr. Wilson allocate the income with  
21 respect to those commingled assets between the JMHI  
22 assets that had been contributed and the private assets  
23 that had been contributed?

1 A At least through 1982, yes.

2 Q Did he do any of that after 1982?

3 A Not by my reading. I know that under his  
4 theory he believes that he did.

5 Q But under your analysis, did he?

6 A I don't believe that he did.

7 Q And the departure point between your analysis  
8 and Mr. Wilson's analysis, for the most part, is in the  
9 post-1982 time period; is that accurate?

10 MR. BETTIUS: Your Honor, we went through  
11 this.

12 THE COURT: I've heard this a number of  
13 times, Mr. Bono.

14 MR. BONO: Thank you, Your Honor.

15 BY MR. BONO:

16 Q Mr. Cobb, prior to 1971, did JMHI utilize any  
17 tax benefits that had been given to it by the  
18 Commonwealth of Virginia?

19 MR. BETTIUS: Your Honor, you wouldn't let me  
20 ask any questions about net operating losses yesterday.  
21 We're going to go back --

22 THE COURT: Is this the question of whether  
23 they were tax-exempt under Virginia law for Virginia

1 tax purposes?

2 MR. BONO: No, Your Honor. This is a  
3 question that goes directly to the accounting analysis  
4 that Mr. Wilson did and Ms. Moore did. They testified  
5 about the tax benefits that the charity allegedly  
6 received. I'm simply asking the question under Mr.  
7 Cobb's analysis did they utilize any of those tax  
8 benefits.

9 THE COURT: All right. I'll permit it. I'll  
10 note your objection.

11 BY MR. BONO:

12 Q Let me rephrase the question. Prior to 1971,  
13 did JMHI take or utilize any tax benefits that had been  
14 given to it by the Commonwealth of Virginia?

15 A I'm not aware that it had any tax benefits  
16 from the Commonwealth of Virginia.

17 Q Now, there was testimony yesterday concerning  
18 the transition from JMHI to JMHC and the patients  
19 didn't know that that happened and didn't know that it  
20 was a for-profit entity. Do you recall generally that  
21 testimony?

22 A I do.

23 Q Mr. Cobb, when a -- what generally happens

1 when a for-profit entity or another buyer comes in and  
2 takes over an existing hospital? What generally goes  
3 on?

4 A In terms of the hospital --

5 MR. BETTIUS: Your Honor, I'm going to object  
6 to what generally goes on. Are we going to get into  
7 this res inter alios acta argument again? I don't  
8 think it matters what generally happens.

9 THE COURT: You need to narrow that down a  
10 little bit, Mr. Bono. You mean as far as the patients  
11 are concerned and the transition period, or are you  
12 talking about everything?

13 MR. BONO: No, just the patients, the  
14 transition, what the patients know, that kind of thing.  
15 I mean, that's the focus of the question.

16 THE COURT: Do you understand the question,  
17 Mr. Cobb?

18 THE WITNESS: I do.

19 THE COURT: All right. Go ahead.

20 THE WITNESS: It's usually relatively  
21 seamless.

22 BY MR. BONO:

23 Q And could you explain what you mean by

1 relatively seamless?

2 A Patients don't -- aren't aware of a change in  
3 ownership. Patients have the same type of care, same  
4 staff, same facilities. The patients oftentimes don't  
5 really notice a change except signage may change, for  
6 example. Over some course of time there may be other  
7 changes reflecting different management philosophies,  
8 approaches, staffing levels and the like, but it's  
9 usually fairly seamless and then becomes a progression.

10 Q So would it be correct that what happened  
11 here would be the typical situation in terms of the  
12 seamlessness of the transition from JMHI to JMHC from  
13 the patients' point of view?

14 MR. BETTIUS: Your Honor, this witness is  
15 testifying to liquidations, not to going concern  
16 transfers. If there's a liquidation --

17 THE COURT: It isn't relevant whether or not  
18 it's typical or not, Mr. Bono, it happened here.

19 MR. BONO: Your Honor, the implication from  
20 the Commonwealth is that -- that the -- because JMHC  
21 continued the operation of the hospital the very next  
22 day after JMHI stopped, that somehow that is a fact  
23 which would implicate JMHC as being JMHI. We've heard

1 this argument from starting argument --

2 THE COURT: He's already testified that --  
3 you asked him what usually happens and he's explained  
4 that.

5 MR. BONO: All right.

6 MR. BETTIUS: Your Honor --

7 THE COURT: I'll sustain the objection.

8 MR. BONO: Thank you, Your Honor.

9 BY MR. BONO:

10 Q In order to -- for JMHI to have wound up its  
11 affairs, did the hospital have to be closed?

12 MR. BETTIUS: Legal conclusion, Your Honor.  
13 There is -- what they have to do to wind up their  
14 affairs is contained in 13.1907.

15 THE COURT: Is this the right witness to ask  
16 this question?

17 MR. BONO: From an accounting point of view.  
18 A wind-up from an accounting point of view.

19 MR. BETTIUS: I object, Your Honor.

20 THE COURT: I'll let him answer it from an  
21 accounting point of view, I guess.

22 THE WITNESS: A corporation can change its  
23 existence, come and go, and operations continue through

1 separate ownership or what have you.

2 BY MR. BONO:

3 Q Now, Mr. Cobb, can I refer you to your first  
4 report, the last page, page 33?

5 MR. BETTIUS: He only had one report that I  
6 know of.

7 MR. BONO: The report in the first trial,  
8 which is Exhibit 710.

9 THE WITNESS: What page, Mr. Bono?

10 MR. BONO: Page 33, your conclusions.

11 MR. BETTIUS: Your Honor, his conclusions in  
12 the first trial couldn't possibly be rebuttal in this  
13 trial. I object.

14 THE COURT: Let me hear the question.

15 BY MR. BONO:

16 Q What was the last conclusion that you drew at  
17 that time in the last sentence?

18 A The last sentence reads, upon dissolution,  
19 whether June 30, 1971, April 18, 1973 or January 29,  
20 1975, net assets of JMHI were not distributed to any of  
21 the members of JMHC.

22 MR. BETTIUS: Your Honor, I'm not going to  
23 ask anyone be admonished, because that's not my role,

1 but that's obviously not rebuttal. It's testimony in  
2 the first trial being reiterated and reiterated.

3 THE COURT: How is that rebuttal, Mr. Bono,  
4 to what?

5 MR. BONO: It directly rebuts Mr. Wilson's  
6 testimony that in this accounting millions of dollars  
7 of assets of the charity's were given away or taken by  
8 these Respondents.

9 MR. BETTIUS: If that's what his concept of  
10 rebuttal is, that's what his whole case in chief was  
11 supposed to be.

12 THE COURT: I'll permit him to answer.

13 MR. BONO: All right.

14 THE COURT: The answer will stand.

15 BY MR. BONO:

16 Q Mr. Cobb, do you continue to adhere to that  
17 conclusion?

18 A As best I know, yes.

19 MR. BONO: I have no further questions.

20 THE COURT: Mr. Hirschkop or Ms. Beach?

21 MR. HIRSCHKOP: Nothing. Thank you, Your  
22 Honor.

23 THE COURT: Mr. O'Donnell?



1 MR. O'DONNELL: No, sir.

2 THE COURT: All right, Mr. Bettius.

3 RECROSS-EXAMINATION

4 BY MR. BETTIUS:

5 Q I've heard great testimony, Mr. Cobb, about  
6 how it was critical to protect the capital base of the  
7 hospital by reinvestment; is that correct? That's your  
8 basic position, right?

9 A In order to support -- continue to support  
10 the operations, it was important that the money be  
11 reinvested in the hospital.

12 Q What were perhaps the two most critical  
13 elements of its capital base in '73 through '75? The  
14 two most important elements.

15 A Of its capital base?

16 Q Yes, sir.

17 A In what year?

18 Q '73, '75, throughout its operation, what's  
19 the most critical element of the hospital's capital  
20 base? Is it the building that they're in?

21 A From a structure, no, because the building  
22 was leased. From -- in terms of running the  
23 operations, absolutely.

1 Q Yes, sir.

2 A You have to have a facility in which to  
3 operate.

4 Q And how about its equipment?

5 A It was very important.

6 Q And if that building is worth enough money to  
7 sustain million-dollar mortgages, can you explain to  
8 me, if they were protecting their capital base, why  
9 they transferred it to themselves in an equity-for-debt  
10 transaction where the hospital got a \$11,000 in total  
11 cash?

12 A Not as I sit here today.

13 Q It's inexplicable, isn't it?

14 A I'm sure -- I'm sure if you traced it through  
15 and you looked at the assets of JMHA and kept them in  
16 focus while looking at the assets of JMHI, the building  
17 ownership moving in that fashion may or may not impact  
18 the hospital operations.

19 Q Well, we have a memo that tells exactly how  
20 it impacted the hospital operations. It raised the  
21 rent, did it not, from \$80,000 to \$112,000 a year; is  
22 that right?

23 A As the hospital was then operating in JMHC,

1 yes.

2 Q The swap for bonds dramatically increased  
3 costs, did it not? It created, by the memo, another  
4 \$10,000 just to service the bond; isn't that correct?

5 A I didn't recall that it was more than that,  
6 but it did create debt service.

7 Q And then one of the alternatives was not to  
8 take the charity's money and invest it, but maybe these  
9 guys for once come up with some of their own money or  
10 some of the hospital's money. The hospital might have  
11 been able to go to the bank if it had some assets on  
12 its balance sheet; isn't that true?

13 MR. COCHRAN: Your Honor, I think this is  
14 beyond the scope of redirect and rebuttal. I would  
15 object to it.

16 MR. BETTIUS: Your Honor, he's talking about  
17 the necessity of keeping capital. They stripped out  
18 the two most important capital assets of the charity  
19 and then rented them back at higher rates and totally  
20 took the credit balance out. It's perfectly good  
21 rebuttal.

22 THE COURT: Well, we're going to try the case  
23 again, I guess.

1 Ms. Beach?

2 MS. BEACH: I also object, Your Honor, it's  
3 contrary to testimony. Much of these funds were put in  
4 by the private individuals. Mr. Bettius' depiction of  
5 it is not accurate with the testimony this Court's  
6 heard.

7 THE COURT: All right. The objection's are  
8 overruled.

9 BY MR. BETTIUS:

10 Q One capital contribution, is that correct,  
11 Mr. Cobb, that you were able to trace?

12 A I only saw one.

13 THE COURT: We've been through this.

14 MR. BETTIUS: Yes.

15 BY MR. BETTIUS:

16 Q Isn't it true that in the '75 transaction  
17 that they stripped out the two most critical capital  
18 assets of the corporation in a transaction that was  
19 totally self-beneficial to themselves; isn't that  
20 correct?

21 A That's not how I'd characterize it.

22 Q Well, let me ask you this. They had stock  
23 before this transaction, didn't they?

1           A     They did.

2           Q     And they ended up converting it --

3           THE COURT: Mr. Bettius, I appreciate the  
4 position you think you're in, but I'm not going to go  
5 through the whole cross-examination of Mr. Cobb, which  
6 last took, I believe, a whole day. I'm not going to do  
7 it again.

8           MR. BETTIUS: Your Honor, I just want the  
9 Court to understand our position, and it's critical.  
10 While they're saying that they took the building off  
11 the balance sheet, Your Honor, that had \$500,000 owed  
12 against it, it's the biggest capital asset that they  
13 had.

14          THE COURT: I understand that and we've been  
15 through some of this. I said we're just not going to  
16 do the whole cross-examination of Mr. Cobb again.

17          BY MR. BETTIUS:

18          Q     Did they, other than the money that they --  
19 you can trace no additional capital; isn't that  
20 correct?

21          A     I don't know if I could or not. I have not  
22 found any additional capital, other than the \$221,000.

23          Q     Did the Respondents ever put a dollar in this

1 hospital at any time that they didn't secure by some  
2 sort of indebtedness that created a profit to  
3 themselves?

4 A Other than sweat equity, I'm not aware of  
5 monies that they put in, other than the \$221,000.

6 Q Now, consistent with your investment  
7 analysis, I'd like to show you a sheet.

8 MR. BETTIUS: I'm going to give one to the  
9 Court as well, Your Honor.

10 BY MR. BETTIUS:

11 Q Did you do any exploration as to the  
12 Respondents' ability to help fund their own hospital?

13 A By ability --

14 Q Perhaps putting money in or lending money?

15 A The ability of them to make charitable  
16 donations to the hospital or whatever, not per se, no.

17 Q Well, there's no doubt, is there, Mr. Cobb,  
18 to the extent that you've found these accretions, these  
19 benefits, these net assets, that that was the charity's  
20 money being reinvested; isn't that correct?

21 A I'm not really following you. There was --  
22 there was, in fact, reinvestment of earnings by JMHC  
23 that were held within the business.

1 Q And you've testified, have you not, that  
2 based on your analysis, assets exceed liabilities by  
3 \$224,517; is that correct?

4 A As of June 30, 1973.

5 Q And they result totally from the charity's  
6 operations; is that correct?

7 A I believe so.

8 Q Now, if we invest that money, I think you  
9 said, and we carry that on out, do we get net proceeds  
10 on a 13 percent analysis of \$4,600,000?

11 MR. HIRSCHKOP: Your Honor, I don't want to  
12 be a bother, but I don't know what he just showed him.  
13 He gave us a sheet, the guy is reading it. I have no  
14 idea what he's reading other than it's a sheet.

15 MR. BETTIUS: Here, Mr. Hirschkop.

16 THE COURT: Well, we don't have it identified  
17 by number because it hasn't been offered as an exhibit  
18 yet.

19 MR. HIRSCHKOP: I don't even know what it is  
20 other than a sheet.

21 THE COURT: I don't know what it is, either,  
22 Mr. Hirschkop.

23 MR. BETTIUS: I think we're going to find

1 out.

2 MR. BONO: Your Honor, I object to this line  
3 of questioning. This is exactly what Mr. Cobb  
4 testified back in direct.

5 MR. BETTIUS: No, Your Honor.

6 MR. BONO: His cross-examination is the  
7 direct, Your Honor. This \$200,000 as of 1973, we went  
8 through hours of this, Your Honor, two days ago.

9 MR. BETTIUS: He invested it piecemeal, Your  
10 Honor. He has three dates of liquidation. I want to  
11 show them, since they've continued to stay in business,  
12 what would happen if they took, on his dates of  
13 liquidation, and invested all three of them rather than  
14 reinvesting them in the business.

15 THE COURT: We're going to open it all up  
16 again, Mr. Bettius?

17 MR. BETTIUS: Your Honor, we're not going to  
18 reopen it at all. It's taking his 13.5 percent and  
19 saying you didn't go out of business. The next year --  
20 the next two years you liquidate it again, and if you  
21 take that and you invest the difference in three  
22 separate transactions at these three separate  
23 liquidation dates, you come to \$24,000,000.



1           THE COURT: How was this covered in the  
2 rebuttal, in direct? What area did we go into with Mr.  
3 Cobb now that raises this?

4           MR. BETTIUS: Absolutely, Your Honor. He has  
5 testified, and testified today, as to the appropriate  
6 reinvestment of capital. What I'm saying, Your Honor,  
7 is if you take the balances that exist on his three  
8 dates, on his three dates, '73, '75 and '82, and  
9 instead of investing them as independent transactions  
10 -- and he says he's accounted for accretions, Your  
11 Honor, that's what he said today, he's accounted for  
12 these accretions by investing the net proceeds -- if  
13 you take the net proceeds and invest not on one  
14 occasion and assume they never did, you invest them on  
15 another occasion and you assume they never did this, I  
16 want to know what the results would be, Your Honor, if  
17 you invested them on the discrete dates of these  
18 liquidations seriatim, because they continued in  
19 business

20           MR. COCHRAN: Your Honor, if the Court would  
21 please, it's not appropriate cross, number one. Number  
22 two, he's already testified that he does not believe  
23 you could do it. Number three, this was his case and

1 this is what his valuation expert said. If you took  
2 each dollar and invested it, you can get X. We've been  
3 through that.

4 You know, if he doesn't believe it should  
5 have ever been invested until you closed up shop,  
6 what's the point? We've been there, we've done it.

7 MR. BETTIUS: He picks it and that's the  
8 point. He criticized Ms. Moore and says he's accounted  
9 for accretions, Your Honor.

10 I want to take the witness' testimony. He  
11 has three liquidation dates. They don't liquidate on  
12 that first date. You take that balance and run it  
13 forward to the second date. Subtract the first from  
14 the second and then you've got the use of the money  
15 through two liquidation dates and then you go to his  
16 third liquidation.

17 There weren't -- these are hypothetical  
18 liquidations that ignore any forward use of the assets.

19 THE COURT: Again, out of what testimony in  
20 rebuttal on the direct by Mr. Cochran does this arise  
21 for cross-examination purposes?

22 MR. BETTIUS: First today he said he properly  
23 accounted for accretions. I objected to it. Your

1 Honor let him go into it. Secondly, he said Ms. Moore  
2 failed to properly invest the income of the charity.  
3 He has taken the investment of the charity in isolated  
4 situations, ignoring the continued operation of the  
5 charity.

6 I want to ask him if he takes the net revenue  
7 that results from the continued operations, does he not  
8 come to these small figures, and he said the capital  
9 should remain in the hospital.

10 What we're doing here is leaving the capital  
11 in the hospital. This analysis leaves the capital in  
12 the hospital and then appropriately accounts for it  
13 going forward. I don't think he has appropriately  
14 accounted for it going forward.

15 If he does properly account, he can disagree  
16 with these numbers. This leaves the capital in the  
17 hospital from liquidation date to liquidation date and  
18 then values it, which is what he said should have  
19 happened. This is the only way to value the  
20 accretions, not doing theoretical liquidations that are  
21 seriatim in time.

22 MR. O'DONNELL: Your Honor, if I may address  
23 one thing, I recognize I came in a little bit late and

1 I'm relying on my colleagues' representation that this  
2 wasn't covered in direct. The biggest issue, Your  
3 Honor, is using this document at all and offering it to  
4 the Court at all. This is our rebuttal. We're allowed  
5 to introduce rebuttal exhibits in the context of this.

6 Mr. Bettius is not. He's taking a financial  
7 report, which I assume was prepared by either Mr.  
8 Wilson or Ms. Moore, and what -- I admire him for it,  
9 it's a very novel approach, but he's trying to rebut  
10 the rebuttal by getting in his own expert's testimony.

11 This is not permissible. It is not  
12 appropriate from the standpoint of the conduct of this  
13 trial. It is not appropriate to throw it at Mr. Cobb  
14 and ask him to testify about another expert's report at  
15 this stage on rebuttal.

16 I have to assume it didn't get covered in  
17 direct examination.

18 THE COURT: I don't think it did, Mr.  
19 Bettius.

20 MR. BETTIUS: Every number on this sheet,  
21 Your Honor, is his number. He said that he had  
22 reinvested the capital. I'm going to ask him if he --

23 THE COURT: He said that today?

1 MR. BETTIUS: Yes. He said it today.

2 THE COURT: I'm sorry.

3 MR. BETTIUS: That it was inappropriate. He  
4 said it was inappropriate for Ms. Moore to invest the  
5 capital back in -- not to invest the capital back into  
6 the operations. This chart shows what happens if you  
7 do invest the capital back in the operations and then  
8 account for it on each of his liquidation dates.

9 He's done seriatim liquidations, Your Honor.  
10 When he goes forward to the next date, he doesn't  
11 account for the use of the capital invested on the  
12 first date.

13 What this exhibit does is to take his own  
14 analysis and say if there's a balance in '74 and you  
15 invest it going forward and then you liquidate, you  
16 have to take these investment dates out individually,  
17 because that's the date of reinvestment of capital.  
18 Otherwise, you have in no sense of the word reinvested  
19 the capital in the building -- in the business.

20 He has said he has reinvested it. He said  
21 that today and he said the Respondents have taken it  
22 out. This is an analysis that shows the real result of  
23 leaving it in. He can say he doesn't agree with it.

1 I'm entitled, I believe, to inquire as to whether he  
2 has, in fact, done what he says he's done.

3 THE COURT: I'll sustain the objection.

4 MR. BETTIUS: All right.

5 THE COURT: What I'm going to do is I'll mark  
6 this as Complainant's Exhibit CC and I'll mark it as  
7 denied.

8 (Whereupon, Complainant's  
9 Exhibit No. CC was marked  
10 for identification.)

11 MR. BETTIUS: Thank you.

12 MR. HIRSCHKOP: What was it marked? I'm  
13 sorry.

14 MR. BETTIUS: Can I give it to the bailiff,  
15 Your Honor?

16 THE COURT: CC.

17 MR. HIRSCHKOP: Thank you.

18 THE COURT: I have it.

19 BY MR. BETTIUS:

20 Q Mr. Cobb, when you -- as I understand it,  
21 your criticism of Ms. Moore is that she was taking the  
22 money out, you say?

23 A She testified that she did. Her calculation

1 implicitly assumes that the cash would be invested to  
2 generate various returns while, in fact, that cash was  
3 left in the business.

4 Q We know the Respondents took the hospital and  
5 conveyed it out. Did you, in your methodology leave  
6 and give credit for the reinvested capital at the  
7 subsequent or next liquidation date?

8 A Yes.

9 Q So you're telling the Court, and I just want  
10 to be clear about this, that when you had an investment  
11 balance you started tracking the value of that  
12 reinvested capital in the business? Did you ever do  
13 that, Mr. Cobb?

14 A Yes.

15 Q How did you do that?

16 A I started with the 1971 balance sheet. I  
17 looked at the earnings statements across, and then I  
18 took the starting balance sheet and I posted the  
19 earnings statements within the balance sheet and it got  
20 me to the second year.

21 I posted the second year's earnings  
22 statements and that got me to the third year, and so it  
23 went.

1           Q     And then isn't what you did to do a  
2     liquidation as of that year and say this is the capital  
3     balance or this is the balance in excess of  
4     liabilities, this is the net asset value and then value  
5     that forward? Is that what you did?

6           A     I don't follow your question.

7           Q     In each succeeding liquidation -- in each  
8     succeeding liquidation you didn't consider, did you,  
9     anything but the net assets as you viewed them on that  
10    date in liquidation; is that correct?

11          A     No.

12          Q     What did you do?

13          A     I just said what I did. I took the balance  
14    sheets, the starting balance sheets, and I posted the  
15    earnings. I looked at all the assets, all of the  
16    liabilities for that given year and had the balance  
17    sheet of the second year. I took the balance sheet of  
18    the second year, I posted the earnings to it. I looked  
19    at all the changes to all of the assets, all of the  
20    liabilities, went to a third year and so on.

21          Q     What return on capital did you give  
22    discretely to the charity's investment during those  
23    years, other than continuing them in the operations?



1 A Continuing them in the operations.

2 Q And then come to another hypothetical value?

3 A I looked at where the money went, and the  
4 money -- earnings money in that regard when back into  
5 the hospital. So if the hospital made money on that,  
6 it made whatever the documents showed. It is lost  
7 money, it lost money as the documents showed.

8 Q And in no year did you ever do a valuation  
9 based on the sale as a going concern, did you?

10 A That's not true.

11 Q What year did you do a sale -- do a value  
12 based on a sale as a going concern?

13 A 1971, 1973, 1975. I made considerations of  
14 the HGV purchase in 1982 and of the Inova purchase in  
15 1985.

16 Q How is a liquidation consistent with a going  
17 concern?

18 A You're kind of mixing your metaphor trying to  
19 get my metaphor mixed. I'm assuming that there is a  
20 liquidation. As I went through the liquidation, I am  
21 marshalling the assets --

22 MR. BETTIUS: Your Honor, I see your  
23 impatience. I'm sorry.

1 THE COURT: I've been through this, Mr.  
2 Bettius.

3 BY MR. BETTIUS:

4 Q Now, you said that the patients ordinarily  
5 wouldn't know about a hospital transition. They'd know  
6 if there was a liquidation, wouldn't they?

7 A If there was a liquidation of the operations,  
8 yes, not necessarily if there was a liquidation of the  
9 corporation.

10 Q Well, how can you have -- I thought that your  
11 whole premise is that there'd be a sale of the assets  
12 of the hospital and that they'd realize less than book  
13 value; is that correct?

14 A Not necessarily.

15 Q How about in '71, '73 and '75?

16 A I think if there had been a liquidation in  
17 1971 or a sale at a fair market value, that the  
18 liabilities would have consumed the asset values,  
19 including the going concern. I think that that would  
20 have been true or near true in '73 and '75 as well.

21 Q Didn't you purport to create a liquidation in  
22 '82?

23 A Yes.

1 Q If there is a liquidation, doesn't that mean  
2 you sell the assets?

3 A It does.

4 Q How would the patients not know if you sold  
5 off the assets? Don't you go out of business when you  
6 sell out the assets?

7 A It depends on who the they is, Mr. Bettius.  
8 If I, JMHI, sell all of my assets, all of my  
9 operations, going concern included, to Health Group of  
10 Virginia, and Health Group of Virginia maintains the  
11 operations of those assets, I now corporately -- my  
12 corporate identity can take the money I received from  
13 selling those in-place assets to whoever. I can meet  
14 all of my liabilities and then I can distribute the  
15 proceeds.

16 So I can have a corporation that used to own  
17 and operate an entity sell that operating entity.

18 Q Isn't the operating entity the lessor in '82?

19 A It's my understanding that it was.

20 Q Well, that's not a liquidation, it's the sale  
21 of a going concern; isn't it?

22 MR. HIRSCHKOP: Your Honor, this was really  
23 gone into for a whole day.

1 MR. BETTIUS: Your Honor, I want to know what  
2 he calls --

3 THE COURT: He got into it today though.  
4 They went into it today. Go ahead, Mr.  
5 Bettius.

6 BY MR. BETTIUS:

7 Q Are you calling the transfer of a business as  
8 a going concern a liquidation?

9 A It certainly can be. If I sell as one of my  
10 assets a business on a going concern basis and I  
11 marshall my assets and I take amounts and I meet my  
12 liabilities, that certainly could be a liquidation.

13 Q Well, doesn't liquidation mean you're going  
14 out of business?

15 A Not -- well, it depends on who I am. The  
16 corporate entity may, the hospital operations may  
17 continue.

18 Q Well, if there's been a dissolution by  
19 operation of law in '73, I've got a right to do no more  
20 business as a matter of law. Do you understand that,  
21 Mr. Cobb?

22 THE COURT: I know we spent a day on that,  
23 Mr. Bettius.

1 MR. BETTIUS: Your Honor, it shows that the  
2 basis for explanation of these transactions has no  
3 legal basis in fact.

4 THE COURT: That's not the point. That's  
5 your argument. We've been through this. I was going  
6 to go back and look and try to figure out how long Mr.  
7 Cobb was on the witness stand when we went through  
8 these things. Let's move on to something else.

9 BY MR. BETTIUS:

10 Q Now, you said that Mr. Wilson did no  
11 allocation of assets between the operations and the  
12 land and buildings?

13 A I said that I know that -- I believe that he  
14 believes he did. For example, if I look -- take after  
15 1992, Mr. Wilson had 100 percent of the amounts  
16 received from Inova going to, in effect, what he  
17 characterized the charity. So there was no amount  
18 going to -- going back in history to JMHA.

19 Q Well, I want to ask you this question.  
20 You've opined that all of these fees are reasonable and  
21 appropriate --

22 A All of what fees?

23 Q Legal fees and other fees in connection with

1 '92 and '94 going forward; is that correct?

2 MR. COCHRAN: He hasn't opined as to the  
3 reasonableness.

4 THE COURT: He never said they were  
5 reasonable.

6 BY MR. BETTIUS:

7 Q You opined that they were transaction costs;  
8 is that correct?

9 A I'm aware that there are transaction costs,  
10 and they include legal fees.

11 Q Do you know when you opine that there are  
12 transaction costs what the litigation was about in '92  
13 and '94?

14 A At least generally speaking.

15 Q What was it about, as you understand it?

16 A I understand that Inova had filed a claim  
17 that the deeds for properties underlying Jefferson,  
18 some of the land, had not been properly filed or what  
19 have you or perfected, so there were difficulties in  
20 conveying the land to Inova.

21 I understand that there was litigation in  
22 federal court that included anti-trust issues that  
23 Inova was involved in, predatory or monopolistic or

1    whatever practices.

2           Q     And I want to take both these issues that  
3    you've opined are transactional costs in this case.  
4    All the legal fees with respect to Inova were title  
5    issues that dealt with the real estate; isn't that  
6    correct?

7           A     All of them? Not to my knowledge.

8           Q     Do you think there was an operational aspect  
9    argued in that case with --

10          A     That's not what I said.

11          Q     Well, isn't it true that this Court has  
12    opined, based on your testimony, that, in fact, the  
13    land issue was very much alive in this case; is that  
14    correct?

15          A     I don't know.

16          Q     Well, if the issues in the Inova-JMHJV  
17    litigation dealt with the real estate, why are they  
18    incurred or what do they have to do with anything that  
19    relates to the license, Mr. Cobb?

20          A     That's an excellent point.

21          Q     Thank you.

22          A     They would relate to the real estate, as  
23    would the payments to settle that litigation. If that

1 litigation is about real estate issues and the real  
2 estate, going back in time, is attributable to JMHA,  
3 that shows that a substantial portion of not only the  
4 revenue but the expense side of that would associate  
5 with the real property.

6 Q Doesn't it really show that they said okay,  
7 we're going to take the real estate out of this and  
8 keep it; is that correct?

9 A I can't answer that.

10 Q In fact, as a result, since you're opining --  
11 since you've opined on this, isn't it true that the  
12 Respondents have had the real estate? They've got it  
13 back and they've had it back?

14 A To my understanding, some grouping of the  
15 Respondents has ownership and custody of the properties  
16 at 4600 or 4800 King Street.

17 Q Well, how, if they've gotten all of the real  
18 estate back and there's no longer any payment of rent  
19 and the lease has been terminated, can this have  
20 anything to do with the real estate, this settlement?

21 A As you know, Mr. Bettius, I'm not  
22 well-schooled on the settlement. I wasn't aware of the  
23 settlement.



1 Q Then I won't ask you that.

2 A You can certainly continue if you want.

3 Q Now, this anti-trust claim that's part of  
4 this, it's for predatory practices by Inova. How does  
5 that have anything to do with the landlord? Doesn't  
6 that really deal directly with the operations?

7 A Not necessarily.

8 Q You mean the landlord has an anti-trust claim  
9 and a competitive claim, from an accounting point of  
10 view when you're accounting for these expenses?

11 A I don't know, Mr. Bettius, but I can imagine  
12 scenarios where a landlord would have claims.

13 Q Well, do you do allocations of accounting  
14 based on what you imagine or does it have to really be  
15 related to the legitimate interest of a party to whom  
16 your allocating the cost or benefit?

17 A That's a rather unfair grasping of the word,  
18 Mr. Bettius. You do accounting based on what's there.  
19 I have not done an analysis of -- I've not read  
20 documents regarding the anti-trust claim. I've not  
21 done an analysis with particulars of the settlement.

22 When you look at the settlement, I look first  
23 at the license that didn't exist at the time of the

1 settlement, because it had been terminated or whatever  
2 the word is. I look at the economic value of the  
3 license at that time. This is a license that had  
4 generated substantial losses in the hands of a very  
5 sophisticated, very high-level operator; I looked at  
6 the prospect of future losses, some \$81 million by the  
7 estimate, and I find in those measures an inability to  
8 attribute much, if anything, to the license.

9 I find in the various documents around the  
10 Inova settlement and the agreement references and  
11 materials regarding real property. I've not made final  
12 determinations in that regard.

13 Q In terms of this analysis that you've gone  
14 through, you read the Fairfax lease; is that correct?

15 A I have.

16 Q It required, did it not, Inova to return the  
17 property to the Respondents with the license intact or  
18 to transfer the entity that had the license; is that  
19 correct?

20 A As we went through at some length, it does.

21 Q Do you have some sense that maybe canceling  
22 that lease is what Inova was after in this whole  
23 litigation? Does it make sense to you?

1           A     I believe that one of the factors that Inova  
2 looked for was canceling the lease.

3           Q     Now, when you made your allocation in 1982 --

4           A     All right.

5           Q     -- you weren't prejudiced by actually having  
6 even read the sublease, were you?

7           A     I had not read the sublease.

8           Q     Well, your allocation, then, is made based on  
9 total ignorance of what the actual documents in the  
10 transaction provided for; is that correct?

11           MS. BEACH: Your Honor, I'm going to object.  
12 This not only exceeds the scope, but it just reiterates  
13 testimony --

14           THE COURT: It was in the direct, Ms. Beach,  
15 when they asked him about the litigation.

16           MR. BETTIUS: Yes.

17           BY MR. BETTIUS:

18           Q     Now, when you made your allocation you had no  
19 idea what the actual document provided; isn't that  
20 correct?

21           A     You have to be more specific.

22           Q     I'm going to be terribly specific. When you  
23 made in your report -- when you opined about the

1 allocation in the '82 lease amendment by which \$1  
2 million of rent, \$900,000 was diverted, you hadn't a  
3 clue what the document said, did you -- had you?

4 A I had read a summary of the financial terms.

5 Q Well, the financial statement incorrectly  
6 reflects the transaction, doesn't it?

7 A I don't know, Mr. Bettius, as I sit here  
8 today.

9 Q In fact, it is true, is it not, that the  
10 considerations -- you take the '66 lease as being  
11 correct, is that correct, all the way through?

12 A As being correct?

13 Q As being the document that embodies what the  
14 parties were entitled to take from the transaction by  
15 way of rent; is that correct?

16 A Not necessarily, though that's what you've  
17 stated a number of times. I looked at the '66 lease.  
18 I paid attention to the terms of it that included that  
19 there needed to be continuous operations of a general  
20 hospital, that the sublet was encumbered or had to have  
21 approvals issued, and I found a hospital operation that  
22 was, at best, floundering; as I looked at it, a  
23 hospital that needed help and needed to get out from

1 under that lease. Enter Health Group of Virginia,  
2 later Inova. So I made considerations of a company in  
3 that kind of position attempting, instead of just  
4 walking away from the liability that it had at that  
5 time for future lease payments, given operational  
6 difficulties, some ability of that enterprise to  
7 negotiate some sort of continuing participation in the  
8 overall leasing of the facility.

9 Q Mr. Cobb, haven't you clearly in your  
10 depositions, in your (sic) trial and in your report  
11 taken the position that your accounting is tied to the  
12 '66 lease?

13 A It certainly is.

14 Q And haven't you further acknowledged that  
15 there are questions -- the '66 lease is irreconcilable  
16 with the '75 lease, isn't it? Its provisions are  
17 different?

18 A Its provisions are different.

19 Q Is it not true that the '82 amendment is tied  
20 to provisions found only in the 1975 lease and  
21 inconsistent -- I know Your Honor has heard it -- with  
22 the '66 lease; is that correct?

23 A I lost you.

1           Q     Isn't it true that your allocation based on  
2     the 1966 lease cannot stand under provisions of the --  
3     strike that.

4                 Isn't it true that the allocation that you  
5     made is inconsistent with considerations expressly  
6     stated in the '66 lease? Let me cut right to the  
7     chase. The '66 lease did not provide for cancellation  
8     on six months' notice, did it?

9           A     It did not.

10           MR. BETTIUS: All right, sir. I don't have  
11     anything further, Your Honor.

12           THE COURT: Anything further, Mr. Cochran?

13           MR. COCHRAN: Just one question.

14           REDIRECT EXAMINATION

15           BY MR. COCHRAN:

16           Q     Did the '66 lease contain a prohibition  
17     against subletting without the landlord's approval?

18           MR. BETTIUS: Your Honor, that's been gone  
19     over.

20           THE COURT: Is that your one question, Mr.  
21     Cochran?

22           MR. COCHRAN: The only one, Your Honor.

23           THE COURT: I'll let him answer it, even

1    though it's been answered I don't know how many times  
2    in the course of this trial.

3               THE WITNESS:   Yes.   Yes, it did.

4               MR. COCHRAN:   Nothing further, Your Honor.

5               THE COURT:    Thank you, Mr. Cobb.

6               MR. BETTIUS:   Your Honor, I'd like to make my  
7    motion.

8               THE COURT:    May Mr. Cobb be excused?

9               MR. COCHRAN:   Mr. Cobb may be excused.

10              THE COURT:    Thank you, sir.   That concludes  
11   the testimony?

12              MR. BETTIUS:   Yes, Your Honor.

13              THE COURT:    Stop.   Wait.   Mr. McAleer?

14              MR. McALEER:   May it please the Court,  
15   Charles McAleer for the Inova Complainants.

16              Your Honor, to the extent necessary, I'd like  
17   to at least formally at this time move the admission of  
18   the exhibits that were attached to the fee application  
19   motion that Mr. Trenga filed last week and tendered to  
20   the Court.

21              THE COURT:    Has counsel had an opportunity to  
22   see those?

23              MR. McALEER:   I believe they were served on

1 all counsel last week.

2 MR. BETTIUS: Your Honor, I think there is an  
3 entitlement to fees.

4 MR. COCHRAN: I have no objection.

5 THE COURT: All right. Mr. Bettius?

6 MR. BETTIUS: Your Honor, we would, at this  
7 time, move the Complainant's accounting, the Arthur  
8 Andersen report, the Kummel (ph) and Associates report,  
9 the Complainant's rebuttal response report and the  
10 exhibits filed with our accounting. I don't think  
11 there's been any objection. I talked to Mr. Cochran  
12 about that earlier. And, of course, we had the  
13 original eight volumes, and the exhibits which we've  
14 utilized at the trial have been identified. Your Honor  
15 has made specific rulings as to which ones were  
16 accepted.

17 THE COURT: Mr. Cochran, let me hear from you  
18 on all of the exhibits.

19 MR. COCHRAN: Your Honor, I think we've  
20 agreed that all of the exhibits -- except for one,  
21 specifically, is excluded, and it may be just the one  
22 from today -- should be admitted by the Court.

23 THE COURT: Let me run through what I think I



1 have and let's make sure. The boxes that are over  
2 there by the Court door are marked as the Complainant's  
3 Accounting Exhibits, and it consists, I think, of eight  
4 volumes.

5 MR. BETTIUS: Yes, Your Honor.

6 THE COURT: Is that what you're talking  
7 about?

8 MR. BETTIUS: They're from the previous  
9 trial.

10 THE COURT: Contained in there are all of the  
11 exhibits from the previous trial?

12 MR. BETTIUS: Yes.

13 THE COURT: There's no objection to those?

14 MR. COCHRAN: No objection, Your Honor.

15 THE COURT: Then I have two volumes marked  
16 Respondent's Exhibit List, Volume 1 and Volume 2, which  
17 are contained in the books I have, a white book and a  
18 smaller black book, and there's no objection to those;  
19 is that correct?

20 MR. BETTIUS: The only one that I can object  
21 to, Your Honor, is the Wheat Securities letter which  
22 was previously refused by the Court on three offers in  
23 the previous trial. Is it going to make a difference?

1 No.

2 Your Honor, let them all come in.

3 THE COURT: All right.

4 MR. COCHRAN: Your Honor, there is also a  
5 volume which is the exhibits to Mr. Cobb's accounting.

6 THE COURT: I'll get to that in a second,  
7 Mr. Cochran.

8 Then we had a number of exhibits that were  
9 marked in what can only be called an unusual numbering  
10 or lettering system with multiple zeros and multiple Es  
11 and I'm sure that -- I will ask you all to confer with  
12 the clerk to make sure he has a list of those and make  
13 sure I have those, because I'm not sure where they  
14 wound up. Some wound up with the clerk. I have a  
15 suspicion or I have a feeling that some wound up back  
16 with counsel at their table.

17 I also do have the accounting exhibits for  
18 both the Respondent's accounting and the Complainant's  
19 accounting. They're attached to the accounting.

20 Those easel exhibits that we used, I looked  
21 around and I'm not sure where they are. Were they ever  
22 changed on the smaller sheets to reflect those items  
23 that were added? I'm thinking particularly of the

1 first one Mr. Cobb did.

2 MR. COCHRAN: We admitted Exhibit EE, Your  
3 Honor, which reflected his original numbers. It does  
4 not reflect the numbers added by --

5 THE COURT: I want the easel exhibits. All  
6 of those pages, just fold them up and give those to the  
7 clerk.

8 Let's see. I think that was all about the  
9 exhibits.

10 MR. BETTIUS: Your Honor, there were these  
11 demonstrative exhibits which I've shown to Mr. Cochran.  
12 I don't think that they were actually given numbers,  
13 but they were referred to -- identified and they were  
14 referred to by the witness.

15 MR. COCHRAN: I actually think they were  
16 given numbers, Your Honor.

17 MR. BETTIUS: They may have been, and I  
18 apologize, Your Honor.

19 MR. COCHRAN: OO and OOO.

20 THE COURT: We'll confirm them.

21 MR. COCHRAN: We have no objection, Your  
22 Honor. We'll make certain that it's consistent.

23 THE COURT: I'm going to hand those to the

1 clerk and you all can confer with him. Anything else  
2 on the exhibits?

3 MR. BONO: Your Honor, I'm unclear as to  
4 whether the Court has all of the exhibits from the  
5 first trial or not.

6 THE COURT: Mr. Bettius says they're all  
7 contained in those eight volumes that are in those two  
8 boxes right over there.

9 MR. BONO: I don't think that's correct. I  
10 think they only took some exhibits from the first trial  
11 and put them in those binders.

12 MR. BETTIUS: Well, Your Honor -- is that  
13 right?

14 MS. FITZGERALD-O'CONNELL: Your Honor, I  
15 think we used the majority of the original trial  
16 exhibits, and then from 800 on, there were additional  
17 exhibits that were part of this trial.

18 MR. BETTIUS: I would say this. Mr. Bono --  
19 if there's anything he wants to add from the first  
20 trial and it's not there, and he wants to supplement  
21 those exhibits, I certainly have no objection.

22 MR. BONO: They ought to be, Your Honor, in  
23 the group. I just don't know where they are.

1 MR. BETTIUS: I think they are, Mr. Bono. To  
2 the extent there's anything in there you want that came  
3 from the first trial, I have no objection to it.

4 MR. O'DONNELL: Your Honor, are they all the  
5 same as the first trial?

6 THE COURT: Wait. We can't have everyone  
7 talking at once. Everybody can sit down. Just relax.  
8 Just relax.

9 The clerk may have, and I have, all the  
10 files. I have what appear to be the pleading files and  
11 the transcripts from the first trial in my office. But  
12 there is not a single box of documents or other things  
13 marked exhibits from that trial.

14 MR. BETTIUS: Your Honor, let me say this.

15 We have an exhibit track, Mr. Bono, from the  
16 first trial.

17 I'd be delighted to let Mr. Bono have a copy  
18 of this, which purports to indicate the exhibits that  
19 were admitted.

20 MR. BONO: Your Honor, the first trial the  
21 exhibits were marked -- most of them were jointly  
22 marked by Mr. Bettius and me from 1 through 700 and  
23 something. There was a set of notebooks that were

1 provided to the Court at that time. I don't know where  
2 they are.

3 THE COURT: I will make an effort. We'll get  
4 in touch with you. We'll make an effort to locate  
5 them. I'm sure they're here somewhere.

6 MR. BONO: Thank you, Your Honor.

7 MR. COCHRAN: Your Honor, I suspect that  
8 whatever exhibits are not in their eight volumes and  
9 three volumes will be finite in number.

10 THE COURT: I would be shocked if they  
11 weren't.

12 MR. COCHRAN: We'll specifically identify  
13 those. Mr. Bettius and I have proceeded on the  
14 assumption that all of the exhibits from the first  
15 trial were still in the record in this case.

16 MR. BETTIUS: Your Honor, we have one more,  
17 and it is the Final Revised Accounting Attachment 1.

18 THE COURT: I have some -- apparently some  
19 things were handed to me. I have Mr. Cochran's copy of  
20 the scheduling order. I have, apparently, a couple of  
21 exhibits, Trial Exhibit 947 and some other ones that  
22 were handed to me sometime during the trial. I'm not  
23 sure how they wound up on my bench.

1 MR. HIRSCHKOP: If Your Honor please, the  
2 motion made by Inova's counsel, when my learned  
3 co-counsel said we weren't objecting to the admissions,  
4 as far as I'm concerned, we reserve the right to object  
5 to the recent list of those things.

6 MR. BETTIUS: I think that's understood.

7 MR. HIRSCHKOP: Okay.

8 MR. HIRSCHKOP: I want to be very clear that  
9 they're not misleading you.

10 THE COURT: I think that -- I'm sorry.  
11 You're talking about the -- which exhibit are you  
12 talking about?

13 MR. HIRSCHKOP: The fee application.

14 THE COURT: All right.

15 MR. McALEER: I'm not quite sure what counsel  
16 is suggesting by way of some later objection to  
17 reasonableness. I think it's clear the Court has  
18 admitted those exhibits into evidence. Maybe counsel  
19 can be clear as to the context.

20 THE COURT: Mr. Hirschkop, I will write  
21 myself a note that if I -- that if I determine that  
22 Inova is entitled to fees, I will give everyone an  
23 opportunity to be heard on the reasonableness of those

1 fees.

2 MR. HIRSCHKOP: Thank you, sir. Your Honor,  
3 may I ask another thing of the Court, perhaps  
4 prematurely? That's the schedule from here -- I'd like  
5 to make a suggestion.

6 THE COURT: I was going to get to that in a  
7 second. You're talking about a briefing schedule?

8 MR. HIRSCHKOP: Yes, sir. May I make a  
9 request?

10 THE COURT: All right.

11 MR. HIRSCHKOP: We'd like to get the  
12 transcript and have 30 days to file a comprehensive  
13 brief to do away with those trial briefs. You've got a  
14 whole bunch of briefs to read now. I think it's  
15 probably an imposition on the Court. There are two new  
16 counsel in this case, and we got in just before trial.  
17 It gives us a chance to get it in, but it gives the  
18 Defendants -- I'm sorry -- the Respondents a chance to  
19 try to do a coordinated brief, rather than this  
20 piecemeal you've been getting. I think it would be  
21 beneficial to the Court.

22 It's a lot of detail. We have a five-day  
23 record now that wasn't before you before that has to be



1 integrated into the brief. We're entitled to go  
2 forward on the record and not on the arguments of our  
3 side or Mr. Bettius. You've heard a lot of argument,  
4 but that's not evidence. I think it should be  
5 adequately briefed.

6 I also think, and I will explore this, that  
7 there should be an opportunity -- perhaps we should be  
8 looking at mediation or further discussions during the  
9 interim.

10 MR. BETTIUS: Your Honor, that's  
11 inappropriate in terms of where we are now. How we're  
12 going to resolve this case outside of the Court is  
13 another issue. I'd like to confine ourselves to the  
14 briefing schedule and be heard on that issue.

15 THE COURT: How much time do you suggest,  
16 Mr. Hirschkop, that you might need to do that?

17 MR. HIRSCHKOP: Thirty days from the time we  
18 get these transcripts, as soon as the Court Reporter  
19 gets it to us, Your Honor. That's not extraordinary.  
20 That's an ordinary time. Given the complexities here,  
21 and the length of this thing, it's perfectly  
22 reasonable.

23 I've talked to all Respondents' counsel and

1 we're all in agreement with that.

2 MR. BETTIUS: Your Honor, it's their duty to  
3 account in this case. There should be joint  
4 submissions of one brief. We don't need a transcript.  
5 The Court has the evidence. The Court's not going to  
6 look at a transcript in deciding this case. The  
7 Court's going to look at its notes.

8 I suggest that within 20 days or 21 days we  
9 all submit a brief and get this over with. There's a  
10 bond running. There are -- people's futures are  
11 concerned with what's going to happen. They're  
12 attempting to market it. We need resolution of this  
13 case. The expense and costs of going to a transcript,  
14 reading the transcript, are absolutely absurd.

15 The Court's heard this case now over the  
16 course of a long, long time. We shouldn't have to  
17 respond to three or four briefs. The Respondents  
18 should submit one set of briefs and we'll submit one  
19 brief and that's it. I mean, it's got to end at some  
20 time, Your Honor.

21 The Court's had -- been inundated with  
22 information. You've got the Respondent's accounting,  
23 rebuttals. One brief apiece, I think, should get this

1 issue done.

2 THE COURT: How about 30 days from today's  
3 date, Mr. Hirschkop, and we expedite the transcript, if  
4 you need it?

5 MR. HIRSCHKOP: We won't have a transcript  
6 for at least a couple of weeks, sir. I've talked with  
7 the Court Reporter already, Your Honor. That would be  
8 the earliest they possibly could do it.

9 Your Honor, there has been a great deal of  
10 representation to the Court while I've been here of  
11 what's in this record, on which counsel can't  
12 reasonably agree. There's a great deal of overstating  
13 of what was done at the first trial and what is  
14 documented or whether counsel received a document. It  
15 changes every moment whether he got the Extended Care  
16 document, until he finally admitted he had it for nine  
17 months.

18 It's those kinds of representations that  
19 having to rely on the record guard against the Court  
20 getting any kind of misinformation from either side.

21 MR. BETTIUS: Leaving aside the --

22 MR. HIRSCHKOP: May I finish? It's only the  
23 lawyer-like way to approach it. It's a traditional

1 time frame.

2 As far as anyone being in great jeopardy in  
3 their jobs or livelihood, that's not the case at all.  
4 We have the facilities there. What's going to happen?  
5 It's just the lawyer-like and appropriate way to do it.

6 Given the question as to representations that  
7 have been raised on both sides, a brief rebuttal would  
8 also be the only appropriate thing. If we see  
9 something --

10 THE COURT: No. No. We're having  
11 simultaneous briefs, Mr. Hirschkop. Everybody's going  
12 to file them at the same time. I will direct that the  
13 parties file briefs with this Court no later than April  
14 1.

15 MR. BETTIUS: Yes, sir. Your Honor, we've  
16 got a bond extension issue, obviously.

17 THE COURT: We may have, but we'll deal with  
18 that at the time. That gives you, I think,  
19 Mr. Hirschkop, a couple of weeks to get the transcripts  
20 and then it should be about a 30-day time period to get  
21 the brief done. That will be due on April 1.

22 I will ask somebody to provide me with a  
23 write-up of the testimony of Ms. Moore. I will tell

1 you all, quite frankly, I had some difficulty following  
2 that. I don't know if it was me or her. I'm not  
3 commenting on that, but I would like to see that  
4 testimony in writing.

5 Anything else?

6 MR. BETTIUS: I have my motion, Your Honor.

7 THE COURT: All right.

8 MR. BETTIUS: For the record, Your Honor, I  
9 think that what we've seen here, patently, is that the  
10 Court's order has not been followed. In fact, the  
11 evidence is clear, and it's beyond a doubt, that  
12 accountants for the Respondents never saw the order;  
13 never accounted for accretions; have never accounted  
14 for total assets; have never accounted for total  
15 revenues; have never accounted for withdrawals; have  
16 never observed nor accounted for third-party  
17 transactions.

18 It's interesting, Your Honor, there isn't one  
19 attack on the methodology or the numbers used in the  
20 presentation by Mr. Wilson. They argue with how he  
21 makes allocations, but his methodology did precisely  
22 what the Court said.

23 These arguments that by a series of

1 valuations we have accounted -- Your Honor, we're  
2 dealing with very sophisticated people here. If Joe  
3 Public came into this courtroom and he attempted to  
4 account for his life as a fiduciary on the basis of a  
5 series of valuations, this Court would be hard put to  
6 even listen to that argument.

7           There's no testimony here that there was an  
8 inadequacy of records from which to do a year-by-year  
9 accounting in accordance with the Court's order.

10           I, Your Honor, under the circumstances  
11 believe that their accounting should be stricken as  
12 non-compliant with the Court's order.

13           THE COURT: Does counsel wish to respond,  
14 briefly?

15           MR. COCHRAN: Your Honor, I don't know that  
16 much of a response is necessary. The fact that  
17 Mr. Cobb had not seen the order is neither here nor  
18 there. As he previously testified, he showed  
19 accretions. As a matter of fact, his testimony was  
20 that his balance sheet showed not only accretions, but  
21 assets and liabilities which are not shown by anything  
22 done by the Complainant's accounting.

23           You know, the methodology difference --

1 accountants can do things whatever way. We're not here  
2 to criticize their methodology. It's inappropriate for  
3 Mr. Bettius to criticize ours, particularly when, as of  
4 1982, we come up with a \$1.880 million as the total  
5 accumulated equity. They come up with \$230,000 less.

6 So, you know, there's not a lot of difference  
7 in how you come out. The difference is do you include  
8 taxes, do you include rent, what do you do with the  
9 licensing? Those are all issues for this Court to  
10 decide.

11 MR. BETTIUS: Brief rebuttal, Your Honor.

12 THE COURT: All right.

13 MR. BETTIUS: Hanshaw says you're not to do  
14 anything with the proceeds of charitable property.  
15 They stood before the Court this morning and said it  
16 was necessary to reinvest. Hanshaw absolutely  
17 prohibits that kind of activity.

18 THE COURT: The motion will be denied and  
19 I'll note your objection.

20 MR. HIRSCHKOP: If it please, Your Honor,  
21 April 1 turns out to be a Saturday.

22 THE COURT: In fact, I just noticed I will be  
23 out of town the week of April 2. So I'll give you to

1 that Friday, which is April 7.

2 MR. HIRSCHKOP: Thank you.

3 THE COURT: I did discover that I have an  
4 extra copy of something called Amended Accounting  
5 Exhibits. I'll leave that here, Mr. Cochran. I don't  
6 know if that's the one you gave me or not.

7 MR. COCHRAN: Those are mine, Your Honor.

8 THE COURT: All right.

9 MR. BETTIUS: Your Honor, there is one  
10 matter. We don't have an order with respect to  
11 Dr. Burtoff. We've taken the trouble of preparing one.  
12 Shall I exhibit it to -- who would be representing  
13 Dr. Burtoff's --

14 MR. O'DONNELL: The estate, I would be.

15 MR. BETTIUS: Your Honor, we'll tender it.

16 MR. COCHRAN: Your Honor, we thank you for  
17 your patience.

18 THE COURT: On occasion.

19 MR. COCHRAN: You're not paid enough to deal  
20 with this.

21 THE COURT: All right. Nothing further,  
22 Court will stand adjourned until tomorrow morning.



1                   (Whereupon, at 3:44 p.m., the proceedings in  
2           the above-entitled matter were concluded.)

3                               \* \* \* \* \*

CERTIFICATE OF REPORTER

I, Eva M. Bridget, the Stenomask Reporter who was duly sworn to well and truly report the foregoing proceedings, do hereby certify that they are true and correct to the best of my knowledge and ability; and that I have no interest in said proceedings, financial or otherwise, nor through any relationship with any of the parties at interest or their counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of December, 2001.

Eva M. Bridget  
Verbatim Reporter