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IN THE  
SUPREME COURT OF VIRGINIA  
AT RICHMOND

---

RECORD NO. 011150

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

Appellants-Respondents,

v.

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

Appellees-Complainants.

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1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. FOX:

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

6 A Yes.

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

9 A Yes, I did.

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

12 A. Yes.

13 Q. Do you recall that?

14 A Yes, I do.

15 Q. Are you still engaged in that profession?

16 A Yes, I am.

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

20 A Yes, it does.

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

23 THE COURT: Does counsel wish to inquire?

J.APP. 0906

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

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

4 BY MR. FOX:

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

7 A. No, I'm not.

8 Q. And you do reaffirm that testimony?

9 A Yes, I do.

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

14 A Yes, I do.

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

18 A Yes, I do.

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

21 A Yes, I do.

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

J.APP. 0907

1 Jefferson. Do you recall?

2 A Yes, I do.

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

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

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

15 A Yes, we did.

16 Q. What did you find there?

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

20 Q. Is that the left part?

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

J.APP. 0908

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

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

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

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

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

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

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

J.APP. 0909

1 year that it did that.

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

4 A Yes, I do.

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

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

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

13 A. In the aggregate?

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

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

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

22 A Yes, I have.

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

J.APP. 0910

1       revoked?

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

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

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

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

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

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

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

J.APP. 0911



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

5 A Yes, I did.

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

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

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

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

J.APP. 0912

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

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

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

10 A. Prior to my testimony in July --

11 Q. Yes, sir.

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

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

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

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

J.APP. 0913

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

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

12 A. That's correct. It did.

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

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

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

21 A. No.

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

J.APP. 0914

1 Do you recognize those documents, Mr. Wilson?

2 A Yes, I do.

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

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

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

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

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

18 A. They did.

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

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

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

J.APP. 0915

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

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

12           A     Yes, it is.

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

15           A     Yes.

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

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

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

J.APP. 0916

1 column directly from the audited financial statement?

2 A Yes, it does.

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

4 A. Why did I do that?

5 Q. Yes, sir.

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

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

12 Would you tell Judge Swersky with that means?

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

21 Q. -- trends?

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

J.APP. 0917

1 an annualization of the prior columns.

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

3 A. Right.

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

6 A Yes.

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

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

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

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

20 A Yes.

21 Q. What does that indicate?

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

J.APP. 0918

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

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

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

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

20 Q. Twenty-four?

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

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

J.APP. 0919



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

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

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

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

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

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

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

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

J.APP. 0920

1 year of their operations.

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

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

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

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

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

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

J.APP. 0921

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

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

5 Q. Or unwilling?

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

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

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

22 Q. Roughly what?

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

J.APP. 0922

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

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

7 A. No. About two or three percent.

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

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

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

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

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

J.APP. 0923

1 business and to operate in the community?

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

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

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

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

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

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

J.APP. 0924

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

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

9 A. I did.

10 Q. Where would that be reflected?

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

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

16 Not for each year, but one typical year.

17 A. How I calculated it?

18 Q. Yes, sir.

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

J.APP. 0925

1 Q. That's 29,270?

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

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

7 A. Correct.

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

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

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

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

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

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

J.APP. 0926

1 period.

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

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

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

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

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

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

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

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

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

J.APP.0927



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

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

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

17 Q. So what are we talking about?

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

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

J.APP. 0928

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

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

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

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

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

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

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

J.APP. 0929

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

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

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

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

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

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

J.APP. 0930

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

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

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

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

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

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

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

J.APP. 0931

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

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

9 A. In my view, it definitely was.

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

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

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

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

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

J.APP. 0932

1 least that side of the equation wired?

2 A. They appeared to have it wired.

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

6 A Yes, they did.

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

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

16 Q. Okay.

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

J.APP. 0933

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

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

9 Q. Not as long-term?

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

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

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

J.APP. 0934

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

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

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

7 A Yes, I do.

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

11 A Yes.

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

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

17 Q. This is Jefferson's method?

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

J.APP. 0935



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

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

7 A. I believe it was 1974.

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

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

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

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

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

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

J.APP. 0936

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

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

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

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

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

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

J.APP. 0937

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

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

7                   Is that the same thing?

8           A    Yes, it is.

9           Q.    And it is entitled what, sir?

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

12           BY MR. FOX:

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

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

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

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

J.APP. 0938

1 see those?

2 A Yes.

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

5 A Yes.

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

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

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

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

J.APP. 0939

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

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

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

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

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

13          THE COURT: All right.

14          MR. CHOCKLEY: Thank you.

15          THE COURT: All right.

16          BY MR. FOX:

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

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

19          BY MR. FOX:

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

23          A     Yes.

J.APP. 0940

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

3 A Yes, it does.

4 Q. What Bates number is that, sir?

5 A. DT 00094.

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

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

10 Does counsel have another copy of that?

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

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

15 MR. FOX: Probably about ten minutes.

16 THE COURT: Let's finish direct.

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

19 What exhibit is it, Fritz?

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

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

J.APP.0941

1 MR. CHOCKLEY: Yes.

2 MR. FOX: Are you with me?

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

4 BY MR. FOX:

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

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

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

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

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

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

J.APP. 0942

1 A. I don't recall seeing that.

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

4 Let me amend it.

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

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

12 A. Would you repeat the scenario again?

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

15 A. Yes.

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

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

21 Q. Replace it?

22 A. -- replace it with bonds payable.

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



1 co-counsel and --

2 BY MR. FOX:

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

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

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

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

J.APP. 0944

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

3 A Yes.

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

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

14 Q. Thank you, Mr. Wilson.

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

20 I would move all of those exhibits into evidence.

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

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

J.APP. 0945

1 to 564.

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

3 MR. CHOCKLEY: No objection to 611.

4 THE COURT: Okay. That's in.

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

7 THE COURT: All right. They're all admitted.  
8 Anything else, Mr. Fox?

9 MR. FOX: Not at this time.

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

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

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

17  
18 (Whereupon, a luncheon recess was taken.)  
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J.APP. 0946

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J.APP. 0947

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

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

4 MR. CHOCKLEY: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. CHOCKLEY:

7 Q. Good afternoon, Mr. Wilson.

8 A. Good afternoon.

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

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

14 Q. You have no opinion?

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

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

21 A. I don't have an opinion.

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

J.APP. 0948

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

2 A. That I believe.

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

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

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

11 A Yes.

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

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

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

19 A. Jefferson achieved a very quick profitability.

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

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

J.APP. 0949

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

4 A Yes.

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

7 A. What do you mean by that?

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

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

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

14 A. No, it's not.

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

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

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

21 A Yes.

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

J.APP. 0950

1 A. Right.

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

4 A. Correct.

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

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

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

10 A. Okay.

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

13 A. I could use a piece of paper.

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

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

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

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

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

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

23 THE COURT: Uh-huh.

J.APP. 0951



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

3 BY MR. CHOCKLEY:

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

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

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

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

9 MR. FOX: The graph or the --

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

15 THE COURT: Are they totalled up?

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

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

20 BY MR. CHOCKLEY:

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

23 A. Yes.

J.APP. 0952

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

3 A. For which year?

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

5 A. Yes.

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

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

9 A. Okay.

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

11 A. Yes.

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

13 A Yes.

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

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

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

18 A. Okay.

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

20 A Yes.

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

22 A Yes, I do.

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

J.APP. 0953

1 per the financial statement?

2 A. Through that period of time?

3 Q. Yes.

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

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

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

10 Q. Per year net income?

11 A. On average.

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

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

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

18 A. From what standpoint?

19 Q. To the success of the Hospital.

20 A. Over what period of time?

21 Q. Well, over any period of time.

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

J.APP. 0954

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

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

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

8           A    Yes, I was.

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

11          A    Yes, it was.

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

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

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

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

J.APP. 0955

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

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

6 A. That would have been one logical source.

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

10 A Yes.

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

13 A. I read the tax returns, yes.

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

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

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

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

J.APP. 0956

1 offset its taxes; that's correct.

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

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

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

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

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

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

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

20 A Yes.

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

22 A. That's correct.

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

J.APP. 0957

1 moment.

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

4 BY MR. CHOCKLEY:

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

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

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

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

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

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

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

22 A Yes, it is.

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

J.APP. 0958

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

2 A Yes, I do see that.

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

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

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

10 A. May I look at the statement?

11 Q. Sure.

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

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

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

22 A. Yes, they are.

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

J.APP. 0959



1 not?

2 A Yes, they are.

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

6 A. That's correct.

7 Q. -- did they not?

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

9 A. Yes.

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

11 A. Yes.

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

15 A. That's correct.

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

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

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

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

J.APP. 0960

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

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

10 A. Let me read this for a second.

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

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

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

J.APP. 0961

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

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

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

8 A Yes, that's right.

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

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

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

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

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

21 A. It wasn't provided.

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

J.APP. 0962

1 A. Off-and-on, yes.

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

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

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

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

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

14 A Yes.

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

16 A. Yes.

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

18 A Yes.

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

20 A. That's correct.

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

23 A. That's right.

J.APP. 0963

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

4 A Yes.

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

7 A. Yes.

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

10 A. Right.

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

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

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

18 A. That's right.

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

22 A. Yes.

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

J.APP. 0964

1 the entire year?

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

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

6 A. That was the highest period, yes.

7 Q. 36,716.

8 A Yes.

9 Q. 1970.

10 A Yes.

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

12 A. No, it didn't.

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

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

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

20 A. Correct.

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

23 A. Right.

J.APP. 0965

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

3 A. That's correct.

4 Q. That's four consecutive downward years.

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

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

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

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

17 A Yes.

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

19 A Yes, they did.

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

21 A. That's right.

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

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

J.APP. 0966

1 except 1973.

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

4 A Yes.

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

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

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

14 A. That's a strong cautionary flag.

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

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

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

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

J.APP. 0967



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

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

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

8 A. Right.

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

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

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

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

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

21 A. I don't know that.

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

J.APP. 0968

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

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

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

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

10          THE COURT: All right.

11          BY MR. CHOCKLEY:

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

18          A.    Sorry. What was your last statement?

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

21          A     Yes, it is.

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

J.APP. 0969

1 A Yes.

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

5 A Yes, it does.

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

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

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

14 A. Yes.

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

17 A. Yes.

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

21 A. Not to my knowledge.

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

J.APP. 0970

1 A. Correct.

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

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

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

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

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

17 BY MR. CHOCKLEY:

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

20 A. Correct.

21 Q. April of '96?

22 A. Yes.

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

J.APP.0971

1 as well?

2 A Yes.

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

5 A. Correct.

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

8 A. Roughly speaking, that's right.

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

11 A. That's not my understanding.

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

14 THE COURT: Objection overruled. You may answer.

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

17 BY MR. CHOCKLEY:

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

21 A. No.

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

J.APP. 0972

1 an appropriation for payment?

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

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

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

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

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

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

19 A. No.

20 Q. Thank you.

21 THE COURT: Any redirect?

22 MR. FOX: Yes, Your Honor.

23 REDIRECT EXAMINATION

J.APP. 0973

1 BY MR. FOX:

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

4 A Yes.

5 Q. -- do you see that?

6 A Yes.

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

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

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

14 A Yes.

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

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

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

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

J.APP. 0974

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

4 A Yes.

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

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

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

14 A. Yes.

15 Q. Their financial history?

16 A. Sure.

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

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

J.APP. 0975



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

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

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

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

10 A. No, they would not.

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

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

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

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

18 BY MR. FOX:

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

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

23 A. No, I don't.

J.APP. 0976

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

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

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

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

8 A. The date is May 22, 1974.

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

10 A Yes, it is. Okay.

11 Q. What does Mr. Ritter say?

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

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

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

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

J.APP. 0977

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

4 A Yes, they did.

5 Q. In spite of that?

6 A Yes, they did.

7 Q. When they trimmed, the FTEs increased?

8 A Yes, they did.

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

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

15 Q. To what?

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

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

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

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

J.APP. 0978

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

4 BY MR. FOX:

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

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

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

12 A. Yes.

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

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

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

19 THE COURT: Objection sustained.

20 MR. FOX: I have no further questions.

21 THE COURT: May Mr. Wilson be excused?

22 MR. FOX: Yes.

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

J.APP.0979

1 or stay in the courtroom.

2 (Witness excused.)

3 Who's next?

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

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

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

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

11 (Whereupon, a recess was taken.)

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

14 Whereupon,

15 ROBERT F. REILLY

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

19 DIRECT EXAMINATION

20 BY MR. FOX:

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

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

J.APP. 0980

1 THE COURT: May Professor Dooley be excused?

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

4 (Witness excused.)

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

7 Whereupon,

8 ROBERT E. WILSON

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

12 DIRECT EXAMINATION

13 BY MR. FOX:

14 Q. Good morning, Mr. Wilson.

15 A. Good morning.

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

17 A. Robert E. Wilson.

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

19 A. Arthur Anderson.

20 Q. And Arthur Anderson is what?

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

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

J.APP. 0981

1           A.     Washington, D.C.

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

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

6           Q.     And what is your educational background?

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

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

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

16          Q.     Do you hold any professional licenses?

17          A     Yes, I do.

18          Q.     In what jurisdictions?

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

J.APP. 0982

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

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

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

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

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

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

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

J.APP. 0983



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

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

9 A Yes.

10 Q. Tell Judge Swersky what an auditor does.

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

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

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

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

J.APP. 0984

1 behind those representations?

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

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

16 THE COURT: Any questions about the  
17 qualifications?

18 MR. CHOCKLEY: Yes, Your Honor.

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

20 BY MR. FOX:

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

22 A Yes, I have.

23 Q In the State of Virginia?

J.APP. 0985

1 A. No.

2 Q In what courts, sir?

3 A. A court in the State of Washington.

4 VOIR DIRE EXAMINATION

5 BY MR. CHOCKLEY:

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

9 A. No, it was not.

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

12 A Yes.

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

15 A Yes, I was.

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

19 A. Correct.

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

21 A Yes.

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

J.APP. 0986

1           A.    Correct.

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

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

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

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

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

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

16                   THE COURT: All right.

17                   BY MR. FOX:

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

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

J.APP. 0987

1 Q. What documents did you review, sir?

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

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

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

10 A. No, I did not.

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

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

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

J.APP. 0988

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

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

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

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

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

17 Q. What were those periods?

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

23 Q. Okay. Then what occurred after that?

J.APP. 0989

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

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

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

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

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

J.APP. 0990

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

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

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

10 A Yes, I do.

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

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

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

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

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

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

J.APP. 0991



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

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

8 THE COURT: Objection overruled.

9 BY MR. FOX:

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

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

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

J.APP. 0992

1 for-profit corporation?

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

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

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

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

15 Q. Let's try that.

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

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

J.APP.0993

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

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

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

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

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

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

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

8           Q.   For example?

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

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

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

J.APP. 0995

1 it atypical in any respect?

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

5 Q. Were there some Medicaid?

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

8 Q. Did you find any fund raising?

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

11 Q. Any grant money?

12 A. No grant money.

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

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

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

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

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

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

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

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

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

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

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

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

19 BY MR. FOX:

20 Q. Referring to Exhibit 190 --

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

J.APP. 0997

1       okay.

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

4           Q.     Exhibit 192?

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

7           Q.     Exhibit 193?

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

10          Q.     That's 682, I believe.

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

13          Q.     Exhibit 194?

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

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

18                   MR. CHOCKLEY:  Okay.

19                   BY MR. FOX:

20          Q.     1969, is that a loss?

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

22          Q.     Will you so indicate, sir?

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

J.APP. 0998

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

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

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

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

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

10 Q. To refresh your recollection?

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

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

14 A. Yes, it is.

15 Q. Okay. Does that refresh your recollection as to  
16 what 1966 was?

17 A Yes. 1966 was \$187,485.

18 MR. CHOCKLEY: I object to that one. There's no  
19 foundation.

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

21 BY MR. FOX:

22 Q. Now, going to 1971, eight months, is there a  
23 method by which accountants would annualize that year if

J.APP. 0999



1     you were trying to compare apples to apples?

2           A.     One approach you could use would be assume that  
3     net income was roughly generated fortunately each month  
4     throughout the year. That may not be entirely accurate.  
5     It's one way of looking at it from the standpoint of an  
6     overall benchmark. But if this represents eight months  
7     worth of income, it's possible income for the full  
8     equivalent of twelve months period would have been about  
9     \$75,000.

10          Q.     Would you put that figure down there,  
11     annualized. It's just straight ratios, is it not?

12          A.     Right.

13          Q.     Okay. Now, given your experience as an  
14     accountant, looking at that profile of a start-up business  
15     through its early phase, are you able to express an opinion  
16     to a reasonable certainty as an accountant and a consulting  
17     accountant as to whether those would be results you would  
18     anticipate in a start-up business?

19          A     Yes, I do have an opinion.

20                 MR. CHOCKLEY: Objection.

21                 THE COURT: You have to speak up if you are going  
22     to make an objection.

23                 MR. CHOCKLEY: I wasn't sure whether the witness

J.APP. 1000

1 was going to say anything other than "yes." He was  
2 supposed to answer "yes" or "no."

3 BY MR. FOX:

4 Q. Do you have an opinion?

5 What is your opinion?

6 THE COURT: Wait one second, Mr. Wilson.

7 MR. CHOCKLEY: I object to that, Your Honor. The  
8 question was incomprehensible and vague as to what --

9 MR. FOX: Let me rephrase.

10 THE COURT: All right. Rephrase.

11 BY MR. FOX:

12 Q. Based upon your experience as an accountant, can  
13 you tell His Honor what you would expect -- in the absence  
14 of this information, what kind of profile you would expect  
15 in a start-up business in terms of its income generated?

16 A Yes.

17 MR. CHOCKLEY: And my objection -- if you are  
18 going to ask a follow-up question, I'll hold off. If the  
19 witness is going to stop there, I'll hold off.

20 BY MR. FOX:

21 Q. Go ahead, Mr. Wilson.

22 MR. CHOCKLEY: Well then, I object, and the  
23 reason I object is that it's irrelevant.

1 THE COURT: What about that, Mr. Fox?

2 MR. FOX: Your Honor, I think it is relevant that  
3 an accountant can testify whether it was something -- and  
4 I'm not talking about the precise numbers, but what kind of  
5 pattern of income you would expect in a start-up business.  
6 I think it's highly relevant.

7 THE COURT: When you say "business," you're  
8 talking about a not-for-profit health care organization.

9 MR. FOX: Yes.

10 THE COURT: I'll permit it.

11 BY MR. FOX:

12 Q. Go ahead, Mr. Wilson.

13 A. I do have an opinion on that from my experience  
14 and I have worked with at least one start-up hospital.  
15 What I would have expected to see sort of in usual  
16 circumstances certainly would have been losses in at least  
17 the first year, possibly more than the first year, as the  
18 hospital attempts to get the volume of revenue or patients  
19 up to the level of its costs that it has had to put in  
20 place to have a basic level of services.

21 What strikes me as unusual is that this hospital  
22 began to turn around very quickly and generated excess  
23 revenues over expenses in year two of operations and in

J.APP. 1002

1 most years subsequent to that, with the exception of 1969.  
2 I find that exceptional.

3 I don't know what the underlying reasons are but  
4 it's atypical.

5 Q. Now, Mr. Wilson, in terms of revenue growth -- do  
6 you want to flip your chart over -- are you also able to go  
7 to the financial statements and chart the revenue growth of  
8 Jefferson Memorial Hospital during that start-up phase?

9 A Yes, I can do that.

10 Q. Okay. Would you do that for His Honor?

11 A. Would you prefer that I list them all or take  
12 them one-by-one?

13 Q. Let's go ahead and list them all and then come  
14 back.

15 (Witness marking).

16 Q. Do you have a figure for '66, referring to your  
17 chart?

18 A. I think 1966 might be a short year.

19 Q. Now, let's review, this is gross revenue.  
20 Actually you don't mean in thousand dollars anymore, do  
21 you?

22 A Yes. I have rounded to the nearest thousand.

23 Q. For 1965 you had gross revenue of what amount?

J.APP. 1003

1           A.    618,000.

2           Q.    Is that before, or after, the taxable allowance?

3           A.    It's before deductions for govern discounts and  
4   bad debts.

5           Q.    1966?

6           A.    \$1,162,000.

7           Q.    1967?

8           A.    \$1,682,000.  1968, \$2,091,000.  1969, \$2,295,000.  
9   1970, \$3,706,000.  1971, for that eight-month period,  
10 \$2,816,000, and I have annualized that for the full  
11 12-month period for approximately \$4,200,000.

12          Q.    Are you similarly able to express an opinion as  
13 you did with reference to net income based on revenue  
14 growth start-up not-for-profit hospital as to whether those  
15 results were something that you would have expected from a  
16 not-for-profit charitable hospital in a start-up phase?

17               MR. CHOCKLEY:  I object, same basis.

18               THE COURT:  Overruled.  He can answer the  
19 question.

20               THE WITNESS:  I do have an opinion, although  
21 probably less exacting because I think there are many  
22 factors that influence how a hospital grows and how quickly  
23 it grows related to the community around it, the

J.APP. 1004

1 demographics and so forth. But clearly Jefferson Hospital  
2 was on a track of good, strong revenue growth throughout  
3 this period.

4 BY MR. FOX:

5 Q. Now, with reference to this income profile and  
6 its revenue growth during that period, do you find those  
7 results acceptable, especially in light of some of the  
8 transactions that you reviewed regarding the internal  
9 workings of these corporations, the related corporations  
10 and partnerships?

11 A. I would have to ask you to rephrase the question.

12 Q. Let me rephrase. Who owned the building in the  
13 start-up phase?

14 A. In the start-up phase the building was owned by  
15 the King Street Joint Venture.

16 THE COURT: Do you need him to look at the  
17 chart?

18 MR. FOX: I don't need the chart.

19 THE COURT: If you would return to your seat,  
20 please.

21 BY MR. FOX:

22 Q. In the start-up phase, who owned the building?

23 A. The building was owned by King Street Joint

J.APP. 1005

1 Venture.

2 Q. Which later became?

3 A. Jefferson Memorial Hospital Associates.

4 Q. Were you able to determine how the lease rate was  
5 derived?

6 A. In looking at the financial statements and Board  
7 of Director minutes, it appeared that the lease was  
8 structured in a way that the underlying costs of the  
9 building, the mortgage interest, the mortgage itself and  
10 taxes were covered, as well as some level of income return  
11 to the partners of the joint venture, around 10 percent, I  
12 believe.

13 Q. Now, given that background, are you able to  
14 express an opinion regarding the acceptability or the  
15 normalcy of the net income stream and the gross revenue  
16 growth in light of some of these transactions that involved  
17 related parties?

18 MR. CHOCKLEY: I object, Your Honor. It's  
19 irrelevant.

20 THE COURT: Overruled.

21 THE WITNESS: Based on reading the financial  
22 statements, it looks to me -- my opinion is that the  
23 hospital itself, the operating entity, was likely operating

J.APP. 1006

1 under a particular financial burden in that it didn't own  
2 the assets that it operated that were in effect its  
3 financial life blood as well as its mission life blood and  
4 in fact was paying payments out in leases that created  
5 expenses more or greater to the hospital than if they had  
6 owned the building outright and were responsible for the  
7 building and the mortgage underneath that building.

8 Q. Did you, in reviewing documents, see any evidence  
9 that the management of the hospital, that is Inc., had  
10 different motivations other than let me call it "earning  
11 surplus"?

12 MR. CHOCKLEY: I object, Your Honor. The  
13 documents say what they say.

14 THE COURT: Objection sustained.

15 BY MR. FOX:

16 Q. Did you review a letter written by Mr. Reeves in  
17 1970?

18 A Yes, I did.

19 Q. Let me direct your attention to Exhibit 374 and  
20 also Exhibit 119. Did you review those documents, Mr.  
21 Wilson?

22 A. Did I review them? Yes, I did.

23 Q. And in terms of the profit motivation, if you



1 will, of JMHI, did those documents shed any light on  
2 whether the hospital was a profit-motivated organization?

3 A Yes, they do.

4 Q. What did you conclude?

5 MR. CHOCKLEY: I object, Your Honor. The  
6 documents speak for themselves.

7 THE COURT: Objection sustained. He's an  
8 accounting expert, not on personal motivation.

9 MR. FOX: I understand that, but it's probably  
10 relevant to an accountant when he's looking at something.  
11 I would submit that he's not looking only at the record.  
12 He's looking at corroborating information.

13 THE COURT: Objection sustained.

14 BY MR. FOX:

15 Q. Mr. Wilson in trying to review the history,  
16 financial history of the company, what, if any, relevance  
17 do corroborating corporate documents have such as minutes,  
18 correspondence?

19 A Well, an auditor would regularly review the  
20 minutes of all the Board meetings and shareholder meetings,  
21 yet again as a corroboration of intent and resolutions that  
22 are brought forth by the governing body of that  
23 organization.

1           Q.    Okay.  If the issue were presented to you as  
2           though JMHI was a struggling corporation in this early  
3           phase of its health care life and you were asked to discern  
4           as an accountant perhaps reasons for why they had not  
5           achieved their best results, to what information would you  
6           resort after the financial statements?

7           A.    If I may rephrase your question and make sure I  
8           understand it?

9           Q.    Yes.

10          A.    You are asking me what kind of evidence would  
11          there be to indicate something regarding the financial  
12          health of a hospital?

13          Q.    Yes.

14          A     Well, I think there are several things that I  
15          would look to as the auditor in this case.  I would look  
16          for any evidence that the hospital --

17               MR. CHOCKLEY:  I object to what he would look to  
18          as an auditor in this case.  He has already testified that  
19          he did not conduct an audit.

20               THE COURT:  Overruled.

21               BY MR. FOX:

22          Q.    Go ahead, Mr. Wilson.

23          A.    As an auditor or a reviewer of these financial

J.APP. 1009

1 statements, I would look to evidence such as the inability  
2 to pay its current bills, judgments against the hospital by  
3 vendors or other credit holders.

4 I would look for evidence that the hospital was  
5 unable to sustain its operations from a cash flow  
6 standpoint, and, as a reader of the financial statements,  
7 the role that I have taken on in this case, if there was  
8 significant difficulties related to the hospital, I  
9 certainly would have expected the auditors to make some  
10 mention of that in their notes to the financial statements  
11 as well as in their opinions.

12 Q. Did you see any such notes?

13 A. There were none.

14 Q. Did you see any evidence in any of the Board  
15 members or related correspondence that the hospital was  
16 struggling and unable to pay its bills?

17 MR. CHOCKLEY: I object, Your Honor. This is the  
18 question that you already sustained an objection to.

19 MR. FOX: No, it's not, Your Honor. This issue  
20 has never been touched upon.

21 THE COURT: Overruled.

22 THE WITNESS: I didn't see any evidence in  
23 reviewing the minutes to the Board meetings of any

J.APP. 1010

1 references to sustained kind of financial difficulties by  
2 any means.

3 BY MR. FOX:

4 Q. Now, Mr. Wilson, you talked about notes on a  
5 financial statement. If the company was encountering the  
6 kinds of difficulties that you just testified to, what kind  
7 of financial statement notes would you expect to find?

8 A. In response to that, let me just say that the  
9 auditor is responsible as part of his professional duty to  
10 be aware of evidence that would suggest that a company is  
11 having difficulty as a going concern and the fact it may  
12 not survive, and if there's evidence to suggest that there  
13 is significant uncertainty about that and the auditor has a  
14 responsibility to be aware of those kinds of conditions and  
15 indicators, if the auditor determined that there is a  
16 significant uncertainty about the going concern of the  
17 company, there would be a footnote and a reference in the  
18 opinion of the auditor, and I can sort of craft a  
19 hypothetical one in my mind if you would like.

20 Q. Would it be obscure?

21 A. It would be very precise and it would indicate  
22 the conditions that the auditor had found and those  
23 conditions might be illiquidity, judgments against the

J.APP. 1011

1 organization, continuing operating deficits, financial  
2 projections that suggest that the hospital itself realizes  
3 that it is having financial difficulty and in fact may not  
4 have means to turn it around.

5 Those would be spelled out in as much detail  
6 possible, and then in the note the auditor would make some  
7 kind of reference that says, because of these factors, it  
8 is uncertain as to whether the company will be able to be a  
9 going concern.

10 Q. Did you see any evidence in this case that the  
11 organization was not a going concern?

12 A. No. There was no evidence of that.

13 Q. On the contrary, was there evidence that it was a  
14 going concern?

15 A. There was every indication that this was a viable  
16 entity, that it was surviving financially. I think the  
17 financial record as depicted on the chart earlier indicates  
18 that. In fact, the Board minutes reflect that.

19 I believe in that period of time there was Board  
20 discussion regarding expansion and addition to the  
21 hospital's capacity.

22 So I didn't see anything to suggest that there  
23 were any pervasive financial difficulties.

J.APP. 1012

1 Q. Okay. Now, let me lead you, if I can, to the  
2 next phase. I think you said 1971 stood out --

3 A Yes.

4 Q. -- as sort of a separate era to you?

5 A. Right.

6 Q. From an accounting standpoint, why did that stand  
7 out as a separate era?

8 A. In 1971 the owners of this business or the  
9 operators of the business attempted to accomplish a  
10 transfer of assets and a corporate reorganization, and  
11 that's what is significant about 1971.

12 I think it is pivotal for this organization and I  
13 think it was -- well, I'll stop there.

14 Q. From an accountant's perspective, do you have an  
15 opinion as to why they were attempting to do this, in  
16 simply reviewing the statements?

17 A. The only thing I can surmise is that --

18 MR. CHOCKLEY: I object, Your Honor. What he  
19 surmises is irrelevant.

20 BY MR. FOX:

21 Q. State with reasonable certainty as an  
22 accountant.

23 A. Well, my opinion is from reading the footnotes

J.APP. 1013

1 and the financial statements that there was a period of  
2 time leading up to 1971 where the IRS was questioning the  
3 tactics and status of Jefferson Memorial Hospital, Inc.

4 I believe that began around 1966, or '67 perhaps,  
5 they were questioning various transactions and so forth and  
6 by 1970 had in fact issued a letter intending to revoke the  
7 tax exempt status of the hospital.

8 Q. Is it unusual for a charitable hospital to lose  
9 its charitable exemption?

10 A. It's very unusual. Even in the late '80s and  
11 '90s where there's much more scrutiny by the IRS on tax  
12 exempt organizations, there are fewer of than a handful of  
13 organizations in this country that have had their tax  
14 exempt status revoked.

15 Q. Have you ever been involved in your 22 or 23  
16 years of practice with one that has had its exemption  
17 revoked?

18 A. I have not.

19 Q. What was the financial result, if you will, or  
20 what is evidenced in the financial statements of this  
21 intent to transfer assets?

22 A. Right. This is where the financial statements  
23 become almost incomprehensible because there are so many

J.APP.1014

1 inconsistencies in what transpired and when it transpired,  
2 and there are three basic entities involved here:  
3 Jefferson Memorial Hospital Associates, the partnership  
4 that owned the bricks and mortar of the hospital itself up  
5 until 1971; then there was the operating company, the  
6 not-for-profit charitable corporation, Jefferson Memorial  
7 Hospital, Inc.; and then there was a new stock corporation  
8 incorporated in the State of Delaware that was incorporated  
9 called Jefferson Memorial Hospital Corporation. And in  
10 reviewing the financial statements for the fiscal year  
11 ended June 30, 1971, here are some of the inconsistencies  
12 that I found.

13 In reviewing the tax return for the partnership  
14 as of that date, there is a note and a reference in the tax  
15 return that says that on June 30, 1971 the assets of the  
16 partnership, in fact the partnership itself, was liquidated  
17 and all the assets and liabilities were transferred to  
18 Jefferson Memorial Hospital, Inc.

19 Q. Let's turn to that exhibit. That would be the  
20 tax return for what year?

21 A. The 1972 tax return, I believe, which is for the  
22 year ended June 30, 1971.

23 Q. Is that 235? You're referring to the partnership

J.APP. 1015



1 return, 230.

2 A. 230.

3 MR. FOX: Your Honor, do you want to see any of  
4 those notes?

5 THE COURT: I'm doing fine.

6 BY MR. FOX:

7 Q. Mr. Wilson, have you turned to that note in the  
8 1971 JMHA statement?

9 A. Yes.

10 Q. What does it say, sir?

11 A. On the tax return balance sheet there's a  
12 handwritten note that says that the partnership was  
13 liquidated on June 30, 1971; all assets and liabilities  
14 were transferred to Jefferson Memorial, Inc. in exchange  
15 for stock representing an excess of 80 percent ownership in  
16 the Corp by the partners of this venture.

17 Q. Why do you find to be inconsistency?

18 A. It's inconsistent in several ways. In reviewing  
19 the June 30, 1971 financial statements for Jefferson  
20 Memorial Hospital, Inc., there's no reflection of the  
21 transfer of those assets from Associates to Inc. as of that  
22 date. There is a footnote that talks about another  
23 transaction that was pending between Jefferson Memorial

J.APP. 1016

1 Hospital Inc. and a newly-formed stock corporation called  
2 Jefferson Memorial Hospital Corporation, but no reference  
3 to the liquidation of this partnership that held the brick  
4 and mortar and other assets and other liabilities of the  
5 hospital.

6 The other thing that I found unusual is in  
7 reviewing this note of the tax return in tandem with the  
8 financial statements for Jefferson Memorial Hospital, Inc.  
9 as of the same date, is that Jefferson Memorial Hospital,  
10 Inc. is a non-stock corporation, and I don't know how you  
11 can have a transaction that exchanges assets for stock in a  
12 non-stock corporation. I didn't understand that.

13 Q. Okay. Did you see any evidence that that  
14 transaction was in fact completed?

15 A. I didn't see any evidence in fact, other element  
16 of inconsistency is a year later when this new corporation,  
17 Jefferson Memorial Hospital Corporation, in its financial  
18 statements indicated that in fact it was the one that had  
19 the assets of the partnership transferred to it.

20 Q. The bricks and mortar?

21 A. The bricks and mortar primarily, and that in fact  
22 that had taken place on July 1st of 1971, a day later and  
23 that it represented the exchange of, I believe, 60,000

J.APP. 1017

1 shares of stock in this new corporation.

2 Having said that, I didn't see anything outside  
3 of Board minutes and the financial statements to  
4 corroborate the fact that that transaction had taken place.

5 Q. Okay. Now, from an accounting perspective, what  
6 level of corroborating background documentation would be  
7 required for such transactions?

8 A Well, in the case of the --

9 Q. Or for you to note such transactions in a  
10 financial statement. Excuse me.

11 A Yes. Yes. Auditors by necessity have to rely  
12 upon representations made to him by management.. That's a  
13 given. Management is should and generally should be  
14 intimately familiar with the operations of the  
15 organization. But the audit needs to go beyond management  
16 representations and corroborate externally wherever  
17 possible from some independent source.

18 As an example, in the case of the so-called  
19 merger and exchange of stock between the non-stock Inc.  
20 Corporation and the stock, Jefferson Memorial Hospital  
21 Corporation, I didn't see any evidence that that had  
22 occurred. But were I the auditor back then, I would have  
23 been looking for something that reflected the dissolution

J.APP. 1018

1 of the non-stock corporation that should have been some  
2 kind of legal documentation, probably would have been  
3 confirmation with the legal counsel of the company that in  
4 fact the transaction had taken place and probably some  
5 filings with the jurisdictions involved to evidence that.

6 Q. Now, in terms of this era 1971, I think you have  
7 already testified that you thought that the IRS situation  
8 was driving this transaction.

9 MR. CHOCKLEY: I object, Your Honor.  
10 Mischaracterizes his testimony.

11 THE COURT: Rephrase that.

12 BY MR. FOX:

13 Q. That the transaction a reaction to the IRS?

14 A. I believe that's the case.

15 MR. CHOCKLEY: I object and move to strike. I  
16 believe he sustained my objection to his going into  
17 motivation for doing that.

18 THE COURT: Not to that question.

19 MR. FOX: I don't think so, Your Honor. I think  
20 the question was what it was in reaction to.

21 THE COURT: I understand. Go ahead, Mr. Fox.

22 BY MR. FOX:

23 Q. Go ahead, Mr. Wilson.

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1           A.    I mean, again, in reading the financial  
2 statements, here's the story that I see painted. The  
3 corporation, the non-stock corporation, by that point in  
4 time was in clear danger of losing its tax exempt status  
5 and in fact in the IRS's mind it had already been revoked.  
6 The company was challenging it. There was a point in time  
7 in early calendar 1971 they gave up and accepted the fact  
8 that they were going to lose their tax status with the IRS  
9 and I believe at that point in time, my opinion is that  
10 there was really no other rationale that would have made  
11 sense for trying to in effect recreate this non-stock  
12 charitable organization in the closing of a for-profit  
13 corporation called Jefferson Memorial Corporation  
14 organization and move forward operating essentially as it  
15 had been before in a new corporate shell. In effect they  
16 behaved that way with respect to how they managed the  
17 company. I didn't see anything that changed by looking at  
18 the financial statements or reading commentary in the notes  
19 or the minutes of the new corporation going forward that  
20 was really any different in tenor from the old.

21               They behaved at that point as a tax-paying  
22 entity. They went back and filed tax returns and utilized  
23 tax benefits that purportedly were available to them for

1 the losses that were generated by this not-for-profit  
2 charitable organization in 1965 through 1970.

3 Q. How could they do that, Mr. Wilson? Under what  
4 circumstances?

5 MR. CHOCKLEY: I object to that. He has already  
6 testified that -- he was not qualified as a tax  
7 specialist. He's getting into opinion about taxes

8 THE COURT: Objection sustained.

9 MR. FOX: I'll lay a foundation for it.

10 BY MR. FOX:

11 Q. Mr. Wilson, are you familiar with the concept of  
12 net operating losses?

13 THE COURT: Let me ask you how much longer you're  
14 going to be on direct. I don't want to cut you off.

15 MR. FOX: An hour and forty minutes.

16 THE COURT: Okay. We'll take a recess.

17 BAILIFF: All rise.

18 (A recess was taken at 11:02 a.m.)

19 BY MR. FOX:

20 Q. Mr. Wilson, I was asking you if you were familiar  
21 with the concept of net operating losses?

22 A. Yes, I am.

23 Q. Are you familiar with the treatment of net

J.APP. 1021

1 operating losses? As an accountant are you familiar with  
2 the treatment of net operating losses for tax purposes?

3 A. Yes.

4 Q. How are you so familiar?

5 A. In functioning as a CPA and as an auditor over  
6 the years, I have worked for-profit organizations as well  
7 as not-for-profit so I have a basic understanding of that.

8 Q. In the ordinary context, what may be done with  
9 net operating losses?

10 A. Essentially operating losses is a tax concept.  
11 Taxable losses generated by tax-paying corporations can be  
12 used to offset tax liability in other years going back in  
13 time for several years.

14 Q. How far back?

15 A. I believe it's five years back and three years  
16 forward, so it's basically used to offset losses in one  
17 year which can be used by the same corporation to offset  
18 tax liability in another year with some limitations.

19 Q. In reviewing the records in this case, did you  
20 see any indication that any of the Jefferson Hospital  
21 related entities made use of net operating losses?

22 A Yes, they did. Jefferson Memorial Hospital  
23 Corporation -- let me backtrack.

J.APP. 1022

1           Jefferson Memorial Hospital, Inc. filed tax  
2       returns and went back for the period 1966 through 1970 and  
3       filed tax returns and utilized net operating losses going  
4       back in time. Going forward, Jefferson Hospital  
5       Corporation, in its first year and perhaps its second year  
6       as a tax paying tax filing corporation, utilized some of  
7       the tax losses generated by Inc.

8           Q.    Okay. Now, did your review indicate to you when  
9       those net operating losses generated by JMHI were  
10      exhausted?

11          A.    They were by-and-large exhausted in the first  
12      year that the corporation filed tax return. That would be  
13      1971. I think there was a small amount of unused losses  
14      that were utilized in 72. Excuse me. Yes. 1972.

15          Q.    Now, are you familiar with IRS code regulations  
16      on the use of net operating losses carry-back and  
17      carry-forward?

18          A.    I'm familiar with that.

19          Q.    Under what circumstances may you use those net  
20      operating losses?

21               MR. CHOCKLEY: Your Honor, I object. The  
22      witness testified on voir dire that he was not a tax  
23      specialist and he has not been qualified in that area by

J.APP. 1023



1 the Court.

2 MR. FOX: I don't think it's required. He's an  
3 accountant. I have laid a foundation. He said that he's  
4 familiar with their use. He has already testified they may  
5 be used by a corporation and this question goes to whether  
6 they may be used by separate and distinct corporations.

7 MR. CHOCKLEY: I further note it's a legal  
8 conclusion.

9 THE COURT: Objection overruled.

10 BY MR. FOX:

11 Q. Go ahead, Mr. Wilson.

12 A. My knowledge of tax net operating loss  
13 carry-forward and how they can being utilized, first and  
14 foremost they can be utilized by the corporation that  
15 generates them. They can also be utilized in some limited  
16 circumstances in the case of a merger between two tax  
17 paying organizations that the surviving corporation can in  
18 some circumstances utilize losses generated by the  
19 corporation that's dissolved or that is merged into the  
20 surviving corporation.

21 MR. FOX: May the witness be shown Exhibit 235?

22 BY MR. FOX:

23 Q. While she's doing that, do those net operating

J.APP. 1024

1 losses have value to an acquirer?

2 A Yes, they do. I mean, they're an economic asset  
3 just like any other asset. They in fact are a means of  
4 reducing the liability, tax liability, of a corporation  
5 that through a merger is able to acquire, acquires another  
6 entity, as well as those tax assets or tax attributes.

7 Implicitly the value associated with those tax  
8 benefits would enter into any kind of arm's length merger  
9 or acquisition transaction between two third parties.

10 Q. 235. Mr. Wilson, are you familiar with Exhibit  
11 235? Yes, I am.

12 Q. What is that, sir?

13 A. It is the US income tax return for Jefferson  
14 Memorial Corporation for the year ended June 30, 1972.

15 Q. Yes, sir. And what representations are made in  
16 that tax return regarding the relationship, if any, between  
17 JMHI and JMHC?

18 MR. CHOCKLEY: The document speaks for itself,  
19 Your Honor.

20 THE COURT: It does, doesn't it, Mr. Fox?

21 MR. FOX: It does speak for itself, but he's  
22 doing it as an accountant and I think he can testify as to  
23 what it shows and where it is.

J.APP. 1025

1 THE COURT: All right. Go ahead.

2 BY MR. FOX:

3 Q. Go ahead.

4 A. Would you repeat the question?

5 Q. I was asking you what the tax return represented  
6 insofar as a relationship between the taxpayer there, JMHC,  
7 and JMHI.

8 A. There's no explicit representation or indication  
9 of any relationship between JMHC and JMHI on the tax  
10 return. There is, however -- and I believe this was one of  
11 the years where the employer identification number of JMHI  
12 was used on the JMHC tax return.

13 Q. Now, as an accountant, what message does that  
14 send, Mr. Wilson, in your opinion?

15 MR. CHOCKLEY: I object to that. What message  
16 does it send to whom?

17 THE COURT: Objection sustained.

18 BY MR. FOX:

19 Q. What message does that send to the Service or any  
20 reader of that statement who understands tax returns?

21 MR. CHOCKLEY: Objection.

22 THE COURT: What difference does it make what  
23 message it sends?

J.APP. 1026

1 MR. FOX: I'll rephrase.

2 BY MR. FOX:

3 Q. Under what circumstances, if any, Mr. Wilson, may  
4 ONE party use the tax ID number of another party?

5 A. I'm not aware of any circumstances where one can  
6 use the tax ID for another, just as I can't use your Social  
7 Security number when I file my tax return.

8 Q. Now, there are attachments to that tax return?

9 A Yes, there are.

10 Q. What are the attachments, sir?

11 A. There are a series of handwritten analyses or  
12 schedules related to cost of operations, other income,  
13 basically supporting schedules for the tax return itself.  
14 In addition to that, there's a plan, an agreement of  
15 reorganization, for the merger of JMHI and JMHC.

16 Q. Okay. Now, that's attached as part of the tax  
17 return?

18 A. I'm assuming so, yes. I mean, since this is a  
19 single exhibit. They were attached when they were filed.

20 Q. In terms of that plan that is attached, we know  
21 now that it never occurred; is that correct?

22 A. I don't believe it occurred.

23 Q. Okay. Now, in your review of the tax returns

J.APP.1027

1 and/or the financial statements of JMHC and/or JMHI, were  
2 you ever able to determine whether the representations made  
3 by that plan were retracted from the tax authority, the  
4 IRS?

5 A. I didn't see any evidence by reviewing subsequent  
6 tax returns that there was any representation that this  
7 merger didn't take place.

8 Q. Okay. Now, going back to the NOLs, I think it's  
9 a subsidiary question: Are those NOLs transferrable from  
10 one corporation to another in the absence of a merger?

11 A. No.

12 Q. Mr. Wilson, if it were later determined that that  
13 merger did not take place, do you have an opinion as to  
14 whether the taxpayer was under an obligation to file an  
15 amended return?

16 MR. CHOCKLEY: I object, Your Honor. It's  
17 irrelevant.

18 THE COURT: What is the purpose of that, Mr.  
19 Fox?

20 MR. FOX: I think it shows, in light of what  
21 we're dealing with here, they have alleged that laches  
22 applies, and while we say it doesn't apply, it hovers over  
23 this case. And I think it shows that there were active

J.APP. 1028

1 misrepresentations, concealment in a continuing fashion  
2 that pervades this case and that if the Court is called  
3 upon to determine that issue on a factual basis -- and we  
4 don't think you ever get there because we think you are  
5 legally precluded from finding it -- but if you are called  
6 upon or the Court is inclined to rule on a factual basis,  
7 we believe that the continuing representations are an  
8 important aspect of that.

9 THE COURT: The failure to file an amended  
10 return with the IRS is evidence of concealment?

11 MR. FOX: No. The question is concealment, duty  
12 to disclose once they discern that there's an error, and  
13 the same representations, for example, were made to the  
14 Commonwealth of Virginia.

15 THE COURT: Objection sustained.

16 MR. FOX: Note our exception to that ruling.

17 THE COURT: Surely. We abolished that section  
18 in about 1970.

19 MR. FOX: My great and humble apologies to you,  
20 sir.

21 THE COURT: That was abolished 20 years ago.

22 MR. FOX: Interestingly, now you have to note on  
23 your orders why you are excepting. So says the

J.APP. 1029

1 intermediate court of appeals.

2 BY MR. FOX:

3 Q. Let me turn you, Mr. Wilson, in 235 on page  
4 number tagged 002911.

5 A. Would you repeat the number again?

6 Q. 002911, entitled Jefferson Memorial Hospital  
7 Corporation, Alexandria, Virginia, statement of something,  
8 fiscal year ended 6/30/72.

9 A Yes.

10 Q. Have you reviewed that page of the tax return?

11 A Yes.

12 Q. There's a reference on page 002911, it says: On  
13 June 30, 1971, Jefferson Memorial Hospital, Inc., a  
14 Maryland corporation, underwent a, quote, "F  
15 reorganization" through a mere change of place of  
16 organization and change of name to Jefferson Memorial  
17 Hospital Corporation, a Delaware corporation being the  
18 surviving corporation.

19 Can you tell Judge Swersky what an "F  
20 reorganization" is?

21 A. Well, the IRS code is actually very succinct  
22 about what an F reorganization is and in fact they've  
23 almost chosen verbatim language out of the code. It's a

J.APP. 1030

1 mere change in location or name of an organization.

2 Q. Is it the same entity or two different entities?

3 A. A single entity is reorganized under the code,  
4 section F, as a mere change in name or change in location  
5 of the organization. Same organization.

6 Q. Mr. Wilson, moving into the 1974-75 timeframe,  
7 can you tell His Honor what the financial records and  
8 corroborating information convey to you as an accountant?

9 A Yes. The operating performance of the hospital  
10 operating company, under whichever name we chose, was again  
11 profitable, seemed to be financially viable and relatively  
12 healthy.

13 It seemed to me, in reading the minutes of the  
14 Board of Directors of JMHC throughout 1972 and '73 and  
15 into '74 that there was almost a pervasive discussion and  
16 dialogue around how to reorganize Jefferson Memorial  
17 Hospital Corporation again, with the primary intent of  
18 finding ways to bring financial gain or return to the  
19 original investors or to the investors in the corporation.

20 Q. Did you review any minutes where it was indicated  
21 that there were some assets of JMHI that had not been  
22 conveyed to JMHC?

23 A. In around October -- there was no mention of JMHI



1 from any documents that I looked at from the point of time  
2 of around October of 1972 where there was discussion by  
3 legal counsel at one of the Board meetings that said  
4 basically that the merger hadn't taken place, that there  
5 were some tax difficulties around that, and that it was  
6 either pending or was an unconsummated transaction.

7 About that point -- again, that was October of  
8 1972, thereabouts -- until around December of '75 -- excuse  
9 me. Let me recall the date again -- about 1975, I believe,  
10 I didn't see any reference in any documents provided to me  
11 of JMHI. It was as if it didn't exist.

12 Q. Now, could you mean December of 1974?

13 A. I stand corrected. I could verify that if I  
14 could --

15 Q. Okay. Now, in terms of the financial performance  
16 of the hospital after this what you called bellweather year  
17 of '71, what was the net income in '72, '73 and 74?

18 A. Net income in 1972 was \$208,000, again, rounding  
19 to the nearest thousand. In '73 it was \$140,000, and in  
20 '74 it was \$10,000.

21 Q. What about through the end of year of 1975,  
22 fiscal year '75?

23 A. In 1975 net income was \$122,000.

1           Q.   Did you see any evidence in the financial records  
2           in the Fall of '74 through the winter of 1975 that the  
3           hospital was in financial distress?

4           A.   No, I didn't. There was periodic discussion  
5           regarding some cash flow difficulties, but, again, those  
6           were -- I didn't see any evidence of follow-up or ongoing  
7           discussion to the point of despair or concern about the  
8           ongoing viability of the hospital.

9           Q.   Did you see any evidence of the directors of the  
10          corporation pushing any kind of panic button about "We have  
11          to bail out of this organization"?

12          A.   No. There was no discussion regarding pushing a  
13          panic button or having to bail out of this investment.  
14          There was lots of discussion about how to reconvey the  
15          assets of the hospital into some kind of a different  
16          structure, particularly a partnership in a way that would  
17          return -- that would be in the best interest of the  
18          investors.

19          Q.   Did you understand from a reading of the minutes  
20          what they were trying to accomplish from an accounting  
21          standpoint in transferring the assets to another entity?

22          A.   During that period of time?

23          Q.   Yes, sir.

1           A.    I believe that they were trying to -- my opinion  
2   is that they were trying to accomplish a couple things.

3                   One was to structure the transaction between a  
4   newly-formed partnership-like entity whereby the hard  
5   assets, the bricks and mortar assets, building and  
6   equipment primarily, would be reconveyed to the partnership  
7   through a sale transaction and then in turn the hospital  
8   operating company, JMHC, in this case would lease those  
9   assets back under terms that in effect would reap a  
10   substantial return to the shareholder partners in the new  
11   partnership.

12                   I think that the other -- in my opinion, the  
13   other corollary reason for looking at that kind of a  
14   transaction was to put the depreciable assets back into a  
15   partnership so that the partners would be able to sustain  
16   depreciation deductions on their partnership tax returns.

17           Q.    Do you recall that there was a stock transaction  
18   in or about this time?

19           A.    There was issuance of 60,000 shares in 1973.

20           Q.    '72 - '73?

21           A.    '72- '73, at \$4 a share.

22           Q.    How were the investors to buy into the new  
23   venture in the '75 era?

1           A.    Again, back in that '72 - '73 period there was  
2           issuance of 60,000 shares at \$4 a share. In '75 the  
3           transaction that was contemplated in effect allowed the  
4           shareholders, the purchasers of those 60,000 shares, to  
5           convert those shares into debt instruments issued by the  
6           hospital, bonds specifically, and there was a conversion  
7           ratio of \$6 a share, which in effect resulted in a premium  
8           benefit to the shareholders.

9           Q.    Let me can ask you, were you able to determine  
10          whether from a perspective of the hospital operating  
11          entity, which at that time they called JMHC, were you able  
12          to determine whether or not that conversion scenario,  
13          conversion of the stock to bonds, retired any short-term  
14          debts and provided infusion of capital into the hospital  
15          operating company?

16               MR. CHOCKLEY: I'll object at this point to the  
17          relevance of this inquiry. This does not have any  
18          relevance to whether or not these particular respondents  
19          breached a fiduciary duty back in 1971.

20               THE COURT: Objection overruled.

21               THE WITNESS: The 1975 transaction, as I  
22          understand it in reading the financial statements and  
23          minutes and another other related documents, attempted to

1 do this: It was to take the operating assets of the  
2 hospital out of the corporation we called C into a  
3 partnership. In return, the consideration going the other  
4 direction was in effect cash on the part of partners, the  
5 new partners in this new joint venture. Where did they get  
6 the cash? They got the cash by converting some of the  
7 stock that they owned into bonds and then reconverted that  
8 to cash.

9 Q. And the investors received the cash? Investors?

10 A. The investors received the cash. So in effect,  
11 as I recall the transaction, the hospital assets were  
12 conveyed to the partnership through in effect the  
13 retirement of those bonds that were issued for the stock  
14 and the assumption of a mortgage -- I don't recall the  
15 exact amount of the mortgage. It's approximately \$300,000,  
16 but I would need to verify that.

17 Q. Now, Mr. Wilson, going back to 1971, are you able  
18 to express an opinion as to whether or not JMHI, the  
19 hospital operating entity, was a viable going concern?

20 A. I can. I believe, again, that there were no  
21 indications that I could ascertain that would suggest that  
22 the hospital was not a viable operating entity. It in fact  
23 was operating, and from everything that I have reviewed, it

1 operated successfully after 1971 in much the same manner,  
2 under the same direction as it had before. I saw no change  
3 in continuity of the operation of the hospital both before  
4 and after.

5 Q. What about 1975?

6 A. My conclusions would be the same.

7 Q. Okay. Could you entertain an opinion that in  
8 either of those years the hospital had zero value?

9 A. No.

10 MR. CHOCKLEY: Objection, Your Honor. The  
11 witness very clearly stated that he not was a valuation  
12 expert and at his deposition he testified that he was not  
13 going to give opinions about value and counsel represented  
14 at deposition that he was going to give no opinions about  
15 value.

16 MR. FOX: That's not a value opinion, Your Honor.

17 THE COURT: Objection sustained.

18 MR. FOX: Your Honor, I would note that in his  
19 designation, we designated him -- says "Expects to testify  
20 as to the fair and reasonable value was exchanged for  
21 assets in 1971."

22 THE COURT: He's already testified about that.

23 MR. FOX: Okay.

1 THE COURT: Your question was broader. It had to  
2 do with the overall value of the corporation.

3 MR. FOX: Let me just confer, if I might.

4 THE COURT: All right.

5 MR. FOX: Thank you, Mr. Wilson.

6 CROSS-EXAMINATION

7 BY MR. CHOCKLEY:

8 Q. Mr. Wilson, you went through the gross revenue  
9 and the net income for the organization JMHI during the  
10 period of -- I guess it was what you called at one point  
11 "phase one" or the period beginning with the operation of  
12 hospital up until about 1970, and you went through those  
13 figures from the exhibits and put them up there.

14 What I would like you to do if you could is tell  
15 me what the comparable annual figures are for the deficit,  
16 the accumulated deficit, at the conclusion of each of those  
17 years as reflected on the same financial statements, and I  
18 believe that starts with Respondents' Exhibit No. 190.

19 A. Would you like me just to read them?

20 Q. If you would, hang on one second and I will go up  
21 there and mark them down.

22 (Telephone ringing in courtroom) .

23 THE COURT: The next time it happens, the bailiff

1 is going to own it.

2 MR. BETTIUS: That's my fault and I apologize. I  
3 didn't know this thing --

4 THE COURT: Does anybody else have a beeper or  
5 cellular phone? Turn on off right now.

6 MR. BETTIUS: That's uncalled for. I totally  
7 apologize. It is rude and shouldn't happen.

8 THE COURT: Yes, it is.

9 BY MR. CHOCKLEY:

10 Q. Mr. Wilson, do you have Exhibit 195 there in  
11 front of you?

12 Sorry. 190.

13 A Yes. The fund deficit was -- again, this is as  
14 of October 31, 1965, and I believe at the end of the first  
15 10 months of the hospital's operations. Do you want this  
16 to the nearest thousand?

17 Q. Why don't you give me exact numbers?

18 A. It's \$25,685.

19 Q. And that's designated at what line there, Mr.  
20 Wilson?

21 A. It's called "fund deficit" or "fund capital" in  
22 brackets deficit on the balance sheet.

23 Q. Is this what you refer to as the operating



1 deficit?

2 A No.

3 Q. What I would like is operating deficit, Mr.  
4 Wilson.

5 A. I don't see any caption in this financial  
6 statement with that indication.

7 MR. CHOCKLEY: Bear with me a second.

8 BY MR. CHOCKLEY:

9 Q. Let's just go on to Exhibit 191, which would be  
10 for the following year.

11 Do you see the report of the operating deficit?

12 A Yes, I do. And the operating deficit in October  
13 31, 1967 -- oops. This exhibit does not include -- I don't  
14 think there is anything on the '66 exhibit here.

15 Q. So this is through '67?

16 A. Through '67.

17 Q. In any event, it's 191?

18 A. Exhibit 191.

19 Q. Would you give me the operating deficit?

20 A. \$305,802.

21 Q. And from that number can you give me the net  
22 operating deficit, or the net deficit?

23 A. \$285,751.

1 Q. All right. And then for the next year, 1968,  
2 which will be Exhibit 192.

3 A. \$251,930.97, and, of course, that's a cumulative  
4 number.

5 Q. So this would be the cumulative operating  
6 deficit. It would reflect the earlier years as well?

7 A. That's right. It's not on top of the 305,000.

8 Q. Right. It's 252,000 in 1968. What is the net  
9 deficit?

10 A. 231,946.

11 Q. All right. Go on to the next year, which would  
12 be Exhibit 193.

13 A. It is slightly illegible, but I believe it's  
14 579,000 -- I can't read the last three digits.

15 Q. That's okay. Let's call 579. What about the net  
16 deficit?

17 A. 559, and just round to thousands there.

18 Q. This is the cumulative operating deficit,  
19 579,000, after these years of operating of the hospital?

20 A. Correct.

21 Q. And 559,000 is the accumulated net deficit  
22 through those years; isn't that right?

23 A Yes.

1 Q. Will you go on to the next year, please, sir,  
2 Exhibit 194.

3 A. Unfortunately this exhibit doesn't have a balance  
4 sheet, so I can't tell you.

5 Q. Let's see if I can supply you with one. Can you  
6 turn to -- I believe it's Tauber 43921 of that Exhibit 194,  
7 please. Isn't this a schedule entitled Operating Deficit?

8 A Yes, it is.

9 Q. What is the figure shown at that point for the  
10 operating deficit?

11 A. 406,433.

12 Q. So it went down a little bit, but again, that's  
13 the cumulative operating deficit for those years.

14 A Yes.

15 Q. What is the net deficit shown for that year?

16 A. There again, I can't -- without the balance  
17 sheet, I'm not sure.

18 Q. And then, sir -- let me search for a more  
19 complete copy, but in the meantime, what about the next  
20 year? I believe that would be Exhibit 195. What is the  
21 accumulated operating deficit shown there?

22 A. Are we at Exhibit 195.

23 Q. I believe that's the one.

1 MR. FOX: Is that the one that we supplemented,  
2 Your Honor?

3 MR. CHOCKLEY: It should be. I believe we did  
4 supplement it. I'm hoping we did.

5 MR. BETTIUS: Your Honor, can I approach the  
6 witness?

7 THE COURT: All right.

8 MR. BETTIUS: Mr. Wilson, see if this doesn't  
9 help you out.

10 BY MR. CHOCKLEY:

11 Q. Did you find an Exhibit A to that, 195?

12 A Yes. 412,619.

13 Q. Do you find a showing for the net deficit?

14 A. 392,658.

15 Q. Now, deficit means that there is no surplus;  
16 isn't that right?

17 A. Deficit means that the reported liability exceeds  
18 the reported assets by that amount.

19 Q. Yes. And it means that they're essentially in  
20 the whole by that amount; isn't that right?

21 A. It means that the recorded liabilities are in  
22 excess of the assets reported at cost by that amount. I'm  
23 not sure what you mean by "in the hole."

1           Q.   Well, at this point the company JMHI had  
2 liabilities in these amounts in excess of their assets;  
3 isn't that right?

4           A.   Assets as stated at cost, yes.

5           Q.   Now, while you've got Exhibit 195 in front of  
6 you, I would like you to take a look at Exhibit A which is  
7 what you were referring to a moment ago. While you've got  
8 that in front of you, you were talking about -- before when  
9 you were talking about what you would look for in terms of  
10 evidence of financial problems or insolvency, financial  
11 distress, that sort of thing.

12          A    Yes.

13          Q.   Do you remember that?

14          A    Yes.

15          Q.   Wouldn't one of the things you would look for be  
16 whether or not they were paying their rent?

17          A.   Whether they were able to pay the rent?

18          Q.   Yes.

19          A    Yes.

20          Q.   Wouldn't that be evidence of financial distress  
21 if they were not paying their rent?

22          A.   Possibly one indicator if they were unable to pay  
23 their rent.

1           Q.    Isn't there a listing on Exhibit A for accrued  
2 rent in the amount of 41,852 as of June 1971?

3           A    Yes, there is.

4           Q.    Isn't that some indicator or sign that there's  
5 some financial distress, not paying the rent?

6           A.    No.

7           Q.    They owe somebody \$41,000 for rent, do they not?

8           A.    If I rent an apartment and I pay my rent on the  
9 first of the month, at the end of month I have a liability  
10 to my landlord. Does that mean that I can't or I won't  
11 pay? No.

12                   There are other liabilities on the balance sheet  
13 as well. To me that doesn't indicate that they are  
14 necessarily unable to or unwilling to pay.

15           Q.    Wouldn't it suggest to you that you ought to dig  
16 a little deeper to find out whether they were in fact  
17 paying their rent?

18           A.    If I was the auditor auditing the financial  
19 statements, I would look for an indication of their  
20 inability to pay rent.

21           Q.    So that would at least be a red flag that you  
22 ought to look in to whether or not they have been able to  
23 pay rent?

1           A.    It would be one factor.  One among many.

2           Q.    Did you make any investigation of that number  
3 yourself, as to what that comprised in that rent?

4           A.    I wasn't asked to re-audit these financial  
5 statements.

6           Q.    So you don't know whether that's the annual rent  
7 or monthly rent or whatever that is?

8           A.    Based upon -- yes, I do, because based on a  
9 reading of the footnote, this rent most likely was due to  
10 related parties.

11          Q.    But the question was, you don't know whether it's  
12 annual or monthly, do you?

13          A.    I could investigate and determine that, but I  
14 don't know off-hand, no.

15          Q.    And doesn't that Exhibit A also show accrued  
16 expenses for real estate taxes in the amount of \$72,802?

17          A.    Yes, it does.  And accrued expenses for interest  
18 in the amount of \$6,696?

19          A     Yes, it does.

20          Q.    Again, aren't those indicators that you ought to  
21 look to see if the company had the ability to pay those  
22 amounts?

23          A.    Based upon if I were the auditor?

1 Q. If you are looking to determine whether or not  
2 the company has a financial distress, wouldn't you look at  
3 their accrued expenses?

4 A. It is very, very common. I have never seen a  
5 balance sheet that doesn't have liabilities reflected on  
6 it, if for no other reason by virtue of timing. It's not a  
7 reflection particularly of the inability to pay.

8 Q. You don't know whether they did or didn't pay  
9 that amount of rent in 1971 or owed that amount of rent in  
10 1971.

11 MR. FOX: Objection. Your Honor. That's been  
12 asked and answered.

13 THE COURT: Overruled. Objection overruled.

14 THE WITNESS: I didn't perform an audit or  
15 examination of these financial statements.

16 BY MR. CHOCKLEY:

17 Q. So the answer is you don't know?

18 A. I don't know whether they paid it or not?

19 Q. Yes.

20 A. I don't know specifically whether they paid it or  
21 not.

22 MR. FOX: Can we have our copy back, Your Honor?

23 THE COURT: Are you finished with it, Mr.



1 Chockley?

2 MR. CHOCKLEY: Yes. I appreciate counsel letting  
3 us use their exhibit. I understood that the Court copy was  
4 going to be substituted and we better check that at a  
5 recess.

6 Now, Your Honor, if I might come up here for a  
7 moment and flip the chart again.

8 BY MR. CHOCKLEY:

9 Q. I believe, Mr. Wilson, that you gave figures for  
10 net income and the gross revenue for the years '71 and  
11 '75. There's one written down up there in your testimony  
12 earlier, did you not?

13 A. For 1971?

14 Q. Through '75. Did you also run through that on  
15 your direct testimony?

16 A. I don't recall whether I did or not. That  
17 information is available, you know.

18 Q. Do you know the gross revenue in the years 1972  
19 through 1975?

20 A. Yes, I do.

21 Q. And that gross revenue was increasing, was it  
22 not?

23 A. Yes, it was.

1 Q. Starting with about four-and-a-half million in  
2 '72 to about six million, a little over six million, in  
3 1975?

4 A Yes.

5 Q. On the other hand, the net income was not  
6 growing; isn't that right, sir?

7 A. It was relatively flat.

8 Q. And, as a matter of fact, in 1972 the net income  
9 was about \$208,000; is that right?

10 A Yes.

11 Q. In 1973 the net income was about \$139,000?

12 A Yes.

13 Q. And the net income in 1974 was about \$10,000, was  
14 it not?

15 A Yes.

16 Q. And in 1975 it was up to about 122,000?

17 A Yes.

18 Q. So, in fact, the increase in gross revenue  
19 doesn't necessarily result in an increase in the net  
20 income, does it?

21 A. That's correct.

22 Q. And the fact that the net income may have  
23 increased in the late 60s doesn't mean it was going to

1 continue to increase in the 70s, does it?

2 A. No. There's no guarantee and I think you have to  
3 look at what the purpose of the organization was; was it  
4 essential to grow net income every year.

5 Q. Well, you would be seeking to grow the net income  
6 in order to invest additional money into the facility,  
7 would you not? Isn't that what a non-profit would do?  
8 Didn't you indicate before that even though it's  
9 non-profit, it still would be seeking to make money for the  
10 purposes of improving the service?

11 A Yes. You would want to have a sustained record  
12 of excess revenues being generated, but it would vary from  
13 year to year. You have to look at it in the long run.

14 Q. And incidentally, Mr. Wilson, you didn't provide  
15 any report to the complainant, did you?

16 A. No, I did not.

17 Q. And you don't have any objection to the financial  
18 statements of this organization prior to 1971, do you?  
19 Nothing wrong with the financial statements prior to 1971,  
20 is there?

21 A. Based upon my reading, again -- and I want to  
22 emphasize it was not an examination or an audit -- I didn't  
23 see the same kind of blatant inconsistencies that emerged

1 in 1971.

2 Q. And in fact you testified at your deposition that  
3 there was nothing wrong with the financial statements prior  
4 to 1971; is that correct?

5 A. I would have to clarify my deposition and make  
6 sure that it's understood that I didn't perform an audit or  
7 examination nor did my staff. It was simply based upon an  
8 informed reading of the financial statements based upon 22  
9 years of experience.

10 Q. Now, with respect to the so-called blatant  
11 inconsistencies, isn't the inconsistency that you point to  
12 the question whether or not the note that indicates whether  
13 assets were transferred to -- whether Associates' assets  
14 were transferred to Inc. or Corp? Isn't that what you  
15 refer to when you talk about blatant inconsistencies?

16 A. I would say that there are either two, possibly  
17 three, versions of the truth as to what happened at that  
18 point in time and I honestly can't tell from reading this  
19 financial statements.

20 Q. Isn't the inconsistency that troubled you the  
21 note in one or two of the financial statements that say the  
22 assets were transferred to Inc.?

23 A. It had to do with whether the assets were

1 transferred out of Associates to Inc. or to JMHC, whether  
2 or not in fact that transaction of took place, and also,  
3 even if it did, when did it happen.

4 There were various versions of all of those  
5 things.

6 Q. In the financial statements where there's an  
7 indication that assets of JMHA, the partnership, were  
8 transferred to Inc., if that statement said they were  
9 transferred to Corp, there would no inconsistency, would  
10 there?

11 MR. FOX: Objection, Your Honor. Speculation.

12 THE COURT: Objection overruled.

13 THE WITNESS: Would you rephrase the question for  
14 me or read it back?

15 BY MR. CHOCKLEY:

16 Q. I'll re-ask it. If the note which indicated that  
17 JMHA's assets were transferred to Inc. had said instead  
18 that they were transferred to Corp, there would be no  
19 inconsistency, would there?

20 A. There would still be inconsistency regarding when  
21 that took place. Did it take place on June 30th or July  
22 1st?

23 There would be inconsistency regarding --

J.APP. 1052

1           Are you referring to the transaction between  
2 Associates and Inc. or the merger between Inc. and C?

3           Q.   Well, I think that I was referring to the  
4 transaction that took place among the three organizations  
5 and I think you answered my question about it. But with  
6 respect to the date, you're saying that that is a blatant  
7 inconsistency as to whether it was June 30 or July 1?

8           A.   Absolutely, because the tax return that was filed  
9 indicated that the transaction took place on June 30. It's  
10 reflected in the tax return. The financial statements  
11 don't reflect that. One or the other has to be wrong or  
12 false.

13          Q.   Now, it is a matter of fact that from  
14 time-to-time accountants, as well trained and qualified as  
15 they are, they do make mistakes, do they not?

16          A.   Humans make mistakes. This was an error. It was  
17 an error and either the auditors -- the combination --  
18 didn't independently verify what was represented to them by  
19 management or somehow overlooked the inconsistency between  
20 the tax returns and the statements of the various entities.

21          Q.   Accountants make errors as well, do they not?

22          A    Yes, they do.

23          Q.   And I believe one of the things you said was that

J.APP. 1053

1 the financial statements are statements of management, not  
2 accountants?

3 A. It's the primary responsibility of management.

4 Q. And I believe also you were saying that when  
5 there's a reflection that there's a merger that you would  
6 want -- as an auditor, you would go back and look for  
7 additional evidence such as talking to legal counsel and  
8 looking for legal documents and evidence of the merger?

9 A. Yes.

10 Q. Is that right?

11 A. Yes.

12 Q. And do you have an opinion one way or another as  
13 to whether the accountants here did talk to legal counsel?

14 MR. FOX: That's so highly speculative that I  
15 don't see how anybody could even conceive an answer to it.  
16 An opinion as to whether they talked to them --

17 THE COURT: You can ask him if in his examination  
18 he saw anything that reflected that.

19 BY MR. CHOCKLEY:

20 Q. In your review, did you find any indication that  
21 the accountant had consulted with legal counsel?

22 A. We didn't have any access to the working papers  
23 of the auditors for the audit so it was impossible.

J.APP. 1054

1       However, I would say that the auditors had a responsibility  
2       to do that, but also it is the responsibility of management  
3       not to send the auditors on some kind of a blind hunt  
4       either.

5           Q.    When you're reviewing the work of another  
6       auditor, you would want to talk to the auditor, wouldn't  
7       you?

8           A.    It would depend upon the scope of what I've been  
9       asked to do.

10          Q.    Wouldn't it be beneficial to you to talk to the  
11       auditor who conducted this particular audit?

12          A.    If I had a chance to talk to the auditor, I would  
13       probably know more than I do now. But I wasn't asked to do  
14       that.

15          Q.    So you didn't make any attempt to contact the  
16       auditor?

17          A.    I wasn't authorized to do that.

18          Q.    Wouldn't you also find it beneficial to talk to  
19       legal counsel who prepared the merger papers?

20          A.    There may be information that legal counsel could  
21       provide, but, again, my role was not to re-audit those  
22       financial statements.

23          Q.    But if you were the auditor back at that time,

J.APP. 1055



1 then you as that auditor would have contacted legal  
2 counsel, wouldn't you?

3 A. I probably would have and I don't know that they  
4 weren't.

5 Q. Now, Mr. Wilson, I believe that you have  
6 indicated that you can't tell what happened here.

7 A. Regarding what.

8 Q. In 1971 that you can't tell from the financial  
9 statements what happened.

10 A. There's more than one version in published  
11 reports that describes what happened. I'm not sure which  
12 one, if either or any, actually occurred.

13 Q. Isn't it in fact very simple what happened and  
14 that is that one for-profit corporation acquired the assets  
15 and liabilities of a non-profit corporation and acquired at  
16 the same time the assets of the partnership?

17 A. I don't think it is so simple and I don't know  
18 that for a fact. Again, as an accountant, not a trained  
19 lawyer by any means unfortunately, but based on a reading  
20 of those footnotes, I don't understand how you can  
21 consummate a transaction between a non-stock charitable  
22 organization and a stock corporation.

23 To me, the existence of stock in a non-stock

J.APP. 1056

1 corporation can't happen, so I don't understand.

2 Q. But that's something you would have expected the  
3 auditors at the time to pick up, wouldn't you?

4 A. I would have expected management to pick that up  
5 and make sure the financial statements probably reflected  
6 what happened.

7 Q. I'm asking about the auditors. You would expect  
8 the auditors to pick up the fact --

9 A. They would also have the responsibility, but  
10 management would have the primary responsibility.

11 Q. Apparently the auditors here didn't pick it up;  
12 is that right?

13 A. Somebody didn't pick it up.

14 Q. The auditor did not; isn't that right?

15 A. I think the auditors and management didn't pick  
16 it up, or maybe they did. Maybe they knew.

17 Q. And so in that situation the auditors would have  
18 violated their duties under their professional -- under  
19 your profession, that is, the AICPA duties; isn't that  
20 right?

21 A. There's a prescribed set of procedures that guide  
22 us. There are some rules of conduct and broad guidelines  
23 regarding the audit process. Without having a complete

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1 knowledge of what the auditors did and didn't do, it's hard  
2 for me to assess whether or not what they did was  
3 sufficient and complete and in accordance with the  
4 professional standards or not.

5 All I can say is that the end product is an  
6 erroneous financial statement.

7 MR. CHOCKLEY: I bet the Court's indulgence for a  
8 moment.

9 BY MR. CHOCKLEY:

10 Q. Now, Mr. Wilson, in reference to -- in response  
11 to one of my earlier questions, I believe you talked about  
12 your staff, they asked or didn't ask something.

13 In any event, you have a staff who assisted on  
14 this matter?

15 A Yes, I do.

16 Q. And there were a number of people from Arthur  
17 Anderson who worked on this engagement with you on behalf  
18 of the Attorney General; isn't that right, sir?

19 A Yes.

20 Q. Among them there was an another gentleman by the  
21 name of Craig Kettler?

22 A. Yes.

23 Q. You didn't supervise Mr. Kettler's work, did you?

1           A.    I did not.

2           MR. CHOCKLEY:  I have no further questions.

3           THE COURT:  Any redirect?

4           MR. FOX:  Just briefly.

5                       REDIRECT EXAMINATION

6           BY MR. FOX:

7           Q.    Mr. Wilson, addressing that issue of accrued  
8   monthly rental on the statement, I believe it was 195, does  
9   the fact that that accrual is noted on the statement but no  
10  adverse remark or note made about it by the auditor tell  
11  you as an accountant anything?

12          A.    As a trained accountant and reader of those  
13  financial statements, the absence of any description  
14  regarding any unusual nature of those liabilities or the  
15  inability of the hospital to discharge those obligations,  
16  my interpretation would be that in the absence of that kind  
17  of commentary, there was no unusual aspect to those  
18  liabilities or, again, the ability of the hospital to pay  
19  them.

20          Q.    Do you recall in reviewing the chronology of the  
21  corporation, that is, JMHI, that JMHI was responsible --  
22  even as a tenant was responsible for the building costs and  
23  any access building costs?

1           A     Yes, they were.

2           Q.    Do you recall that there were at one time bonds  
3 issued for construction overrun?

4           A     Yes, there was.

5           Q.    About 39,000 or so?

6           A     Yes.

7           Q.    If those bonds had been issued by the company for  
8 that rent, would the offsetting entry on the company's  
9 books be accrued rental?

10           MR. CHOCKLEY: I object, Your Honor. It's  
11 leading.

12           MR. FOX: I'll rephrase it.

13           BY MR. FOX:

14           Q.    How would that bond transaction be reflected if  
15 those bonds were issued for rent?

16           A.    It would be reflected as accrued liability, rent  
17 liability, on the balance sheet.

18           Q.    Now, in terms of the exercise that you went  
19 through with Mr. Chockley where he outlined the operating  
20 deficit and capital deficit, can you distinguish for His  
21 Honor the difference between capital deficit and the  
22 operating deficit?

23           A.    The capital deficit -- is that that page there

1       that you have?

2           Q.    No.

3           A.    Or was it the page prior?

4           Q.    Can you see that?

5           A     Yes.  Thank you.  The operating deficit that's  
6       reflected on that sheet it's important to note is really a  
7       reflection of if JMHI were a stockholder company of  
8       shareholders equity; shareholders deficit in this case.  It  
9       represents in a bookkeeping sense the difference between  
10      tallying up all the liability of the organization and all  
11      the assets of the organization which are all reflected as  
12      costs, not necessarily what their value is, but at cost,  
13      and even depreciated costs.

14                So it's, true enough, there was a shareholder  
15      deficit or in this case enough a deficit for several of  
16      those years.  That's not necessarily a reflection of the  
17      true worth or value of that organization.

18           Q.    Is it a reduction in capital?

19           A.    It's in effect what the capital account would be  
20      at any point in time and it happened to be in a deficit  
21      position.

22                But alongside that you have to look at what the  
23      net income was of the organization each year, income or

1 loss, and that's a better reflection in my view of the  
2 ongoing operations of the hospital and its sustainable life  
3 as an organization.

4 Q. Now, you say that the assets that are on the book  
5 are receivables, but the liabilities are at current face  
6 value; is that correct?

7 A Yes.

8 MR. FOX: I don't have any further questions,  
9 Your Honor.

10 THE COURT: Anything based on that?

11 MR. CHOCKLEY: No, thank you.

12 THE COURT: May the witness be excused?

13 MR. BETTIUS: Yes, Your Honor.

14 THE COURT: Thank you, sir. You are excused and  
15 free to go.

16 MR. BETTIUS: Could we have just one moment?  
17 There's one thing I wanted to look at. We reserve the  
18 right to recall Mr. Wilson.

19 MR. CHOCKLEY: He has already been excused,  
20 Judge.

21 THE COURT: You will have to get him back if you  
22 want him back. He's not excused from the rule on witnesses  
23 if you intend to call him back. You can't discuss with him

1 the testimony of anyone else in court.

2 MR. CHOCKLEY: It occurs to me that perhaps we  
3 ought to notify Mr. Wilson of that because he heard he was  
4 excused a moment ago.

5 MR. FOX: He's out there.

6 THE COURT: All right. What is next?

7 MR. FOX: Your Honor, would the Court entertain  
8 breaking for lunch now?

9 THE COURT: Who is the next witness?

10 MR. FOX: Mr. Kettler.

11 THE COURT: How long is he going to take?

12 MR. FOX: He's going to take an hour-and-a-half  
13 or so.

14 Total of direct -- I would think direct 45 or 50  
15 minutes.

16 THE COURT: All right. 1:30.

17 BAILIFF: All rise.

18

19 (Whereupon, a luncheon recess was taken.)

20

21

22

23



1 specific document that's offered, I'll be glad to hear  
2 it. All right. Are we finally ready to begin?

3 MR. FOX: I believe, Your Honor.

4 THE COURT: All right. First witness.

5 MR. BERGHOLD: Celeste Vella, Your Honor.

6 THE COURT: Please come forward to the witness  
7 stand.

8 Whereupon,

9 CELESTE BURNS VELLA

10 was called as a witness by and on behalf of the  
11 Complainant and after having been first duly sworn, was  
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 THE COURT: I'll ask you gentlemen not to  
15 confer with one another during the administering of the  
16 oath of the witness.

17 MR. BETTIUS: I'm sorry.

18 THE COURT: Go ahead, Mr. Berghold.

19 BY MR. BERGHOLD:

20 Q Would you please identify yourself for the  
21 Court?

22 A I'm Celeste Burns Vella.

23 Q Where are you employed?

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1           A       I'm currently employed as a partner at Mackall,  
2 Mackall & Gibb.

3           Q       And your occupation?

4           A       I'm a lawyer.

5           Q       Prior to being employed with Mackall,  
6 Mackall -- let me ask you first, how long have you been  
7 with Mackall, Mackall & Gibb?

8           A       For approximately a year. I started in May of  
9 1995.

10          Q       Okay. Prior to becoming employed with Mackall,  
11 Mackall & Gibb, where were you employed?

12          A       I was employed with Miles & Stockbridge. I was  
13 a partner there as well.

14          Q       How long were you with Miles & Stockbridge?

15          A       I joined Miles & Stockbridge in July of 1986.

16          Q       Are you admitted to practice in the  
17 Commonwealth of Virginia?

18          A       I am.

19          Q       Okay. Are there particular areas of specialty  
20 that you have in the practice of law?

21          A       Commercial real estate, primarily. I do real  
22 estate transactions from the development of real estate  
23 through acquisition, through title searching, through

J.APP. 1065

1 commercial leasing.

2 Q Okay. Are there typical transactions that  
3 you're involved in as a commercial real estate attorney?

4 A Usually very complex real estate transactions  
5 dealing with the purchase and sale of commercial real  
6 estate.

7 Q Okay. And would that, your involvement in  
8 these transactions, would that entail the exercise of  
9 due diligence?

10 A Yes.

11 Q And what would the exercise of due diligence  
12 do?

13 A The exercise of due diligence usually involves  
14 once you have negotiated a purchase and sale agreement  
15 and assuming that you are representing the party who's  
16 acquiring the property, as their lawyer what you would  
17 do is insure that all of the terms of contract are  
18 fulfilled and all the representations are true and  
19 accurate.

20 First and foremost in most real estate  
21 transactions is the issue of whether or not you're  
22 getting insurable and marketable title. Therefore, you  
23 would order the appropriate title insurance commitments

J.APP. 1066

1 as well as review those title documents once they were  
2 received to insure that you have marketable title.

3 There is also other issues concerning zoning of  
4 the property depending on what your purchaser, your  
5 client as purchaser is intending to do with the  
6 property. Other issues along those lines as well.

7 Q With regard to the title searches and title  
8 issues, is that something you do yourself or do you work  
9 with others? Describe that for me.

10 A Well, I have done title searches in the past  
11 with these more complicated and expensive transactions.  
12 And basically, the commercial practice these days is to  
13 have the title insurance company to actually perform the  
14 search and you as the lawyer must not only look to the  
15 requirements and the stipulations that the title company  
16 is putting forward in order for them to make their  
17 underwriting decision, you also take those documents,  
18 review them yourself and insure that your client is  
19 obtaining marketable title.

20 Q Okay. You've done title searches yourself in  
21 the past and are familiar with them?

22 A Yes.

23 Q What other due diligence is pursued in

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1 connection with the kinds of transactions, with  
2 particular reference, for instance, if there's a  
3 partnership or corporation?

4 A Well, what you want to look at is the entity  
5 from whom your client is acquiring the property.  
6 Property can be held in a corporation or a partnership  
7 pursuant to a trust instrument. And depending on the  
8 type of entity that's selling the property, you would  
9 then look at the documents associated with that entity  
10 to insure authority issues and to make sure that the  
11 deed that you would be receiving is not only authorized  
12 but proper.

13 Q Properly executed as well?

14 A Properly executed by the party on behalf of the  
15 entity or the individual.

16 Q And that would hold true for whether you're  
17 dealing with a partnership or corporation?

18 A Yes. Obviously there is different documents  
19 that would be reviewed, but that is true.

20 Q And as part of your due diligence in  
21 investigating the conveyance and the closing of the  
22 transaction, do you look at the different ways in which  
23 title to the property can be held?

1       A     Well, certainly. If it's determined that the  
2 property that you're acquiring, say, for example, is  
3 held in a trust, then you would determine whether or not  
4 that trust was a simple trust or a land trust.

5       Q     Is there a distinction between a simple trust  
6 and land trust?

7       A     There is a distinction.

8       Q     That you have to deal with as a real estate  
9 transaction lawyer?

10      A     Yes. There is a distinction due to the fact  
11 that under Virginia code, there is a provision that is  
12 cited as 55-17.1 which allows for a trustee holding  
13 property in trust not only to hold the legal title to  
14 the property, but to also hold the beneficial and  
15 equitable title. This allows the beneficiaries under  
16 the trust to hold their interest as personalty.

17           Therefore, it allows the purchaser for value,  
18 without knowledge, not to have to look behind the  
19 authority issues and not to have to investigate the  
20 beneficiary because you can accept a deed from a trustee  
21 knowing full well that you're getting both equitable and  
22 legal title.

23           Now, on the other hand, with a simple land

J.APP. 1069

1 trust, the basic common law land trust that you deal  
2 with, you have a trustee owning bear legal title. And  
3 you have the beneficiaries owning the equitable title.  
4 Your investigation must, must go further in those  
5 situations due to the fact that the equitable title also  
6 must be conveyed.

7 So just accepting a deed from a trustee, you  
8 would have to, one, know who the beneficiaries are, and  
9 you would have to have some indication of the conveyance  
10 of the beneficial interest.

11 Q And all these issues that you've described are  
12 issues that you must deal with in connection with  
13 conveyancing and your occupation as a commercial real  
14 estate lawyer; is that correct?

15 A Yes.

16 MR. BERGHOLD: At this time, I would move  
17 Ms. Vella as an expert in the area of real estate  
18 transactions, title and conveyance.

19 THE COURT: Any questions about qualification?

20 MR. BONO: No objection with respect to those  
21 three areas.

22 THE COURT: All right.

23 BY MR. BERGHOLD:

JAPP. 1070

1       Q     Mrs. Vella, there came a time when you were  
2 retained by the Commonwealth of Virginia in this case, I  
3 assume?

4       A     Yes.

5       Q     And can you describe for the Court what your  
6 assignment was, what your focus was in connection with  
7 your retention?

8       A     I was asked to look at the Respondents' claims  
9 to title that were reported, chain of title, and  
10 investigate that and form an opinion as to the  
11 Respondents' chain of title. I was also asked to  
12 investigate and analyze, give an opinion on the assets  
13 held by the charitable entity, Jefferson Memorial  
14 Hospital, Inc..

15       Q     And to investigate the assets held or to --

16       A     To investigate the title to those assets.

17       Q     Okay. Would that also include to render an  
18 opinion as to title and where the title was reposed at  
19 different times?

20       A     Yes.

21       Q     Okay. And have you reached any conclusions in  
22 connection with your investigation?

23       A     Yes. I have.

J.APP. 1071



1 Q What are those conclusions?

2 A Well, the conclusions that I have reached is  
3 that there are several numerous assets that JMHI owned.  
4 There is a parcel identified as the Berman parcel.

5 Q Let me just -- let's focus first as of June 30,  
6 1971. I apologize.

7 A There is a piece of land that we'll refer to as  
8 the Berman parcel. There is a parcel that is a portion  
9 of Hopkins one and two, as well as a 65 percent  
10 undivided interest in the totality of parcels one and  
11 two.

12 There is a ground lease for what we will refer  
13 to as the Hopkins parcel three, as well as a ground  
14 lease encumbering what we will refer to as the Gondor  
15 parcel, which is subdivided parcel number one, as  
16 well -- I believe that that's the list.

17 Q Okay. How about improvements?

18 A Oh, yes, of course. The hospital improvements.

19 Q Do you have opinions as to where the title to  
20 the hospital improvements reposed as of June 30, 1971?

21 A Yes. Those reposed in JMHI.

22 Q The charitable corporation?

23 A Yes.

J.APP. 1072

1 Q And do you have an opinion as to where title to  
2 those assets which you've described for the Court  
3 reposed from that time forward and as of today?

4 A Yes. My opinion is that they are still in  
5 Jefferson Memorial Hospital, Inc..

6 Q Okay. I'm going to ask you to explain to the  
7 Court a little bit of how you get to those opinions.  
8 But first I would like to ask you what documents or what  
9 you reviewed in connection with the formulation of the  
10 opinions that you've expressed to the Court?

11 A I reviewed the on record deeds. I reviewed off  
12 record deeds. I reviewed various agreements such as  
13 leases. I've reviewed various purchase agreements. I  
14 have reviewed corporate documents, federal tax returns,  
15 financial statements, letters.

16 Q Documents that the Respondents themselves  
17 produced in this case and were provided to you?

18 A Yes. And I have also reviewed the Respondents'  
19 answers to interrogatories to determine their purported  
20 chain of title.

21 Q Did you bring to your assignment in this case a  
22 prior understanding of the title history to this ground  
23 and these improvements?

1       A       Yes. I am very familiar with this title. I  
2 spent approximately two to three years investigating  
3 this title on another matter which was initially the  
4 acquisition of the property and later it evolved into a  
5 lawsuit involving title to the property.

6       Q       That was what we colloquially refer to as the  
7 INOVA versus JMHJV litigation in 1994?

8       A       Yes.

9       Q       Could you describe for the Court in some brief  
10 detail the breadth and depth of your involvement in  
11 investigating the title during that two to three year  
12 time period?

13       A       Well, initially, as associate at Milès &  
14 Stockbridge, I was working with several other attorneys  
15 in an attempt, in our representation of INOVA Health  
16 Care Service, in an attempt to close a transaction which  
17 resulted from an agreement between INOVA Health Care  
18 Services and Laszlo Tauber, Trustee, and JMHJV or  
19 Jefferson Memorial Hospital Joint Venture.

20               I was asked to review the title document and  
21 title commitment from the title company who was  
22 underwriting the title insurance for our client in order  
23 to determine that we would be getting insurable title

1 acceptable to us. I was also asked to review title in  
2 general so that we could insure that our client was  
3 receiving marketable title as well pursuant to the  
4 agreement.

5 Q And what, specifically what property was INOVA  
6 acquiring in that transaction?

7 A INOVA was acquiring the improvements as well as  
8 several leases in order to operate the improvements on  
9 Hopkins one and two, as well as the assignment of the  
10 lease for Hopkins parcel number 3.

11 Q So as part of that transaction, then, you were  
12 exercising the due diligence that you described just a  
13 few minutes ago to the Court?

14 A Yes.

15 Q Now, can you explain how that due diligence  
16 proceeded?

17 A Certainly. Initially when we obtained the  
18 title commitment, we discovered that the title was held,  
19 according to the title commitment, by Dr. Tauber as  
20 trustee. And there were numerous -- there were several  
21 other requirements the title company wanted to insure  
22 before it would make its underwriting decision. One of  
23 those requirements was a requirement that Dr. Tauber,

1 Trustee, had the authority to convey the property.

2           There were other title issues that we were  
3 working through at the time. But interestingly enough,  
4 documents were also being negotiated in order to  
5 finalize the transaction. It was a very complicated  
6 transaction.

7           One of those documents that was being  
8 negotiated dealt with establishing Dr. Tauber's, as  
9 trustee, authority as well. So in the process of  
10 negotiating those documents, which I was not  
11 participating at that time in the transaction, it was --  
12 the attorneys at Miles & Stockbridge were attempting to  
13 get a representation from Dr. Tauber that he was acting  
14 as trustee pursuant to a land trust.

15           Again, as I explained earlier, the benefit that  
16 would allow us is then we could rely on Dr. Tauber,  
17 Trustee's authority to execute the deed, and we would  
18 not have to look behind determining who was the  
19 beneficial interest holder and whether or not the  
20 beneficial interest had the authority to execute the  
21 deed, whether they had authorized Dr. Tauber to execute  
22 the deed.

23           Q     Okay. And so you -- there was an attempt made

1 to verify that Dr. Tauber held the property as trustee  
2 under a land trust.

3 A Yes.

4 Q What happened?

5 A In the negotiation process, there was a letter  
6 that came from Dr. Tauber to our client, INOVA, which  
7 indicated that as the negotiations were being -- he was  
8 basically giving his opinion as to changes in the  
9 document. He adamantly stated in no uncertain terms was  
10 he not acting as a trustee under a land trust. He  
11 stated he didn't understand why we kept insisting on it,  
12 and it was kind of the document.

13 That immediately sent a panic through us as the  
14 lawyers trying to close this transaction because we were  
15 no longer able to rely on section 55-17.1. The title  
16 company had raised many concerns about Dr. Tauber's  
17 authority. So at that point in time, the title company  
18 also had to be informed of this revelation.

19 Q Okay. Was there an effort then as a result of  
20 that revelation to learn more about how the property was  
21 held?

22 A Yes. Numerous letters transpired between  
23 Dr. Tauber, Trustee's lawyer and the lawyer for the

1 title company.

2 Q And Dr. Tauber's lawyer at that time was who?

3 A Was Thorpe Richards.

4 Q What did Mr. Richards indicate?

5 A Mr. Richards indicated and confirmed to us our  
6 concern that in fact we were not dealing with a section  
7 55-17.1 land trust by stating in a letter to the title  
8 company in no uncertain terms that Dr. Tauber as trustee  
9 held legal title -- only bear legal title and the  
10 partnership JMHJV held the equitable and beneficial  
11 title. And he suggested that they were planning on  
12 joining into the deed as well. Therefore, it would no  
13 longer be an issue. But there was an issue.

14 Q Was there a request made for some documentation  
15 to try to figure out what --

16 A Well, that's the point that I was going to get  
17 to. The reason why that became an issue is we then had  
18 to investigate JMHJV or Jefferson Memorial Hospital  
19 Joint Venture to review the title -- to review the  
20 partnership agreement, which again is the normal course  
21 of business when you're dealing with an acquisition from  
22 a partnership. And what you would do, is you review the  
23 partnership agreement to determine the authority issues.

1           We started -- slowly but surely documents were  
2 being produced dealing with the partnership. And the  
3 first glaring issue that arose is the fact that the  
4 partnership did not come into existence until 1975, and  
5 we were aware that Dr. Tauber as trustee acquired the  
6 property in 1962.

7           That's what is referred to in the suit and in  
8 the title documents as the infamous gap occurred. There  
9 was a gap of the beneficial owner from 1962 to 1975.

10          Q     When you say a gap, would that be of record,  
11 documents that would be available to the public  
12 scrutiny?

13          A     Yes. There were no documents of record  
14 indicating any type of transfer of any beneficial  
15 interest from 1962 to 1975 when JMHJV came into  
16 existence. And as a matter of fact, there was no  
17 conveyancing instrument conveying the beneficial  
18 interest to JMHJV. So we were in quite a quandary.

19          Q     What did you do to try to resolve that?

20          A     We were getting a lot of pressure from our  
21 client INOVA to settle this transaction. It was a  
22 transaction that they were hoping to have resolved in a  
23 relatively short period of time. But, of course, this



1 investigation required numerous documents to be  
2 reviewed.

3           So we were -- the process had been slowed down  
4 as a result. Due to the fact that we were getting a lot  
5 of pressure to close this transaction, as the title  
6 attorney I sought the advice of the head of our office  
7 to inquire what should I do in this particular position.

8           Q       Was there an effort made to go back to  
9 Dr. Tauber or his attorney to try to fill in this gap?

10          A       Yes. We continuously requested documentation  
11 to fill in the gap. And at the same time, it was  
12 discussed at Miles & Stockbridge that the best way to  
13 resolve this issue was actually to bring in the  
14 quintessential title expert, Henry Mackall, who is a  
15 renowned title expert with practice over 50 years. And  
16 as a third party reviewing this title, he could give us  
17 an opinion that would give us comfort so that we could  
18 advise our client whether or not they would be acquiring  
19 insurable and marketable title.

20               So we suggested that our client hire  
21 Mr. Mackall to review the title. He did a title search,  
22 and he also started meeting and having discussions with  
23 Dr. Tauber's lawyer, Thorpe Richards, and a meeting was

1 scheduled at the title company to -- and it was promised  
2 that we would be receiving all the documents necessary  
3 to answer all of our questions and to fill in the gap.

4 At that meeting, I would estimate approximately  
5 20 or 30 boxes of documents showed up.

6 Q Produced by Mr. Richards?

7 A Produced by Mr. Richards. And we basically  
8 just started going through them and passing them around.  
9 Many, many new questions and issues arose as a result of  
10 the documents that we received as opposed to answering  
11 those questions. We discovered that there were off  
12 record deeds of conveyance and we discovered a lot of  
13 other documents that questioned or added further  
14 question to who in fact was the beneficial owner.

15 We received partial documents or subscription  
16 letters of partnerships which were purported to us to  
17 have owned the beneficial interest. We received tax  
18 returns of the initial partnership King Street Joint  
19 Venture that was supposed to have been the beneficial  
20 owner in 1962, but no partnership document was ever  
21 produced.

22 But unfortunately, during that process, what we  
23 didn't receive were the documents that in fact

1 transferred the interest and gave us the comfort level  
2 that we needed in order to certify title being  
3 marketable.

4 Q The documents produced at this meeting, had you  
5 seen those documents previously?

6 A No. I would say in that inventory we did not  
7 see them.

8 Q They were not documents of record?

9 A They are not documents of record.

10 Q What happened then as a result of the  
11 production of those -- of these 20 to 30 boxes of  
12 documents?

13 A We continued our search again. In attempting  
14 to close this transaction, we continued our search,  
15 continued to try to answer those questions. But just  
16 more questions arose as a result of --

17 Q Let me back up and ask you a question.

18 MR. BONO: I've stood silent throughout all of  
19 this. It now appears Ms. Vella is a fact witness and  
20 not just offered as a so-called expert witness. And I  
21 fail to see the relevance of the facts and information  
22 she's testifying to. She has testified to hearsay,  
23 facts that are beyond the scope and time period of what

1 the Commonwealth represented are at issue here. She's  
2 testified to legal conclusions, and I would, for all  
3 those reasons, I feel compelled to finally object to  
4 this testimony. I didn't want to interrupt so early in  
5 the trial. But I object --

6 THE COURT: I can't rule on the objection,  
7 Mr. Bono, unless you make it.

8 What's the relevance?

9 MR. BERGHOLD: It's extremely relevant. First  
10 of all, let me say that Mrs. Vella is a fact witness as  
11 well as an expert witness. It's extremely relevant,  
12 Your Honor, because the Respondents in this case have  
13 articulated that the doctrine of laches should apply to  
14 the actions that were brought in this case. And they  
15 also, Mr. Bono indicated in his opening statement that  
16 this whole theory was somehow concocted in 1994 upon  
17 which we're proceeding today.

18 Setting aside for the moment whether laches can  
19 even apply to the Commonwealth, I think there is a -- it  
20 is important for the Court to understand how it is and  
21 whether or not this transaction was revealed, when it  
22 was revealed and when it was discovered. That's  
23 precisely where Ms. Vella's testimony is going to right

1 now, is to the uncovering of these boxes and boxes of  
2 documents, off record transactions, which I'll proffer  
3 to the Court Respondents are relying on for purposes of  
4 their title and where the title resides now.

5           So I think it's extremely relevant to the issue  
6 of laches because if these transactions were hidden, if  
7 the transactions and ownership of the title of the  
8 ground and what happened, the ownership interest of the  
9 prior owners were hidden and were not discovered until  
10 1993 or 1994, then that goes right to the heart of one  
11 of the defenses, one of the chief defenses the  
12 Respondents are relying on.

13           MR. BONO: With all due respect to  
14 Mr. Berghold, I'm sitting here amazed. Ms. Vella was  
15 not identified as a fact witness. We have asked for all  
16 their witnesses. And she was not identified as a fact  
17 witness.

18           Number two, her designation is limited to an  
19 examination of title documents and the so-called legal  
20 opinion which we've objected to. And now she is well  
21 beyond the scope of anything, anything possibly  
22 conceivably set forth in this designation.

23           I think this is utterly, utterly improper and

1 we object that they should -- at the very least, they  
2 should be limited to their designation. This is highly  
3 improper. And I didn't want to be a problem here and  
4 let them do what they want to do. But this is highly  
5 improper and well beyond the designation.

6 I ask the Court to ask the Commonwealth to keep  
7 this witness's testimony to the limit specified in the  
8 designation.

9 MR. BERGHOLD: As to qualified as an expert,  
10 I'm not aware that we identified fact witnesses, Your  
11 Honor. But Ms. Vella is offered both as a fact witness  
12 and as an expert witness. I think it's entirely proper,  
13 especially given the assertions of the Respondents in  
14 the case as to where the title resides now in these  
15 properties. And in their own interrogatory answers,  
16 they rely on documents that rebound from, rely on  
17 positions which rebound from the documents that were  
18 produced in the '93 and '94 time period. So it's  
19 extremely relevant, Your Honor.

20 THE COURT: Objection is overruled, although  
21 she did testify to some hearsay that was in there. It  
22 may have been offered for the truth of the statements.  
23 I'm not sure.

1 But Mr. Bono, rest assured I'm not going to  
2 hold it against anybody who has objections to make. I  
3 can't rule on them unless somebody stands up and makes  
4 them. So there's not any penalty. If it gets  
5 excessive, I'll let you know.

6 MR. BONO: Thank you, Your Honor.

7 THE COURT: All right, Mr. Berghold, go ahead.

8 MR. BERGHOLD: Thank you, Your Honor.

9 BY MR. BERGHOLD:

10 Q Ms. Vella, I think you were about to tell us  
11 what effort was undertaken right after the production.  
12 Actually, I was backing up to ask you with regard to the  
13 referenced off record deeds, were these deeds that  
14 affected the ground upon which the hospital improvement  
15 sat?

16 A Yes, the off record deeds not only affected the  
17 conveyances of the title to the real estate on which the  
18 hospital lies, they also conveyed the interest in the  
19 Hopkins lease as well. And it completely contradicts  
20 the on record conveyances.

21 Q Was there evidence that the grantees in these  
22 deeds ever received the deeds?

23 A Yes. The deeds were properly executed and

1 delivered and accepted as a result of their being  
2 executed both by the grantor as well as the grantee.

3 Q Now, as a result of the production of these  
4 documents, what happened next essentially?

5 A Basically, what happened next is despite all of  
6 our efforts to attempt to make heads or tails out of the  
7 title in order to be able to assure our client that they  
8 were obtaining insurable as well as marketable title,  
9 the client had to make the decision to file a lawsuit in  
10 order to be declared that they were no longer  
11 responsible for carrying out their obligations under the  
12 agreement as a result of the seller being unable to  
13 perform its obligations under the agreement, which was  
14 to deliver insurable and marketable action.

15 Q There was a declaratory judgment action to  
16 determine the marketability of the title?

17 A Yes.

18 Q As part of that lawsuit, in discovery were  
19 additional documents produced by the Respondents?

20 A Yes. Additional documents were produced,  
21 primarily corporate documents which shed light on  
22 numerous issues dealing with the various nonprofit and  
23 profit organizations, corporate minutes, financial



1 statements, tax returns. I believe those were produced  
2 during the lawsuit.

3 Q And which impacted title to the real estate and  
4 the improvements; is that correct?

5 A Yes. In fact, impacted it to the extent that  
6 again we were trying to figure out who owned the  
7 improvements, whether the conveyances were done  
8 appropriately, and basically determine the status of  
9 title.

10 MR. BERGHOLD: Okay. With that background,  
11 then, I think what I would like to do -- and, Your  
12 Honor, with your permission, I'd like to have Ms. Vella  
13 come off the stand. We've prepared some charts which  
14 show change of title, both for the parcels of real  
15 estate and improvements, and have her go through the  
16 charts and explain the chain of title and where interest  
17 in the property reside. And I would like to then  
18 approach the easel as well.

19 MR. BONO: I must make an objection on the  
20 grounds of relevance. I don't understand at all what  
21 the relevance of the chain of title is to this lawsuit.  
22 Title of this, to this property, which is all she's  
23 talking about, was quieted by Your Honor by order, by

1 final order and judgment. There is no question about  
2 title to this property because it was quieted by order  
3 of Your Honor on September 14, 1994, number one.

4 Number two, she's talking about things that  
5 happened in 1994 and 1993. I fail to see at all the  
6 relevance of that.

7 And third, the chain of title is not an issue  
8 in this case. The issue is what happened in 1971 in a  
9 very narrow transaction. What they are doing here is  
10 retrying the INOVA/Jefferson case in which the issue was  
11 chain of title. She was a lawyer for INOVA. She was  
12 Mr. Bettius's partner, which they have kept from Your  
13 Honor, and she's inherited --

14 MR. BERGHOLD: He can do that on  
15 cross-examination.

16 THE COURT: Wait a minute. I didn't mean to  
17 encourage all of this, because we were doing all right  
18 before. But what is the purpose of this, Mr. Berghold?  
19 What difference does it make what the title is today?  
20 Does it make a difference?

21 MR. BERGHOLD: It does make a difference today.  
22 But the purpose of what we're trying to accomplish here  
23 is I think critical to Your Honor's determination in

1 this case even though -- let's focus first on 1971, 1973  
2 or 1975. Pick any -- pick the three dates that  
3 Respondents have put forward. You are going to have to  
4 determine, I would suggest to Your Honor, respectfully  
5 suggest, not only what assets the charitable corporation  
6 held at those dates, but whether or not the Respondents  
7 in their actions in trying to divest the charitable  
8 corporation of those assets, the actions they took,  
9 whether they were appropriate, whether they were proper,  
10 whether the assets were taken, whether the conveyances  
11 were defective so as not to operate as any kind of a  
12 transaction.

13           So the title to the property at those times is  
14 critical, Your Honor. And I think the chain of title as  
15 it resides today, ultimately Your Honor is going to have  
16 to reach that issue as to where -- and I would suggest  
17 to Your Honor, that as a result of your findings as to  
18 the '71-'75 time frame, that's going to impact on where  
19 title to those improvements resides today.

20           And with regard to the quiet title issue, this  
21 issue has been mentioned, I guess talked around a little  
22 bit before Your Honor previously in motions. And I  
23 think Your Honor is going to have to make a

1 determination as to the effect of the decree that  
2 Respondents had to enter in that case on September 14,  
3 1994, and whether or not in fact quiet title in a  
4 situation where the Respondents proceeded by publication  
5 against parties unknown, did not reveal any of the trust  
6 relationships or allegations that are contained in these  
7 pleadings, though they knew at that time that the  
8 Attorney General was making inquiry, and whether or not  
9 a trustee at a later date can proceed by publication  
10 against its beneficiaries to take and confirm title. So  
11 that is an issue.

12 THE COURT: I'm going to limit the testimony  
13 for now to the time period 1971 through 1975. If I have  
14 to deal with the status of the title at the present  
15 time, I'll deal with it at a later time.

16 MR. BERGHOLD: Mr. Bettius points out to me,  
17 Your Honor, that clearly one issue that will be critical  
18 I think for Your Honor's determination is who owns these  
19 assets as of today. And I think Your Honor is going to  
20 have to reach that issue.

21 THE COURT: I'm not going to reach it now. I  
22 thought we were talking before about '71 through '75  
23 here. Are you talking about -- well, I'm --

1 MR. BERGHOLD: I'll move on. But may we  
2 approach the exhibits?

3 THE COURT: All right. And you can move  
4 around, Mr. Bono and Mr. Chockley, if you want to  
5 observe the --

6 MR. BONO: May I inquire were these exhibits  
7 produced?

8 MR. BERGHOLD: These are demonstrative exhibits  
9 that were referenced in our exhibit book.

10 THE COURT: Did you give them copies of them?

11 MR. BERGHOLD: We didn't have copies because  
12 they weren't prepared until just recently. They are  
13 demonstrative exhibits as to chain of title. And it's  
14 done for everyone's ease, a demonstrative exhibit. It's  
15 easier to refer to than walking through the --

16 THE COURT: Well, the documents themselves are  
17 not going to be admitted, Mr. Bono. I'll let the  
18 witness to refer to them for purposes of illustrating  
19 her testimony.

20 MR. BONO: Thank you, Your Honor. May I move  
21 around?

22 THE COURT: Yes, sir. All right, ma'am, you  
23 may step down.

1           (The witness left the stand and approached the  
2           easel.)

3           BY MR. BERGHOLD:

4           Q     Mrs. Vella, the first demonstrative exhibit we  
5     have here is entitled Recorded Title Documents for  
6     Hopkins Parcels 1 and 2. I'm going to ask you to  
7     explain what this chart shows. But first let me ask you  
8     just to tell the Court what are Hopkins parcels one and  
9     two?

10          A     Hopkins parcels one and two is land upon which,  
11     the majority of the land upon which the improvements are  
12     constructed. There is another parcel that still  
13     remains, title still remains in the Hopkins. And  
14     there's a leasehold interest in that property that also  
15     affects the improvements somewhat, to a certain degree.  
16     But these are the parcels that were purportedly conveyed  
17     to Dr. Laszlo Tauber, Trustee, initially, in the 1962  
18     transaction.

19               MR. BERGHOLD: Okay. And Your Honor, we had  
20     marked this exhibit with the various conveyancing and  
21     title documents for your ease of reference. And in  
22     light of your ruling that the exhibit is not going to  
23     come into evidence, perhaps as we run through the chain,

1 we can reference the conveyancing documents, if it will  
2 assist Your Honor?

3 THE COURT: All right.

4 MR. BERGHOLD: So that you could refer to them.

5 BY MR. BERGHOLD:

6 Q Dr. Tauber as trustee acquired title in 1962 --

7 A Would you prefer that I just go through the --

8 Q Sure. Why don't you.

9 A Okay. These three initial boxes basically  
10 describe what happened when Dr. Laszlo Tauber, Trustee,  
11 acquired the property initially in 1962. The original  
12 deed into Dr. Tauber was conveyed into him individually.  
13 That was -- do I need to give the exhibit numbers?

14 Q Might as well.

15 A That was Exhibit No. 262. Later that deed was  
16 corrected to indicate that it was, in fact, the  
17 conveyance should have been to Dr. Laszlo Tauber,  
18 Trustee, with trust powers. And that was Exhibit 265.

19 There was one later correction which basically  
20 cleaned up the second correction, which joined in  
21 Dr. Tauber's wife to basically remove any dower interest  
22 that she may have, and that's Exhibit 266.

23 In 19 -- at the end of 1964, Dr. Laszlo Tauber,

1 Trustee, conveyed a 65 percent undivided interest of the  
2 land to Jefferson Memorial Hospital, Inc.. And again, I  
3 reiterate that what I'm going through here are the on  
4 record transfers. That's Exhibit 273.

5 The property was later, in 1970, subdivided  
6 whereby JMHI joined with Dr. Laszlo Tauber, Trustee, to  
7 subdivide the property into four parcels. That exhibit  
8 is 296. The effect of that document was to divide up  
9 parcels one and two into four separate and distinct  
10 parcels.

11 The interesting aspect of that deed is that if  
12 you were to place the hospital improvements on top of  
13 the property and draw the property lines to each of the  
14 parcels, you would find that most of them dissect the  
15 improvements. So the improvements do not sit on an  
16 individual parcel. It almost touches each -- it touches  
17 three of the parcels. The fourth one is just the  
18 parking lot.

19 Q Let me ask you a question about the 1964 deed  
20 from Dr. Tauber as trustee to JMHI. Was there anything  
21 unusual about the grantee clause contained in that deed?

22 A Yes. The deed in to JMHI had a reference that  
23 it less and excepted all of the improvements located



1 located thereon. Therefore, at that time, the title to  
2 the real estate was bifurcated and divided from title to  
3 the improvements.

4 Q What's the effect on the person who holds the  
5 improvements if not owning the underlying ground?

6 A Well, the effect is quite interesting and I  
7 would say quite unique as well. Because what it does  
8 is, it gives the party, Tauber, Trustee, in this  
9 instance, who's reserving the improvements to  
10 themselves, a right to the improvements but no way to  
11 enjoy them, basically, because there was also no lease  
12 or underlying easement that allowed Tauber, Trustee, to  
13 enjoy those improvements since they were separated from  
14 the real estate. And basically, the improvements would  
15 therefore have to be at sufferance or at the whim of the  
16 majority property owner as to whether or not they stayed  
17 or remained.

18 Q In this case, was JMHI.

19 A Yes.

20 Q Okay. Let's proceed.

21 A The subdivision occurred in January of 1970.  
22 And shortly thereafter, in March of 1970, there were  
23 deeds of conveyance in which Dr. Laszlo Tauber, Trustee,

1 and JMHI were the grantors and conveyed each individual  
2 parcel. The parcel that was identified as parcel number  
3 one was conveyed to Mr. and Mrs. Gondor. Parcel two was  
4 conveyed to Jefferson Memorial Hospital, Inc..

5 Parcel one -- let me go back and say that's  
6 Exhibit 300. Parcel two was conveyed to JMHI, and  
7 that's Exhibit 299. Parcel three was conveyed to the  
8 Tauber Foundation, which is also a nonprofit  
9 organization, a Maryland corporation, Exhibit 298. And  
10 the last parcel, parcel number four, was conveyed to a  
11 Samuel Burtoff, and that is parcel 297.

12 Q Exhibit 297?

13 A I mean Exhibit 297.

14 Q The effect of this subdivision was JMHI's  
15 ownership interest was reduced, then?

16 A Well, JMHI's ownership interest went from,  
17 according to the land records, a 65 percent undivided  
18 interest to full ownership of a parcel of land.

19 Q Which comprised what? About 20 percent of  
20 the --

21 A Well, probably if you drew out a scale, I don't  
22 know. But it seemed that it could have been 20 percent  
23 of the actual parcels one and two.

1       Q     Okay. The out conveyance, did that -- and the  
2 reduction of JMHI's interest, did that have any effect  
3 on the ability that it had enjoyed as a 65 percent  
4 undivided interest to control what happened to the  
5 improvements?

6       A     Well, yes. The 65 percent undivided interest,  
7 the majority interest in the property, would have  
8 entitled it to joinder to any transferring or  
9 conveyancing document dealing with the whole parcels one  
10 and two, whereas now, it owned title just in a parcel.

11           And I'm not certain exactly to what extent the  
12 improvements affect or touch that parcel. But they  
13 would only have the right to convey that parcel. They  
14 would no longer have an ownership interest in the  
15 remaining three parcels.

16       Q     With respect to the subdivision and these  
17 conveyances in 1970, were you able to find or have you  
18 seen any corporate resolutions or minutes or any of the  
19 documents you would look for in a due diligence search  
20 which authorized this transaction?

21       A     No. From the documents that I have reviewed,  
22 both in the previous lawsuit and as well in this  
23 lawsuit, there have been no, to my knowledge, no

1 documents produced indicating that JMHI and their  
2 members approved this transfer, nor is there any  
3 indication as to what consideration passed from one  
4 entity to the other.

5 Q Go ahead and say what the chart shows.

6 A In February of 1975, JMHI purportedly, and I  
7 use the word purportedly, conveyed its interest in  
8 parcel two to JMHC. And then later on, later on in the  
9 year, 1975, June '75, the corporation JMHC conveyed it  
10 to Laszlo Tauber, Trustee. Those exhibits respectively  
11 are 305 and 308.

12 Q When you say purportedly conveyed interest,  
13 what is it about that particular conveyance that gives  
14 you pause?

15 A It's my legal opinion that this --

16 MR. BONO: Objection.

17 BY MR. BERGHOLD:

18 Q Is it your expert opinion?

19 A Expert opinion. It's my expert opinion.

20 MR. BONO: Objection, Your Honor, she's  
21 offering a legal conclusion.

22 MR. BERGHOLD: She misspoke, Your Honor.

23 MR. BONO: She's going to change it to try to

1 get out of it. But she's offering a legal opinion.

2 MR. BERGHOLD: I will rephrase the question. I  
3 believe she misspoke.

4 THE COURT: Rephrase the question.

5 BY MR. BERGHOLD:

6 Q What if anything is there that's unusual about  
7 this February '75 deed, Ms. Vella?

8 A The unusual aspect about this deed is the fact  
9 that JMHI is no longer in existence in 1975. And in  
10 order for a corporation -- and the reason why it's no  
11 longer in existence, based upon the documents that I  
12 reviewed, there was a revocation of their charter in  
13 1973, "their" being JMHI's charter in 1973. And as a  
14 result, the appropriate parties were not joined in the  
15 deed in order to effect conveyance.

16 Q Who signed the deed purportedly on behalf of  
17 JMHI?

18 A I believe -- I don't have the document in front  
19 of me, but I believe it was Laszlo Tauber, Trustee.

20 Q What is your understanding of who would have  
21 had to sign the document?

22 A It's my understanding that a majority of the  
23 directors of the previous corporation who are now acting

1 as trustees would have had to execute the deed. And  
2 it's my reading from the documents that the annual  
3 report in 1973 indicates there were at least 19  
4 directors or there were 19 directors of JMHI and  
5 therefore, at least the majority would have to have  
6 executed the deed.

7 Q Okay. I think you previously stated it, but as  
8 of June 30, 1971, then, what is your opinion as to who  
9 held title to this parcel three?

10 A This parcel three -- well, as of -- again, by  
11 legal title, you mean?

12 Q Yes.

13 A Quite frankly, I believe that each one of these  
14 conveyances could be called into question due to the  
15 fact of what I have testified to earlier: that there  
16 doesn't seem to be any corporate documentation  
17 supporting that there was any type of evaluation by the  
18 corporation and its members as to whether or not it was  
19 prudent on behalf of the charitable interests to convey  
20 a 65 percent undivided interest. And there was no  
21 indication of consideration or approval of that  
22 consideration to the extent there was any consideration  
23 to these conveyances. Therefore, I think it calls into

1 question the effectiveness of those transactions as  
2 well.

3 MR. BETTIUS: Your Honor, may I approach with  
4 Mr. Bono for just a moment?

5 THE COURT: All right.

6 (The following bench conference was held.)

7 MR. BETTIUS: When I left the courtroom, I was  
8 approached by Dr. Tauber. We had a conversation. And  
9 Dr. Tauber does this frequently and I think Mr. Bono  
10 knows it. There's nothing material about it, but I had  
11 a conversation with his client and I don't think  
12 Mr. Bono really minds. Dr. Tauber does pretty much what  
13 he wants to do.

14 MR. BONO: Well, I do mind, but I find it  
15 difficult to do anything about it.

16 MR. BETTIUS: And I want you to know that it's  
17 going to happen throughout the trial. And I don't -- I  
18 really like Dr. Tauber. I have enormous affection for  
19 him. And whatever he says to me, it means nothing to  
20 the trial of the case. But I felt since it occurred and  
21 Your Honor is unfamiliar with what happens, you needed  
22 to know it. It's of no significance.

23 THE COURT: All right. Mr. Bono, do you wish

1 to inquire as to the contents? You're certainly free to  
2 do that.

3 MR. BONO: I don't need to do that on the  
4 record, Your Honor.

5 THE COURT: I don't mean necessarily on the  
6 record. All right. Thank you, Mr. Bettius.

7 (The bench conference was concluded.)

8 BY MR. BERGHOLD:

9 Q Mrs. Vella, have we finished with this exhibit?

10 A Yes, I do believe so.

11 Q Let's turn to the --

12 A I would like to make one other just general  
13 comment.

14 Q Okay.

15 A I understand that this title can be very  
16 complicated. I think probably I'm, of all the people I  
17 probably am as familiar with that title than anyone  
18 else. But one thing that makes it a little easier to  
19 understand is that the title to the realty was  
20 transferred, all of Dr. Tauber, Trustee's interest to  
21 the realty was transferred out in the end of 1965 or the  
22 beginning of 1966. So whenever I speak to the real  
23 estate, there are no issues regarding whether or not



1 Tauber, Trustee, holds as trustee pursuant to 55-17.1 or  
2 pursuant to a simple trust.

3 So it has helped me in remembering this title  
4 that not until much later does the issue of Tauber,  
5 Trustee, affect the real estate.

6 Q I think you had mentioned that -- in one of the  
7 opinions you expressed was that as of June 30, 1971, you  
8 believed that title to this real estate reposed in JMHI,  
9 the interest --

10 A That's correct.

11 Q Do you find any documents, or do you have any  
12 opinion as to whether that title ever left JMHI  
13 thereafter?

14 A In my opinion, based on the analysis of the  
15 documents, there was no valid transfer of that interest.

16 Q Okay. Let's move to the next, the next chart.  
17 And this is denominated Unrecorded Transfers of Hopkins  
18 Parcels 1 and 2. Could you run through this?

19 A Yes. Again, we're dealing with the real  
20 estate. And I will show you here why the issue of  
21 Tauber, Dr. Tauber owning the property as trustee is an  
22 issue with respect to the real estate.

23 MR. BONO: May I ask a clarification? When you

1 say real estate, do you mean the land --

2 THE WITNESS: I mean parcels one and two, the  
3 real estate as opposed to the improvements. I'll try to  
4 make that distinction.

5 BY MR. BERGHOLD:

6 Q Let me back up. On record transactions, it's  
7 not represented on this chart, but was there another  
8 parcel that of record was transferred as well.

9 A Yes, there was another parcel which we will  
10 refer to as the Berman parcel. The reason the chart was  
11 not developed on that parcel is that's a fairly simple  
12 transaction.

13 JMHI acquired that parcel from Mr. and  
14 Mrs. Berman in 1966. And then there was the purported  
15 transfer of that title in 1975, but again for the  
16 reasons -- to JMHC. But again for the reasons I  
17 expressed earlier, I believe that that was an invalid  
18 transaction.

19 Q And is it your opinion that title to that  
20 parcel resided in JMHI as of June 30, 1971?

21 A Yes.

22 Q And have you seen anything that changes your  
23 opinion as to whether title ever left JMHI thereafter?

1       A     No. Again, there was the indication of the  
2 recording of the subsequent 1975 deed to JMHC which I  
3 believe to be an invalid transaction.

4       Q     Okay. Let's turn again to the unrecorded  
5 chart.

6       A     These are the documents which I refer to as  
7 part of the documents that were provided to us in the  
8 previous lawsuit and were again provided to me in this  
9 lawsuit. And what these documents show, again, this is  
10 the on record initial conveyances where you have  
11 Dr. Tauber as trustee acquiring the initial parcels one  
12 and two, and then the conveyance of the 65 percent  
13 undivided interest to JMHI at the end of 1964.

14           According to the Respondents' answers to  
15 interrogatories and also their previous testimony, there  
16 is an assertion that an unrecorded 50 percent interest  
17 of JMHC's 65 percent interest was conveyed to a Leslie  
18 P. Gondor. And the documentation, the only  
19 documentation to support this is not a deed instrument,  
20 but is a letter agreement that was dated interestingly  
21 enough 12/21/64.

22           The reason why I say it was dated interestingly  
23 enough 12/21/64 is the fact that JMHI did not acquire

1 its undivided 65 percent interest until 12/29/64. So  
2 there was this agreement that purportedly transferred  
3 this 50 percent undivided interest to Mr. Gondor.

4 Then later on a series of transactions occurred  
5 in which Laszlo Tauber, Trustee, divested himself of his  
6 undivided 30, remaining 35 percent interest. And these  
7 transactions are as follows: 30 percent of his  
8 interests were transferred to himself individually on  
9 December 31, 1965. On that same date, the remaining 5  
10 percent was conveyed to a Samuel Burtoff. Again, these  
11 are done by unrecorded deeds, executed by both the  
12 grantor and grantee.

13 Do I need to say the exhibit numbers?

14 Q Yeah, why not?

15 A Okay. That document is Exhibit 278, the first  
16 document I spoke of, and the second document dealing  
17 with the Burtoff conveyance is 279.

18 What happened in a matter of a day with  
19 Dr. Tauber's individual interest, 30 percent interest,  
20 he conveyed 10 percent of that remaining 30 percent to  
21 the Tauber Foundation by virtue of this unrecorded deed,  
22 and conveyed 5 percent to JMHI, all in the same day,  
23 December 31, 1965.

1           The following day -- let me give you that  
2 exhibit. I apologize. The exhibit to the Foundation is  
3 281. The exhibit to JMHI is 280.

4           The following day, January 1, 1966, he conveyed  
5 the remaining interest that he owned individually to the  
6 Tauber Foundation. And that's Exhibit 287.

7           So if you're keeping your score card, as of  
8 this date, the Tauber Foundation owned 25 percent, an  
9 undivided 25 percent interest in the parcels -- I mean  
10 the Hopkins parcels one and two. JMHI by virtue of this  
11 conveyance out and this conveyance in now owned only 20  
12 percent. It went from 65 percent to 20 percent  
13 undivided interest. And Samuel Burtoff ends up with 5  
14 percent.

15       Q     This was the off record --

16       A     These are the off record transactions.

17       Q     And these conflict with the on record?

18       MR. BONO: Objection, Your Honor.

19       THE COURT: Sorry?

20       MR. BONO: Calls for a legal conclusion.

21       THE COURT: Objection overruled.

22       BY MR. BERGHOLD:

23       Q     You may answer.

1       A     Yes, they do conflict. The reason being is  
2 there's absolutely no reference, there's no -- they are  
3 not on record, obviously. But there's no reference  
4 subsequent to this date to these ownership interests  
5 when there is a conveyance out of the four parcels to  
6 these entities and individual. So the off record  
7 conveyances are more and they conflict with the on  
8 record.

9       Q     Now, did you discover, is there any  
10 contemporaneous documentation other than the off record  
11 deeds themselves which supports or relates to these off  
12 record conveyances? Corporate resolutions, anything  
13 like that?

14       A     No. Again, as I indicated, from the documents  
15 that were provided previously to me in the last lawsuit  
16 as well as the documents that were provided to me in  
17 this lawsuit, there was no indication of any corporate  
18 authority, nor was there any indication of any corporate  
19 discussion or any discussion regarding consideration  
20 flowing.

21               Now, there is information in this letter  
22 agreement that speaks of consideration. But whether  
23 there was any valuation done as to whether that

1 consideration was adequate, that the record --

2 Q Okay. Did the off record deeds contain the  
3 same reservation in the granting clause?

4 A All deeds on and off record to the chain of  
5 title to the real estate all contained the reservation  
6 reserving unto Dr. Laszlo Tauber, Trustee, the  
7 improvements.

8 Q Okay. I think that concludes the off record  
9 transactions. Let me ask you, were there also land  
10 leases or ground leases for certain portions of the  
11 property?

12 A Yes. There were two leases that were essential  
13 to the operation of the hospital and to the use of the  
14 improvements that were also assets of JMHI. The first  
15 one that I mentioned was the Hopkins lease. And the  
16 Hopkins lease, we didn't do a chain of title for it  
17 because it basically parrots to most -- all the  
18 transactions basically parrot the on and off record  
19 transactions of the real estate. And I'll just quickly  
20 run through that.

21 What happens is that Laszlo Tauber as trustee,  
22 actually L&L Corporation, through a series of  
23 assignments, Laszlo Tauber as trustee is the tenant

1 under the lease. Then there is a conveyance out in the  
2 deed to JMHI conveying the 65 percent undivided interest  
3 in the realty and also conveys a 65 percent undivided  
4 interest in the Hopkins lease.

5 Q That was Exhibit 273?

6 A Yes.

7 Q Okay.

8 A That's the documentation. And that is  
9 recorded.

10 And there are off record deeds which follow the  
11 exact conveyances and the exact percentages, therefore,  
12 reside at -- purportedly conveying to these individuals  
13 Dr. Laszlo Tauber, Trustee, conveying his 35 percent  
14 undivided interest in the Hopkins lease, to these  
15 individuals.

16 Later, these individuals in 1966 --

17 Q When you say these individuals, the recipients  
18 of the off record deeds in 1965?

19 A Right.

20 Q Okay.

21 A It would be the Foundation, JMHI and Samuel  
22 Burtoff conveyed their undivided interest to JMHI giving  
23 it approximately 100 percent in that property as of



1 1/1/66.

2 Q A ground lease in the Hopkins property, was  
3 that a 99 year ground lease?

4 A Yes. And it's still in effect today, the  
5 leases are, the lease is.

6 Q Okay. And so as of June 30, 1971, do you have  
7 an opinion as to did JMHI have an interest in that  
8 ground lease?

9 A Yes.

10 Q And have you seen any documentation which  
11 divests JMHI from that interest in the ground lease?

12 A Yes. There is an assignment of that lease  
13 interest to Dr. Tauber as trustee that happened in, I  
14 believe it was June of 1975. But it was definitely in  
15 1975. And again for the reasons I stated earlier, due  
16 to the fact that JMHI was no longer in existence and the  
17 appropriate signatories were not on the assignment, I  
18 believe that to be an invalid transaction.

19 Q Was there also -- was there another lease  
20 affecting the property?

21 A Yes. The other lease affecting the property is  
22 what we refer to as the Gondor lease.

23 Q Can you explain that?

1       A     Yes, the Gondor lease came in existence at  
2     January 1, 1966. And it is a document that also has  
3     been confirmed later in the chain of title.

4             Interestingly enough, the Gondor lease reflects  
5     the off record transfers. It's a document that  
6     represents that Gondor, Burtoff and the Tauber  
7     Foundation own 80 percent undivided interest in the  
8     underlying land, Hopkins one and two.

9       Q     It's dated what date?

10      A     January 1, 1966.

11      Q     Okay. So then it's a -- well, the  
12     representations then would conflict with the on record  
13     title to the real estate at that time?

14      A     Yes. It does conflict with the on record. But  
15     it makes perfect sense with respect to the off record.

16      Q     Okay.

17      A     Now, there is acknowledgment in the lease that  
18     it is an 80 percent undivided interest. And there is a  
19     representation that JMHI, as the tenant under the lease,  
20     owns the remaining 20 percent interest.

21      Q     Okay. Now, is there, are there any rights that  
22     inure to JMHI's benefit by virtue of the provisions of  
23     that lease?

1       A     Yes. The lease indicates that the improvements  
2 can be demolished and replaced at the tenant's request.  
3 The lease allows, in the event of a condemnation, that  
4 JMHI would receive the value of the improvements, and  
5 that the landlord would receive the value of the  
6 unimproved land. There is an addendum to the lease  
7 dated the same date which actually requires that upon  
8 the termination of the lease, that the landlord would be  
9 required to buy the improvements constructed by JMHI  
10 from them at a fair market value determined by an  
11 appraisal system methodology.

12       Q     Okay. As of June 30, 1971, the ownership of  
13 that ground lease resided in JMHI, I believe? Is that  
14 your testimony?

15       A     Yes.

16       Q     And have you seen any documentation which would  
17 divest JMHI of its ownership of that lease thereafter,  
18 in the time period thereafter?

19       A     There is a lease assignment again that was  
20 executed by JMHI. JMHI is not the only assignor, but  
21 there were a few other parties that were thrown in that  
22 I don't recall. But JMHI assigned all of its right,  
23 title and interest in that lease in 1975. But again, I

1 believe that that assignment is invalid for the reasons  
2 stated previously.

3 Q JMHI was in dissolution at that point.

4 A Yes.

5 Q And not all of the directors joined in the  
6 assignment?

7 A That's correct.

8 Q Let's turn to the improvements. Can you  
9 explain to the Court what this exhibit represents?

10 A Now, the improvements are more difficult to  
11 understand for a variety of reasons, the first and  
12 foremost of which is that as we discussed before, they  
13 are separated from the land. So, so goes the land does  
14 not so go the improvements, because in every conveyance  
15 of the land, there is a reservation of the improvements  
16 to Tauber, Trustee.

17 So we have to make -- in my analysis, I had to  
18 do the following thing. I had to determine how did  
19 Laszlo Tauber, as trustee, own as trustee. Did he own  
20 pursuant to a 55-17.1 trust which would vest in him not  
21 only the legal title but the equitable title and would  
22 place in the beneficiary a personalty interest which in  
23 fact could be transferred by off record documents?

1 There wouldn't need to be the standard bill or other  
2 legal type of conveyancing instrument.

3 Therefore, I had to do an analysis based on  
4 that theory and that has been what the Respondents have  
5 purported to hold, on some occasions they have purported  
6 to hold as a 55-17.1. Other occasions they have also  
7 purported to hold it as a 1510. But let's assume that  
8 their representation is that they hold it as a 5517 --

9 Q That's their representation in this case as  
10 well, isn't it, in their interrogatory answers?

11 A Yes. Well, actually, the question is  
12 either/or. And they answered yes. So let's assume that  
13 it's 55-17.1. What is the indicia of ownership? What  
14 are the documents that tell me who owns the beneficial  
15 interest?

16 Well, the first document that I see that tells  
17 me who was the beneficiary of this interest when  
18 Dr. Tauber as trustee initially reserved those  
19 improvements to himself at the end of 1964 was a  
20 document that was executed by Dr. Tauber, Trustee, in  
21 October of 1966. It's the declaration of trust. And  
22 that's one of the -- is that the document that you want  
23 me to see or submit to the Court?

1       Q     Well, I think we can reference the judge to the  
2 exhibit number. Judge, that's Exhibit 295 in the  
3 Complainant's exhibits if Your Honor would like to refer  
4 to it.

5       A     That document tells me and it declares, it's a  
6 declaratory statement by Dr. Tauber, Trustee, which  
7 indicates that he owned that property, he owned the  
8 legal title to that property, and that King Street Joint  
9 Venture owned the beneficial interest to that property.

10           And again, that document was dated October of  
11 1966. In that document, it indicated that KSJV was  
12 being dissolved and that a new organization called  
13 Jefferson Memorial Hospital Associates was being  
14 created. And it also indicated that Dr. Tauber,  
15 Trustee, would be holding for that new organization.

16       Q     Okay.

17       A     So I'm able to surmise and that document tells  
18 me that this beneficial interest, which is personalty,  
19 remember, has gone from KSJV to JMHA, and that's spelled  
20 out in this document dated 10/1/6 or October 21,  
21 actually, I believe it is, 1966, if my memory serves me.

22           Anyway, then what happens? The next indicia of  
23 ownership that I see from all of the documents are two

1 statements, two documents, certified documents, one  
2 being the financial statement from JMHA for 1971, the  
3 other being its final tax return also for the same year.

4 Q Those are Exhibits 211 and 230. What do they  
5 indicate?

6 A They indicate that JMHA, as the owner of the  
7 improvements, has transferred those improvements to  
8 JMHI. Both documents indicate that.

9 So based on that information, there has been a  
10 transfer of personal interest in that beneficial  
11 interest to JMHI as of 6/30/71.

12 Q Okay. Are there any other -- is there any  
13 other documentation that indicates conflicts, perhaps,  
14 as to ownership in the improvements?

15 A Well, it appears that there are -- well, there  
16 are also documents that JMHC's financial statement  
17 indicates that it is acquiring JMHI. Well, there's a  
18 conflict on the dates. But sometimes they say that they  
19 are acquiring it on June 30, 1971. And another  
20 statement indicates that they are acquiring it July 1,  
21 1971. But regardless, it's indicated that Jefferson  
22 Memorial Hospital Corporation is indicating they are  
23 acquiring all the assets and liabilities in exchange for

1 stock of JMHI.

2 Q Do they reference a date of when they, you say  
3 they supposedly acquired the assets of JMHA, which would  
4 be --

5 A Yes, they state that on July 1, that they also  
6 acquire JMHA.

7 Q Okay. That's a day after JMHA's documents  
8 indicate that they were transferred to JMHI.

9 A Yes. And it was also a day after that JMHA's  
10 documents say it dissolved. So JMHA was no longer in  
11 existence from the records that I reviewed as of July 1,  
12 1971.

13 Q So it's your opinion that as of June 30, 1971,  
14 the improvements resided in JMHI.

15 A That's correct.

16 Q And have you seen or been able to discern any  
17 other documentation which takes the improvements out of  
18 JMHI after that date?

19 A Well, there is an interesting document that is  
20 this reorganization, reorganization merger agreement  
21 that was attached to JMHC's tax return. And in it, it  
22 represents that there has been an acquisition of all of  
23 the assets and liabilities of JMHI.

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1 Well, if that were the case, then there  
2 obviously would have been a transfer of JMHI at that  
3 time. The problem again, the reason why I was giving  
4 that, giving that opinion the other documents are  
5 invalid, this particular document seems to indicate that  
6 JMHI could be merged with JMHC, which it could not as a  
7 nonprofit merging with a profit. But it represents  
8 JMHI's owning stock and transferring that stock to JMHC.

9 Q Okay. So ownership of the improvements was in  
10 JMHI as of June 30, '71, and continued thereafter?

11 A Yes. That's right.

12 Q Okay. Is there any other indicia that you  
13 found for ownership of the improvements in JMHI?

14 A Well, if I take the tack or analyze the title  
15 as not being held pursuant to a 55-17.1 trust, but in  
16 fact being held as a -- since this is a partnership, as  
17 a 50-10 trust for lack of a better word, that's citing a  
18 code provision which allows partnership property to be  
19 held by trustees, then we would have to do an analysis  
20 of where are the on record transfers? And if not on  
21 record, where are the valid conveyancing instruments  
22 such as a deed or will or whatever, what have you,  
23 transferring that beneficial real property interest?

1           And so you have to go back to 1962 and see,  
2 well, what did it say? Well, the deed said that he was  
3 holding for himself and other individuals.

4           Q     Okay.

5           A     That really doesn't provide me with a clue as  
6 to who those other individuals are. However, in  
7 confirming the Gondor lease, later on in 1993, there is  
8 representation as to how in fact Laszlo Tauber held  
9 title in 1962 and who the beneficial interest holder was  
10 in 1962. And that happened to be Gondor, the Tauber  
11 Foundation, and JMHI and Burtoff, I believe. But the  
12 important thing about that document is --

13           THE COURT: Are you still using the chart? Can  
14 she return to the witness stand?

15           MR. BERGHOLD: Well, we're done here. You can  
16 probably go back up.

17           THE COURT: Why don't you resume your seat?

18           BY MR. BERGHOLD:

19           Q     Your Honor, if I cease being a gentleman, I  
20 know that you'll insure that I continue, I think.

21           A     Well, continuing, that tells me that the  
22 beneficial interest is owned by those individuals and  
23 entities. So I must find another transferring

1 instrument that conveys that interest out. But on its  
2 face, it indicates that JMHI at least owns a part of the  
3 beneficial interest.

4 The next document that I can refer to that in  
5 fact divests that ownership interest would be the Gondor  
6 1966 lease which is a recorded document that was later  
7 confirmed. In that document, as I testified to earlier,  
8 there is all the indicia of ownership of the  
9 improvements, first and foremost of which is the right  
10 to demolish and reconstruct them at any time. Certainly  
11 the right to receive all condemnation proceeds dealing  
12 with them is an indication that JMHI owned the  
13 improvements.

14 And finally with respect to the obligation of  
15 the landlords to acquire that improvement back at the  
16 end of the termination of the lease pursuant to a  
17 methodology of obtaining an appraiser's determination of  
18 the value of the property at the time, certainly  
19 indicates that there was true value in those  
20 instruments.

21 So either way, whether the analysis is through  
22 a 55-17.1 trust or through the 50-10 trust, the assets,  
23 title to the assets end up in JMHI.

1 Q Title to the improvements end up in JMHI?

2 A Yes.

3 Q And don't leave JMHI?

4 A And do not leave JMHI.

5 MR. BERGHOLD: That's all the questions I have  
6 for this witness, Your Honor.

7 THE COURT: All right. Cross-examine.

8 CROSS-EXAMINATION

9 BY MR. BONO:

10 Q Do you go by Mrs. Vella-Burns?

11 A As Mrs. Vella is fine.

12 Q Mrs. Vella.

13 A That's what having children will do for you.  
14 It makes you an old married woman.

15 Q I understand. Mrs. Vella, are you aware that  
16 with respect to each of the items, the property, the  
17 land and improvements that you've been talking about  
18 today were the subject of a quiet title order entered by  
19 in court in September, 1994?

20 A Yes, I'm aware of that.

21 Q And are you aware that the title was vested at  
22 that point in Jefferson Memorial Hospital Joint Venture?

23 A Well, I'm aware that what the order indicates,

J.APP.1123

1 based on the complaint and the information provided to  
2 the Court in the complaint, that the Court ordered that,  
3 yes.

4 Q Now, when you did all this work in which you  
5 became so knowledgeable in all of these title  
6 transactions going back through the years, on whose  
7 behalf were you doing that work?

8 A I was working on the firm's client's behalf,  
9 INOVA Health Care Systems.

10 Q And --

11 A Services, actually, I believe is what it's  
12 called.

13 Q And you as a lawyer at that point, your object  
14 was to look into the question of marketability of title  
15 on that property; correct?

16 A Yes. Well, actually, it was both to evaluate  
17 the insurability of the title to insure that we were  
18 getting the type of insurance policy that we were  
19 contracting with the title company to receive, as well  
20 as to make the independent determination of  
21 marketability.

22 Q And at that point, it was INOVA's position, was  
23 it not, that title was not marketable? In fact, they

J.APP.1124

1 filed a lawsuit which made those allegations; isn't that  
2 right?

3 A Yes. I could not advise my client that it  
4 would be obtaining marketable title, in which the  
5 decision was made to file the declaratory judgment.

6 Q And you at that time were a lawyer representing  
7 INOVA throughout that litigation.

8 A Yes.

9 Q Against Jefferson Hospital; correct?

10 A Yes.

11 Q And at that time, you were with the firm of  
12 Miles & Stockbridge; is that right?

13 A Yes.

14 Q And am I correct that at that point, you were a  
15 partner?

16 A Well, actually, I started out as an associate.  
17 And then I was elected to partnership in 1970 -- 1970;  
18 1994.

19 Q Were you elected to partner prior to the  
20 beginning of the trial?

21 A I believe the trial began in July of '94; is  
22 that correct?

23 Q Correct.

1 A Yes, I was.

2 Q And am I correct that Mr. Bettius was a fellow  
3 partner of yours at that time?

4 A Yes, he was.

5 Q And so was Mr. Fox?

6 A Yes, he was.

7 Q And in fact, Mr. Berghold was an associate of  
8 yours; is that right?

9 A Yes, that's correct.

10 Q And it was at that time where you gained all  
11 this knowledge; is that right?

12 A I gained, I would say, a vast amount of my  
13 knowledge during that time. There was, in reviewing the  
14 documents again, like I said, this thing is  
15 constantly -- the more documents you see, the more  
16 interesting it gets. But I also obtained additional  
17 information from this trial as well.

18 Q Who asked you to be an expert in this case?

19 A I was hired by the Commonwealth of Virginia.

20 Q Did someone call you?

21 A Yes.

22 Q Who was that?

23 A Mr. Bettius called me.

1 Q And he asked you to be an expert in this case?

2 A He asked me on behalf of the Commonwealth to be  
3 an expert in this case.

4 Q And in that phone call, did you accept?

5 A What I said that I would do, I would be happy  
6 to meet with the Commonwealth Attorney, which I did. I  
7 met with Mr. Lief and discussed what would be required  
8 of me as an expert.

9 Q And then did you agree to that position?

10 A Yes. I think we met in November and I think  
11 sometime in May.

12 Q Now, you at some point left Miles & Stockbridge  
13 and joined your present law firm; is that correct?

14 A Yes. A year ago last May.

15 Q Up to the time you left Miles & Stockbridge, I  
16 take it you continued to have your association with  
17 Mr. Bettius and Mr. Fox and Mr. Berghold?

18 A I continued to be partners with them, yes.

19 Q And you left that firm when?

20 A In May of 1995.

21 Q And since that time, have you remained friendly  
22 with Mr. Bettius and Mr. Fox and Mr. Berghold?

23 A What do you mean?

JAPP.1127



1 Q I wasn't implying anything.

2 A My dealings socially and otherwise with them  
3 have been with respect to this lawsuit. But I think  
4 that they are wonderful human beings.

5 Q Have you met with them and socialized with them  
6 since then?

7 A No.

8 Q Have you had contact with them since May of  
9 '95?

10 A Yes.

11 Q Off and on?

12 A More off than on.

13 Q Now, how did you end up at the firm where you  
14 presently are associated?

15 A They made me an offer I couldn't refuse.

16 Q Did Mr. Bettius have any part in you --

17 A No.

18 Q -- taking that position?

19 MR. BETTIUS: I stipulate I tried my darndest  
20 to stop it.

21 BY MR. BONO:

22 Q Now, Mrs. Vella, if I could come up and maybe  
23 help clarify some things by using this board, if I may.

1 A Do you want me to step down?

2 Q No. Let me see if I can turn this this way.  
3 These charts are very confusing to me and I can imagine  
4 to Judge Swersky who has not seen this stuff before and  
5 trying to deal with this before. Let me see if I can  
6 just understand the pieces of property in interest that  
7 affect JMHI, because that's what is at issue here.  
8 Right?

9 A Yes.

10 Q One is, I think you said, if I'm correct, is  
11 you talked about the Berman parcel?

12 A Yes.

13 Q Is that right?

14 A Yes.

15 Q Let's just talk about Berman. That's a piece  
16 of land, as I understand; right?

17 A Yes.

18 Q And the Berman parcel was conveyed into JMHI.

19 A Yes, in 1966.

20 Q Okay. And then there is a document, I think  
21 you mentioned, that is a deed which transferred the  
22 Berman parcel from JMHI to some other entity?

23 A Yes.

1 Q And that's a deed?

2 A Is a deed.

3 Q And that was a deed from JMHI?

4 A To JMHC.

5 Q To C.

6 A Yes.

7 Q And that was when?

8 A 1975.

9 Q Okay. Now, and I believe you said in your  
10 opinion that this, you thought this was invalid because  
11 JMHI was already dissolved?

12 A That's correct.

13 Q Isn't that right?

14 A Yes.

15 Q And I think you also said that you didn't see  
16 any documents which authorized that transaction?

17 A No, I didn't mention that with respect to that  
18 particular 1975 transaction. My testimony, I believe,  
19 dealing with the authority issues was on the previous  
20 transfers.

21 Q So you don't have any doubt, do you, that this  
22 transaction was authorized by JMHI, do you?

23 A No. I have reviewed the documents that

J.APP. 1130

1 indicated in 1975 -- again, there were board minutes, I  
2 believe, stating that this corporation, again, which is  
3 no longer in existence, authorized this transaction in  
4 1975.

5 Q Well, I'm just trying to understand your  
6 testimony.

7 A Right.

8 Q So there is no question that it was authorized  
9 by --

10 A Well, I will say there is no question --

11 THE COURT: Wait. Let him finish the question.

12 THE WITNESS: Okay. I'm sorry.

13 BY MR. BONO:

14 Q Putting aside whether the transaction, the deed  
15 actually worked, I'm just trying to talk about did the  
16 directors give authority to make the transfer?

17 A Well, it's my understanding that in order for  
18 the directors to act pursuant to a forfeited corporate  
19 charter, they would have to make this decision as  
20 trustees. And it appears from the minutes that they  
21 were acting as if JMHI still existed and therefore that  
22 would call me to question those minutes.

23 Q All right. But they okayed it. I mean, as

J.APP. 1131

1 people, they said yes, go ahead, transfer it.

2 A Yes. As people.

3 Q Okay.

4 MR. BERGHOLD: Let me just state an objection  
5 or clarification, Mr. Bono. You're saying the people  
6 who were in attendance --.

7 THE COURT: Mr. Berghold, if you have an  
8 objection to a question, you make it. If you have  
9 something on redirect, you can come back and clear it  
10 up.

11 MR. BERGHOLD: Thank you, Your Honor.

12 BY MR. BONO:

13 Q Thank you. You said you looked at a deed that  
14 did this in 1975; is that right?

15 A That's correct.

16 Q Was that at the beginning of 1975?

17 A It may have been around June. I don't recall  
18 the exact dates.

19 Q Okay. June of '75. You understand that the  
20 directors are not lawyers in this case. They are  
21 doctors; correct?

22 A That's correct.

23 Q Do you know who prepared the deed for that?

J.APP.1132

1       A     I believe -- well, I believe it was their  
2 lawyer at the time, which was Thorpe Richards.

3       Q     Okay. And so Mr. Richards prepared this deed  
4 and told them to sign it; is that correct?

5       A     That's correct.

6       Q     So since 1975, the directors would have a  
7 belief, would it be reasonable for them to have believed  
8 for the last --

9           MR. BERGHOLD: I object to the speculation.

10          THE COURT: Finish the question and then wait a  
11 minute, Ma'am, and let me hear the objection.

12          BY MR. BONO:

13       Q     Would it have been reasonable for them to have  
14 believed for the last 21 years that this property was  
15 transferred since Mr. Richards had drafted the deed and  
16 had them sign it?

17           MR. BERGHOLD: I object.

18          THE COURT: What's your objection?

19           MR. BERGHOLD: It calls for speculation on the  
20 part of --

21          THE COURT: Objection sustained.

22          BY MR. BONO:

23       Q     Now, this property, the Berman property, has

1 been used since 1975; correct?

2 A I -- I'm not quite familiar. I know that there  
3 might be a building built on it. But --

4 Q Okay. Now, do you know what entity actually  
5 used this piece of property since 1975?

6 A Do I know what entity?

7 Q Yes.

8 A I don't understand the question.

9 Q Well, obviously somebody has actually used this  
10 land since 1975. Do you know who used it?

11 A Well, I believe there's a building of some sort  
12 and there's like a parking structure on the top of it.  
13 And I know that there's doctors in it. But I don't --

14 Q You don't know what entity has used it?

15 A I'm not certain who used it.

16 Q But since JMHI was dissolved in 1973, it  
17 certainly hasn't used it, has it?

18 A I don't know. I mean, physically and legally,  
19 since it didn't exist, I assume it couldn't have used  
20 it.

21 Q Thank you. Now, let's go to the second parcel  
22 which is related to JMHI. I think you said it was  
23 portions of Hopkins one and two?

J.APP.1134

1 A Yes.

2 Q Can I call that Hopkins one and two?

3 A Yes, I don't know if I would use portions. I  
4 think Hopkins one and two.

5 Q All right. That's fine. I'll accept that.  
6 Hopkins one and two.

7 A Okay.

8 Q And then I think this was another piece of land  
9 that was owned by or transferred into JMHI; correct?

10 A 65 percent undivided interest was transferred.

11 Q All right. 65 percent. Now, I believe you  
12 mentioned that there was a document that you saw which  
13 transferred it out of JMHI; am I correct?

14 A There was a document that has been represented  
15 to have transferred it out, a 50 percent interest to a  
16 Mr. Gondor. However, there was no deed. There hasn't  
17 been a deed or any will or anything along those lines.

18 Q But there was a document?

19 A There was a document.

20 Q And 50 percent to Dr. Gondor?

21 A Yes. It's referred to as a letter agreement  
22 December 21 --

23 Q '65 or thereabouts?



1 MR. BERGHOLD: '64.

2 THE WITNESS: '64.

3 MR. BONO: 1964. 31 years ago. 32 years ago.

4 MR. BERGHOLD: 31 and a half years ago.

5 BY MR. BONO:

6 Q Now, when this letter was signed, did  
7 Dr. Gondor pay money for that portion of the land to  
8 JMHI?

9 A I have no way of knowing that.

10 Q Doesn't that letter say he paid money?

11 A The letter says a lot of things. It says a  
12 deed was going to be executed, too. And I've never seen  
13 that.

14 Q The question is, did Dr. Gondor --

15 A I have no idea.

16 Q You don't know?

17 A I have no idea.

18 Q Do you recall whether the letter said he paid  
19 over \$80,000 for that property?

20 A The letter indicated a future intent to do so.

21 Q Okay. But it said that.

22 A Yes, it did say that.

23 MR. BERGHOLD: I object. Perhaps we should

JAPP. 1136

1 refer to the document, Your Honor.

2 THE COURT: The document says what it says and  
3 I'm sure it's in evidence. I would be willing to bet  
4 it's in evidence. The question is, does this witness  
5 know whether in fact the money was paid? And I suspect  
6 the answer to that is no, she doesn't. Is that correct,  
7 Ma'am?

8 THE WITNESS: That's correct.

9 THE COURT: Okay. Go ahead.

10 BY MR. BONO:

11 Q Was that the only transfer? Was there any  
12 other document transferring out this interest of JMHI to  
13 anyone else?

14 A Yes.

15 Q All right. What was that document?

16 A There were several documents. There were deeds  
17 out of the subdivided parcels.

18 Q Okay. And when were those deeds?

19 A Those deeds were in March of 1970.

20 Q Okay. That was the subdivision; correct?

21 A They conveyed out the subdivision parcels.

22 Q Okay. Let's talk about the subdivision. As I  
23 understand what you said, at first there was one big

J.APP. 1137

1 parcel, undivided interest?

2 A Actually there were two, Hopkins one and two.

3 Q And the entities held undivided percentage?

4 A Held undivided percentages; correct.

5 Q And they subdivided into four parcels; correct?

6 A Well, they didn't. JMHI and Tauber, Trustee,  
7 subdivided the two parcels into four parcels.

8 Q All right. Now, do you know how that  
9 subdivision was done?

10 A What do you mean?

11 Q Do you know how they drew the lines making the  
12 four parcels?

13 A Yes. You mean how did -- the actual parcels  
14 were divided?

15 Q Let me rephrase the question and withdraw that.  
16 Do you know who drew the parcels that were actually  
17 becoming the four parcels?

18 A I assume it was an engineer.

19 Q Do you know that it was an engineer?

20 A I have seen the subdivision document prepared  
21 by an engineer. I don't --

22 Q Do you recall the engineer's name?

23 A No, I do not.

J.APP. 1138

1 Q Do you know what instructions the engineer was  
2 given when he made that subdivision?

3 A I have no knowledge of that.

4 Q Now, in terms of work you have done in this  
5 case with respect to the subdivision -- okay?

6 A Um-hum.

7 Q -- did you make any investigation as to the  
8 value of the parcels of land after the subdivision?

9 A No.

10 Q Okay. So sitting here today, you don't know  
11 whether the subdivided parcels were of proportional  
12 value to the undivided percentage interest beforehand;  
13 do you?

14 Well, I can tell you I'm not a valuation  
15 expert. However, I do know there is a tremendous  
16 difference in value between having an undivided interest  
17 in a whole as opposed to a whole interest in -- it's  
18 like getting a big fish in a small pond versus a small  
19 fish in a big pond.

20 Q But you made no attempt to make that assessment  
21 in this case, did you?

22 A No.

23 Q Now, JMHI, as I understand it, got one of these

JAPP. 1139

1 deeds in the subdivision; is that right?

2 A That's correct. Referred to as parcel -- it's  
3 the subdivision parcel number two.

4 Q Parcel two?

5 A Two.

6 Q And that was JMHI; correct?

7 A That's correct.

8 Q All right. Now, did you see a document that  
9 transferred out that parcel from JMHI to somebody else?

10 A Yes.

11 Q And what was that?

12 A That was in 1975. I believe it was February  
13 whereby JMHI, there was a deed on record where JMHI as a  
14 corporation conveyed to JMHC, on record deed.

15 Q Now, I'm sorry. Let me do this for a minute.  
16 I forgot to ask that question.

17 A Okay.

18 Q Back on the subdivision, do you know who  
19 drafted the deeds and did the subdivision for these  
20 individuals?

21 A I don't. I don't.

22 Q Do you recall that Mr. Richards did it?

23 A Well, he certainly could have. I'm not quite

JAPP. 1140

1 sure as to when he came into representation of the  
2 organization.

3 Q Let me move ahead to the deed involving parcel  
4 two of the subdivision.

5 You were questioning, as I understand it,  
6 whether authorization was given by JMHI for this  
7 transfer, as I understood your testimony.

8 A No, my testimony dealing with that particular  
9 transaction was questioning the actual deed itself. And  
10 to the extent that JMHI didn't exist, I didn't believe  
11 that there was certainly authority to execute the deed  
12 and in a fashion which indicates that it still exists.

13 Q But the people who were the directors of JMHI,  
14 they authorized this transaction.

15 MR. BERGHOLD: I'm going to object here or at  
16 the appropriate time, Your Honor. Which directors of  
17 JMHI at this time? The directors who appeared at the  
18 meeting or the true directors of JMHI?

19 THE COURT: She can answer the question if she  
20 knows.

21 A In 1975 whether the directors at the time  
22 conveyed the property, I don't recall.

23 BY MR. BONO:

J.APP.1141

1 Q You don't recall?

2 A I don't recall if the directors -- I have not  
3 done a -- I didn't do -- I don't recall doing a  
4 comparison between the directors at the time. The only  
5 thing that I did do is determine the directors at the  
6 time -- as far as relevance for my particular analysis,  
7 the only thing that I needed to do is determine who the  
8 directors were in 1973 in order to see whether the deed  
9 in fact included the appropriate parties who became  
10 trustees in 1973. So I cannot tell you who were the  
11 appropriate directors in '75 because it no longer  
12 existed at the time.

13 Q So all of your testimony on whether the  
14 directors had approved this was based upon your looking  
15 at who the directors were in 1973?

16 A Whether -- to determine -- again, my testimony,  
17 I believe, dealt with the fact that I believe that that  
18 deed was invalid. And therefore, my search would lead  
19 me to determine who were the directors at the time in  
20 1973 to determine if they were on the deed in '75. And  
21 therefore, as far as I can see, they were not.

22 Q All right. Put aside for the moment whether  
23 the directors' names were on the deed. Okay? When you

J.APP. 1142

1 were looking to see who had authority, you were looking  
2 at to determine who were the directors in 1973 to see  
3 whether they were the directors in 1975 who approved the  
4 transaction; is that what I understand you to be telling  
5 me?

6 A No. I was looking to see if the appropriate  
7 parties joined in the deed.

8 Q Simply looking at the deed.

9 A That's correct.

10 Q So you don't know whether the directors in 1975  
11 who approved this transaction were also the directors in  
12 1973, do you?

13 A Well, no, I don't know that because I believe  
14 it to be irrelevant for my search.

15 Q Okay. It may be relevant for this Court's  
16 determination. Now, the deed that was then prepared, I  
17 take it, do you know who prepared the deed?

18 A In 1975?

19 Q Yes, that dealt with parcel two.

20 A I do not know with any, you know, surety who  
21 prepared it. I do believe that Mr. Richards was  
22 representing the partnership at the time. But, again, I  
23 can only speculate.

JAPP.1143



1 Q But you don't know.

2 A I can only speculate; that's correct.

3 Q Now, you wouldn't expect the directors to have  
4 done the deed, would you?

5 A No, I wouldn't believe that would have been the  
6 prudent thing to do.

7 Q Now, the same parcel since February of 1975,  
8 who has been using this parcel two?

9 A I'm really unclear on the using issue. And I  
10 wasn't asked to opine to use. I was asked to opine to  
11 the title.

12 Q I'm asking as a matter of fact, and you just  
13 don't know; is that right?

14 A The fact is, I believe that the dividing lines,  
15 the improvements touch it somewhat.

16 Q You don't know.

17 A I don't know with any, certainly, with any  
18 certainty.

19 Q And I take it from your testimony that the one  
20 thing you do opine on is that JMHI hasn't used that  
21 parcel since '75?

22 A I don't have -- I don't know. I mean, all I  
23 know is JMHI didn't exist anymore. And therefore, it

J.APP.1144

1 would be difficult for them to use anything after that  
2 time..

3 Q Let's look at another parcel. What other  
4 parcel of land did JMHI own or have interest in?

5 A Well, they had a 65 percent interest.

6 Q We covered that.

7 A Right. And they had this parcel later on. And  
8 then the Berman.

9 Q We talked about Berman already.

10 A That's correct.

11 Q Other than what we've already covered, is there  
12 any other land that JMHI had ownership in?

13 A As distinguished from improvements; right?

14 Q Yes, ma'am.

15 A We've gone through them all, I believe.

16 Q So no other?

17 A That's correct.

18 Q Let's talk about the improvements.

19 A Okay.

20 Q Now, I take it by improvements what we're  
21 really talking about is the building.

22 A Right. As you know, there's sort of a strange  
23 configuration. There was the building. Then there's

1 the MOB, and they are all kind of attached. Then  
2 there's the, you know, improvement that's sort of on the  
3 Berman parcel as well.

4 Q I understand about those other medical  
5 buildings, but my question now relates only to JMHI.  
6 Did JMHI have any ownership interest that you're opining  
7 about in anything but the hospital building with respect  
8 to improvements?

9 A Well, it's interesting that you ask that  
10 question, as I believe they have an ownership interest  
11 in all of the improvements pursuant to the Gondor 1966  
12 lease.

13 Q We'll come to that. Other than that, is the  
14 only other thing you're talking about the building, the  
15 hospital building?

16 MR. BERGHOLD: Asked and answered.

17 THE COURT: Objection overruled.

18 MR. BONO: I'm just trying to --

19 A No, I believe that all of the buildings that  
20 encompass parcels one and two, including the Berman --  
21 well, let me say at least with parcels one and two, all  
22 of the buildings affecting those properties and the  
23 Berman, any improvements affecting the Berman parcel, by

1 virtue of my testimony earlier, would be vested in JMHI.

2 Q Let's hold that aside for a second and we'll  
3 come to that. Let's talk about the hospital building  
4 since that's sort of a clear building that we're talking  
5 about here. Okay?

6 Now, as I understand your testimony, you're  
7 saying that the building somehow got into JMHI's  
8 ownership.

9 A Beneficial interest.

10 Q Beneficial interest.

11 A Yes.

12 Q Okay. Would you -- where did you see that  
13 happening?

14 A I see it happening -- the actual document  
15 itself?

16 Q Yes.

17 A I see it happening in the final tax return for  
18 JMHA as well as the financial statement, the last  
19 financial statement for JMHA through 1971, June 30,  
20 1971.

21 Q All right. Do you see it anywhere else?

22 A No, that -- well, no, let me correct myself.  
23 I'm sorry. I also see that there is indicia of

1 conveyance of ownership in the improvements pursuant to  
2 the Gondor lease as well.

3 Q Let's put Gondor aside.

4 A You're putting that aside. All right.

5 Q So you would base your opinion that the  
6 building is owned by JMHI on the JMHA tax returns and  
7 financial statements?

8 A And again, let me -- my mike went down. Maybe  
9 I was talking too loud, which is not unusual.

10 But, no, let me qualify that a bit. My  
11 analysis dealing with ownership of the beneficial  
12 interest in JMHA transferring to JMHI is an analysis as  
13 Tauber, Trustee, owning the property pursuant to  
14 55-17.1, which of course allows the beneficial interest  
15 to be personalty. And yes, those are the documents that  
16 I opined to as transferring the interest.

17 Q That's based on your examination of the law?

18 A No. That's based on my knowledge.

19 Q Your knowledge of the law?

20 A That's correct.

21 Q Okay. But for that statute.

22 A Yes.

23 Q Let's put the statute and the law aside for a

1 minute and let's deal with facts if we could.

2 A Yes.

3 Q Am I still correct that the only document  
4 factually you see that deals with the building are the  
5 JMHA tax returns and financial statements?

6 MR. BERGHOLD: I'll object again. We're  
7 setting aside the Gondor lease?

8 THE COURT: She said it included the Gondor  
9 lease and you said let's set it aside. So your question  
10 is a little unfair.

11 BY MR. BONO:

12 Q And setting aside the Gondor lease, okay?

13 A Okay.

14 Q Am I correct?

15 A That's correct.

16 Q All right. Now, and as I understand it, what  
17 these two documents -- these are the documents that were  
18 prepared by an accountant named Allen Bear. Do you  
19 recall that?

20 A Yes, I believe so.

21 Q Okay. And is this the document where Mr. Bear  
22 used the term Inc. instead of Corp.?

23 A I have no idea if he used the term Inc. instead

JAPP. 1149

1 of Corp.. I know that the term Inc. is used.

2 Q Okay. So as far as your analysis is concerned,  
3 what you're resting your opinion on is this use of the  
4 word Inc. by Mr. Bear on these tax returns and financial  
5 statements?

6 MR. BERGHOLD: I object. It mischaracterizes  
7 her testimony.

8 A Yes. What I --

9 THE COURT: Just a minute. I'll overrule the  
10 objection. She can answer it if she knows.

11 A I'm sorry. My opinion is that based on the  
12 certified financial statement and the certified tax  
13 returns that the language on those documents state  
14 clearly that JMHA conveyed and transferred all of its  
15 interest in liquidation to JMHI. Yes.

16 BY MR. BONO:

17 Q No, it said Inc., didn't it?

18 A Well, it actually spelled it all out. It said  
19 Jefferson Memorial Hospital, comma, Inc., yes.

20 Q And this is what you're basing your opinion on.

21 A That's correct.

22 Q Okay. And that's it. So if Mr. Bear were  
23 mistaken when he wrote Inc. instead of Corp., your

J.APP.1150

1 opinion would be wrong; isn't that right?

2 A You're asking me to speculate on a mistake.

3 Q Do you know whether or not Mr. Bear was  
4 mistaken when he wrote Inc. --

5 MR. BERGHOLD: Your Honor, I'm going to object  
6 at this point. I think it's one thing to cross-examine  
7 a witness. It's another thing --

8 THE COURT: What is your objection? What are  
9 the grounds of your objection?

10 MR. BERGHOLD: It calls for speculation without  
11 any foundation. Mr. Bono is suggesting possibilities  
12 now that there's no foundation for. If there is an  
13 underlying document which supports his position, I think  
14 he ought to produce it.

15 THE COURT: Clearly if there's a mistake in the  
16 document, Ma'am, that got the wrong entity and indicated  
17 it had been conveyed to the wrong entity, it couldn't  
18 belong to JMHI.

19 THE WITNESS: Right. It could be the fact that  
20 the document said Mickey Mouse on it.

21 THE COURT: The question is kind of  
22 argumentative, quite frankly, Mr. Bono. But that is the  
23 argument you can make at the appropriate time.

JAPP.1151



1           You know -- well, go ahead.

2           Q     My question is, did JMHI convey any stock to  
3     JMHA?

4           A     Well, according to the representation, JMHI  
5     conveyed stock to JMHA, yes.

6           Q     Do you know whether any stock was issued?

7           A     Well, this is what I do know. I know that JMHI  
8     is a nonstock corporation. However, there are  
9     representations all throughout the documents from JMHC  
10    and JMHI that JMHI transferred stock, that its  
11    stockholders approved this transaction and it  
12    transferred stock. So I assume it's correct.

13          Q     I'm asking you a simple question. Do you know  
14    whether JMHA conveyed any stock or issued any stock in  
15    favor of J -- I misspoke. I apologize. Do you know  
16    whether JMHI conveyed any stock to JMHA?

17          A     That's what the documents said occurred.

18          Q     Do you know whether or not it was in fact  
19    transferred?

20          A     I physically do not know what was transferred.  
21    All I know is what -- the information has been provided  
22    to me. And the documents clearly state that stock was  
23    transferred.

J.APP.1153

1 Q All right. Now, were you also provided with  
2 other financial statements that said that JMHC issued  
3 240,000 shares of stock to JMHA in exchange for its  
4 assets?

5 A Yes.

6 Q And do you know whether or not it was JMHC that  
7 issued 240,000 shares of stock to JMHA?

8 A Whether or not it was JMHC that -- well, the  
9 interesting point about that is --

10 Q Would you please answer my question?

11 A I'm trying to.

12 Q No. Answer my question.

13 THE COURT: Wait, wait. Ma'am, don't argue  
14 with Mr. Bono.

15 Mr. Bono, if you have a problem with the  
16 witness, you address it to me and I'll take care of it.

17 Ma'am, just answer the question. Do you know  
18 whether the stock was issued or not?

19 THE WITNESS: The reports indicated that they  
20 were.

21 THE COURT: All right.

22 BY MR. BONO:

23 Q Now, let me deal with the other thing that we

JAPP.1154

1 put aside, which was the Gondor lease, I think.

2 A Lease, yes.

3 Q Now, I believe -- you'll have to help me with  
4 this because I'm a little bit confused on this point.  
5 If you help me with it, I'll appreciate it.

6 As I recall your testimony -- correct me  
7 because I could be totally off on this -- there was -- I  
8 believe you said there was a lease assignment that  
9 affected JMHI with respect to this lease?

10 A Yes, there was an assignment. It was actually  
11 a variety of assignments. Which one are you referring  
12 to?

13 Q Let's do it this way, because I think this is  
14 the last piece we have to deal with and I want to  
15 clarify it for the Court. Is it your opinion that JMHI  
16 got some kind of interest as a result of this lease?

17 A Yes.

18 Q Like the other things we were talking about.

19 A Yes.

20 Q How did it get that interest?

21 A Being trustee -- trustee. Excuse me. Being  
22 tenant under the lease.

23 Q So JMHI was a tenant under this lease.

1 A That's correct.

2 Q Now, do I understand that what we're talking  
3 about here is Gondor got that subdivided parcel and  
4 leased that to JMHI?

5 A No. That's incorrect. Probably -- actually,  
6 it would help matters if I could see a copy of the 1966  
7 Gondor lease, so then I can answer your question with  
8 specificity.

9 Q Is it one of the exhibits that you --  
10 MR. BERGHOLD: I can get it.

11 MR. BONO: That would be fine. Sure. Happy to  
12 have her look at it.

13 MR. FOX: Eric, 289.

14 MR. BERGHOLD: 289. Thank you, Steve.

15 THE WITNESS: It's 289.

16 BY MR. BONO:

17 Q Now, as I understand it, Mrs. Vella, you're  
18 talking about Exhibit 289?

19 A That's correct.

20 Q Okay. Would you explain what this lease does?

21 A Yes. It leases to -- it leases an 80 percent  
22 undivided interest into Hopkins one and two.

23 Q To JMHI?

1           A       JMHI. And acknowledges that JMHI owns the  
2 remaining 20 percent undivided interest.

3           Q       Now, even though it bought the land which this  
4 lease is referring to?

5           A       Hopkins one and two is what is described as the  
6 attachment.

7           Q       Okay.

8           A       That's the unsubdivided two parcels, the  
9 initial ones back in 1962.

10          Q       So what this lease relates to is  
11 presubdivision?

12          A       That's correct, 1966. The subdivision happened  
13 in 1970.

14          Q       This is pre '70 subdivision?

15          A       That's correct.

16          Q       Okay. So under this lease, JMHI was leasing  
17 property from Dr. Gondor prior to the subdivision.

18          A       He was leasing it -- it's just a shortcut to  
19 call it the Gondor lease. He was actually leasing it  
20 from Leslie Gondor, Samuel Burtoff and the Tauber  
21 Foundation, who were represented in the document as  
22 owning the 80 percent undivided interest.

23          Q       Okay. I got it. 80 percent. Now, I take it,

JAPP.1157

1 was this then changed when the subdivision was done in  
2 1970?

3 A No. It was not.

4 Q You saw no change.

5 A In 1970, no.

6 Q All right. Do you know what happened, in fact,  
7 in 1970 after the subdivision?

8 A The lease remained in effect.

9 Q Do you know whether there was a new lease that  
10 was executed?

11 A There was no new lease executed.

12 Q You didn't see one?

13 A I haven't been provided with it.

14 Q You haven't been provided. Have you seen any  
15 document that confirms or acknowledges any different  
16 lease that was in effect after the subdivision?

17 A I have seen numerous documents -- well, several  
18 documents that confirm the Gondor lease. But it always  
19 refers to this lease here that was entered on 1/1/66.

20 Q At which JMHI was the tenant?

21 A That's correct.

22 Q And do you know -- what was the rental amount  
23 under this lease, do you know?

J.APP. 1158

1       A     Let's just go right through it, here.  Okay.  
2     There's an escalator, but in '66, the annual rent was  
3     \$15,600.  And then there was an escalator; I think it  
4     was a CPI escalator.  Let me see.

5       Q     That was to go into effect after ten years?

6       A     I believe so.  Yeah, the tenth anniversary.

7       Q     There was no CPI the first ten years?

8       A     That's correct.  Now, I will say that since my  
9     analysis of this document was in order to confirm the  
10    chain of title, I did not focus on rental amounts, nor  
11    did I focus on whether an amendment may have occurred to  
12    change that.

13      Q     All right.  So you don't know whether this rent  
14    was paid or a different amount was paid, do you know?

15      A     No, I have no idea.

16      Q     You really didn't pay much attention to whether  
17    there was a new lease executed by Dr. Gondor after the  
18    subdivision?

19           MR. BERGHOLD:  I'm going to object.  That  
20    wasn't her testimony.  I think it mischaracterizes --

21           THE COURT:  Rephrase that one.

22           MR. BONO:  All right.  I'll rephrase it.  Thank  
23    you, Your Honor.

1 BY MR. BONO:

2 Q Did you make any analysis or look for any new  
3 lease after the subdivision?

4 A What I did is, I traced all documents related  
5 to this Gondor lease. That was later confirmed as late  
6 as 1994. And if there is another Gondor lease, I would  
7 be happy to review it. But none were provided to me.

8 Q And I understand you said you really didn't  
9 look for the rental amount. Do you know whether after  
10 the subdivision in 1970, whether the rental amount  
11 changed or stayed the same?

12 A I don't know.

13 Q Now, with respect to this lease, with respect  
14 to JMHI, were there any -- did you examine any documents  
15 that had terminated this lease or transferred it to a  
16 new entity?

17 A Terminated it -- there was an assignment of the  
18 lease.

19 Q Okay. Thank you. I was looking for something  
20 like that. I appreciate it. When was the assignment of  
21 lease?

22 A The assignment of lease occurred in 1975.

23 Q At or about the same time --

JAPP.1160



1       A     At or about the same time.

2       Q     All right. And do you know who prepared that  
3 assignment of lease?

4       A     Not with any certainty. But again, it could be  
5 Thorpe Richards since he was their lawyer at the time.

6       Q     All right. And the assignment was from whom to  
7 who?

8       A     There was another entity -- could you give me  
9 the reference to that exhibit? Because it was not only  
10 JMHI that was entering into that assignment as the  
11 assignor. But Dr. Tauber, Trustee, was the assignee  
12 under that lease.

13       Q     Would it help you to know, to look at that  
14 document?

15       A     To review it. Because there is more than one  
16 assignor under that assignment.

17             MR. BERGHOLD: Either 306 or 307.

18             THE WITNESS: Okay. It's 307. And it  
19 indicates that Jefferson Memorial Hospital, Inc. and  
20 Jefferson Memorial Hospital Corporation and Laszlo  
21 Tauber, Trustee, are assigning the lease.

22             BY MR. BONO:

23       Q     To whom was the assignment made?

1 A To Laszlo Tauber, Trustee.

2 Q Do I understand from your testimony, JMHI and  
3 JMHC transferred --

4 A And Tauber, Trustee.

5 Q And --

6 A He's also an assignor.

7 Q Who is the -- okay. Who is the assignee?

8 A See, it gets very confusing.

9 Q No, no, no, I just think we need to clarify it.

10 A Right.

11 Q So the three entities?

12 A The three entities all joined together and  
13 then --

14 Q Transfers it to Tauber?

15 A Trustee.

16 Q Okay. And do you know what entity paid the  
17 rent for this lease from 1975 and thereafter?

18 A I do not.

19 Q Now, Mrs. Vella, can you transfer an interest  
20 in a building by filing a tax return?

21 A You can transfer a beneficial interest under  
22 55-17.1 because it's considered personalty.

23 Q In a tax return, by simply filing a tax return?

1       A     All you need is any kind of evidence. It can  
2 be an oral agreement. Just any evidence of transfer  
3 will do.

4       Q     Now, are -- other than what we've reviewed  
5 here, are there any other interests, land, improvements,  
6 that affected JMHI other than what we've already  
7 covered?

8       A     Can you tell me what we've already covered?

9       Q     Certainly. Let's make sure we're clear on  
10 that. Berman, the Berman piece of property.

11      A     Berman.

12      Q     Hopkins one and two.

13      A     65 percent undivided interest, correct.

14      Q     We already covered the subdivision in 1970.

15      A     Right.

16      Q     And we've covered the subdivided lot out of the  
17 subdivision.

18      A     Um-hum.

19      Q     You have to say --

20      A     That's correct. I'm sorry.

21      Q     That's all right. We covered the building?

22      A     That's correct.

23      Q     And we covered what we've called the Gondor

1 lease.

2 A Now there's one more.

3 Q All right.

4 A There's the Hopkins lease.

5 Q I'm glad I brought this along. All right.

6 Hopkins lease. Now, I don't remember you talking about  
7 it. So you have to help me at this point.

8 A This is the lease that I referred to that is  
9 Hopkins parcel number three. It's the one that had to  
10 be entered into with L&L Corporation initially back in  
11 '62 as a result of the parties being unable to subdivide  
12 the parcel. Part of the improvements and the parking  
13 lot lie on that land.

14 Q Was there a long term lease of the land?

15 A 99-year.

16 Q On a parcel of land.

17 A On a parcel of land on which a portion of the  
18 improvement and parking lot were located.

19 Q All right. But I just want to understand, this  
20 is again a long term --

21 A This is a long-term ground lease; correct.

22 Q Okay. I'll call it land lease. How's that?

23 A That's fine.

J.APP.1164

1 Q Okay. Now, how did JMHI acquire an interest in  
2 this?

3 A It acquired its interest in that lease pursuant  
4 to that December 21 or December 29, excuse me, 1964 deed  
5 into JMHI. It's the same deed that conveyed 65 percent  
6 undivided interest. It also conveyed a 65 percent  
7 undivided interest in this leasehold. Later there was  
8 an assignment by the other parties who acquired an  
9 interest in that lease pursuant to those unrecorded  
10 documents.

11 Q Yes.

12 A There was an assignment by those entities which  
13 I believe was the same parties to this Gondor lease,  
14 which was Burtoff, Gondor, and the Tauber Foundation,  
15 all conveyed their undivided interest to JMHI, which I  
16 believe resided 100 percent of the Hopkins lease to JMHI  
17 and that all occurred in 1966.

18 Q So JMHI in 1966 got the lease of this parcel of  
19 land which we call the Hopkins land lease?

20 A Yes. It acquired its first interest back in  
21 '64 and then the remaining interest in '66. Correct.

22 Q Now, did you see a document which conveyed out  
23 this interest from JMHI to some other entity?

J.APP. 1165

1       A     Yes. And it's Exhibit No. 306, assignment of  
2 lease.

3       Q     And would you tell me, tell the Court who were  
4 the assignors and who were the --

5       A     The assignors were Laszlo N. Tauber, Trustee,  
6 and Jefferson Memorial Hospital, Inc.. And assignee was  
7 Laszlo N. Tauber, Trustee.

8       Q     And when was that document?

9       A     It was in '75. And I can give you -- it's  
10 June, '75.

11      Q     Now, about the same time as the other ones?

12      A     All at the same time, exactly.

13      Q     Do you know, did Mr. Richards prepare that  
14 document?

15      A     I do not know that for any certainty. But I am  
16 aware he was the lawyer at the time.

17      Q     Okay. And what entity since 1975 used and/or  
18 occupied that parcel of land, do you know?

19      A     No, I'm not aware of that. I think only a very  
20 small portion of the building actually touches that  
21 parcel. They needed it for parking primarily.

22      Q     But a portion of the building --

23      A     I believe it does. I mean a little teeny

J.APP.1166

1 fraction of the building goes on there.

2 Q And as I understand from your testimony, JMHI  
3 did not use or occupy that land since that time; is that  
4 right?

5 A I don't believe I've testified to that  
6 previously, but I will state that JMHI was no longer in  
7 existence after 1973.

8 Q And therefore --

9 A From a legal standpoint. And you know, who  
10 knows. I -- I don't know the physical user of the  
11 plant.

12 Q But you have no information that you're aware  
13 of that in any way shows that JMHI occupied that land  
14 since June of '75?

15 A Right. I did not review any information along  
16 those lines.

17 Q Okay. Now, Mrs. Vella, have we covered  
18 every --

19 A Yes.

20 Q Yes. Let me finish the question so the record  
21 is clear. Have we covered every interest that touched  
22 JMHI?

23 A Every interest to which I've been made aware

J.APP.1167

1 with respect to real estate improvements. I'm not  
2 opining to equipment or any other --.

3 Q I understand. But the land and the  
4 improvements?

5 A That's correct.

6 Q Mrs. Vella, do you have any knowledge or any  
7 opinion as to the reasons for the subdivision in 1970?

8 A I can only speculate. I have no fundamental  
9 knowledge.

10 MR. BONO: Thank you. Thank you, Mrs. Vella.  
11 I have no further questions.

12 THE COURT: Any redirect?

13 MR. BERGHOLD: Just real briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. BERGHOLD:

16 Q Mrs. Vella, Mr. Bono asked you about the 1970  
17 subdivision of Hopkins parcels one and two and took you  
18 through that subdivision. And I believe you testified  
19 that Tauber as trustee and JMHI were the grantors.

20 My question is this: Did the 1970 subdivision  
21 recognize off record transactions or did it ignore them?

22 A Recognize in what sense?

23 Q As far as ownership and granting.



1       A     There were no joinder of the parties to the off  
2 record deeds in the subdivision.

3       Q     Is that unusual?

4       A     Yes. Well, not only is it unusual; I mean,  
5 technically, it would void the subdivision because all  
6 owners must join in and certify to the subdivision under  
7 the code.

8       Q     Okay. Mr. Bono asked you about the  
9 improvements and asked you a number of questions as to  
10 the different statements and the financial statements of  
11 JMHA and JMHC.

12            Now, what date did the JMHA financial statement  
13 and final tax return indicate that JMHA had conveyed its  
14 assets to JMHI?

15       A     June 30, 1971.

16       Q     Now, the indication in the JMHC financial  
17 statements about when it acquired the --

18            THE COURT: You've been through this,  
19 Mr. Berghold. You went through this on direct. Get to  
20 your next question.

21            MR. BERGHOLD: I did, Your Honor, but Mr. Bono  
22 touched on these questions. I wanted to clarify.

23            THE COURT: You don't go back into it. She's

J.APP. 1169

1 already stated what the dates were. If you have a  
2 question about that, you can ask her a question. But  
3 let's not go through the direct again.

4 BY MR. BERGHOLD:

5 Q Those documents indicate that there were  
6 different dates for each transaction; isn't that  
7 correct?

8 A That's correct. One was a day later than the  
9 other.

10 Q Did the plan of merger attached to the JMHC tax  
11 return, did it in fact make the statement that JMHC is  
12 JMHI?

13 MR. BONO: Objection, calls for speculation.

14 THE COURT: It says what it says. It speaks  
15 for itself, doesn't it?

16 A It says --

17 THE COURT: Just a minute, Ma'am.

18 MR. BERGHOLD: It does speak for itself.

19 THE COURT: Is it in evidence?

20 MR. BERGHOLD: I believe it is.

21 THE COURT: Let's move on. It says whatever it  
22 says.

23 MR. BERGHOLD: That's all I've got, Your Honor.

J.APP.1170

1 THE COURT: All right. May the witness be  
2 excused?

3 MR. BERGHOLD: Yes, Your Honor.

4 THE COURT: Thank you, ma'am. You're excused  
5 and free to go. You may stay in the courtroom if you  
6 like.

7 MR. BETTIUS: I wonder if you would consider  
8 recessing for the day. I'm probably going to take the  
9 next witness. I'll go on if Your Honor wants me to.

10 THE COURT: How long would you anticipate --

11 MR. BETTIUS: A long witness, Your Honor.

12 THE COURT: As long as this one?

13 MR. BETTIUS: Maybe longer.

14 THE COURT: I'm not too thrilled about doing  
15 one witness a day. I think the pace will pick up  
16 tomorrow.

17 MR. BETTIUS:- If you want to go on, that's  
18 fine.

19 THE COURT: We'll adjourn. We'll start at 9  
20 o'clock tomorrow. I don't know if that causes any  
21 problems for counsel or any of the parties or not. But  
22 we're going to start this thing at 9.

23 Also, I want to talk a little bit about the

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

----- -x	:	<b>COPY</b>
COMMONWEALTH OF VIRGINIA, et al.,	:	
Complainants,	:	
v.	:	
LASZLO N. TAUBER, et al.,	:	
Respondents.	:	
----- -x	:	
	:	
	:	
	:	
	:	In Chancery
	:	No.: 96-1241
	:	PARTIAL
	:	TRANSCRIPT
	:	VOLUME I

Alexandria, Virginia

Tuesday, February 1, 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 10:00 a.m., before Eva M. Bridget, Verbatim Reporter, when there were present on behalf of the respective parties:

J.APP. 1172

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J.APP. 1173

## C O N T E N T S

## WITNESS:

## PAGE

Irwin Friedman, M.D.:

Direct Examination by Mr. Bono	4
Cross-examination by Mr. Bettius	13
Redirect Examination by Mr. Cochran	28

## EXHIBITS

## IDENTIFIED RECEIVED

None.

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

2 Whereupon,

3 IRWIN S. FRIEDMAN, M.D.

4 was called as a witness and, after having been first  
5 duly sworn by the Clerk of the Court, was examined and  
6 testified as follows:

## 7 DIRECT EXAMINATION

8 BY MR. BONO:

9 Q Dr. Friedman, would you please state your  
10 full name, please?

11 A Irwin Stanley Friedman.

12 Q And, Dr. Friedman, you're a named Respondent  
13 in this matter; is that correct?

14 A Yes, sir.

15 Q Now, Dr. Friedman, I want to direct your  
16 attention to the time period of 1982. Did you enter  
17 into a lease arrangement with Jefferson Memorial  
18 Hospital Joint Venture at that time?

19 A Yes, sir.

20 Q What -- and did that -- with respect to what  
21 building did that lease pertain to?

22 A 3450 North Beauregard Street, suite 1.

23 Q Is that building referred to as the

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1 Beauregard Building?

2 A Yes, sir.

3 Q What were the circumstances leading up to you  
4 entering into that lease for the Beauregard Building?

5 MR. BETTIUS: Your Honor, I'm going to object  
6 to the circumstances. This is an accounting. The  
7 lease is the lease. I don't care why he did it.

8 THE COURT: Objection's overruled.

9 BY MR. BONO:

10 Q You may answer.

11 A I had a very large, multi-specialty medical  
12 group in Alexandria since 1960, and I had been a former  
13 user of the Jefferson Memorial Hospital, and there came  
14 a time when my group left the Jefferson Hospital and  
15 used the Alexandria Hospital on Seminary Road. Shortly  
16 -- one month into 1982, Dr. Tauber, through a mutual  
17 physician friend, approached me to return to the  
18 Jefferson Memorial Hospital because they needed to  
19 improve their physician utilization.

20 I was reluctant to do that, but Dr. Tauber  
21 met with me and he explained to me that if I would  
22 bring my group back to the Jefferson Memorial Hospital  
23 and utilize the facilities at Jefferson Hospital, he

J.APP. 1176



1 would give me a lease for 10 years for suite 1 at 3450  
2 North Beauregard, at an extremely reasonable monthly  
3 rate that would just cover expenses, and if we would  
4 admit 90 percent of the patients that we admitted to  
5 hospitals for services that Jefferson could provide,  
6 then at the end of the tenth year for \$1 we could  
7 purchase our space.

8 Q Did you enter into a lease provision as a  
9 result of that?

10 A Yes. They were the terms of the lease with  
11 one addendum, and that was at the end of each year I  
12 would have Dr. Tauber certify I met my requirements so  
13 at the end of the ten years I would be able to have the  
14 office space.

15 MR. BETTIUS: Your Honor, so I won't keep  
16 interrupting, this building's not the subject of any of  
17 the --

18 THE COURT: Let's get to it.

19 MR. BONO: Yes, Your Honor.

20 BY MR. BONO:

21 Q Now, the lease was signed in August of '83;  
22 is that correct?

23 A Yes.

J.APP.1177

1 Q What was the monthly payment?

2 A It was approximately \$6 a square foot, for  
3 6,000 square feet, \$36,000.

4 Q Every year did you fulfill your 90 percent  
5 requirement of admitting patients to Jefferson?

6 A Yes. My associates and I used the hospital  
7 more than 90 percent for every year we were there.

8 Q What did you have to do to certify that?

9 A At the end of each year -- we kept track of  
10 the admissions and then Dr. Tauber signed it.

11 MR. BETTIUS: Continuing objection.

12 THE COURT: I'm giving you some leeway here,  
13 Mr. Bono, but let's get to what it's about.

14 MR. BONO: I just have one other preliminary  
15 question, Your Honor.

16 THE COURT: All right.

17 BY MR. BONO:

18 Q Did the rent amount or the amount of monthly  
19 payment remain the same?

20 A Yes, sir.

21 Q Did there come a time when you purchased the  
22 interest in the building for \$1?

23 MR. BETTIUS: Objection, Your Honor.

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1 THE COURT: Make a proffer to me, Mr. Bono.

2 What's this about?

3 MR. BONO: Your Honor, this is about the fact  
4 that the doctors were supporting the hospital and made  
5 an additional financial sacrifice to support the  
6 hospital, even after HGV came in, at their own personal  
7 -- their own personal forbearance, that the  
8 partnership, JV, literally -- in order to provide  
9 doctors support for the hospital, literally provided a  
10 building, or most of this building, for no money.

11 That is a financial commitment that they  
12 made, and it's a direct response to the allegations in  
13 this case that these doctors have ripped off this  
14 charity and were ripping off this hospital.

15 MR. BETTIUS: It doesn't sound very good to  
16 me what they were doing, Your Honor, for Medicaid and  
17 other purposes. I'm going to tell you, I don't know  
18 what the relevance is.

19 MR. BONO: Secondly, Your Honor --

20 MR. BETTIUS: This building's not within the  
21 confines of the accounting.

22 THE COURT: Let Mr. Bono finish and then I'll  
23 hear from you, Mr. Bettius.

J.APP. 1179

1 Go ahead. Continue at secondly.

2 MR. BONO: Secondly, Your Honor, as part of  
3 the HGV lease, the Jefferson Memorial Joint Venture  
4 committed to build this medical building. That would  
5 be the testimony. Therefore, they had an additional  
6 cost as part of that deal that the Court should be  
7 aware of.

8 THE COURT: Go ahead.

9 MR. BETTIUS: Your Honor, the HGV lease was  
10 right here before the Court. It contains absolutely no  
11 such commitment. All of this is collateral. It's a  
12 building not involved within the ambit of the  
13 litigation or within the ambit of the accounting.

14 If he's going to get up here and impeach as a  
15 party to the lease, it's the exact terms of what's  
16 consideration. I'll give the Court a copy of the  
17 lease. There's absolutely no consideration in the HGV  
18 lease for the construction of any additional  
19 facilities.

20 THE COURT: It sounds somewhat collateral.  
21 Does it have to do with your equitable argument?

22 MR. BONO: Yes, Your Honor.

23 THE COURT: How much more do you have of

1 this? I want to listen to some of it without ruling,  
2 yet, whether --

3 MR. BONO: One minute and I was on to a  
4 different subject, Your Honor.

5 THE COURT: All right. Go ahead.

6 MR. BONO: Thank you, Your Honor.

7 BY MR. BONO:

8 Q What area of the building, how much of the  
9 building did you purchase, then, for \$1?

10 A Two-thirds.

11 Q Two-thirds. All right. Now, Dr. Friedman,  
12 earlier in this time period, in 1974, were you chairman  
13 of the board of directors of Jefferson Memorial  
14 Hospital Corporation?

15 A Yes, sir.

16 Q I'd like to show you what's previously been  
17 marked as Exhibit 130.

18 MR. BONO: Your Honor, I have another copy.  
19 Your Honor, it's original Trial Exhibit 130. It's  
20 board of directors meeting minutes, Jefferson Memorial  
21 Hospital Corporation, dated October 16, 1974. It was  
22 previously marked in the first trial as Exhibit 130.

23 BY MR. BONO:

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11

1 Q Now, Dr. Friedman, I direct your attention to  
2 paragraph number 5 on page 2 of the minutes. Have you  
3 read that?

4 A It's difficult, but I know what it says.

5 Q All right. Would you explain this paragraph  
6 to the Court?

7 A I had asked a local respected attorney, Mr.  
8 Thorpe Richards --

9 MR. BETTIUS: I'm going to object, Your  
10 Honor. This advice of counsel issue has been raised  
11 before. The Court went to some length in its opinion  
12 that they didn't advise counsel of all of the relevant  
13 facts, that their franchise had been revoked the month  
14 before that -- they made filings.

15 We're back into advice of counsel as a  
16 defense in this case. Again --

17 THE COURT: What's the purpose of it, Mr.  
18 Bono?

19 MR. BONO: Your Honor, this goes to the  
20 equities of the accounting in this Court.

21 THE COURT: I'll permit a little bit of it.

22 MR. BONO: That's all I intend to do, Your  
23 Honor.

J.APP.1182

1 THE WITNESS: I asked Mr. Thorpe Richards to  
2 come to the board of directors meeting, and I asked the  
3 board to vote that Mr. Richards be allowed to review  
4 the past, present and future operations of the board of  
5 directors to make sure that while I was the chairman of  
6 the board that things would be put in proper order and  
7 that things would be done according to proper  
8 accounting and legal standards.

9 BY MR. BONO:

10 Q Did Mr. Richards accept that engagement?

11 A Yes, he did.

12 Q What did Mr. Richards do, to your knowledge,  
13 after that?

14 A Well, while I was the chairman of the board,  
15 he came to the hospital regularly. We consulted him on  
16 any decision or matters the board was to make, as far  
17 as improving the ability -- trying to increase doctor  
18 usage and trying to make the thing more viable and  
19 trying to make sure it was legal.

20 Q To your understanding, did Mr. Richards carry  
21 out that task?

22 A When I was there, he did.

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

J.APP.1183

1 THE COURT: Any questions?

2 MR. BETTIUS: Yes, I do, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. BETTIUS:

5 Q Mr. Friedman, are you aware that --

6 A Excuse me. I didn't hear that.

7 Q Dr. Friedman, you said that you wanted to  
8 make sure that everything was legally right and  
9 correct.

10 Do you have a hearing problem, Doctor?  
11 Because I do, and I want to make sure --

12 A I'm 66 years old and we all have a little  
13 loss of hearing when we get to be 66.

14 Q You're a couple of months older than I am, so  
15 we'll just yell at each other.

16 Dr. Friedman, were you -- what did you do  
17 after asking to make sure that Mr. Richards make  
18 everything right to make sure he had what he needed to  
19 know to make things right?

20 A The first thing I did is I asked Mr. Richards  
21 to accumulate as many documents as he could and start  
22 to do a document search and put together what the  
23 legalities were prior to my taking over as chairman of

J.APP. 1184



1 Q It happened while you were president, didn't  
2 it?

3 A No.

4 Q Were you advised or did you know that Mr.  
5 Richards had not been advised that JMHI's authority had  
6 been terminated in Maryland, its authority to do  
7 business?

8 A It was my understanding that they wanted to  
9 dissolve one of the partnerships and the accountant,  
10 who is now deceased, suggested -- which I didn't think  
11 was a great idea -- that we just not pay the corporate  
12 fee and we would be terminated.

13 Q But why did you then feel it was appropriate  
14 to tell Virginia a month later that JMHI was still in  
15 good standing?

16 A I didn't tell them that.

17 Q Well, did you know Mr. Richards wasn't  
18 advised of these things?

19 A All I know is I called Mr. -- I don't know  
20 what Mr. Richards knew or didn't know. I called him in  
21 from the time I became chairman of the board and asked  
22 him to do a test for me, which was to look up and make  
23 things during my stay at the helm proper.

J.APP. 1186

1 Q Did you know that Mr. Richards said that he  
2 understood that JMHI had defaulted on rent in 1971, and  
3 that's when JMHC took over operations? Were you  
4 advised of any of these things?

5 A When I became chairman of the board, I had no  
6 knowledge of most of the transactions I heard about  
7 afterwards.

8 Q Well, it's one thing to tell Mr. Richards to  
9 go make everything right --

10 A I asked him to please look into and try to  
11 put the papers in order as far as documentation. I  
12 didn't say anything was wrong or right. I just asked  
13 him to please go ahead and try to get the papers lined  
14 up so they'll be meaningful so I could understand what  
15 the entity was that I was chairman of the board of and  
16 what I should do to keep it running in a proper way.

17 Q Well, Dr. Friedman, I don't mean to be flip,  
18 but I could tell the judge to order world peace. It  
19 doesn't matter what you tell somebody, you've got to  
20 see that it's implemented in terms of getting the  
21 information and getting the documents to the lawyer,  
22 don't you?

23 A Well, the documents were in the hospital in

J.APP.1187

1 various cardboard boxes. Of course, Mr. Richards came  
2 over and I, on several occasions, saw him -- because I  
3 was there many hours every day -- trying to put  
4 together the -- as much information as he could to work  
5 with Carl Linton and myself, who was the administrator.

6 Q All right. Well, you indicated that you left  
7 the hospital. Why did you leave?

8 MR. COCHRAN: Your Honor, that's beyond the  
9 scope.

10 MR. BETTIUS: No, it's not. Excuse me, Your  
11 Honor. That's a decision you're going to make.

12 THE COURT: What's the purpose of it?

13 MR. BETTIUS: It's material to transactions  
14 that occurred at or about the time he left, and a  
15 disagreement with Dr. Tauber that's material to this  
16 dispute. If I can't hook it up, then Your Honor can  
17 strike it.

18 THE COURT: All right. Go ahead.

19 BY MR. BETTIUS:

20 Q Why did you leave?

21 A I was spending large numbers of hours in the  
22 hospital, actually, as many as six hours a day, and my  
23 own practice was starting to suffer because I was

JAPP.1188

1 spending so much time at the hospital.

2 At the same time we were trying to make  
3 physical improvements, et cetera, and not all members  
4 of the board thought as I did; that the hospital was  
5 such an ugly, homely, place, and it needed more doctor  
6 participation. Some of the board members did not feel  
7 this was the way to go.

8 And I also felt if I was going to put all of  
9 this time and effort in, I had to have some  
10 compensation for the loss of wages I had in my  
11 practice, because we did a tremendous overhaul of the  
12 building when I was chairman of the board and it took a  
13 lot of time and effort and I had to have some  
14 compensation.

15 Some of the other board members didn't think  
16 I should have that and Dr. Tauber may not have agreed  
17 either, and they just decided that maybe they didn't  
18 like my management style or maybe they didn't like to  
19 pay me money, but I told them without that I couldn't  
20 -- I can't do a job if I can't do it right, and I can't  
21 do it right if I don't spend enough time. If they  
22 don't reimburse me for some of my loss in my practice,  
23 I'd have to leave.

JAPP.1189

1 Q Doctor, let me show you a letter that you  
2 wrote. When did you leave?

3 A You've got it on the letter.

4 Q When did you leave?

5 A Let me see the letter to refresh my memory.

6 MR. COCHRAN: Can counsel identify that?

7 MR. BETTIUS: I'm sorry. I apologize. It's  
8 Exhibit 426B.

9 MR. COCHRAN: Do you know what volume that  
10 comes from?

11 MR. BETTIUS: I really don't.

12 BY MR. BETTIUS:

13 Q Would you look at the last paragraph, Dr.  
14 Friedman? You and Dr. Tauber disagreed, with some  
15 animosity, about what he had done with respect to the  
16 sale and lease-back, didn't you?

17 A I first want to tell you that Dr. Tauber was  
18 like a father to me and I never had animosity toward  
19 him. We had definite disagreements as to management  
20 style. I didn't feel that his management style was the  
21 same as my management style, which is a very hands-on,  
22 very obsessive-compulsive-type of style. I thought  
23 that when -- I was improving the hospital, bringing in

J.APP.1190

1 more patients, that the hospital profits were starting  
2 to improve, and then if I couldn't keep doing that, I  
3 thought it would fall back and finally just implode on  
4 itself.

5 Q In fact, during your management you started  
6 to improve the hospital, didn't you?

7 A It did certainly start to improve.

8 Q And a special stockholders' meeting was  
9 called, was it not, in response to improvements that  
10 you were making at the hospital to improve it?

11 A Yes.

12 Q Your power to make improvements was taken  
13 away in that meeting, wasn't it?

14 A Yes.

15 Q And it was decided at that point by Dr.  
16 Tauber that he was going to convey and, in fact, passed  
17 a resolution, to have the hospital reconveyed back to a  
18 partnership that he would control; is that correct?

19 A Well, the way I understood it was that when I  
20 left, Dr. Peters would become chairman of the board.

21 Q Didn't you understand that he called a  
22 special stockholders' meeting --

23 A I was there.

J.APP. 1191

1 Q That's right -- and, in effect, determined  
2 that the building should immediately be conveyed to a  
3 partnership and that he would make future decisions  
4 with respect to improvements over \$50,000?

5 A Mr. Bettius, let me explain that.

6 Q Just tell me if I'm right or wrong and I'll  
7 be glad for you to explain it, Doctor.

8 A Say it again. What was your question again?

9 Q Isn't it true that Dr. Tauber called a  
10 special board -- a special stockholders' meeting, took  
11 his proxies and voted that the building would be  
12 immediately conveyed to a joint venture?

13 A That was not the purpose of the meeting.

14 Q It wasn't?

15 A No.

16 Q Let me give you the notice of the  
17 stockholders' meeting. I'm referring to Exhibit 131.  
18 You don't recall at this meeting a motion passed to  
19 sell the hospital --

20 A If you'd ask one question at a time and not  
21 combine them in one major question that I could answer  
22 yes or no, I'd be able to answer you better.

23 Q All right, Dr. Friedman. Was a resolution

1 put on the floor and voted on by Dr. Tauber and his  
2 proxies to convey the hospital to a joint venture?

3 A After I left, maybe, but not while I was  
4 there.

5 Q Were you subsequently informed that that  
6 decision had been made?

7 A If you'll let me explain.

8 Q I want you to first answer were you informed  
9 that that decision was made.

10 A Afterwards?

11 Q Yes.

12 A No.

13 Q Did you ever come back?

14 A No.

15 Q You never came back?

16 A That's correct.

17 Q Then I guess you can't tell me what happened.  
18 All right.

19 MR. HIRSCHKOP: Your Honor, can we get the  
20 explanation? He keeps trying to offer it and --

21 THE COURT: You can ask it in redirect.

22 MR. BETTIUS: You all wanted to get into the  
23 equity argument.

J.APP.1193



1 BY MR. BETTIUS:

2 Q You took the position, did you not, Dr.  
3 Friedman, directly, that the hospital should be  
4 contributing to charity?

5 A I voted against converting to a for-profit  
6 organization.

7 Q You directly stated it should go to charity,  
8 didn't you, Dr. Friedman?

9 A My exact words were, if you'll let me give  
10 you my words, was that it was a non-profit.

11 Q All right, sir. Did you write -- you said  
12 you left. I'm concerned about that, because didn't you  
13 write a letter, and I'm referring to Exhibit 426, on  
14 April 22, 1976 that talked about the effect of the sale  
15 and lease-back.

16 A I'm not familiar with that.

17 Q You've got the letter there, I believe,  
18 Doctor.

19 A What exhibit is it?

20 Q It's 426B.

21 A You gave me one page.

22 Q That's it, Doctor, it's a one-page letter.  
23 Would you look at it?

J.APP. 1194

1 A What is your question again?

2 Q You commented on the effect of the sale and  
3 lease-back in this letter, didn't you, Doctor?

4 A I mean, as to your comment to Waltuck (ph)  
5 about the hospital being in the red, I want to point  
6 out that the hospital showed a net profit last year and  
7 is showing a net profit this year to date of more than  
8 \$150,000. The only added financial burden the hospital  
9 has over last year is the payment of bond interest to  
10 the 20 percent stock conversion to bonds which was put  
11 through and approved by the stockholders.

12 Q Wasn't the 20 percent additional redemption  
13 part of the sale and lease-back?

14 A Where does it say that?

15 Q I'm not asking you what it says. I'm asking  
16 you if that isn't the case.

17 A I have no idea.

18 Q Do you recall receiving a memorandum from the  
19 hospital administrator on the effect of the sale and  
20 lease-back?

21 A Show me papers. That was a long time ago.

22 Q I will, sir. Did you again -- I'll come back  
23 to that. Did you again come back and participate in

J.APP. 1195

1 hospital operations as a member of the board in 1982,  
2 or did you just stay there as a person who was  
3 occupying the space?

4 A I came back and never again participated in  
5 any hospital management or staff activities except to  
6 bring patients in as a staff physician.

7 Q Let me show you Exhibit 806, Dr. Friedman,  
8 which is a letter -- strike that -- memorandum to you  
9 from the hospital administrator. I ask you to read  
10 this paragraph and tell me if you remember it?

11 A Could you just tell me the date? Is that  
12 January 2, 1976?

13 Q Yes, sir. It's addressed to you, isn't it?

14 A There's a big ink blot over this.

15 THE COURT: The question is, do you recall  
16 receiving that memo, Doctor?

17 THE WITNESS: I'm sure I received it. I  
18 don't remember it.

19 BY MR. BETTIUS:

20 Q Well, it reflects on the sale and lease-back.

21 A This talks about redemption of stock.

22 Q Right.

23 A Insurance for the employees' pensions.

J.APP.1196

1 There's four separate actions which he wants to call to  
2 my attention. They are redemption --

3 THE COURT: Let's go through them. Ask a  
4 question.

5 BY MR. BETTIUS:

6 Q It is your recollection that that was the  
7 effect of the sale and lease-back, Dr. Friedman?

8 A I don't see that. I don't know where that  
9 says that.

10 Q Would you read what the paragraph says?

11 A I want to report the results upon the  
12 hospital corporation of actions directed by the  
13 stockholders for the last 12 months and carried out by  
14 the board of directors. There were four separate  
15 actions, which were the redemption of all common stock  
16 issued in -- is that --

17 Q '72.

18 A -- '72; the sale of building and land to the  
19 Joint Venture; the establishment of an employee pension  
20 plan and the increased group life insurance and the  
21 option of converting 20 percent of all outstanding  
22 stock as of December 30, 1975 to bonds.

23 The immediate impact -- do you want me to go

JAPP.1197

1 on?

2 Q Yes, sir.

3 A The immediate impact of these transactions  
4 has been to increase our expense by \$20,000 in the last  
5 six months. However, the full impact will likely be  
6 felt in 1976 -- is it?

7 Q Yes.

8 A Then the next word I can't see. What these  
9 actions mean in terms of expenses, the cash flow and  
10 the months ahead, I will treat each of the four actions  
11 separately and then summarize them as a package.

12 Q I don't want you to do all of that.  
13 Basically it says Blue Cross/Blue Shield is going to  
14 have a problem with this; isn't that correct? It's  
15 been a long time, Dr. Friedman.

16 A I'm reading.

17 MS. BEACH: Your Honor --

18 THE WITNESS: He was raising the question in  
19 the last paragraph, will these things be allowable by  
20 Blue Cross.

21 BY MR. BETTIUS:

22 Q Do you not recognize -- as I say, it's been a  
23 long time -- the direct effect of the sale and

1 lease-back and redemption of stock for bonds?

2 MS. BEACH: Your Honor, I'd like to make an  
3 objection. The document speaks for itself. The  
4 witness testified he has no recollection. He's read  
5 it, it doesn't recollect his memory.

6 THE COURT: Way beyond the scope of direct as  
7 well.

8 MR. BETTIUS: One of the things I'm asking  
9 him, Your Honor -- if it is beyond the scope of direct,  
10 I'll stop, but I really thought he asked him about  
11 leaving the hospital and coming back.

12 THE COURT: This is beyond that. I'll let  
13 you go into that a little bit, but not beyond that.

14 BY MR. BETTIUS:

15 Q You never again participated in the  
16 management or operations of the hospital, Dr. Friedman?

17 THE COURT: Asked and answered.

18 MR. BETTIUS: That's all I have.

19 THE COURT: Anything on redirect?

20 MR. COCHRAN: I have a couple, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. COCHRAN:

23 Q Dr. Friedman, when you engaged Thorpe

J.APP. 1199

1 Richards to get things straight, as you described it,  
2 did you put any limitations on the information or  
3 records that he would have access to?

4 A No.

5 Q Did you say anything to him one way or the  
6 other about whether Inc., JMHI, was in good standing in  
7 Maryland or good standing in Virginia?

8 A No.

9 Q Did you give him any instructions that would  
10 suggest that he should not inquire as to whether the  
11 corporation was in good standing in Maryland?

12 A No.

13 MR. COCHRAN: I have nothing further, Your  
14 Honor.

15 (End of partial transcript.)

## 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 \_\_\_\_\_ day of March, 2000.

---

Eva M. Bridget  
Verbatim Reporter

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