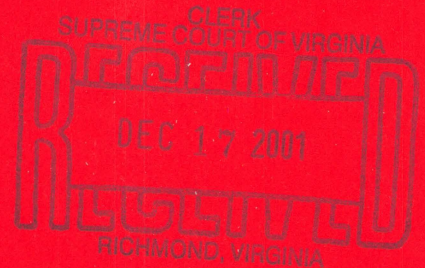


263 Va 520

COPY

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND



RECORD NO. 011150

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

Appellants-Respondents,

v.

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

Appellees-Complainants.

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

----- -X	
COMMONWEALTH OF VIRGINIA, et al.,	:
Complainants,	:
v.	:
LASZLO N. TAUBER, et al.,	:
Respondents.	:
----- -X	
	In Chancery
	No.: 96-1241
	PARTIAL
	TRANSCRIPT
	VOLUME I

COPY

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. 1202

APPEARANCES:

On Behalf of the Complainants:

MARC E. BETTIUS, ESQ.
DEBRA FITZGERALD-O'CONNELL, ESQ.
INA C. CHARVET, ESQ.
Lawson & Frank
6045 Wilson Boulevard, Suite 100
Arlington, VA 22205

RICHARD S. SCHWEIKER, JR., ESQ
Assistnat Attorney General
Office of the Attorney General
900 Main Street
Richmond, VA 23219

ANTHONY J. TRENGA, ESQ.
Miller & Chevalier, Chartered.
655 15th Street, Suite 900
Washington, DC 20005

On Behalf of the Respondents Tauber, et al.:

STEPHEN G. COCHRAN, ESQ.
JAMES KINSEL, ESQ.
The Jefferson Law Firm, P.L.C.
6862 Elm Street, 7th Floor
McLean, VA 22101

GASPARE J. BONO, ESQ.
Long, Aldridge & Norman, L.L.P.
701 Pennsylvania Avenue, N.W.
Suite 600
Washington, DC 20004

BARBARA BEACH, ESQ.
Beach and & Associates
416 Prince Street
Alexandria, VA 22314

PHILIP HIRSCHKOP, ESQ.
Hirschkop & Associates
108 North Columbus Street
Alexandria, VA 22314

KEVIN M. O'DONNELL, ESQ.
Henry & O'Donnell, P.C.
4103 Chain Bridge Road, Suite 100
Fairfax, VA 22030

C O N T E N T S

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
Robert DenUyl	4			

EXHIBITS	IDENTIFIED	RECEIVED
Respondents:		
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P R O C E E D I N G S

Whereupon,

ROBERT BRUCE DENUYL

was called as a witness and, after having been first
duly sworn by the Clerk of the Court, was examined and
testified as follows:

DIRECT EXAMINATION

BY MR. BONO:

Q Mr. DenUyl, just a couple of questions with
respect to your expertise. Would you briefly outline
for the Court your experience with respect to hospital
valuations?

A Yes. I spend a fair amount of time doing
health care valuations, and a number of those are
hopsital valuations. In fact, I think the majority of
them are probably hospital valuations. So I do that on
a national basis, value hospitals for various purposes,
mostly dealing with acquisitions or reviewing the
fairness of transactions in hospital conversions.

Q In the course of that work, have you been
engaged to perform analysis with respect, specifically,
to conversions of hospitals in regard to their -- where
they operated as non-profit and then converted to

J.APP. 1205

1 for-profit or acquired by a for-profit entity?

2 A Yes, I have.

3 Q And would you briefly describe for the Court
4 your experience in that particular area?

5 A Yes. I've done a number of reviews for
6 attorneys general on the fairness of hospital
7 conversion transactions over the past, probably, ten
8 years, again, in a number of states, and these are, as
9 we have here, a conversion or a hospital which is a
10 not-for-profit and it converts to a for-profit entity.
11 If there's consideration paid, I have to determine
12 whether that consideration is fair in my report to the
13 attorney general of the respective state.

14 Q And for what attorneys general have you
15 performed this work?

16 A Massachusetts, Rhode Island, Pennsylvania,
17 Ohio, Texas, Kansas, North Carolina, Wisconsin. That's
18 what I can recall offhand.

19 Q Are you currently working on any hospital
20 valuation or hospital conversions?

21 A I'm actually working on an HMO conversion
22 right now for an attorney general.

23 Q In this work that you have performed for

JAPP. 1206

1 attorneys general dealing with hospital conversions,
2 what have you been asked to do in that regard by them?

3 A Well, I'm asking to review whether --
4 essentially whether fair market value is being paid for
5 the hospital. So in other words, in many cases there
6 is a transaction on the table for a set amount of
7 dollars, and I do a valuation to assert whether that
8 offer is fair in terms of what the hospital's currently
9 worth.

10 Q And when you're performing this valuation in
11 a conversion situation, what period of time is
12 generally looked at when evaluating these conversion
13 transactions for attorneys general?

14 A You look at it as of the date of the
15 conversion.

16 MR. BETTIUS: Your Honor, I'm going to say
17 preliminarily that every one of these transactions is
18 different. I don't see the relevance of this continued
19 line of inquiry.

20 THE COURT: You've stipulated he's an expert
21 in this area. You're just disagreeing with the area.

22 MR. BONO: That was my last question, Your
23 Honor, as a matter of fact.

JAPP.1207

1 BY MR. BONO:

2 Q Now, Mr. DenUyl, at the first trial in this
3 case, you performed an analysis with respect to 1971,
4 1973 and 1975; is that correct?

5 A Yes, that's right.

6 MR. BONO: Your Honor, as a housekeeping
7 matter, does the Court have the exhibits from the first
8 trial? If not, I'll hand up a copy.

9 THE COURT: Do you want to go in my office
10 and look at the boxes, Mr. Bono, of the stuff that's in
11 there from the first trial?

12 MR. BONO: With the permission of the Court,
13 may I hand that up?

14 MR. BETTIUS: Do you have exhibit numbers,
15 Mr. Bono?

16 MR. BONO: Yes, 711, Mr. Bettius.

17 BY MR. BONO:

18 Q Mr. DenUyl, do you have a copy of your report
19 from the first trial?

20 A No, I don't.

21 MR. BONO: With the Court's permission, I'll
22 hand that up.

23 THE COURT: All right.

J.APP.1208

1 BY MR. BONO:

2 Q I will direct your attention to the 1973 part
3 of your report.

4 MR. BONO: Your Honor, for the Court's
5 information, I'll just rest on the testimony as to 1971
6 that was given in the first trial, because I think Your
7 Honor's already made a ruling on that year.

8 THE COURT: Judges are sort of like sieves,
9 Mr. Bono. I retain stuff for about 30 days, which is
10 the time people have to note an appeal. After that it
11 just -- in all honesty, it just -- in all honesty, you
12 all make some assumptions that I know a whole lot more
13 about this case than I really do.

14 MR. BONO: Your Honor, I didn't want to
15 presume to be repetitive.

16 THE COURT: Don't worry about that.

17 MR. BONO: All right. Thank you, Your Honor.

18 BY MR. BONO:

19 Q Mr. DenUyl, let me ask you to address --

20 MR. BETTIUS: This is the nature of my
21 objection, Your Honor. You said that all of these
22 theoretical liquidations were not a defense. I wonder
23 why we're going through the same issue. If it's not a

JAPP.1209

1 defense in the first trial, why is it a valid defense
2 or relevant to this trial?

3 THE COURT: What's the purpose of it, Mr.
4 Bono?

5 MR. BONO: Your Honor, the first purpose is
6 for the 1973 dissolution, we need to establish what the
7 assets and liabilities were of JMHI, what the value of
8 those assets and liabilities were in order to determine
9 what the accounting should be as a starting point.

10 THE COURT: I'll permit it. I'll note your
11 objection, Mr. Bettius.

12 BY MR. BONO:

13 Q Mr. DenUyl, let me address your attention to
14 1973, since it seems to be -- and I'll ask you to
15 explain to the Court your analysis as to April 18,
16 1973.

17 A Okay. Basically --

18 MR. BETTIUS: May I just have a continuing
19 objection?

20 THE COURT: Yes, sir.

21 THE WITNESS: What I looked at was the income
22 and the operations of the hospital as of 1973, '72 and
23 '71, and did what's known as a capitalization of

J.APP. 1210

1 earnings approach, which is shown, I think, two pages
2 from the back, Your Honor, the tables for '73.

3 But basically, the hospital at that time was
4 making a little bit of money, not a great deal of
5 money, and so I looked at that income and said if that
6 income continued into the future with reasonable
7 prospects of growth, what would the value be.

8 And so I came to what we call an enterprise
9 value or \$745,000, but at that time there was debt of
10 over \$800,000, so that the equity of the hospital, what
11 its net worth is, was a negative \$70,000 at that time,
12 based on that capitalization of earnings approach.

13 I then also looked at what we call an
14 adjusted book value approach. If you reach a situation
15 where the ongoing operations of the hospital are not
16 producing value, then you look to the underlying
17 assets.

18 In fact, at that time I looked at the book
19 value of the hospital and then, because the objective
20 was to look and see what JMHI was worth, I took out the
21 real estate assets, the building and the land that was
22 owned by -- would have been owned by Corp, and the
23 plant and equipment and the goodwill, and after making

J.APP. 1211

1 those adjustments came to a book value -- an adjusted
2 book value of \$291,000.

3 BY MR. BONO:

4 Q Now, did you also perform an analysis as of
5 January of 1975?

6 A Yes, I did.

7 Q Would you explain to the Court your analysis
8 as to that time period?

9 A Yes. I used a similar approach in 1975,
10 looking at the three-year weighted average income of
11 the hospital. That is, I gave the most weight to
12 '74 -- actually, it was done as of January '75. I gave
13 the most weight to '74, next most to '73 and the next
14 most to '72, and determined that the profitability of
15 the hospital had declined somewhat and the debt had
16 increased.

17 So its enterprise value, the value of the
18 hospital, was \$400,000, but it had debt of almost \$1
19 million, \$987,000. So it had a negative equity value
20 at that time.

21 I then, because of that, looked again at the
22 adjusted book value approach to say what would be the
23 liquidation value of this hospital at that time, and

J.APP. 1212

1 again took out the plant and equipment and the goodwill
2 and added back the mortgage, since they were paying the
3 mortgage at that time, and estimated that the book
4 value was \$166,000 as of 1975.

5 Q And you did a similar analysis for 1971 in
6 that report; is that correct?

7 A Yes, it is.

8 Q And just very briefly, what was your -- what
9 did you conclude in 1971?

10 A Well, in '71 it was -- the hospital was sort
11 of at a break-even level and, on a cash flow basis, was
12 hardly generating any cash. So its value was \$271,000,
13 but it had outstanding debt of over \$1 million.

14 MR. BETTIUS: What time period is this?

15 MR. BONO: 1971.

16 MR. BETTIUS: '71?

17 THE WITNESS: '71, yes.

18 So we were again faced with this situation
19 where the debt is worth more than the value of the
20 hospital.

21 And then again, I went and looked at the book
22 value approach, and this was before the hospital --
23 they transferred the land and buildings to the

1 hospital, and the hospital had a negative book value at
2 that time of almost \$400,000.

3 BY MR. BONO:

4 Q And based on your analysis for those three
5 years, what conclusion did you reach as to the ongoing
6 value of JMHI at those time periods?

7 A The conclusion was that the going concern
8 value was zero, or nominal at that period of time,
9 because the debt outweighed any value of the hospital.

10 (Whereupon, Respondents'

11 Exhibit No. T was marked

12 for identification.)

13 BY MR. BONO:

14 Q Now, let me ask you to turn to your more
15 recent report, which--

16 MR. BONO: Your Honor, it is Exhibit T. I
17 believe you've been given a notebook, Your Honor, of
18 these exhibits.

19 BY MR. BONO:

20 Q Do you have your report, Mr. DenUyl?

21 A I do, yes.

22 Q What were you asked to do in this stage of
23 the case?

J.APP.1214

1 A I was asked to look at the value of Jefferson
2 Memorial Hospital, whether -- the value as a going
3 concern as of 1982 and 1992.

4 MR. COCHRAN: Your Honor, the exhibit is in
5 the white Volume 1 that you have in front of you.

6 MR. BETTIUS: Your Honor, while we have a
7 break, I'd like to have a continuing objection to the
8 relevancy of these hypothetical valuations.

9 THE COURT: I understand.

10 MR. BETTIUS: I object to Mr. Bettius' use of
11 the term hypothetical.

12 THE COURT: Let's move on, please.

13 BY MR. BONO:

14 Q Now, Mr. DenUyl, when you were doing this
15 report, did you again look at what you had done
16 previously?

17 A Yes, I did.

18 Q What conclusion did you reach with respect to
19 the work you had done previously?

20 A That the conclusions had stayed the same.

21 Q Now, in doing your analysis for April 1 of
22 1982, would you explain to the Court what analysis you
23 undertook?

J.APP. 1215

1 A Yes. I reviewed the financial statements for
2 the period since 1975, that is, for the period of 1976
3 through 1981. And I have an exhibit that we sort of
4 spread that out, Exhibit 1 to my report.

5 MR. BONO: Your Honor, this has been marked
6 as Exhibit T1, which should be right in the same tab at
7 the end.

8 BY MR. BONO:

9 Q The hospital revenues grew significantly
10 during that period of time from about \$7 million to
11 over \$14 million. However, as you may recall, that was
12 a time of high inflation, not only for the health care
13 industry, but for the country as a whole.

14 Even though the revenues grew significantly,
15 the expenses grew even at a greater rate, so that the
16 profitability of the hospital declined over this period
17 of time from a very narrow margin of 2.3 percent down
18 to a margin of less than 1 percent.

19 Q And that is -- is that shown on the T1
20 Exhibit on the line after net income, referring to
21 percentage of revenue?

22 A Yes, it is. And then not only was the net
23 income low during this whole period of time, even

J.APP. 1216

1 though revenues were growing significantly, the cash
2 flow was either negative or break-even during this
3 period of time, so that the hospital was just
4 sustaining its operations without adding to, basically,
5 its cash flow and its reserves.

6 Q On what line is that information
7 demonstrated?

8 A That would be on the bottom line, adjusted
9 cash flow. So I looked at the actual cash flow, and in
10 the last year they -- I made an adjustment because the
11 hospital's working capital was getting into a
12 dangerously low position. So I normalized that to what
13 the hospital would expect to have during that period of
14 time to maintain their operations.

15 Q Now, we heard -- strike that.

16 In Mr. Wilson's report that's been submitted
17 by the Commonwealth, he represents that the hospital,
18 during this point in time, was experiencing increased
19 revenues and, you know, was doing very, very well.
20 Have you taken a look at that allegation specifically?

21 A Yes. He's right about the revenues. They
22 were increasing significantly. But, unfortunately, the
23 expenses were increasing even more than the revenues.

JAPP. 1217

1 So it was -- actually had declining cash flow during
2 this period of time.

3 Q Let me -- have you prepared an exhibit that
4 demonstrates that point?

5 A Yes, I have two exhibits. I'm not sure of
6 the number.

7 Q This is the exhibit titled Jefferson Memorial
8 Hospital Total Operating Revenue and Operating
9 Expenses?

10 A Yeah.

11 MR. BONO: Your Honor, this is Exhibit T8.

12 THE WITNESS: So this illustrates the point
13 that the revenues increased from \$6 million to over \$12
14 million during this period of time, but the expenses in
15 the red -- I don't know if you have this in color, Your
16 Honor.

17 THE COURT: I understand.

18 THE WITNESS: Okay. Increased in a
19 proportionate basis and actually at a little bit higher
20 rate.

21 BY MR. BONO:

22 Q Does that mean that the margin, then, was
23 actually decreasing?

1 A The margin -- profit margin was actually
2 decreasing.

3 Q You mentioned there was another exhibit
4 that --

5 A Yes. Then I prepared one looking at cash
6 flow, which is the more important measure than net
7 income.

8 MR. BONO: Your Honor, this is Exhibit T9.

9 THE WITNESS: This shows a trend towards more
10 negative cash flows during this period. All of them
11 are in the red, except for '77. So the hospital had to
12 spend money on capital expenditures, on the working
13 capital, to maintain its operation as it grew revenues
14 and, therefore, it really never was able to generate
15 cash flow.

16 BY MR. BONO:

17 Q Now, in terms of your analysis for 1981 --

18 A Just --

19 Q I'm sorry.

20 A We had another exhibit comparing Jefferson
21 Memorial to other hospitals in the industry.

22 MR. BONO: Your Honor, that's Exhibit T3.

23 BY MR. BONO:

J.APP. 1219

1 Q Was this another exhibit that you prepared,
2 Mr. DenUyl?

3 A Yes. I just wanted to show most hospitals --
4 these are some hospital -- publicly-traded hospital
5 companies. Generally they're what they call their
6 EBIDAT margin, earnings before interest, depreciation
7 and taxes, which is the margin the health care industry
8 looks at the most for hospitals.

9 It generally runs around 15 to 25 percent.
10 You can see that most of these companies fall in that
11 range. Jefferson Memorial is only a few percentage
12 points for their EBIDAT margin, so it's really a
13 different story than ~~it is for many of the~~ hospitals in
14 the country.

15 Q And what conclusion did you draw from doing
16 this comparison?

17 A Well, if you talk about the value of other
18 hospitals, you have to look at the income that each one
19 generates. In other words, those that are generating
20 more income are more valuable than hospitals that don't
21 generate income. It's important to focus not on
22 hospitals in general but on the situation that you have
23 in each particular case.

J.APP. 1220

1 Q Now, in doing your analysis for 1981, have
2 you looked at -- what else did you do in performing
3 that analysis? For 1982. Excuse me.

4 A To look at the going concern value of the
5 hospital, I used the same technique that I had used in
6 my prior analysis, that is, a capitalization of
7 earnings approach, which I have shown on -- I'm not
8 sure what exhibit it is.

9 MR. BONO: ~~This is Exhibit T2,~~ Your Honor.

10 BY MR. BONO:

11 Q This was Exhibit 2 to your report, Mr.
12 DenUyl, also?

13 A Yes, it is.

14 Q So, again, I looked at first a three-year
15 weighted average of the hospital in terms of its income
16 and then I looked at its liabilities. I came out with
17 a net enterprise value on a three-year basis of
18 \$416,000. So if it didn't have any debt, that would be
19 the value of the hospital. However, it had debt of
20 about \$563,000 and, therefore, ~~its value on this basis~~
21 was negative.

22 Then I also looked in the right column on the
23 last 12 months. If you look at just that last 12

J.APP.1221

1 months, the story is worse. It had declining
2 profitability and the debt still exists, so you have a
3 negative value as well.

4 Q So just looking at the last 12 months here,
5 it had a negative value of \$503,300, negative?

6 A Right.

7 Q Now, the valuation date of this was April 1,
8 1982?

9 A Yes, that's right.

10 Q Why did you pick that date?

11 A Well, that was the date that the hospital and
12 its current ownership ceased operations and transferred
13 the operating entity to HGV, Health Group of Virginia.

14 Q Now, did you -- and when you looked at this
15 negative value in 1982, this valuation, what does that
16 indicate?

17 A Well, that's the going concern value,
18 basically what someone would look at when they're
19 trying to assess what the hospital's worth on a going
20 concern basis, because it's the cash flow that you're
21 interested in when you're buying a hospital.

22 Q And so as to ongoing value, at that time what
23 was your conclusion?

J.APP. 1222

1 A That it had essentially no value.

2 Q Now, did you also look at the possibility of
3 looking at Jefferson Memorial Hospital Corporation as a
4 liquidation scenario at that time?

5 A I did, yes.

6 Q And what was your analysis with respect to a
7 liquidation of JMHC?

8 A Well, I did -- I looked at the book value,
9 because at that time the HGV essentially bought the
10 hospital operations from JMHC. They paid some cash and
11 then there was a remaining book value to JMHC.

12 So I looked at the cash that had been paid or
13 approximately -- or had been distributed to the
14 shareholders, which was approximately \$909,000, and
15 even after that payment, there remained a book value of
16 about \$763,000. But of that \$763,000, there was a
17 little under \$300,000 in goodwill.

18 The goodwill obviously goes away because
19 they're not operating the hospital. So you look at the
20 net value as \$501,000.

21 Q And based upon that, what did you conclude as
22 to the liquidation value of JMHC at that time?

23 A Well, in my report, I concluded a value of

J.APP. 1223

1 \$501,000, which was basically the liquidation value of
2 the hospital. However, in my report I had given
3 consideration to the \$909,000 that was paid. I had
4 assumed that that had been paid to the existing
5 shareholders to an investment they had made back in
6 1972.

7 However, in reviewing some information after
8 my deposition, I realized that actually those shares
9 had been redeemed and that should be counted as part of
10 the liquidation value of the hospital.

11 So you get the value of about \$1,410,000.

12 Q And that is the liquidation value of
13 Jefferson Memorial Hospital Corporation at that time?

14 A Yes, that's right.

15 Q Now, how did Health Group of Virginia account
16 for this transaction?

17 MR. BETTIUS: Well, I'm going to object to
18 how they accounted for it. I don't care how they
19 accounted for it. They're a stranger to the
20 transaction.

21 MR. BONO: They're the buyer.

22 MR. BETTIUS: These documents have never been
23 furnished to me. I've never seen them. If there's any

J.APP. 1224

1 evidence, Your Honor, this is absolutely beyond the
2 pale.

3 MR. BONO: The document --

4 MR. BETTIUS: There was a cutoff -- excuse
5 me.

6 MR. BONO: The document was identified in Mr.
7 DenUyl's report and the Commonwealth never asked for
8 it.

9 MR. BETTIUS: Your Honor --

10 MR. BONO: It's their failure.

11 MR. BETTIUS: Excuse me.

12 MR. BONO: It's identified in his report as a
13 document he relied upon. I'll refer specifically to
14 it. I don't have the exhibit list.

15 BY MR. BONO:

16 Q Mr. DenUyl, you have that list of exhibits
17 that were identified?

18 A Yes. The valuation of Jefferson Memorial
19 Hospital's financial position and market position
20 prepared by Ernst and Whinney and dated June 1985.

21 MR. BETTIUS: He's also --

22 MR. BONO: An expert is entitled to rely --

23 MR. BETTIUS: I understand that. That

J.APP. 1225

1 doesn't make it admissible.

2 THE COURT: Let me hear from Mr. Bettius.

3 MR. BETTIUS: I don't care how they accounted
4 for it. How they accounted for it on their records --
5 it's not their dissolution. It's our dissolution.
6 It's how we should account for the transaction. It's
7 irrelevant how they account for it.

8 THE COURT: What's the relevance, Mr. Bono?

9 MR. BONO: It will -- I can rephrase the
10 question.

11 MR. BETTIUS: It's also hearsay.

12 THE COURT: Rephrase the question.

13 BY MR. BONO:

14 Q Mr. DenUyl, did you do an analysis of what
15 was paid in this transaction for the intangible value
16 of JMHC?

17 A Yes.

18 Q What was that analysis?

19 A Well, there were -- there were two documents,
20 I believe. The one document showed that basically what
21 HGV paid was -- they paid for the receivables and the
22 inventory. The assumed the liabilities and then they
23 paid a 15 percent premium on top of that. That's one

1 indication, and -- I don't have the document in front
2 of me -- \$200,000-some.

3 Q And that document you're referring to is in
4 Mr. Wilson's, the Commonwealth's expert's, report?

5 A That's right.

6 Q Okay. What other analysis did you perform to
7 determine what HGV paid for the intangibles?

8 A Well, there's a reference to this 1985 Ernst
9 and Whinney report that says they paid \$493,000 for the
10 intangible value of Jefferson --

11 MR. BETTIUS: I'm going to object to the
12 relevance and how they accounted for this transaction,
13 Your Honor.

14 THE COURT: Isn't it some evidence of value
15 of these things, Mr. Bettius?

16 MR. BETTIUS: Your Honor, the evidence of
17 value is \$1.92 million, as we see from the operating
18 assets. That's the relevance. I don't care what Ernst
19 and Whinney did with it.

20 MR. BONO: That's argument, Your Honor.

21 MR. BETTIUS: These Respondents receive \$1.92
22 million. If Ernst and Whinney wants to account for
23 what they did with it, those are arbitrary decisions

JAPP.1227

1 made by accountants who want to book the value.

2 THE COURT: Overrule the objection.

3 BY MR. BONO:

4 Q I think my question, Mr. DenUyl, was what
5 further analysis did you do and what was paid for the
6 intangibles?

7 A Yes. I was referring to that Ernst and
8 Whinney report that said they paid \$493,000 for the
9 intangible value and the rest was related to the
10 acquisition of the assets.

11 Q And when you say -- let me ask you, for the
12 acquisition of the assets, what would that be paid for?

13 A That would be your accounts receivable,
14 inventory, equipment. That was the bulk of it. And
15 the assumption of payables.

16 Q Am I correct that the payment of the accounts
17 receivables and the inventory and those other items you
18 mentioned are not related to ongoing value or goodwill
19 value of the hospital?

20 A No.

21 Q They're not related?

22 A No.

23 Q Now, would you explain to the Court what

1 would be included in the intangibles?

2 A Well, that would be goodwill. It could be
3 the value of the operating license. It could be
4 contracts they have with certain payor groups such as
5 Blue Cross, the value of the doctor referral base,
6 things like that.

7 Q So all of that would be part of that
8 intangible number; is that correct?

9 A Yes, that's right.

10 Q Am I correct, then, that only part of that
11 would then be talking about the license value?

12 A Yes, some part of it. They didn't break it
13 out.

14 Q And in the Wilson report and the letter he
15 refers to, what number is the number that is referred
16 to as going to the intangibles?

17 A Well, they refer to it as a premium. They
18 pay for all of these assets and then they pay 15
19 percent over that. It's a little bit over \$200,000.

20 Q And was that the premium price that Mr.
21 Bettius was talking about in his opening statement?

22 A I believe so.

23 Q And what conclusion did you draw from that

1 analysis?

2 A Well, I think it was consistent with the
3 analysis that I did, that the going concern value was
4 -- was not significant in the hospital in 1982.

5 Q And did you make any conclusion with respect
6 to what the maximum number could be for the value of
7 the hospital license or ongoing value at that time,
8 based upon that analysis?

9 A No, not explicitly. I looked at the going
10 concern value and that was nominal, and then the rest
11 related to the liquidation value of the assets. There
12 was some portion of that attributed to the intangibles.

13 Q That's what you just testified about, that
14 portion?

15 A Yes.

16 Q Now, did you also do an analysis of the value
17 of JMHI assets in 1992?

18 A Yes. I looked at the value of the operating
19 entity at that time.

20 Q And would you explain to the Court what
21 analysis you did with respect to that time period?

22 A Yes. In 1992, as the opening statement
23 talked about, the Inova Health System bought the

1 hospital operations from HGV. I'm sorry. They bought
2 it in 1985. And during the course of the next six or
3 seven years, Inova operated this hospital and they
4 operated it at a very significant loss over that period
5 of time.

6 Q Did you do an exhibit that examined Inova's
7 operations of Jefferson starting in 1985?

8 A Yes, I did.

9 MR. BONO: Your Honor, I refer the Court to
10 Exhibit T4.

11 MR. BETTIUS: I'm going to object to the
12 relevance of Inova's operations. They've got a rental
13 obligation they continue to pay, and because it's down
14 the tubes, they buy the license from them. What's the
15 relevance of what Inova did with the hospital?

16 THE COURT: Objection's overruled.

17 BY MR. BONO:

18 Q And what analysis did you perform in their
19 operations, Mr. DenUyl?

20 A Well, this shows -- this is from their
21 consultant's report that shows the losses that had been
22 incurred between 1985 and 1991.

23 These are cumulative of what you see, that

J.APP. 1231

1 right off the bat in 1985, they lost over \$1 million in
2 cash flow, and that this loss accelerated over time,
3 such that by 1991, they were losing over \$5 million on
4 the operations of the hospital. So they decided to
5 stop operating the hospital.

6 Well, that and based on the fact that their
7 consultants projected that if they were to continue to
8 operate the hospital, they would incur losses of
9 approximately \$81 million between 1992 and 2005.

10 Q And what conclusion -- or how did this enter
11 into your analysis of what the value of JMHI's assets
12 were in 1992?

13 A Well, there's been some discussion that --
14 that Inova bought this valuable hospital in 1985, but
15 at -- we can see that basically, it operated at a huge
16 loss right from the time they started operating it.

17 The reason they bought the hospital was for
18 -- not just for financial reasons, and I have an
19 exhibit that outlines that.

20 MR. BONO: I'll refer the Court to Exhibit
21 T6.

22 BY MR. BONO:

23 Q Is this an exhibit you prepared, Mr. DenUyl?

1 A Yes, it is.

2 Q Please continue.

3 A Well, one of the reasons they bought the
4 hospital from HGV is because they wanted to preclude
5 their competitors from coming into the Northern
6 Virginia market. And in addition to that, they saw the
7 hospital as a referral base for their other hospitals
8 or their other programs, so they could refer out if
9 there was, say, tertiary care that's needed by the
10 patients of Jefferson Memorial.

11 They also used -- it would also give them
12 more clout in contracting with managed care companies,
13 and in addition, they wanted to improve the quality of
14 care at Jefferson Memorial and increase the indigent
15 care levels.

16 And so all of those were the nonpecuniary
17 reasons that Inova -- well, not nonpecuniary, but
18 specifically to Jefferson Memorial's pecuniary
19 situation.

20 But they wanted it as a defensive move and to
21 expand their system, is why they bought the hospital at
22 that time.

23 Q And what did you then conclude from this

1 analysis in determining what the value of JMHI's assets
2 were in 1992 when the hospital was closed?

3 A Obviously, the hospital had no value as a
4 going concern in '92. It had run up significant losses
5 and the biggest, supposedly most astute, operator
6 couldn't operate it, so it closed the hospital.

7 Q The operator you were just referring to, was
8 that Inova?

9 A Inova, right.

10 Q Now, in your report on page 6 you refer to a
11 consultant's report in this analysis.

12 MR. BONO: Your Honor, I'll identify this for
13 the Court as Exhibit H.

14 (Whereupon, Respondents'

15 Exhibit No. H was marked

16 for identification.)

17 BY MR. BONO:

18 Q In reviewing this report, what did that
19 report tell you, Mr. DenUyl?

20 A That was the report that concluded that --
21 that there was essentially no hope to operate this
22 hospital profitably and that it would incur significant
23 losses, \$81 million in losses going forward if they

1 were continued -- if they were to continue to operate
2 the hospital through 2005.

3 MR. BONO: Your Honor, I'd move the report of
4 Mr. DenUyl and the exhibits that we just identified
5 into evidence.

6 MR. BETTIUS: I've already stated my
7 objections, Your Honor, and they're continuing.

8 THE COURT: All right. T is the exhibit that
9 will be admitted?

10 MR. BONO: Yes, Your Honor, T and the
11 sub-exhibits, and H, Your Honor, which is the report I
12 identified.

13 THE COURT: What about H, Mr. Bettius?

14 MR. BETTIUS: I object to that.

15 THE COURT: Same objection?

16 MR. BETTIUS: Yes, sir.

17 THE COURT: It's admitted.

18 (Whereupon, Respondents' Exhibit
19 Nos. T and H were received
20 in evidence.)

21 MR. BONO: Thank you, Your Honor. I have no
22 further questions at this time.

23 (End of partial transcript.)

J.APP.1235

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 February, 2000.

Eva M. Bridget
Verbatim Reporter

J.APP. 1236

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

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COMMONWEALTH OF VIRGINIA, et al., :
Complainants, :
v. :
LASZLO N. TAUBER, et al., :
Respondents. :
----- -x

ORIGINAL

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. 1237

APPEARANCES:

On Behalf of the Complainants:

MARC E. BETTIUS, ESQ.
DEBRA FITZGERALD-O'CONNELL, ESQ.
INA C. CHARVET, ESQ.
Lawson & Frank
6045 Wilson Boulevard, Suite 100
Arlington, VA 22205

RICHARD S. SCHWEIKER, JR., ESQ
Assistant Attorney General
Office of the Attorney General
900 Main Street
Richmond, VA 23219

ANTHONY J. TRENGA, ESQ.
Miller & Chevalier, Chartered
655 15th Street, Suite 900
Washington, DC 20005

On Behalf of the Respondents Tauber, et al.:

STEPHEN G. COCHRAN, ESQ.
JAMES KINSEL, ESQ.
The Jefferson Law Firm, P.L.C.
6862 Elm Street, 7th Floor
McLean, VA 22101

GASPARE J. BONO, ESQ.
Long, Aldridge & Norman, L.L.P.
701 Pennsylvania Avenue, N.W.
Suite 600
Washington, DC 20004

BARBARA BEACH, ESQ.
Beach and Associates
416 Prince Street
Alexandria, VA 22314

PHILIP HIRSCHKOP, ESQ.
Hirschkop & Associates
108 North Columbus Street
Alexandria, VA 22314

KEVIN M. O'DONNELL, ESQ.
Henry & O'Donnell, P.C.
4103 Chain Bridge Road, Suite 100
Fairfax, VA 22030

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EXHIBITS	IDENTIFIED	RECEIVED
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None.		
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J.APP. 1239

P R O C E E D I N G S

MR. COCHRAN: I think the burden is now upon us, Your Honor.

THE COURT: I think so.

MR. COCHRAN: I'd like to take a moment to try to put this into perspective. As I said the first time that I had the pleasure of appearing before Your Honor in this case, I was trying to portray myself as the voice of reason in the wilderness of irrationality, and that, to some extent, is still the case. I think we need to cut down, if not eliminate, the rhetoric and look at this with some perspective.

The perspective is the Respondents created this hospital in 1965. They purchased the land. They borrowed the funds with which to build the facilities. They personally guaranteed those borrowings. They bought stock in 1972 and invested \$221,000 in this hospital at a time when the hospital was desperately in need of cash.

Mr. Bettius will tell you, probably, in his opening that that investment of stock was exchanged for bonds and they made a handsome return on those investments. The fact of that matter is, that handsome

J.APP. 1240

1 return translates into something less than 12 percent.

2 As the Court may recall from the trial many,
3 many moons ago, even Mr. Riley was suggesting that the
4 cost of equity financing such as this should have a 38
5 or 39 percent rate of return. So we have a rate of
6 return at 12 percent or less.

7 These doctors managed this hospital. They
8 managed this hospital with little, if any,
9 compensation. They did put sweat equity into this
10 business. So these are not the money-hungry, greedy
11 people that Mr. Bettius would have us believe.

12 They had the misfortune of losing their tax
13 exemption, as this Court knows. They, with advice of
14 counsel, attempted to create a for-profit entity. That
15 was done wrong. With advice of counsel they tried to
16 rectify that again in '74 and '75. It was still done
17 wrong. But these were efforts that the evidence will
18 show were undertaken in good faith by the Respondents
19 in this case in an effort to go forward in a corporate
20 mode that was both appropriate and legal.

21 You have this structure, Your Honor, that Mr.
22 Bettius takes considerable issue with. But you'll hear
23 evidence from Mr. Cobb that having a hospital with an

J.APP. 1241

1 operating entity that runs the hospital and an
2 ownership entity that owns the hospital, owns the
3 ground and rents it to the hospital is not particularly
4 unusual, and that there's no ulterior motive to such a
5 thing, other than as Dr. Tauber said at the last trial
6 and has said repeatedly, they tried to protect the real
7 assets of the ownership entity from malpractice cases.

8 To put it in the whole perspective, Your
9 Honor, we also have to look at what was going on in
10 1970 and 1971 and 1972 and '73. There was an offer
11 from a company called Extended Care in 1970, which
12 offered to pay, in the form of stock, \$25,000 for the
13 hospital, with an option to purchase the land and
14 facilities for \$2.2 million.

15 That gives us something of a benchmark from
16 where we start. You have Wheat Securities trying to
17 sell the hospital in the early '70s and reporting to
18 the hospital board that they could not --

19 MR. BETTIUS: Your Honor has already
20 sustained objections to introduction of testimony from
21 the previous trial, over and over and over again. I
22 don't want to interrupt if that issue comes up.

23 THE COURT: All right.

JAPP. 1242

1 MR. COCHRAN: So, Your Honor, we have a
2 hospital struggling. One of the few things the
3 accountings tend to agree upon is that the hospital in
4 '70, '71, '72, '73, had little, if any, value. They
5 were making some money, but they weren't making much
6 money.

7 The final thing that I think we need to look
8 at to put this in perspective, Your Honor, is that this
9 Court has imposed fiduciary duties on these Respondents
10 25 years after the fact. You know, I don't mean to
11 suggest that that's an incorrect ruling, because I
12 don't argue with the Court's ruling, but I think it is
13 fair to say that most any of us here who have conducted
14 ourselves in a business, whatever the nature of the
15 business, if our conduct was to be viewed with the
16 benefit of 25 years' hindsight and from the perspective
17 of a fiduciary, very few of us would have that conduct
18 stand up.

19 Your Honor, in looking at the accountings,
20 there is mostly good news, and I'm sure Mr. Bettius
21 will disagree with this, but the accountings are very
22 similar in their methodologies.

23 They all look to the financial statements as
JAPP.1243

1 the primary financial document. They look at the 1966
2 lease, which was the original lease, as an operative
3 document. They look at the Joint Venture or its
4 predecessors as the landlord. They look at Inc. or
5 Corp. as a tenant. They both appropriately charge
6 rent. They both treat the income as taxable.

7 Where we go off on divergent paths, Your
8 Honor, is that the Complainant's accounting stops
9 treating the income as taxable in 1982, and stops
10 charging rent in 1994, a divergence which results in
11 tens of millions of dollars of additional income which
12 the Complainant seeks.

13 I would submit to the Court that after you
14 hear the testimony from Mr. Cobb and Mr. DenUyl, you
15 will conclude that their approach, which was to tax the
16 income throughout, to charge rent throughout, is the
17 appropriate methodology.

18 We have submitted, as Mr. Bettius was just
19 complaining, alternative accountings. This Court's
20 order, as affirmed by the Supreme Court, said account
21 as of April 18, 1973. Mr. Cobb has submitted that
22 accounting. That accounting says that nothing would be
23 due if we were to close the books on that date. There
JAPP.1244

1 is no value in '73. There was no value in '71.

2 If we carry forward to July 1, '75, which is
3 a date that we have proposed as an alternative because
4 of the sale and lease-back that occurred at that time,
5 you still have no value. If you look at the
6 Complainant's accounting, perhaps there is a little bit
7 of value, Your Honor, but even their accounting does
8 not establish much value.

9 The next date that we have suggested the
10 Court consider, and I think this is probably the
11 watershed event in the history of the hospital, is the
12 sublease with Health Group of Virginia in March of
13 1982. Mr. Bettius, I'm sure, will complain about this
14 and the other dates as being hypothetical accountings,
15 Your Honor, but, in essence, we're dealing with a
16 hypothetical. We are imposing hindsight on 25 years
17 worth of conduct and saying this should have been done.

18 I think if you look at what was done and
19 listen to the evidence as to what was done, you will
20 see that as of March 1982, this hospital was still in
21 very, very poor financial shape. It had not a penny of
22 reserves. It was making some money. It was not making
23 a lot of money.

J.APP.1245

1 It had been in existence for 17 years.

2 According to Mr. Cobb, the total net income that had
3 been earned in those 17 years was \$1.4 million.

4 According to Mr. Wilson for the Complainant, it's about
5 \$2.4 million. But whether it's 1.4 or 2.4, the fact of
6 the matter is that this hospital was not a particularly
7 profitable entity.

8 It has an opportunity, in March of 1982, to
9 wind up, which is what this Court would have it do.
10 And it is not a hypothetical winding up, Your Honor.
11 The evidence is that the hospital entered into a
12 sublease with Health Group, a ten-year sublease. As
13 part of that, their receivables were purchased, their
14 equipment, their inventory were all purchased at book
15 value.

16 They received a discharge from a lease
17 obligation. So this is, in essence, a winding up.
18 This is a marshalling of the assets. This is payment
19 of the debt. This is discharging other obligations and
20 liabilities of the corporation. So this has been an
21 entirely appropriate date at which to stop and consider
22 what happens.

23 If we stop the clock in March of 1982 and

J.APP. 1246

1 carry forward either the 1.4 that Mr. Cobb calculates
2 or the 2.4 that Mr. Wilson calculates, we come up with
3 a number between \$4 million and \$13 million as what
4 those 2 sums would be worth today.

5 I also want to point out, Your Honor, just
6 how overreaching the Complainant's accounting is.
7 Everything after 1982 is relatively simple. Either we
8 charge rent at \$220,000 or some escalated sum as Mr.
9 Wilson does, or we charge rent at \$900,000. There was
10 an increase in the rent between the Joint Venture and
11 the Jefferson Memorial Hospital to \$900,000 as a
12 condition to agreeing to this sublease.

13 There was consideration for that. The Joint
14 Venture agreed to build a 10,000 square foot building
15 at a cost of \$725,000. The Joint Venture agreed to use
16 its best efforts to attract more doctors to the
17 hospital and entered into a specific agreement with Dr.
18 Friedman, who will testify, pursuant to which he
19 received office space in the building that amounted to
20 about 64 percent of the total area of the building,
21 basically at cost, the cost of maintenance, \$6 a foot,
22 with an option to purchase for \$1, which he exercised
23 some eight years later.

J.APP. 1247

1 So we have a real event, we have real
2 consideration. Looking back at the Complainant's
3 accounting, Your Honor, there's one thing that stands
4 out and I think it's indicative of their overreaching,
5 in 1970 -- in the fiscal year ending June of 1973, Ms.
6 Moore -- Mr. Wilson's accounting shows that there was
7 \$130,000 in total net income.

8 If you looked at the financial statement,
9 there was an ending balance of a negative \$5,500 in the
10 bank, and that's after \$220,000 in capital was infused
11 from the sale of stock to the Respondents. But Ms.
12 Moore, in her treatment of this income, ignoring the
13 fact that there was not only no money in the bank,
14 there was a negative balance, said that we should have
15 invested that money in 1972, '73, and there is a rate
16 of return that she applies to that number.

17 That is hypothetical, Your Honor, and that is
18 the -- the image will be very, very unrealistic. If we
19 go beyond 1982, Your Honor, we get into numerous
20 disputes as to what to do with the Fairfax Hospital
21 money.

22 But before we get into that time an event
23 happens which I think is another benchmark event that

1 the Court needs to look at. In 1985, Fairfax purchased
2 the stock of HGV for approximately \$5.8 million. It
3 then entered into a new lease for 20 years. Even Mr.
4 Wilson, the Complainant's own accountant, concedes that
5 that is an indicator of the value of the license, the
6 value of the right to operate that hospital.

7 That's a point in time in 1985. You will see
8 evidence that there were mixed motives on the part of
9 Fairfax coming into the Jefferson facility. They
10 describe them as defensive and offensive. The motives
11 were, in part, to prevent Georgetown or other teaching
12 hospitals from establishing a bastion in the Northern
13 Virginia marketplace.

14 it was offensive mostly to the extent that
15 they were looking for a referral source so that they
16 could bring in patients from that area through
17 Jefferson Memorial Hospital and into their other
18 facilities.

19 Fairfax brought to this situation great
20 strengths, and you'll hear from Mr. Cobb as to what
21 some of the critical issues are as to the financial
22 viability of any business. Economy of scale is one,
23 professional management is one, access to capital is

1 another, none of which the Respondents had, but Fairfax
2 brought that to this situation in 1985.

3 What happens from 1985 through 1992? Fairfax
4 loses millions of dollars. Fairfax projects, in an
5 analysis done in '92, \$81 million in future losses, and
6 Fairfax decides that they have to stop the bleeding and
7 close this hospital down.

8 If the Court goes beyond '82, the Court is
9 going to have to decide what is the nature of the money
10 that flowed from Fairfax from '92 to '94 onward, Your
11 Honor. The Complainant's accounting suggests that the
12 entirety of the Inova payments or payment for the right
13 to operate or not operate that hospital for the
14 license, which -- would have been an asset of Inc. or
15 Corp. as opposed to the Joint Venture.

16 That analysis flies in the face of reality,
17 which is, you know, even the best run hospital in this
18 area discovered it was losing millions of dollars a
19 year, and projected tens of millions of losses and
20 decided to do what it could to get out of a very bad
21 situation.

22 There are two settlement agreements with
23 Inova which the Court may recall that the Court may

J.APP. 1250

1 have to look at. There's an October '92 letter
2 agreement which simply says the hospital, Fairfax
3 Hospital, may choose one of three or four different
4 alternatives, one of which was to close the hospital,
5 which they chose to do, and they exchanged buildings.
6 Fairfax had acquired a building called Cambridge Court,
7 a brand new building. They exchanged that for the
8 Jefferson Memorial Hospital facilities.

9 That exchange, however, never took place
10 because of title problems, which I'm sure this Court is
11 aware of from the first trial, litigation ensued and
12 then a settlement was reached.

13 The 1992 deal, Your Honor, was a land deal.
14 It had nothing to do with the license to operate. The
15 evidence is that the right to lose \$81 million is not a
16 particularly valuable right.

17 In July of 1994 we have the settlement
18 agreement. It calls for certain monthly payments over
19 time and a \$10 million lump sum in 2005. Again, the
20 Complainants would submit to the Court that that
21 represents the value of the license. The evidence is
22 going to be that in the 1992 agreement, not only did
23 Jefferson get the Cambridge Court facility, but Fairfax

1 had an obligation to pay rent of over \$2 million a
2 year.

3 It's that rental stream that these payments
4 represent and the lump sum payment is representative of
5 the fact that Fairfax Hospital got a valuable asset,
6 Cambridge Court, back, and, in exchange, was able to
7 let Jefferson retain its facilities.

8 Your Honor, I think finally the Court has to
9 look at this from the equitable perspective. When all
10 is said and done, this Court is sitting as a Court of
11 equity. I think that the Complainants believe that if
12 the number is \$10 million or \$20 million or \$60
13 million, that that's the number that they should
14 receive.

15 I would submit to the Court that that's not a
16 foregone conclusion, that this Court, whatever the
17 number is the Court arrives at, must be viewed as a
18 starting point and then I think the Court has to
19 evaluate from an equitable perspective culpability and
20 other issues.

21 And when you look at that from the issue of
22 equity, and we look back at what this hospital was
23 worth in 1973, which was zero, had counsel done his

1 thing in 1973 or 1971 or 1975, there would have been
2 little, if anything, that would have been left over to
3 give to charity.

4 The value of the license in 1970 from
5 Extended Care was \$25,000. It may have been \$5.8
6 million in 1985. It certainly was not worth anything
7 in 1992 or 1994.

8 If you look at it from that perspective, Your
9 Honor, and balance the equities, I think the Court will
10 conclude that our accounting is the reasonable are,
11 that we have given the Court options to consider and
12 that the \$70 million that Mr. Bettius' accounting
13 submits is just totally unreasonable.

14 Thank you, Your Honor.

15 THE COURT: Mr. Bono?

16 MR. BONO: Thank you, Your Honor. May it
17 please the Court.

18 Your Honor, during the first trial this Court
19 was examining a period of time from 1965 to 1975 and
20 that trial was, indeed, complicated itself. This week
21 we're faced with a task that's at least three times
22 more difficult of examining the facts from 1975 to
23 today.

J.APP.1253

1 As Your Honor indicated, this is, indeed, a
2 daunting task and the submissions in this case are
3 virtually indecipherable, even for someone such as
4 myself who is fully familiar with this case. So what
5 I'd like to do in my opening is give the Court some
6 framework in which to apply the legal principles that
7 need to be applied in this case to all of the numbers
8 that have been submitted.

9 First of all, Your Honor, I'd like to go back
10 to the Court's order which imposed the constructive
11 trust in this case. And the constructive trust was
12 imposed on the assets and liabilities of Jefferson
13 Memorial Hospital, Inc. No other entity's assets or
14 liabilities are subject to this constructive trust, and
15 that was because Inc. was the only charitable entity
16 existing at any point in time.

17 Your Honor, we have submitted a detailed
18 trial brief on Friday which presents the legal
19 principles that need to be applied in this case. The
20 fundamental principle that needs to be applied under
21 the case law is that the assets and liabilities of Inc.
22 and only Inc. need to be identified at the time of its
23 dissolution in 1973, and then the Court must examine

J.APP. 1254

1 whether any income or revenue or increased value going
2 froward into the future is attributable to those assets
3 and liabilities of Inc.

4 There must be a distinct tracing of the
5 future income into those assets, otherwise no future
6 income or revenues are attributable to the assets of
7 Inc.

8 In our trial brief, Your Honor, we have
9 pointed out that the Virginia Supreme Court made it
10 quite clear, we believe, that ~~the 1973~~ dissolution of
11 Inc. is the key operative event. And, in fact, the
12 Court -- the Virginia Supreme Court said that it was
13 the Maryland dissolution statute which was to be
14 applied in the accounting in this case, and they cited
15 the Maryland Code and the Maryland Court of Appeals
16 case.

17 The Maryland dissolution statute, which is
18 section 5208(B) of the Maryland Code, is very specific,
19 and it says, when a non-stock Maryland corporation is
20 dissolved or its charter forfeited, which is what
21 happened in this case, what the trustees are to do is
22 the following: 1, by operation of law the trustees --
23 the directors of the corporation or the trustees are

1 converted to trustees in dissolution. No matter what
2 they call themselves after that point, if there's a
3 document that says they're directors, by operation of
4 law the Virginia Supreme Court said they're trustees in
5 dissolution and they are to undertake actions in
6 dissolution.

7 The Maryland statute clearly says that what
8 you do is you identify every liability and obligation
9 of the dissolving corporation and the trustees are
10 obligated to pay those obligations or to make provision
11 for their payment. That's the first thing that has to
12 be done.

13 The second thing that has to be done, if
14 there were any assets donated to the charity with a
15 provision if the charity dissolves, those assets must
16 be given back to the donor, they have to be given back.
17 There are no such assets in this case.

18 Finally, Your Honor, after -- and the statute
19 in Maryland's quite clear -- after all of the
20 liabilities are paid, or provision made for their
21 payment, then the trustees must identify if there are
22 any remaining assets left in that dissolved
23 corporation. And if there are any remaining assets,

J.APP. 1256

1 then those assets must be distributed to -- and the
2 statute in Maryland says -- to any person, society,
3 organization or Maryland or foreign corporation.

4 The case law also makes it clear if there are
5 no remaining assets, in which case if the liabilities
6 are greater than all of the assets and must be
7 satisfied, then there are not assets that need to be
8 distributed to any other corporation.

9 Your Honor will recall that Professor Dooley,
10 that was called by the Commonwealth in the very first
11 trial, who is the professor from the University of
12 Virginia and who was the corporate expert, explained
13 this in detail. In fact, he said, I believe, very
14 closely to what I just said was the statutory
15 requirement.

16 Now, Your Honor, the other point that we made
17 in our trial brief, which is very, very significant is
18 that when assets of a charity are commingled with
19 private assets, what does the Court do with the
20 corresponding pool or with the income that is derived
21 from that.

22 There must be, according to the case law, a
23 proportionate or pro rata allocation of the future

JAPP.1257

1 income between the assets of the charity that went into
2 the pool and the assets of the private entity that went
3 into the pool. And the cases and the treatises are
4 very, very explicit on this. This has to be applied
5 and the Complainant's accounting makes no effort to do
6 this, Your Honor. ~

7 In addition, I would like to point out that
8 in briefs that were filed by the Commonwealth in the
9 United States Supreme Court following the Virginia
10 Supreme Court's opinion, they told the Supreme Court
11 that it was the Maryland dissolution statute that
12 applied in this case.

13 They said that the Virginia Supreme Court had
14 based its opinion, quote, upon a scholarly application
15 of Maryland law and that the operative event was that
16 dissolution of the corporation. Now, I would
17 respectfully submit that having made those
18 representation to the Supreme Court, they should not
19 come into this Court and take a different position.

20 As Mr. Cochran advised, Mr. Cobb will testify
21 that, in his opinion, it is the dissolution that
22 applies and the analysis should be focused on the 1973
23 dissolution and what assets and liabilities of Inc.

1 existed at that time.

2 Your Honor, I would reiterate Mr. Cochran's
3 position that the Respondents in this case come to this
4 Court seeking equity, and the numbers and requests of
5 the Commonwealth of Virginia are completely out of line
6 under the totality of the circumstances in this case,
7 and I, too, respectfully submit, Your Honor, that this
8 Court should apply its equitable powers and determine
9 an equitable result based upon all of the evidence in
10 this case.

11 Your Honor, the evidence has shown in this
12 case that this is a very unusual case. It was filed by
13 the Commonwealth ~~25 years after the fact~~. I appreciate
14 Your Honor said laches doesn't apply, but that is a
15 ~~significant event that goes to the equities~~ in this
16 case.

17 The Respondents in this case acted in good
18 ~~faith~~. While they didn't do everything perfectly
19 right, the evidence is clear they attempted to do it.
20 They sought advice from legal counsel. They sought
21 advice from counsel among the best in this city.

22 While Your Honor said that the advice of
23 counsel defense doesn't apply, it certainly is a factor

1 in equity that they attempted to do what was correct
2 and legal. In fact, Your Honor, there's an October 16,
3 '74 board memorandum in which the board of Corp.
4 specifically hired Thorpe Richards to ensure that
5 everything was done properly and legally.

6 While, again, it was not a defense to the
7 case, it is a factor to be entered into (sic). At the
8 time of the transaction the evidence is clear that not
9 one penny went to the Respondents, and that after the
10 conversion from not-for-profit to for-profit, the
11 Respondents continued to fund the operations of the
12 hospital. Unquestionably they poured in another
13 \$240,000 in 1972 in capital to support the hospital.

14 Mr. Cobb will explain that without that
15 injection of capital, that the hospital would assuredly
16 close its doors, because it would have been unable to
17 function and meet its obligations.

18 During the period 1971 to 1982, and Your
19 Honor will recall -- maybe a time line would help put
20 this in the framework -- from 1965 to 1971, Inc.
21 operated the hospital. And from 1971 to 1982, Corp.
22 operated the hospital. During the time from '71 to
23 1982, all of the net income generated by the

J.APP. 1260

1 Corporation was plowed back into the Corporation. The
2 doctors did not declare dividends.

3 The only income that was taken out during
4 that time period were some bonds that were payable to
5 the doctors, but all of the income was reinvested
6 through 1982.

7 Your Honor has already determined that the
8 initial transaction in 1971 -- that the ongoing value
9 was totally consumed by the liabilities. Your Honor
10 said that our experts, Mr. Cobb and Mr. DenUyl, were
11 the more persuasive and demonstrated that at that time
12 the liabilities were far greater than all the assets,
13 including the ongoing value.

14 Your Honor, it's also significant in terms of
15 equity that in 1978 the General Assembly of this
16 Commonwealth changed the law. And while Your Honor
17 correctly applied 1971 common law of Virginia to hold
18 that even though the transaction was fair and that a
19 fair price was paid, a constructive trust could still
20 be imposed and the Commonwealth could elect to void
21 that transaction.

22 In 1978, which was 22 years ago, the Virginia
23 General Assembly amended the corporate code of

J.APP. 1261

1 Virginia, and that was section 223.1 of the Virginia
2 Code at that time, which is now codified at section
3 13.1-871. And it says that this kind of transaction,
4 when you make a determination that a fair price was
5 paid in an insider transaction, that the beneficiaries
6 cannot -- cannot -- elect to void the transaction, that
7 the only determination to be made is was the
8 transaction fair.

9 Now, this is -- in my mind this is a
10 significant event, because had this transaction
11 occurred at any point in time after 1978 in this
12 Commonwealth, the Attorney General would be entitled in
13 this case to zero as a matter of law. There would be
14 no constructive trust. This case would have been over.

15 Now, does that totally do away with the
16 constructive trust in this case? No, Your Honor,
17 because you correctly applied the common law at the
18 time it existed in '71. But I would respectfully
19 submit that that's a significant event to be taken into
20 account in applying the equities in this case.

21 I would also point out that under Maryland
22 law in 1971, there was no right to void this
23 transaction or to impose a constructive trust in any

1 event.

2 Now, Your Honor, the hospital conversion at
3 issue here is very similar to one that occurred two
4 years ago with respect to National Orthopedic Hospital.
5 And I think that's also another significant event in
6 applying the equities in this case.

7 At that time Columbia Pentagon City Hospital
8 acquired National Hospital for Orthopedics and
9 Rehabilitation right here -- nearby in Virginia.

10 MR. BETTIUS: Your Honor, I'm going to object
11 to a collateral transaction that there's no proof of,
12 that Mr. Bono --

13 THE COURT: Do you intend to introduce
14 evidence of this?

15 MR. BONO: Yes, Your Honor.

16 MR. BETTIUS: Your Honor, it's not within
17 their accounting, it's not within their submissions.
18 The Court cut off any additional production of
19 documents as of October 1. These documents haven't
20 been produced to us as of today, and I object to it.

21 THE COURT: Objection's overruled. I'm not
22 ruling on whether the evidence would be admissible.
23 This is opening statement.

J.APP. 1263

1 MR. BONO: Thank you, Your Honor.

2 The terms of that transaction which converted
3 National Orthopedic Hospital from a not-for-profit
4 entity to a for-profit entity are strikingly similar to
5 what happened in this case with respect to JMHI. What
6 happened is the purchaser, a for-profit entity, simply
7 assumed the liabilities of National Orthopedic Hospital
8 in exchange for its assets.

9 And the liabilities primarily consisted of
10 bonds payable. There were \$8 million in industrial
11 bonds payable by the hospital. The assets of the
12 corporation only exceeded the bond liability by \$6,000,
13 and the purchaser simply created a constructive trust
14 for \$6,000 to be donated to charity.

15 The Attorney General of Virginia reviewed
16 that transaction and under the current law in Virginia
17 if they want to object they have 30 days, and the
18 Virginia Attorney General allowed that transaction to
19 proceed. I think it's a significant event in applying
20 the equities here, Your Honor.

21 I would also point out the many times
22 attorneys general act to recoup the tax benefits that a
23 not-for-profit hospital benefitted from, from either

J.APP. 1264

1 the federal government or the state government.

2 Oftentimes that is the theory behind which the state
3 seeks to impose a constructive trust.

4 Mr. Gilmore, in written documents, has said
5 that was what he seeks to recoup here, the tax benefits
6 that this hospital gained from the state. Well, in
7 this case Your Honor will recall there are not tax
8 benefits that Inc. gained, one, while it initially had
9 the tax-exempt status from the federal government, that
10 was revoked and the evidence has already shown that new
11 tax returns were filed and whatever taxes were due for
12 a for-profit entity were paid to the federal
13 government.

14 Secondly, Virginia never approved the
15 tax-exempt status of Inc. Therefore, there are no tax
16 benefits that this corporation obtained from either the
17 federal or state government.

18 When Inc. dissolved in 1973, the question has
19 come up and the Commonwealth likes to say, that the
20 directors of Inc. simply killed the corporation. The
21 facts are -- will show something quite different, Your
22 Honor. In fact, what happened at that time, and
23 testimony will show, was that the directors went to an

J.APP.1265

1 attorney and said what is the easiest way to dissolve
2 this corporation.

3 The attorney advised them simply don't pay
4 the franchise tax in Maryland and the corporation will
5 be dissolved.

6 Also, Your Honor, in 1974 and 1975, there was
7 testimony in this case, and there'll be further
8 testimony, that after the corporation was dissolved in
9 1973, what acts did the directors take. The
10 Commonwealth likes to argue that the directors took
11 actions of an ongoing corporation and, therefore, their
12 actions should be viewed by this Court as null and
13 void.

14 As Your Honor ruled and as the Virginia
15 Supreme Court confirmed, the directors were converted
16 by operation of law to trustees in dissolution after
17 1973. And I would ask this Court to examine what
18 actions the directors, in fact, took to make a
19 determination as to whether these actions were actions
20 running an ongoing corporation or were they actions
21 winding up the affairs of Inc.

22 I would respectfully submit to Your Honor
23 that all of the actions the directors took, and they

JAPP. 1266

1 weren't perfect, they weren't pretty, and the documents
2 aren't perfect, but if you examine the substantive and
3 legal impact of what the directors did, every act they
4 took after 1973 was an act that a trustee in
5 dissolution would take.

6 What did they do? Number one, the land had
7 not been transferred by deed yet, they hired Thorpe
8 Richards to do it. Mr. Richards did the deeds and the
9 land was transferred.

10 What did they do with the leases? They
11 canceled the leases and entered into new leases with a
12 separate entity. Again, an act winding up. You don't
13 transfer your property by deed and you don't cancel
14 your leases if you're running an ongoing corporation.
15 That is an action in winding up.

16 They also paid all the debts of Inc. or made
17 provision for it. There's no question in this case
18 that every cent of debt and liability on Inc.'s books,
19 whether you look at it in 1971 or 1973, was paid by the
20 directors. Again, an act mandated by statute in
21 Maryland and they fully did that.

22 So every action post-'73 is an action in
23 dissolution.

J.APP. 1267

1 Now, the Commonwealth also likes to take the
2 position, and their accounting takes the position, that
3 when Corp. in 1975 -- well, let me go back one second.

4 As Your Honor will recall, in 1971 the
5 partnership, Associates, owned the building.
6 Associates transferred all of its assets and
7 liabilities to Corp., and it had a -- since it was the
8 owner of the building, it had a right to transfer the
9 building to Corp.

10 Now, the Commonwealth comes into this Court
11 now and their accounting takes the position that in
12 1975, when Corp., which was the separate Delaware
13 corporation, transfers the building to JV, that's
14 somehow an act that's not authorized, can't be done,
15 they have a right to void it.

16 Your Honor, I don't know of any way that they
17 could take that position. If I own this pen and I give
18 it to Your Honor, and four years later you give this
19 pen to the Commonwealth, you have a perfect right to
20 transfer my pen to the Commonwealth, because I owned it
21 and properly gave it to you.

22 Inc. never owned the building. They have no
23 document that says they owned the building. In fact,

J.APP.1268

1 they've taken the position that Dr. Gondor's purchase
2 of the land -- they did this at the first trial -- is
3 not valid, because there was no deed.

4 Now, there is no deed in this case that
5 transfers the building at any point in time to Inc.
6 Since the Commonwealth's already taken the position
7 that you need a deed to transfer a building, they
8 cannot now come into this Court and take the position
9 that somehow Inc. has any claim to the building.

10 MR. BETTIUS: ~~Never have, Your Honor, and~~
11 ~~still don't, except the testimony --~~

12 THE COURT: Let him finish, Mr. Bettius.
13 I'll hear from you.

14 MR. BONO: Your Honor, when you examine the
15 accounting submitted by the Commonwealth, one thing
16 jumps out at you, and that is that their -- practically
17 their entire accounting is based on one document, and
18 it is the 1966 lease of the building that JMH signed in
19 1966. They claim that that document gives it the right
20 to the lease monies that were given to JV from Health
21 Group, from Inova, and the Inova settlement monies.

22 The only way that they could use the lease to
23 have a claim to those monies would be if the JMHI had

J.APP.1269

1 the right to sublet the building to another tenant.
2 The lease is quite clear and the Commonwealth can't
3 really dispute this, that the lease has a provision
4 that says, JMHI, you cannot sublet the building. That
5 is the operative document.

6 And so under that document they have no right
7 to any claims to future subleasing monies or rent
8 monies.

9 Now, let me examine, since Mr. Cochran
10 examined it in his opening statement, the -- now we've
11 come forward to 1982, Your Honor, when Health Group of
12 Virginia, an independent third party, came in and
13 leased the hospital building and began to run the
14 hospital.

15 Now, Mr. DenUyl, who is our expert on
16 hospital conversions and hospital valuation, will
17 testify that he did an evaluation of the operations of
18 the hospital as of 1982, and his testimony and evidence
19 would show that the hospital had a negative value of
20 \$181,000 at that time. Therefore, it had no ongoing
21 value. It had no license value.

22 Your Honor, this analysis that Mr. DenUyl did
23 for 1982 is the very same analysis that Your Honor

J.APP. 1270

1 agreed with in the first trial. Mr. DenUyl did an
2 analysis as of 1971, 1973 and 1975, in which he came up
3 with the same conclusions. He's done the exact same
4 analysis to show that at that point in time there was
5 no ongoing value and no value of the license for the
6 hospital.

7 That is a significant finding, Your Honor,
8 because the question at that point in time is were
9 there any assets of JMHI that existed as of 1973 that
10 could be pointed to as giving rise to any value, income
11 or revenue at the time HGV came into the picture.
12 Well, all of the liquid assets and receivables of JMHI
13 were already consumed years ago, because they were
14 dissolved nine years earlier or ten -- yes, nine years
15 earlier, Your Honor.

16 What could be pointed to? The only thing
17 that could be pointed to would be, would there be some
18 residual, ongoing value that would come into the
19 picture as a result of their goodwill or a result of
20 the license that JMHI held in 1973.

21 Well, if you examine the operations and
22 there's no value to that, there could not be any value
23 attributed to the ongoing value that would have been

JAPP.1271

1 JMHI's.

2 Your Honor, the HGV lease is what it is. It
3 is a lease that was entered into for the building. And
4 I would respectfully submit that the Commonwealth has
5 no claim, as I said, to any of the lease monies,
6 because they'd didn't own the building and JMHI's lease
7 could not be sublet.

8 Furthermore, on a very simplistic approach,
9 the space that HGV leased was far greater than the
10 space that was occupied by JMHI under its lease. Of
11 course they only claim the JMHI lease as being their
12 rights to get to the lease money. So at the very
13 outset, all of the space that was beyond what JMHI had
14 leased needs to come out of the picture. There is no
15 claim to any of those monies.

16 When Inova leased the hospital building and
17 other areas in 1985, they even leased a greater
18 portion. And, in fact, the lease covers the additional
19 22,000 square feet that HGV had leased, and in
20 addition, 18,000 square feet of an unfinished fourth
21 floor in which the Inova lease separately says \$375,000
22 of rent is for that.

23 I would respectfully submit that all of the

J.APP. 1272

1 area beyond the JMH lease is beyond the scope of any
2 constructive trust. Your Honor, the Inova settlement
3 that we've heard so much about in this case, which was
4 entered into in 1994, the Commonwealth likes to take
5 the position that the Inova settlement simply settled
6 the Inova lease that had been entered into in 1985.
7 That is simply not the case.

8 The facts will show the following. There are
9 several significant events that show that the Inova
10 settlement, or at the very least most of it, has
11 nothing to do with the Inova lease per se.

12 In 1992, after Inova had been in and running
13 the hospital from 1985 to that point, there was a real
14 estate transaction entered into between JV and Inova,
15 and this is referred to as the October 1992 letter
16 agreement. And what that letter agreement provided,
17 and it says that it essentially provided, was an
18 exchange of buildings. And the document, being an
19 exchange of buildings, did not disturb any leaseholds.

20 Now, under the agreement as signed, this
21 contract, the Jefferson building was to be deeded to
22 Inova and the Inova Cambridge Court headquarters
23 building was to be deeded to JV, a swap of these

J.APP. 1273

1 properties.

2 Now, in addition to that, what was going to
3 happen is Inova was given whatever rights it wanted to
4 do with the Jefferson building, but JV agreed to lease
5 back to Inova the Cambridge Court building under a
6 lease provision which is specified in the letter
7 agreement. It specifies the lease payments, what the
8 amount would be, what the escalators would be, et
9 cetera.

10 The letter agreement also specifically
11 provided that in the year 2005, Inova would have the
12 option to buy back the Cambridge Court building for \$20
13 million. Now, at that point in time the letter
14 agreement provided that the rent on the Cambridge Court
15 building would be increased to \$3 million a year.

16 Now, litigation -- after that contract was
17 signed, litigation was filed by Inova. They filed a
18 declaratory judgment action which basically challenged
19 JV's marketable title in the Jefferson building. That
20 lawsuit went through litigation, started trial and in
21 the process, Your Honor, in addition, a federal
22 anti-trust lawsuit was filed by Jefferson against
23 Inova, alleging that they had engaged in an attempt to

JAPP. 1274

1 monopolize the Northern Virginia market.

2 So at the time of July of 1994, two lawsuits
3 were in process, the federal anti-trust claim and
4 Inova's declaratory judgment action, which was over the
5 letter agreement. The settlement settled the two
6 lawsuits and settled the letter agreement.

7 What did it provide? It provided that the
8 two lawsuits would be dismissed and it also provided
9 that Inova would pay what was going to be paid as the
10 Cambridge Court rent. And it also -- the settlement
11 was that the \$20 million option was compromised to a
12 \$10 million payment, and also that the federal lawsuit
13 would be dismissed and the anti-trust claims would be
14 dismissed.

15 Why is this significant? Your Honor, the
16 Inova settlement had nothing to do with JMHI. It had
17 to do with the swap of the buildings; it had to do with
18 those two lawsuits and it had to do with the Cambridge
19 Court rent and the option to buy back the building,
20 none of which were assets which could conceivably be
21 argued to be JMHI's.

22 Your Honor, finally I would like to point
23 out, since this is an equity Court, that I would ask

JAPP.1275

1 the Court to examine what was the intent of the
2 Respondents at the time of the reorganization from
3 not-for-profit to for-profit. I think this is
4 significant in the Court applying equity in this case.

5 The intent was that there existed two
6 entities, JMHI, which had the operations, and JMHA,
7 which had the building and the equipment, which was the
8 partnership. JMHC was formed, and as the documents
9 show and the testimony will again show, JMHC agreed to
10 purchase all of the assets and liabilities of
11 Associates, which were the building and the equipment,
12 in exchange for 240,000 shares.

13 As to JMHI, JMHC was to acquire all of the
14 assets and liabilities of JMHI, which even the
15 Commonwealth's expert in his report says was a negative
16 book value of approximately \$400,000, in exchange for
17 which JMHC was supposed to give JMHI 5,000 shares. And
18 as Your Honor pointed out and as the Supreme Court of
19 Virginia pointed out, JMHC acquired the assets and
20 liabilities of A and acquired the assets and
21 liabilities of I, 240,000 shares were given to A, but
22 5,000 shares were not given to I.

23 And I would respectfully submit that if

J.APP. 1276

1 there's any constructive trust that would have to be
2 imposed in this case, that the only -- that a
3 reasonable approach would be -- and I say it in my
4 brief -- a constructive trust imposed on the 5,000
5 shares and what income or revenue would be deriveable
6 from those 5,000 shares to the present time.

7 That was the intent of the Respondents. It
8 was based, as Mr. Cochran said, on the Extended Care
9 prior offer, that the Respondents, the trustees in
10 1970, got an offer from a third party.

11 The testimony will show that the third party
12 said we'll give you, JMHI, \$25,000 worth of our --

13 MR. BETTIUS: Your Honor, that's a document
14 never produced.

15 THE COURT: Your objection's noted. Go
16 ahead, Mr. Bono.

17 MR. BONO: I gave this document to Mr.
18 Bettius six months ago and it's a trial exhibit.

19 THE COURT: Go ahead.

20 MR. BONO: Extended Care offered \$25,000 of
21 its common stock to assume all of the assets and
22 liabilities of Inc., and it also agreed it would have
23 the option to buy the physical plant for \$2,160,000.

1 This was a third-party offer.

2 It sets forth a ratio between JMHI's assets
3 and JMHA's assets of approximately 2 percent and 98
4 percent, even a little bit less than 2 percent. The
5 testimony will be that the trustees of JMHI, when they
6 were dealing with the 1971 transaction, used this
7 allocation to come up with the 5,000 shares that were
8 voted to JMHI and the 240,000 shares to go to JMHA.

9 Finally, Your Honor, and I've been up here
10 quite a while and I thank Your Honor for giving me the
11 courtesy of doing this. I also represent the Tauber
12 Foundation in this matter, and its interests. I would
13 just simply like to say that the Tauber Foundation is a
14 501(c)(3) organization. As the evidence has shown at
15 various points in time, land, stock and partnership
16 interests were donated to this entity.

17 It is now a 9.22 percent partner in JV, and I
18 would respectfully submit that those assets should
19 certainly be beyond the touch of any constructive trust
20 in this case.

21 Thank you, Your Honor.

22 THE COURT: Ms. Beach and Mr. Hirschkop?

23 MS. BEACH: No thank you, Your Honor.

J.APP.1278

1 THE COURT: Mr. O'Donnell?

2 MR. O'DONNELL: Waive, Your Honor.

3 THE COURT: Mr. Trenga, anything you want to
4 say?

5 MR. TRENGA: I would only say, Your Honor, as
6 the Court knows we have filed an interpleader action to
7 seek direction from the Court as to whom to pay the
8 proceeds of the 1994 settlement between Inova and the
9 Jefferson entity. We take no position as to the
10 underlying merits of the dispute that's being directed
11 in the other action. The only affirmative relief we
12 seek is the direction.

13 We would also ask that Inova be reimbursed
14 for its litigation expense incurred in connection with
15 the interpleader action. We will file the necessary
16 petition at the appropriate time in this proceeding.

17 THE COURT: Mr. Bettius?

18 MR. BETTIUS: Your Honor, this accounting,
19 there's one thing we can agree on, it's been a long
20 time coming.

21 One of the things I take very strong
22 exception to is that this Court, 25 years after the
23 fact, has imposed a fiduciary duty on these

1 Respondents. These Respondents assumed a fiduciary
2 duty when they formed a charity in 1965.

3 They provided in their articles of
4 incorporation that they would never receive private
5 inurement, because that was consistent with the law of
6 Maryland and Virginia.

7 This supposed similarity between corporate
8 dissolutions for non-stock corporations in Virginia and
9 Maryland, the statutes are virtually, and as our
10 Supreme Court said, the same. There is no difference.
11 All of these statutes are progeny of 501(c)(3) law.
12 The United States government extends enormous
13 privileges to charities, and they require in return
14 enormous responsibility, a clear division, a line of
15 demarcation between interests which shall not be
16 crossed.

17 As I listened to Respondents this morning,
18 they described a cup of vinegar as the sweet nectar of
19 the gods. Your Honor, like the first trial, we
20 discovered tens of thousands of documents. The
21 testimony in this case is really superfluous to the
22 records.

23 Mr. Bono should be listened to carefully,

J.APP. 1280

1 because his philosophy embodies the philosophy of their
2 accounting. Your Honor, if I can use an example, Mr.
3 Bono would say that if in 1965 I, as a trustee, were
4 given 10,000 share of IBM stock worth 30 to 40 cents a
5 share, and that I was, within six months, as a trustee,
6 required to give it back and I didn't, and I kept it
7 and I managed it and I did wonderful things with it,
8 and today it's worth \$1 billion, that he should only be
9 responsible to account for the money when the stock was
10 misappropriated in the first instance.

11 That violates every tenet of Virginia law. I
12 commend to the reading of the Respondents Handshaw
13 versus Day, relied on by the Supreme Court and this
14 Court in the opinion of this case, which says, you
15 shall not, during the life of a charity or thereafter,
16 receive any private inurement direct or indirect from
17 charitable proceeds.

18 Your Honor, it is very important to look at
19 intent and motive, and that decision in this case has
20 already been made. The Court found that the
21 Respondents, in their self-dealing with the charity's
22 assets were so driven by self-inurement and profit that
23 it led to the total obliteration of the charity.

JAPP. 1281

1 Now, is the accounting in this matter
2 submitted by the Respondents responsive to the Court's
3 order? Is it responsive to the requirements of
4 Handshaw? What do Respondents do? They take the date
5 closest to the statutory obligation to account and say,
6 okay, we're at this point going to create a
7 hypothetical balance sheet, not the real balance sheet
8 of the corporation. We're going to conduct a
9 hypothetical liquidation. And as a valuation expert,
10 I'm going to supply to you, the Court, my essence of a
11 sense of value of the assets.

12 This is not an accounting, Your Honor. It's
13 a motion to reconsider your first ruling. It's
14 precisely what you have here. The Court said,
15 consistent with Handshaw, that's not a defense.

16 Your Honor, how did we end up in the
17 situation of having assets exceed liabilities (sic)?
18 How did that happen? It was a purposeful corporation
19 structure that the IRS ultimately held was so violative
20 of federal law that it led to the revocation of
21 tax-exempt status. It was private inurement, private
22 inurement, private inurement.

23 How did they structure the corporation? It

J.APP. 1282

1 was permitted to own no assets. How were the
2 operations of the charity funded? They were funded,
3 Your Honor, by loans made by the Respondents on
4 favorable terms.

5 What about the hospital's operating
6 equipment? Even though the hospital paid for it and
7 the IRS said this supposed lease relied on in their
8 accounting is essentially, and I use quote, a skimming
9 transaction, the hospital wasn't permitted to own its
10 own equipment, notwithstanding that they paid for it.

11 Your Honor, as we examine the accounting
12 scenario, what we find is there was a purposeful
13 conversion of the assets of the charity that occurred
14 actually in 1971. Now, how did we get from here to
15 there? In 1966 they went to outside counsel for an
16 opinion, who looked at this off-record, on-record,
17 private inurement, and said to them I must caution you
18 that extraordinary transactions invite extraordinary
19 challenges.

20 They were warned in 1966 that they were
21 playing with fire in the way they were dealing with
22 this corporation. In 1969 the abuse was so flagrant
23 that the IRS, within a few years of the granting of the

JAPP.1283

1 charity's charter as a 501(c)(3), tax-exempt status,
2 began revocation proceedings.

3 In 1970, the Respondents go to an attorney
4 named Reeves, and Reeves tells them two things. You
5 have so abused this charity, you are in danger of
6 having the veil or corporate immunity pierced, and oh,
7 by the way, from a business point of view, this doesn't
8 make any sense. You're now a not-for-profit, but
9 you're going to operate as a for-profit.

10 Your Honor, is there the slightest indication
11 of financial distress in the motivations of these
12 Respondents in 1971? Dr. Tauber said they never
13 intended to go out of business. That's the absolute
14 testimony.

15 If you look at the corporate records, what
16 was their intention? Their intention was to go to Wall
17 Street to sell the stock and to get a profit and to
18 attract new investors to the hospital.

19 Your Honor, the accounting methodology to be
20 employed in this case is, in essence, very, very simple
21 if Respondents are not allowed to complicate it. What
22 is at issue in this case from beginning to end is the
23 garnering by the Respondents of private inurement.

J.APP. 1284

1 Private inurement is the question.

2 We have to look at Respondents' conduct to
3 first determine, as a matter of law, what their
4 reasonable economic expectation was to participate in
5 the operations of Jefferson. What was it? What did
6 they tell the Treasury Department? We are successful
7 physicians. We have no intention to profit from
8 operations of the hospital.

9 What did they tell Blue Cross/Blue Shield?
10 We have no interest in hospital operations. What did
11 Dr. Tauber tell this Court in direct testimony from the
12 stand? We never intended, nor was it right, to profit
13 from operations of the hospital.

14 Now, we have established, then, that their
15 economic expectation, at best, can be expressed in a
16 lease, and that's the 1966 lease. And Mr. Bono may
17 want to disregard it today, but Mr. Cobb, who is their
18 expert in this case, testifies that's his point of
19 reliance. It's the only valid obligation ever extant
20 between the parties. The only valid obligation that
21 ever existed between Respondents and the hospital which
22 divided their economic interests, and that lease was
23 for 99 years.

J.APP. 1285

1 If we proceed from there -- and, Your Honor,
2 it's critical to look at what JMHC is and never lose
3 sight of what JMHC is and what it's rights to operate
4 the hospital are. In 1971, pursuant to a plan to go to
5 Wall Street, JMHA, the Joint Venture, the constant
6 vehicle for profit by the joint venturers, swapped all
7 of its assets and liabilities, which included,
8 supposedly, the building and the assets attached to the
9 building, to JMHC.

10 And what did JMHC get, Your Honor? Never
11 lose sight of the 240,000 shares of stock. In effect,
12 all of the Respondents who were members of the Joint
13 Venture got percentage interests in the totally
14 controlled corporation JMHC for 240,000 shares of
15 stock.

16 Who has the hospital license? Who has the
17 right to operations? JMHC indicates that it's going to
18 assume all of the liabilities and assets of the JMHI,
19 because we'd have to ultimately determine who has the
20 right to operate this hospital. Who has the right to
21 that body of assets. Did that transaction take place?
22 No.

23 Mr. Bono talked to you about half the

JAPP. 1286

1 transaction. He said that the 5,000 shares never
2 issued. He then goes on to tell Your Honor that they
3 assumed the assets and liabilities. That can't be
4 right. In 1975, when they come back and they realize
5 what they've done and they're in the midst of trying
6 to, again, recapture the building because they've
7 exhausted all the tax benefits as found by the Supreme
8 Court, they repudiate that they'd ever assumed the
9 assets and liabilities.

10 In fact, they declared JMHI is in default of
11 obligations that are inconsistent with any assumption
12 of liability -- Dr. Palmer's contract is an agreement
13 made by JMHC with Dr. Palmer, in its first meeting.

14 They haven't paid the bonds. What bonds are
15 outstanding? The only bonds outstanding are the ones
16 reportedly assumed in 1971. JMHC is a corporate
17 outlaw. They have taken mom and pop who run the candy
18 store and locked them in the basement.

19 We are now operating and we continue in
20 operate, uninterrupted, without dissolution. Your
21 Honor, it is amazing to hear the Respondents, in light
22 of the Supreme Court's opinion, stand before this Court
23 this morning and say there were no assets and no

J.APP. 1287

1 liabilities.

2 The Court found that the entire motivation
3 for all of the transactions that occurred in 1973 and
4 '75 were profit driven. Profit driven. There is no
5 doubt they had no intention to go out of business and
6 Dr. Tauber told you in previous testimony that a very
7 significant even happened in 1973, the COPN law was
8 passed.

9 From that point on this hospital was like a
10 taxicab in New York that had one of those medallions.
11 If you don't have the medallion, you don't do business.
12 That hospital had an indisputable value. And look at
13 Respondents' position at this point. They have what is
14 conceded in every brief to be a white elephant without
15 the license, and they're personally liable on the loan.

16 Did it have value? Of course it had value.
17 It had value to them. It had enormous value to them.

18 Now, let's talk about this hypothetical
19 balance sheet that's carried forward. I've told Your
20 Honor, you have an outlaw operating. You have 240,000
21 shares of stock that have nothing to do with JMHI.

22 What we have at this point, Your Honor, is a
23 total commingling of the operations of the hospital

JAPP.1288

1 with the Respondents' interest as landlord and now
2 their outlaw corporation running the hospital
3 operations.

4 Now, Mr. Bono has literally, in his argument
5 and in his trial brief, turned the law of trustees on
6 its head. His view is if a trustee, in derogation of
7 his responsibility to wind up, commingles assets, that
8 the burden shifts to the beneficiary to sort out what
9 the wrongdoing trustee has done.

10 It's very interesting that in this regard he
11 cites a case decided by Judge Newman, and he cites a
12 learned treatise on trusts by Scott, Scott on Trusts.
13 What's very interesting is he doesn't tell you what
14 section that he's dealing with and he doesn't tell you
15 what Judge Newman's decision was about.

16 Judge Newman's decision and the law that Mr.
17 Bono cites deals with competing claims of creditors of
18 an insolvent debtor. If you want to claim a specific
19 right to assets of an insolvent debtor among competing
20 claims, you must trace with clear and convincing
21 evidence your right or entitlement.

22 That's got nothing to with this case. The
23 law in this case was decided a long time ago in a

1 series of cases. The trustee who commingles -- and
2 it's Bogart, it's Scott, it's every one -- has the duty
3 to segregate and specifically trace any contribution
4 which it may have had to the beneficiary's property.

5 Have they, in their accountings, done an
6 analysis of capital infusions and capital withdrawals?
7 I asked Mr. Cobb directly in deposition on several
8 occasions, can you show me infusion of any capital by
9 Respondents that isn't totally paid back? No.

10 Your Honor, I'm going to deal with this
11 stock. In 1972, before they decided to use net
12 operating losses, there was a critical potential tax
13 problem, so the Respondents went out and issued stock.
14 In what corporation? JMHC. They issue 60,000 shares.

15 What does Mr. Cobb do with this transaction?
16 He treats it as a debt. So an equity investment is now
17 treated in a hypothetical accounting as a debt and
18 interest is charged to it and it's carried forward to
19 1982.

20 Well, let's talk about the stock and let's
21 talk about this hypothetical balance sheet. Mr. Cobb
22 apparently did not read the previous revocations, and
23 that's why they want this to start at '73. It avoids a

J.APP. 1290

1 lot of issues.

2 In the previous tax revocation the IRS said
3 the equipment lease which he carries as a liability
4 with the stock is a sham, that the hospital really owns
5 the property that's in the equipment. How did they get
6 it? They issued bonds and assumed the debt and then
7 leased it.

8 Dr. Tauber, in discussions with Blue
9 Cross/Blue Shield, tells Blue Cross/Blue Shield it's
10 just a method for getting depreciation. The hospital
11 doesn't really owe us but a dollar a year, I think, is
12 where it went. So now we have two items on the balance
13 sheet that are liabilities.

14 What really happened to that stock? When
15 they went to do the sale and lease-back of the
16 hospital, they decided -- and Mr. Cobb always operates
17 in his dissolutions and liquidations with book value.
18 Book value.

19 Your Honor, you have heard testimony after
20 testimony of experts in valuation. I want to know when
21 Your Honor has ever heard, with the three approaches to
22 value, when anyone has come in and said I'm going to
23 use a hypothetical balance sheet with -- that's

J.APP.1291

1 historical in nature and, incidentally, creates nothing
2 for going concern value.

3 This Court said that absence of equity in the
4 corporation was a result not only of structure -- not
5 only of structure, but that it wasn't a defense. It
6 wasn't a defense because the Court recognized in
7 Handshaw -- excuse me, sir.

8 MR. COCHRAN: Your Honor, counsel's really
9 making closing argument.

10 MR. BETTIUS: No, I'm --

11 THE COURT: It's gotten beyond what you
12 expect the evidence will show is that rather than being
13 -- any liquidation occurring, and that's what -- in an
14 accounting he says, in his presentation, must, of
15 necessity, reflect what the Respondents did.

16 That comes right out of his accounting. They
17 didn't liquidate. They didn't wind up. They issue
18 this stock, so we have the equipment lease as a
19 liability in this hypothetical liquidation and the
20 stock.

21 Now, what happened to that stock? In '75
22 they decide to sell the building to themselves. This
23 is -- they're going to have C, who is the corporate

J.APP. 1292

1 outlaw, sell the building back to them. The Court
2 found why; they had exhausted all of the tax benefits.
3 They'd exhausted all of the net operating losses and
4 they want the building back.

5 Their accountant tells them in '73 and '74,
6 be careful. If you do that and you convey the building
7 back to yourselves, if you get it at less than market
8 value, you've created a dividend. You've gotten a
9 benefit in a corporate liquidation and you must pay.
10 The Respondents, never anxious to pay taxes, decided to
11 postpone the sale.

12 In 1974, Dr. Tauber gets into an argument or
13 disagreement with existing board members and resigns.
14 They begin to operate the hospital independent of Dr.
15 Tauber and start a series of improvements. Dr. Tauber
16 immediately comes in and says, by a special
17 stockholders' meeting, we're going to do two things.
18 We're going to sell the building to a joint venture and
19 he gets the stockholders to approve it at what price.
20 And it's critical what he does.

21 He indicates that we're going to buy the
22 building back for an assumption of its mortgage and 10
23 percent of its book value, which he calculates to be

J.APP. 1293

1 \$2,400,000, 240,000 at 10 percent. So they decide
2 they're going to do this transaction and that the
3 buildings are worth \$2.4 million and they're going to
4 pay 10 percent.

5 Two years later, when he's in a dispute with
6 his own directors, he tells them, you know, that
7 transaction was an undeniable dividend, and he's right.
8 It was an undeniable dividend.

9 As they get on with the transaction, Your
10 Honor, again, ever reluctant to spend their own cash,
11 they decide is there a way -- they attempt to decide is
12 there a way to complete this transaction without
13 spending any of our own money.

14 This is what they decided to do. Mr. Cochran
15 told you it was 12 percent return. They decide, and
16 there's no doubt about this, I mean, it's clearly
17 documented in the records, they're going to exchange
18 stock for bonds. They're going to pay for the bond \$6
19 for every share of stock that was issued at \$4.

20 Now, Your Honor, if my math serves me
21 correctly, that's not 12 percent, that's 50 percent.
22 That's a 50 percent dividend. What did they then do
23 with those bonds? They give the bonds to the hospital,

J.APP. 1294

1 and that nets the hospital \$11,000 in cash. But more
2 importantly, it voids the bonds.

3 There's an additional 20 percent of those
4 bonds, because it only takes 80 percent of them to get
5 to the 240,000. There's an additional 20 percent of
6 these bonds that remain outstanding. Dr. Tauber moved
7 that the doctors are permitted to convert those to
8 cash.

9 Your Honor, the total stock issue comes off
10 the books as a result of the sale and lease-back,
11 because Mr. Cobb didn't examine documents, and it's
12 very clear he didn't, it's going to be come very clear
13 with respect to this transaction, he continues this
14 liability on the books, and, in addition, Your Honor,
15 carries the bonds on the books. Both of these have
16 been substantially eliminated with the exception of the
17 excess bonds which continue on the balance sheet.

18 In a '75 dissolution, Mr. Cobb finds positive
19 value in the hospital but doublecounts the liabilities
20 and carries the lease. So if you take those, it's not
21 a small positive, it becomes a large positive. Your
22 Honor, you don't need testimony for this, it's in the
23 records. It's exactly what was done. J.APP.1295

1 Now, let's talk about this assumption of
2 liabilities and benefit to the corporation. The Court
3 has clearly held that any dealing entered into by and
4 between the Respondents and themselves with respect to
5 the corporation's charities are void. They realize in
6 '75 they have a problem.

7 So acting as JMHI on both sides of the
8 transaction, they purport to cancel the '66 lease. Mr.
9 Cobb rightly reckoned in his accounting that was wrong
10 and you couldn't do that. Everything that happened in
11 1975 with respect to transactions by and between the
12 Respondents that would attempt to modify the basis of
13 the use of the assets, which reside solely in JMHI,
14 JMHC has no interest, is void.

15 Now, what did they do in the '75 lease? And
16 they would present to this Court that it was a
17 beneficial transaction to this corporation. They have
18 now made the operating entity -- it is a stepchild and
19 it is a stepchild every step of the way -- they've made
20 the operator a tenant in its own building. They bought
21 the asset for 10 percent of its book value and assumed
22 a mortgage that they were liable for in the first
23 instance.

J.APP. 1296

1 That's the basis of their contribution. So
2 they've assumed what they already had. So they were
3 personally liable on it. They increased the rent to
4 \$112,000 and dramatically changed the terms of the
5 lease.

6 The way they changed the terms of the lease,
7 Your Honor, is materially important. They shortened
8 the lease to 20 years. They provide that any
9 improvements that the hospital wants, they're going to
10 get a 12 percent rider. Private inurement? Increased
11 rent, private inurement? I think so. I think under
12 the definition that's clearly what they are.

13 And in addition, Your Honor, they indicate
14 that at this time they're going to build some
15 additional improvements.

16 I'm going to look at this struggling
17 hospital. It's improved in 1968. In 1971 they seek
18 approvals for further expansion. In 1975, when this
19 merger's going on, what are they doing? They're
20 conducting improvements to the hospital. Improvements
21 are underway.

22 Now, Your Honor, in '75 we have this void
23 lease, this 1975 lease. Has there been any

1 contribution to the operations of the hospital that are
2 being run by C, by the Respondents, infusions of
3 capital that haven't been paid back? Zero. In fact,
4 for the only infusion of capital, they have been paid a
5 50 percent profit.

6 Now, let's examine the transactions of the
7 '70s. Your Honor, I'm going to tell you something, and
8 it's very important to me. I've told you in every case
9 that I've appeared before you in respect to this
10 matter, listen to my opening statement and hold me to
11 it transaction by transaction.

12 If at the end of the day I haven't reported
13 every one of these things correctly, hold it against
14 me. If there's any doubt about it, I'll have this
15 opening statement printed and tendered to the Court.

16 Let's talk about the 1970s, the post-1975
17 period. In 1966, and, Your Honor, in the '75 period
18 it's material that they had advice of counsel. I ask
19 the Court to reflect on its holding, because they
20 failed to tell counsel about mergers. They failed to
21 tell counsel that they misrepresented the corporate
22 status.

23 Your Honor, in every transaction they did, in

JAPP. 1298

1 every transaction they did, notwithstanding they
2 stripped all the benefits from C, who is the lessor?
3 Always follow the lessor, because if you follow the
4 lessor, you follow the license.

5 Every transaction of Jefferson -- every
6 transaction of Jefferson deals with the hospital as a
7 going concern. And what you're saying in those words
8 is you're dealing with the license. Who owned the
9 license? JMHI always, always owns the license. Under
10 Virginia law it could not be transferred. It could not
11 be assigned.

12 You can operate a hospital only two ways
13 under Virginia law, as licensee or operator of the
14 licensee. JMHI, from its beginning to its end was
15 always the licensee and everyone who operated, operated
16 as JMHI, except that JMHI told Virginia, told the
17 federal government, we are JMHI.

18 They filed tax returns that said that. They
19 misrepresented corporate status on dissolution over and
20 over, and that's how they used the tax law, that's how
21 they used the license.

22 1975, plans are already underway for another
23 expansion of the hospital. It's very critical that we

1 look at the events that surround that hospital, because
2 they've been totally ignored by Mr. Cobb, and they're
3 very critical events.

4 They intend to build -- it's like now you've
5 locked mom and pop in the basement and you're running
6 the business and the business is doing well, and you're
7 reinvesting. I want to live close to my business.
8 They want to build themselves a medical office building
9 for their own private practices, and they build it
10 right next to the hospital.

11 They decide that it's propitious, under the
12 circumstances, that the hospital occupy 22.5 percent of
13 the total space in this office building. They're going
14 to use it for hospital-related facilities. And what
15 does that do? It requires them to go to the state and
16 seek a COPN.

17 Now, what do they tell the state in the COPN?
18 They tell the state the totality of the expenses that
19 will ever be attributable to the hospital are \$98,000.
20 Health facilities says what? It's got to be more than
21 that. They said not to fear, we're going to execute
22 and prepare for you a lease agreement that says that
23 the hospital will never pay more than \$11,760 for the

1 use of the medical office building.

2 We're criticized because we validated that
3 lease. They say it's inconsistent with our position
4 that all leases entered into by and between the
5 Respondents with the trust property are void. What
6 they fail to understand is that, in connection with
7 that transaction, there was third-party oversight.

8 The Health Facilities and Health Department
9 of the Commonwealth of Virginia ensure that hospital
10 facilities are built and leased at reasonable cost.
11 Based on the representations of Respondents, they got a
12 COPN. They knew, and their own corporate records will
13 show, that they absolutely knew that those numbers
14 weren't right.

15 In the course of construction -- and it's all
16 constructed by Dr. Tauber's own personal construction
17 company, Westwood -- Westwood has to incur about
18 \$230,000 in notes. Your Honor, I do not exaggerate.
19 They're in a board meeting and the discussion is
20 Westwood isn't going to pay them, the Respondents
21 aren't going to pay them. This is their medical office
22 building. We're going to put them in the corporation.

23 The administrator says you can't do that.

J.APP. 1301

1 You've been subject to scrutiny. You've gone up there
2 and nobody believes your costs. We're going to do it.
3 They elect to it and to pay for them in such a way that
4 it's not reflected in their cost and expense sheet.
5 They hide it.

6 But right then -- and you talk about private
7 inurement -- for their own medical office building
8 which they have a lease for, they divert \$200,000-some
9 and take it from where? Hospital operating revenues.

10 The whole time during this period they're
11 telling us the hospital can't -- it just can't
12 function. It has no money, \$230,000. As the
13 construction proceeds, Your Honor, they decide that it
14 will be really a good idea for the hospital to be the
15 person who does the operation and maintenance and pays
16 all expenses.

17 They decide that they're going to do this for
18 50 cents a foot. The administrator goes, wait, you
19 can't do that for 50 cents a foot. He said you're
20 actually going to ask the hospital to assume -- it's in
21 the records -- two-thirds of the expense of the
22 operation of your medical office building and they're
23 only occupying less than 25 percent. It's not going to

JAPP.1302

1 wash. You're going to get in trouble. They do it
2 anyway.

3 So at this point we have another -- more than
4 \$100,000 a year being diverted from revenues to their
5 own private benefit, in contravention of an \$11,760
6 lease.

7 They're not finished, Your Honor. They now
8 have problems funding construction from their own
9 pockets, so they decide they're going to go take out a
10 mortgage. How much is the mortgage? Its's \$1.4
11 million. And they take out this \$1.4 million, and
12 guess who's responsible for it? The charity.

13 They have the charity responsible for it. So
14 before the charity even assumes occupancy of the
15 building, Your Honor, they're having the charity pay
16 more than \$240,000 a year in debt service for their
17 medical office building.

18 But that isn't all, Your Honor. What did
19 they do with the proceeds of the \$1.4 million? They
20 took \$400,000 of it and paid off the original mortgage,
21 which they had assumed, supposedly, as a consideration
22 for the sale and lease-back.

23 Your Honor, commitments of the Respondents

JAPP. 1303

1 with reference to this corporation are day tickets.
2 They're good for one day and one ride only, because a
3 year from now, they don't matter to us.

4 So what they now do, their equity
5 contribution to this \$800,000 construction loan, about
6 \$400,000 of that is used to pay that off. So we now
7 have the charity's continuous operation without
8 infusion of capital paying for their equity
9 contribution to the transaction. The charity's now
10 paying -- now has \$1 million moved over in the
11 construction.

12 In 1980, they make it official. They will
13 not and have not produced for us the '78 amendment.
14 We've seen it. We know what it's terms are. It's
15 described as assumption of the lease, the debt service
16 is between \$230,000 and \$240,000. We know it was paid.
17 They refuse or don't have or won't give us a copy of
18 that lease.

19 We do have a copy, Your Honor, of a 1980
20 lease that is -- that makes the loan official. I'm
21 sorry, Your Honor, I should have these facts committed
22 to memory. That 1980 lease says -- and it's very
23 important that the Court study it and the consideration

J.APP.1304

1 for it -- it says we're going to raise the rent to
2 \$240,000.

3 Your Honor, did they not just tell the state
4 two years before that the rent will never exceed
5 \$11,760? And they throw in some additional space, but
6 it's for improvements and excess costs and construction
7 of the medical office building.

8 What do they cite as consideration for the
9 lease, Your Honor? They cite as consideration of the
10 lease a 12 percent return provided for under the 1975
11 lease that's a void document.

12 There is no other consideration recited in
13 that document that's consistent with the '66 lease or
14 the lease with Health Facilities. It's a total
15 stranger. It's a wild card. It's private inurement.
16 There is as yet no basis, based on their own
17 accounting, for any increase of value of the hospital.

18 Now, Handshaw says you're not to profit
19 during and you're not to profit after. The Court said
20 account for the assets. Well, I'm accounting for the
21 assets. We've taken it as a body, and the Court said
22 going concern, and we've moved that going concern
23 forward.

JAPP. 1305

1 take their scenario for a moment. If the hospital's
2 worth nothing, its plant's obsolete and it's out of
3 date, why would anybody want it? Would it be the
4 license? Of course. I mean, under either scenario
5 it's the license. They bought an ongoing operation.

6 It's not the Commonwealth's fault that they
7 had commingled their interests. but HGV rapidly
8 separates them out, and half the transaction is not
9 reported by the Respondents. It's the part that
10 belongs to the charity.

11 HGV says to the -- as part of the deal, says
12 we will pay you a premium price of the tangible -- and
13 it is a premium price and both accountants will testify
14 to that -- they pay a premium price for the ongoing,
15 tangible operating assets of the corporation. It's the
16 right to use its license, its accounts receivable, its
17 patients. Your Honor, they walked in and bought the
18 hospital and maintained it as Jefferson.

19 When HGV came in there, there wasn't a
20 ripple. There wasn't a ripple. State officials said
21 it's no problem. It's an operation under the existing
22 license. There's correspondence to that effect.

23 What happens to the \$1.9 million? Very

J.APP.1308

1 critical. They never report it on the charity's books
2 or JMHC's books and it's their asset. It's clearly
3 their asset. It's never reported.

4 What did they do with the money? Your Honor,
5 it's very critical on how did they get there. They
6 take \$909,000 and what do they do with it? They redeem
7 stock at \$7 a share. If you'll do the mathematics,
8 Your Honor, that's over 140,000 shares. It can't be
9 the 60,000 shares that have already been redeemed. If
10 you go back to '75 and look at the change, the 60,000
11 were redeemed then.

12 What's this \$900,000 for? It's for real
13 estate. The only claim that JMHC has is the 240,000
14 shares that were issued for the real estate in 1971.
15 Respondents have now received \$1.1 million for their
16 original contribution of a construction loan for the
17 building.

18 So if that circle is now complete, that's a
19 totally inappropriate diversion of the revenue to pay
20 off the land interest that is not part of the
21 operations and never has been and never should have
22 been commingled in the first place.

23 What do they do with the rest of the money,

J.APP. 1309

1 Your Honor? They put it in the back to do what? To
2 pay off the \$1.4 million mortgage that's going to come
3 due in '84 and they invest it in high-yield securities.
4 They invest in high-yield securities, and later
5 corporate minutes tell us that the investment was so
6 successful that it not only paid the mortgage, it paid
7 for the fourth floor.

8 If you look at hospital operations to 1982,
9 we now find that they have taken off as excess revenue
10 rent, pursuant to the 1975 lease, they've paid their
11 office expenses, they've paid for office construction,
12 they've mortgaged the building and they've paid off the
13 entire debt contribution with a profit, not of 12
14 percent, they paid themselves back entirely and
15 stripped it all out of the charity.

16 What's the basis, the consideration for the
17 1982 amendment as revealed by their own documents?
18 They cancel the right -- in the 1975 lease, it's not in
19 the '66 lease, they cancel the right to cancel -- they
20 waive the right to cancel the lease on six months'
21 notice. That's not a provision of their original
22 lease. That's part of the private inurement, the
23 benefit they took in '75.

J.APP. 1310

1 So they're now reciting as consideration,
2 Your Honor, an amendment to a lease that's been
3 judicially voided as inappropriate, a, because it's
4 self-dealing and, b, because they had -- JMHI had no
5 corporate authority. So at this point we've now taken
6 off the entirety -- the entirety of all the money
7 that's paid for the tangible operations of the charity
8 and it's been put in the Respondents' pockets.

9 What's very interesting is, they then have to
10 deal with the \$1 million a year rent that HGV is
11 willing to pay. And all the money with respect to that
12 -- I'm sorry, Your Honor -- all the money I was talking
13 about, the \$1.9 million, they don't even explain that.
14 They just take it. They just take it.

15 The amendments to the lease pertain to the \$1
16 million that HGV is willing to pay for 10 years. They
17 have the corporation -- the operating entity, the day
18 before the lease is signed on February 10, 1982, enter
19 into an amendment to the '75 lease, which is void, and
20 it recites that in consideration that they won't --
21 they'll waive their right to terminate, and the second
22 consideration is we'll also assume the mortgage.
23 That's very big of them, since the money to pay it off

1 is in the bank. But they're going to do that.

2 They have \$100,000. They take \$900,000 of
3 that \$1 million based on that consideration, which is
4 no consideration at all, and they leave \$100,000 in the
5 operating entity. This is an operating entity that's
6 struggling, but they leave \$100,000.

7 Why did they leave \$100,000, Your Honor? Did
8 they express a reason for leaving the \$100,000? Yes.
9 They want to service their bonds. They want to pay off
10 their bonds. So what we'll see is that JMHC is totally
11 cut out of the transaction, and the only reasons it's
12 even left there are twofold; one to service the debt
13 and two, they can't even do the HGV deal without the
14 license. The license and the continuing operations and
15 the sale of the assets are absolutely important.

16 So while the Respondents' valuation experts
17 are telling you that the hospital is worthless, we see
18 a premium payment of \$1.9 million, taken off by the
19 Respondents, and a lease value which you can discount
20 back for present value of \$1 million a year for 10
21 years.

22 The hospital at this point is valued by HGV
23 as a going concern, which Your Honor said they must

J.APP. 1312

1 account for, at over \$10 million. Right then and
2 there.

3 And, indeed, we do depart at this point. We
4 say that anything above the lease belongs to us.
5 You're entitled to whatever you bargained for in '66.
6 You said that was your participation and pursuant to
7 Handshaw and the ruling of this Court, anything else is
8 private inurement.

9 We give them credit throughout our accounting
10 for the totality of the rent and the amendments that
11 took place with respect to the medical office building.

12 From this point forward, Your Honor, they
13 resist and say well, you should tax-affect these
14 proceeds. My answer is why. If you paid taxes on
15 these and they were erroneously paid, it's because you
16 breached your fiduciary duty. If you paid them in
17 error, go to the IRS and file an amended return, and I
18 dare these Respondents to raise these issues with the
19 IRS.

20 The point, in fact, is that this money
21 belonged to charity. There's no doubt it belonged to
22 charity. It's directly traceable to charity and we
23 don't have to trace it, Your Honor.

JAPP. 1313

1 MR. COCHRAN: Your Honor, counsel is
2 continuing to argue.

3 THE COURT: Again, Mr. Bettius --

4 MR. BETTIUS: The very fact of commingling
5 obviates our obligation to trace, but we do. We do.
6 We trace every dollar.

7 Let's move forward. It's interesting in
8 their accounting, they want to ignore the '85 Inova
9 transaction, and, indeed, I can understand why.
10 They're not into the HGV deal two years when Dr. Tauber
11 notices a default. He tells HGV you're in default of
12 your lease because you're not keeping up with accounts
13 receivable.

14 Why he's concerned about that, his money's
15 coming in every month, but he starts bargaining for the
16 hospital in 1985. Are there willing suitors? They're
17 coming out of the woodwork. And it's interesting that
18 two of those suitors are qualified 501(c)(3)s,
19 Georgetown Hospital wants it and is willing to pay
20 millions for it, and Fairfax wants it and they're
21 willing to pay millions for it.

22 If this is such a defunct, awful
23 organization, it isn't worth anything, and the

JAPP. 1314

1 Respondents are charitably motivated, why don't they
2 just give it to them? They don't do that.

3 They do a deal in July of 1985 that's
4 contingent on Fairfax being able to go out and buy
5 HGV's what? Operating rights, which include the right
6 to use the license and the tangible and intangible
7 assets. What do they pay for it, Your Honor, \$5.8
8 million.

9 Incidentally, Mr. Cobb, who is their
10 accounting expert, reports in detail about this '83
11 transaction. He never read it. He never saw it. So
12 he mis-cites the consideration. They said there are
13 considerations in that lease and Mr. Cochran apparently
14 hasn't read it either. In his brief he says there were
15 considerations to build additional space.

16 Well, there were no such considerations.
17 There's a random note about that financial statement.
18 Actual correspondence between HGV and the Respondents
19 shows there was never any such intent. There was a
20 discussion of constructing improvements and HGV will
21 lend the money. That's all there was and they never
22 were going to operate, in any sense, as the lessee of
23 those improvements.

J.APP. 1315

1 But we go forward in 1985, and Fairfax has
2 now paid \$5.8 million to HGV. Mr. Cobb reports the
3 underlying lease transaction as follows. He indicates
4 that their -- as consideration for a lease amendment
5 they agree to cancel the obligations under the '75
6 lease.

7 What obligations? The lease to Fairfax is
8 triple net. The mortgage has been paid and all there
9 is is revenue to collect. That's all there is. But
10 they cancel it.

11 Again, Your Honor, is it a conflicted (sic)
12 transaction? You can imagine who signs on both sides
13 of the deal. Respondents cancel JMHC's lease, which
14 was an -- inappropriately canceled in 1975.

15 What's the new consideration, Your Honor? It
16 starts at about \$1,650,000 and accelerates to over \$2
17 million a year. Under the circumstances of that lease,
18 they then have JMHC assign the lease and cancel it.
19 They have, for the first time, united income from
20 operations with the right to receive rent.

21 Now, Your Honor, if we're going to sit here
22 and apportion values, what's been contributed to the
23 net rent pool in both the HGV and in the Fairfax

J.APP. 1316

1 leases? If you believe them, the building's obsolete,
2 it isn't worth anything. The hospital can't compete in
3 the area. The only thing that everybody's after is the
4 license.

5 Both valuation experts ignore the market
6 transaction and ignore the separation of entities.
7 JMHC simply is an interloper, has now operated for a
8 number of years without significant or traceable
9 capital contribution by the Respondents.

10 I asked their accountant what did they
11 contribute. Your Honor, in our capital withdrawal
12 analysis, the Respondents, not as rent, as capital
13 withdrawals, took \$16 million. Now, these hardworking
14 physicians had been substantially rewarding themselves.
15 In addition, they're taking off rent and they're taking
16 all the tax benefits off.

17 Incidentally, we've never gone back and tried
18 to tax them for the depreciation benefits, the other
19 benefits they've received from tax deductions, and it's
20 impossible to understand how to tax-affect their
21 proceeds, Your Honor, because they're a partnership.
22 The income is then distributed out to the various
23 partners and we don't know what they paid in tax and

JAPP. 1317

1 they've never given us any basis to make those kind of
2 allocations if we wanted to.

3 Now, what happens? Dr. Tauber has been
4 admonishing the Respondents since the '80s. He said
5 you guys are getting very fat now. You're making a lot
6 of money and you're also killing the golden goose.
7 You're no longer supporting the hospital. It's census
8 is falling apart.

9 Fairfax, if you don't stop this, is going to
10 lose its license and we're going to kill the goose
11 that's laying the golden egg. He says in
12 correspondence after correspondence, we can attempt to
13 blame Fairfax for this, and the fault is not in the
14 stars, my friend, the fault is in us. We're not
15 supporting the hospital. It's declining. And he's
16 precisely right.

17 Incidentally, Fairfax can't make changes,
18 because Dr. Tauber is assured his position as medical
19 director and by side letter agreements the Respondents
20 have all assured their privileges and positions in the
21 hospital. These are side letter agreements to the
22 lease.

23 By 1992 the situation is critical for Inova.

J.APP.1318

1 Now, if what they say is true about what happened, why
2 didn't Inova just shut down and pay the rent, if that's
3 what this case is about? They couldn't. The lease
4 provided as follows. If Fairfax, for any reason,
5 terminates the license, the doctors can come back and
6 operate the hospital at Inova's expense.

7 Inova has an unacceptable risk. They can't
8 conduct operations profitably at the hospital, but they
9 must protect the license. And if they don't protect
10 the license, the Respondents can do it and charge them.
11 Now, these are the provisions of the lease.

12 An agreement called the October 14 binding
13 letter agreement is entered into. Now, at this point
14 all the land and improvements are paid for and they're
15 worth, depends on if you listen to their appraisal
16 expert, our appraisal expert, Your Honor, both
17 appraisal experts are of the highest quality and
18 integrity. One is Tom Reed, the other one -- and I
19 don't even know why we argue about this -- the other is
20 Scott Humphrey. The Court knows both of them.

21 The value of the paid-for improvements is
22 between \$6 million and \$7 million. So in the sale and
23 lease transaction Inova's going to get \$6 million or \$7

1 million and they have a long-term health care operative
2 called Integrated, who is going to come in and take the
3 hospital.

4 They're also going to take the licenses and
5 see if they can persuade the state to allow them to
6 move them to other areas. What nobody thought about at
7 the time is Inova couldn't transfer the license and
8 they couldn't own the license. That later was going to
9 cause Inova problems. That license is simply not
10 transferable and it's not purchasable.

11 Inova starts doing due diligence and we find
12 problems in the title. Inova says wait a minute. You
13 guys don't own this thing, the charity owns it. We
14 can't do this deal.

15 So litigation is filed. Integrated's gone.
16 The licenses during the period of litigation go down
17 the drain. There's nothing here except now an empty
18 building with no use and Inova says we're not taking
19 it, because you don't have title to it.

20 The only way Inova concluded it could
21 legitimately take title to that building was by
22 donation or payment to a third-party charity, and
23 Respondents were having none of that. That wasn't the

1 way this transaction was going down. They wanted the
2 money.

3 Well, what happens? Your Honor, they void
4 the lease agreement, the binding letter agreement.
5 They specifically say it's void. So any consideration
6 of that being rent is totally inappropriate.

7 What's very fascinating about this case, Mr.
8 Cobb says I can't account for the \$10 million at the
9 end. He can't account for any of the money. Mr. Bono
10 says it's surrogate rent. For what? Inova's now not
11 getting the \$6 million worth of real estate. It's not
12 getting the right to use the licenses or argue for
13 their transfer.

14 What they've said is, and it's pure and
15 simple, we're going to pay you for the license. If
16 Your Honor can find any other consideration in there at
17 all, you have to search for it and it could possibly be
18 this anti-trust suit.

19 Now, if the anti-trust suit is examined, it
20 says that, Inova, as a corporate health care predator,
21 has invaded what? The land and buildings, uh-uh, it's
22 affected the operations. It has taken down a
23 competitor. Who would the damages belong to in such an

J.APP.1321

1 anti-trust suit? They'd have to belong to the
2 operator.

3 This is like somebody arguing in an AT&T
4 transaction that a landlord of some injured person is
5 entitled to the proceeds. This anti-trust suit is an
6 inveiglement, if it has any consideration at all. How
7 do you apportion it for commingling purposes.

8 Your Honor, in summary, every transaction
9 involved in this hospital represents, at best, a
10 commingled opportunity.

11 They then, in apportioning in their
12 accounting the rights to receive rent, charge us at \$20
13 a square foot for the third floor medical office
14 building because they canceled the lease that we had
15 for \$11,760 a year. They then -- and we never had a
16 lease with them that provides for that.

17 In the bidding between Georgetown and
18 Fairfax, the deal was ultimately awarded to Fairfax
19 because they'll pay for an empty shell fourth floor
20 that nobody uses. It really is shelled-out space and
21 they now want to charge us because they put that as a
22 term in the Inova agreement. They want to charge us
23 with that rent.

J.APP. 1322

Your Honor, they can't charge us with rent for anything, nothing was rented. Under that settlement agreement the Court can come, I respectfully submit, to only one conclusion, they bought the license. These people never had a right to the license.

What did they do with JMHC after they had stripped out all the benefits in 1985? They did exactly what they did before with JMHI, they let it die. Only there's one problem with the way they let it die; it had a \$500,000 receivable on its books from Dr. Tauber never accounted for.

Your Honor, with respect to this portion of the testimony, we don't have to trace anything that we've done.

Now I want to talk about Dr. Tauber's \$9.9 million claim that that should be credited against the Tauber Foundation. It can't happen. The 9.9 percent interest comes from Dr. Tauber. We're not talking about his purported land interest. His contribution of shares to the Tauber Foundation in 1975, for which he took a tax benefit.

Your Honor, they all need to go back tonight

1 and consider that position in light of Handshaw.

2 Handshaw is a case that shows how stringent the
3 application of this law is. In Handshaw a volunteer
4 fire department dissolved and they were trying to
5 figure out what to do with the assets. Nobody intended
6 that they would go anywhere but to charity, anywhere
7 but to charity.

8 So what they say is each member will show up,
9 we'll decide what you're entitled to and you can give
10 it to the charity. The Court said absolutely not. You
11 never had any right to receive the proceeds or benefit
12 directly or indirectly. Whether it's going to charity
13 or not, it doesn't qualify, so you can't do that.

14 So Tauber's transaction doesn't qualify under
15 Handshaw. But in addition to that, Your Honor, Dr.
16 Tauber's foundation, and I'm sure its goals are very
17 worthy -- incidentally, in that stock transfer, they're
18 saying that the situation at Jefferson was so deeply
19 troubled that the hospital's value, he takes a \$15 a
20 share tax deduction for the stock.

21 In 1981 -- in valuing transactions in '75,
22 the hospital administrator, in written form, says the
23 value is between \$15 and \$30, and certainly anybody who

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1 contributed at \$15 is safe. In addition to that, Your
2 Honor, we have contemporaneous sales in that time
3 period of hospitals to Circle Terrace and Commonwealth
4 Doctors of millions of dollars. So that's beside the
5 point.

6 So in any event, we now come to the last
7 question for resolution in this case, who owns the real
8 estate and who owns the land and buildings, and that's
9 easy. They elected to rely on a quiet title case,
10 which the Court says doesn't bind us at all.

11 Your Honor, we've submitted the testimony of
12 Ms. Vella, which is uncontradicted, and the testimony
13 of Mr. Richards.

14 The conveyances made by Dr. Tauber were in
15 the following form. Dr. Tauber grants, in fee simple,
16 with the right -- reserving his right to the
17 improvements. Richards' testimony and Vella's
18 testimony are identical on this issue. That gives you
19 the right to come in and tear down the improvements and
20 that's all. You don't have a continuing right, and
21 there's Virginia case law on that point.

22 So the hospital had a right to come in and
23 tear down and remove the improvements, which they never

1 exercised. We recognize Dr. Tauber's 25 percent
2 contribution in 1965 to his Tauber Foundation, and
3 that's his. There's no doubt about it. Actually, if
4 there's doubt about it, we don't contest it.

5 But this Court and the Supreme Court made
6 very specific rulings about the 1970 subdivision. Your
7 Honor pointed to that as a marker of inappropriate
8 self-dealing with the charity's assets, and, indeed, it
9 was.

10 But this Court and the Supreme Court said
11 something very important. It was an attempt to dilute
12 the previous 65 percent undivided interest. Your
13 Honor, that means that as of 1970 the hospital had an
14 undivided majority interest, 65 percent, and there's no
15 other way to read that opinion, and it's consistent
16 with another doctrine of law, since we're here doing
17 equity. It's called estoppel by deed.

18 Because when that transaction was
19 participated in, they ignored any off-record
20 conveyances. They purportedly made the conveyances
21 based on the on-record transactions, and guess who
22 participated? Dr. Gondor.

23 Ms. Vella's testimony is uncontradicted

JAPP. 1326

1 through any number of sources, and I've been here a
2 long time, the title to this hospital's property and
3 assets, except for the 25 percent, reside in the
4 charity, and the improvements are left on the ground,
5 because the exercise of the right to remove them
6 belonged to the charity.

7 Do we want that land back? Your Honor, it's
8 very difficult for us. They have created so many
9 conflicting interests with it. We have a claim to it.
10 We're going to assert the claim. It's of much greater
11 value to them. Incidentally, Your Honor, with respect
12 to this claim for rent under the Inova settlement
13 agreement, the Respondents have had complete and
14 exclusive possession of the real estate since 1994
15 under the settlement agreement. They're now marketing
16 it for an Alzheimer's center.

17 They've produced no records which would give
18 Your Honor, if he wanted to make such a credit, rent --
19 an appropriate rent credit for their use and occupancy
20 of the property, which has an assessed value of over \$7
21 million. That's not our burden. That's their burden.

22 You don't have any evidence from which you
23 could apportion what was supposedly rent and what they

1 supposedly received. In any event, Your Honor, any
2 allegation that this is rent is totally removed when
3 you look at the essence of the transaction.

4 Your Honor, you've been very patient with me.
5 I think, if you don't mind, I'm going to ask my
6 co-counsel if there's anything else.

7 Your Honor, I thank the Court for your
8 indulgence.

1 Whereupon,

2 ROBERT BRUCE DENUYL

3 was called as a witness and, after having been first
4 duly sworn by the Clerk of the Court, was examined and
5 testified as follows:

6 REDIRECT EXAMINATION

7 BY MR. COCHRAN:

8 Q Mr. DenUyl, the stocks that were exchanged
9 for bonds in 1975, would you describe those bonds that
10 were received as high-risk?

11 A Given the financial condition --

12 MR. BETTIUS: Your Honor --

13 THE COURT: Do you want to open the door, Mr.
14 Cochran? Do you want to open the door and let Mr.
15 Bettius get back up?

16 MR. COCHRAN: Not if I can help it, Your
17 Honor.

18 THE COURT: That's the same kind of question
19 that Mr. Bettius was asking. If you want to ask it,
20 I'll let him answer it.

21 MR. COCHRAN: I won't ask that question, Your
22 Honor.

23 THE COURT: All right. Mr. Bono?

J.APP. 1329

1 MR. BONO: Just very briefly, Your Honor.

2 THE COURT: All right.

3 MR. BONO: I won't open any doors.

4 THE COURT: We'll see.

5 MR. BONO: I hope not. If you think I am,
6 tell me and I'll withdraw the question.

7 REDIRECT EXAMINATION

8 BY MR. BONO:

9 Q Mr. DenUyl, you were asked several questions
10 about the rent being increased in 1980. Can I direct
11 your attention to Exhibit 1 of your report?

12 A Yes.

13 Q And you have a line under operating expense
14 which says, rent, land and building and equipment. By
15 that were you aggregating the rent for all of those
16 three items?

17 MR. BETTIUS: Leading.

18 BY MR. BONO:

19 Q What did that line represent?

20 A Just what it states, the rent for the land,
21 building and equipment.

22 Q Now, the increase in the rent that Mr.

23 Bettius was referring to is \$340,000 in 1980 and then
J.APP. 1330

1 \$535,000 in 1981; did those numbers include land,
2 building and the equipment?

3 A Yes.

4 Q Now, with respect to the stocks of Jefferson
5 Memorial Hospital Corporation, except for the
6 conversion of bonds that you were questioned about, did
7 you see any evidence in the financial statements that
8 any other form of dividends were paid with respect to
9 those stocks at any time from 1971 to 1982?

10 MR. BETTIUS: They were redeemed, Your Honor.

11 MR. BONO: I made the exception.

12 MR. BETTIUS: The witness said they were
13 redeemed in '75.

14 THE COURT: He can answer if he knows.

15 THE WITNESS: Yes. I didn't see any
16 dividends.

17 BY MR. BONO:

18 Q Now, with respect to the bond transactions
19 that Mr. Bettius was asking you about, were these bonds
20 transactions during the period after 1971?

21 A Yes.

22 Q And were all of these bond transactions and
23 stock transactions and redemptions of the bonds and

J.APP. 1331

1 conversions of the stocks to the bonds, did they all
2 relate to Jefferson Memorial Hospital Corporation?

3 A Yes, they did.

4 Q Did any of those transactions relate to the
5 charity, Jefferson Memorial Hospital, Inc.?

6 A No.

7 Q So, in your opinion, would there then be any
8 private inurement with respect those transactions?

9 A Not if they considered themselves a private
10 entity at that time.

11 Q Now, you were also asked questions with
12 respect to whether this \$1.4 million mortgage and
13 mortgage payments appeared on the financial
14 statements --

15 MR. BETTIUS: Your Honor, the door is open.

16 BY MR. BONO:

17 Q You were asked that question, correct?

18 A I'm sorry. I was distracted.

19 Q You were asked questions about whether the
20 \$1.4 million mortgage that supposedly existed, whether
21 it appeared on the financial statement or not that you
22 looked at?

23 A Yes.

J.APP. 1332

1 Q And I believe your response was no?

2 A No, it was not on the financial statements.

3 Q So then, whether there was a mortgage or not,
4 was there any effect with respect to the opinions you
5 have rendered based on your analysis of the financial
6 statements?

7 A No, I did not rely on the financial
8 statements.

9 MR. BONO: I have no further questions.

10 RECROSS-EXAMINATION

11 BY MR. BETTIUS:

12 Q Mr. DenUyl, if you service a mortgage from
13 operating revenues, don't you diminish cash?

14 A I'm sorry? What was question?

15 Q If you're servicing this mortgage from
16 operating revenues and your analysis is based on cash
17 in, cash out, and you're servicing the mortgage from
18 operating revenues, then the mortgage definitely
19 impacts your analysis, doesn't it? How are you paying
20 it?

21 A Well, I guess I don't understand the context
22 of your question.

23 Q Pardon me?

JAPP. 1333

1 A What's the context of your question?

2 Q The man asked you if you've got this mortgage
3 increase and it relates to the land, then it doesn't
4 relate to the operations. Where is the mortgage being
5 paid from?

6 A I'm sorry. I'm really confused about what
7 you're asking.

8 Q Who's paying the mortgage and from what
9 source of revenue?

10 A At what time?

11 Q 1982, 1981, at all times.

12 A The mortgage is being paid by JV at that
13 time.

14 Q Are you sure about that? Isn't it true that
15 the mortgage was, in fact, paid by the hospital and
16 they had to back those transactions out because they
17 were having tax problems?

18 A I don't have any knowledge of that. The
19 mortgage was -- resided with the corporation that owned
20 the real estate.

21 Q Well, but if the rent was tied to the
22 mortgage and you're saying that the costs increased, if
23 the rent's tied to the mortgage and they had the

J.APP. 1334

1 hospital assuming and paying the mortgage, isn't that
2 paid out of operating expenses?

3 A If that's the case.

4 Q Well, doesn't the rent, in fact, become the
5 mortgage?

6 A No. I don't know that that's the case at
7 all.

8 Q What was the rent in -- well, another
9 question you were asked is was this stock for bonds
10 private inurement, and you said not if they considered
11 themselves to be a profit entity?

12 A Right. Their tax status was revoked in '70,
13 so as far as they knew at that time, they were a
14 private corporation.

15 Q Are you aware that subsequent to dissolution
16 you're not supposed to profit from charitable assets?

17 A I'm not sure what you're asking.

18 Q Are you saying that their responsibilities
19 with respect to charitable assets end upon termination
20 and they're no longer responsible for how they deal
21 with the charity's assets if they don't wind up?

22 A Well, you're assuming that it's one -- that
23 they had knowledge of this, I guess. I guess I don't

JAPP. 1335

1 understand what you're saying. If they were a private
2 corporation a that time, then there wouldn't be private
3 inurement issues.

4 Q But if they weren't a private corporation in
5 terms of dealing with the charity's assets, it is
6 private inurement, isn't it, and that's the issue?
7 They didn't wind up, did they?

8 MR. BONO: Your Honor, let --

9 THE WITNESS: That was 25 years later when
10 they learned that.

11 BY MR. BETTIUS:

12 Q It was 25 years? Did they not know that
13 their corporate charter had been revoked? And are you
14 aware, Mr. DenUyl, they represented a month after it
15 had been revoked that they were in good standing? Are
16 you aware of that?

17 A I'm not sure what you're asking.

18 Q Well, in any event I just want to understand,
19 is your hypothesis that as soon as they become
20 not-for-profit and they don't wind up, they can then
21 deal with the charity's assets as they wish?

22 A You're saying if they don't wind up?

23 Q Yes. They continue operating the charity.

JAPP. 1336

1 A Well, isn't that a hypothetical, though? I
2 mean, ultimately that's what was determined by the
3 Court, but at that time they thought they were private.

4 Q There wasn't any hypothetical about them
5 misrepresenting to the state the status of their
6 corporate existence, was there?

7 A I can't comment on that.

8 Q All right. Well, let me ask you this. Do
9 you concede that operations of the charity -- you've
10 had their income statements -- were continued without
11 interruption, without public notice, from the date that
12 the -- from 1971 forward as a continuing and going
13 concern?

14 A That they considered themselves?

15 Q That Jefferson was a going and continuing
16 concern, never shut down, never any public notice,
17 patients never told. It operated consistently as
18 Jefferson Memorial Hospital; is that correct?

19 A Until 1982.

20 Q It continued after '82, didn't it?

21 A No, it was operated by HGV and then Inova.

22 Q Wasn't it still called Jefferson Memorial
23 Hospital?

J.APP. 1337

1 A Well, actually it changed the name. It was
2 changed to Jefferson Hospital when Inova got it.

3 Q And I want to ask you, sir, and then I'll
4 stop, how in your valuation do you ignore a sale at
5 \$1.9 million with a 10-year -- that's a quantifiable
6 sum of cash; isn't it? That went for the charity's
7 operating assets, is that correct, the \$1.92 million
8 paid by HGV?

9 A That was for the assets, as I've testified.

10 Q Who did those assets --

11 MR. COCHRAN: That's not proper recross on
12 that.

13 MR. BETTIUS: He started talking about
14 private inurement, Your Honor.

15 THE COURT: Stop. I'm going to let him do
16 it.

17 Go ahead, Mr. Bettius.

18 BY MR. BETTIUS:

19 Q Who did that \$1.92 million belong to?

20 A Corp.

21 Q Did Corp. ever have any interest in the
22 operations, and when did it get them if it did?

23 A Yes, it had an interest in the operations.

1 Q When did it acquire the right to the license
2 and the right to operations? What transaction?

3 A In 1971.

4 Q When?

5 A '71.

6 Q The Court said it didn't happen.

7 A Well, it was called for in 1981.

8 Q I know what it was called, but that's a
9 continuous body of operating assets, is it not, that
10 was a going concern from '81 -- '71 right up to that
11 sale in '82?

12 MR. COCHRAN: Your Honor, we're just arguing
13 issues.

14 MR. BETTIUS: We're not.

15 THE COURT: That sounds argumentative, Mr.
16 Bettius.

17 MR. BETTIUS: Your Honor, I want to know who
18 the \$1.92 million belonged to.

19 THE COURT: You can ask him that question.

20 BY MR. BETTIUS:

21 Q Who did the \$1.92 belong to?

22 A It belonged to Corp.

23 Q On what basis?

J.APP. 1339

1 A They owned the operating assets.

2 Q When did they get them? When did they get
3 the operating assets?

4 MR. BONO: He just asked that.

5 THE WITNESS: Well, now you're going back.

6 BY MR. BETTIUS:

7 Q I just want to ask you when they acquired it.

8 A They thought they acquired them in '71.

9 Q So they got this on the basis that they
10 thought they acquired. All right. Did they report
11 this money on the charity's books? Did C or the
12 charity ever report the receipt of \$1.92 million?

13 MR. COCHRAN: Your Honor, he asked this
14 question on cross originally.

15 MR. BETTIUS: No, I didn't.

16 THE COURT: I thought you did. Go ahead.

17 BY MR. BETTIUS:

18 Q Was it ever reported on the charity's books?

19 A The charity being C, if you want to call it
20 that.

21 MR. BONO: Objection, Your Honor. He can't
22 call C the charity. He can argue it, but he can't call
23 it that for this question. Mr. DenUyl --

JAPP. 1340

1 THE COURT: That's what the problem was, Mr.
2 Bettius.

3 BY MR. BETTIUS:

4 Q Was it ever recorded in the operating entity,
5 the receipt of \$1.92 million?

6 A Yes.

7 Q How? Will you show me any note on the
8 financial statement that reports the sale? I'll give
9 you the financial --

10 A All right. I'll give you the financials.
11 They had -- they paid out \$909,000 to shareholders.

12 Q I'm asking you --

13 A Let me finish.

14 THE COURT: Let him finish his answer. If
15 it's not right, you can follow it up.

16 THE WITNESS: The cash increased, the
17 receivables, all of those were indications of exactly
18 what happened.

19 BY MR. BETTIUS:

20 Q Not an indication. I'm going to ask you if
21 the sale is reported. Show me where the sale's
22 reported.

23 MR. COCHRAN: What is this?

J.APP.1341

1 THE COURT: What are you showing him?

2 MR. BETTIUS: The financial statement for the
3 year 1982, and it's Exhibit --

4 BY MR. BETTIUS:

5 Q Read the exhibit number off the front, Mr.
6 Cobb (sic). What's the exhibit number?

7 A It's 715.

8 Q Show me the reported sale. Not the effect of
9 it on the book, show me the report of the sale.

10 A I'm telling you what the effect it.

11 Q No. I want to know if the sale's reported.

12 MS. BEACH: Your Honor, I just want to
13 clarify. He's handed forward the 1982 financial
14 statement and asked if the sale's reported in the '82
15 financial statement?

16 THE COURT: That's correct.

17 MS. BEACH: Thank you.

18 THE WITNESS: Well, it may not be reported --

19 BY MR. BETTIUS:

20 Q I just asked you is it reported --

21 A -- because it was an asset purchase, not a
22 stock purchase, so the corporation survived. So they
23 sold some of the assets.

J.APP. 1342

1 Q Are you telling me that this is an event that
2 wouldn't be reported on the ordinary balance sheet of a
3 corporation, the sale of all of its operations and
4 assets? You're telling me that's a transaction you
5 wouldn't report?

6 A You'd think there'd be some note about the
7 transaction, but certainly the effects are all over
8 here.

9 Q Let's talk about the effects. Nine hundred
10 and nine thousand is paid for stock.

11 A Right.

12 Q Now, the only stock outstanding is the
13 original 240,000; isn't that right?

14 A Well, 217,000 as of 1981.

15 Q But it's the residue of the 240,000; is that
16 correct?

17 A The residue? I don't know.

18 Q There were only two stock issues in the
19 corporation; isn't that correct?

20 A Well, there were some redemptions and
21 purchases along the way.

22 Q We know the total 60,000 was redeemed; is
23 that correct?

J.APP. 1343

1 A Yes.

2 Q So this \$900,000 of money that flowed was for
3 the stock that was issued for the purchase of the land;
4 is that correct?

5 A I'm sorry? The what?

6 Q This stock was originally issued for the sale
7 and transfer of the hospital building by the JMHA, the
8 joint venture group, to the individual partners; is
9 that correct, as corporate members? That's the stock?
10 That's how they got it?

11 A I don't -- again, I don't know individually
12 who got the stock.

13 Q Do you know of any stock issue other than the
14 original one for 240,000 shares and the second one for
15 60,000 that was totally redeemed, by your own
16 testimony?

17 A Well, there were certain small sales and
18 purchases along the way.

19 Q So can we take it the \$909,000 of this \$1.9
20 million paid for the assets of the operating entity was
21 paid to the Respondents to redeem stock that was
22 originally issued for the land that was never part of
23 the operation of the charity?

J.APP.1344

1 MR. BETTIUS: Did that lose you, Your Honor,
2 because it's very important. I want to make sure we
3 understand.

4 BY MR. BETTIUS:

5 Q This 240,000 -- 240,000 was issued to
6 Respondents for the payment of the hospital building,
7 is that correct, the 240,000 that was issued in '71?

8 A The real estate, yes.

9 Q All right. The only money that ever hit
10 operations of the hospital was 60,000 shares that had
11 been redeemed by 1982; is that correct?

12 A Yes.

13 Q So the only stock outstanding has nothing to
14 do with hospital operations or any asset that was ever
15 within the operating entity; is that correct?

16 A Well, you had stock during that period of
17 time that was accumulated and these assets, the
18 receivables and inventory, were as a result of the
19 operations.

20 Q Mr. DenUyl, you know full well, do you not,
21 that the entity never had any interest in that real
22 estate and they paid for it by rent; isn't that
23 correct?

J.APP. 1345

1 A C had the real estate for a while, and then
2 they did the transaction with JV.

3 Q In 1982, there is no basis for that stock
4 claim being against any entity in operation; is there?

5 A I don't know what you mean.

6 Q You do know, don't you, Mr. DenUyl, that
7 payment --

8 MR. COCHRAN: Your Honor, that's arguing --

9 THE COURT: He said he didn't know, Mr.
10 Bettius.

11 MR. BETTIUS: I'm sorry.

12 BY MR. BETTIUS:

13 Q That payment can only be attributed, isn't
14 that correct, to land -- stock that was issued for land
15 in -- for land and buildings in 1971?

16 A No, because the accumulation of the accounts
17 receivable and inventory during that period of time,
18 until '82, was for the operations of C.

19 Q What did operations have to do with the
20 redemption of stock in 1982 that was issued originally
21 for land? That stock's issued for land, isn't it, for
22 real estate?

23 A The accumulation of those assets that were

J.APP. 1346

1 bought by HGV were largely the result of the increase
2 in accounts receivable, inventory less payables during
3 that whole period of time. In fact, in 1971 there was
4 a negative book value, so you could attribute it all to
5 C.

6 Q So you're telling me, then, this \$900,000 in
7 shares that's redeemed really results from the
8 operations of C?

9 A From --they're paying for the assets, the
10 receivables, the inventory, all of that.

11 Q Do you understand that the Court held that
12 the merger never occurred?

13 A You've asked me that.

14 Q All right. You understand that?

15 A Yes.

16 Q How did the land ever get into the operations
17 of the hospital, because C had no right to the
18 operations of the hospital, did it?

19 THE COURT: We're going around in a big
20 circle here, Mr. Bettius.

21 MR. BETTIUS: Your Honor, we have C, who has
22 never acquired the operations --

23 THE COURT: I understand that.. I keep

1 getting back to the fact that this particular witness
2 on these issues is probably not the right place for
3 this. I understand your argument and your theory.

4 MR. BETTIUS: But, Your Honor, he says that
5 it had no value as -- in terms of where it was going.
6 Of course it didn't, they took all the money. They
7 took all the money.

8 THE COURT: He doesn't know that. He said --
9 again, we're back to where we were 40 minutes ago.

10 MR. BETTIUS: Let me ask him another
11 question.

12 BY MR. BETTIUS:

13 Q What happened to the rest of the money? What
14 did they do with the rest of the money?

15 A The rest of the consideration?

16 Q Yes, \$1.92 --

17 A At the time it was still on the books of
18 Corp.

19 Q Did you see corporate minutes that said they
20 invested it to pay off the mortgage and that they were
21 successful in those investments?

22 A Ultimately, they did, yes.

23 Q And they paid for it out of those HGV

1 proceeds; is that correct?

2 A Yes.

3 Q Why is the operating entity being charged
4 with the mortgage that's attributable to ownership of
5 the land by the Respondents?

6 A It wasn't the operating entity anymore. When
7 they paid off the mortgage it was operated by HGV.

8 Q No, sir. That money, the residue of the \$1.9
9 million, belonged, did it not, to the operations of the
10 hospital? It's attributable for the sale of the
11 operation of the hospital; is that correct?

12 A Up until that point in time when they stopped
13 operating, yes.

14 Q And then the Respondents then used the money
15 to pay off their mortgage on their property; is that
16 correct?

17 A They made some investments which increased in
18 value that allowed them to pay off their mortgage.

19 Q Well, why is the operating company, again,
20 paying for land they don't own -- for a mortgage and
21 improvements they don't own?

22 A I guess I don't understand.

23 Q Well, if the proceeds belonged to the

JAPP. 1348

1 operating entity, why is the operating entity using the
2 proceeds to pay off the Respondents' mortgage on their
3 land and buildings?

4 A Well, I don't know that they thought of
5 separating it, because it was a private corporation.

6 Q Everything's all commingled during this
7 entire period of time and they really think of it, as
8 you said, all of the accounts receivable and
9 everything, are all together? Isn't that the way they
10 thought about it and they commingled it?

11 A Well, to the extent that they were owned by
12 some of the same people, that might be true. But the
13 point was, what is the value of the operations and what
14 was the consideration paid for it.

15 Q And it's just too broad to sort out for you?

16 A No, no. I've explained. They paid for --
17 the operations didn't have much value and the rest went
18 to the receivables and the inventory.

19 Q Well, they don't have a lot of value if
20 you're paying off stock, do they, that was issued for
21 land and you're paying off the mortgage on the
22 buildings?

23 A It was just a liquidation of those assets.

1 Q Now, are you telling me that the hospital as
2 a going entity had very little value, and that they
3 came in to buy off competition, to right off
4 competition, HGV (sic)? What did they buy?

5 A Inova, you're talking about?

6 Q Yes. You're saying the hospital -- if you're
7 doing the analysis for HGV, this hospital doesn't have
8 any value. You've looked at its operations and it has
9 no value; is that right?

10 A They said there's very little value.

11 Q What are they buying then?

12 A They bought those assets.

13 Q Why, did they want the license so that they
14 could get in and compete?

15 A No, I think they thought they probably could,
16 perhaps, do better.

17 Q Well then, it had an asset value to a
18 purchaser in the market that was \$1 million a year
19 lease, did it not, and they were willing to pay a
20 premium for the assets? As a valuation expert, and the
21 Court looks at these issues all the time with respect
22 to valuation, we have a market transaction with the
23 subject where someone's coming in and paying \$1.9

1 million, which is a premium for the operating assets
2 and they're paying \$1 million a year for the lease, and
3 you're telling me that the hospital as a going concern
4 has no value?

5 MR. BONO: Your Honor, I object to the
6 question. He is mischaracterizing the facts. He's
7 testified -- his own expert says that the premium was
8 only \$250,000, not \$1.9 million. His own expert's
9 report --

10 THE COURT: What objection is that? What
11 rule of evidence does that fall under, Mr. Bono?
12 You're making an objection because the evidence doesn't
13 support Mr. Bettius' question? I'll overrule that
14 objection.

15 THE WITNESS: Can I answer the question?

16 THE COURT: Go ahead.

17 BY MR. BETTIUS:

18 Q Please.

19 A HGV attributed only about \$240,000 for that
20 intangible asset.

21 Q I'm not talking about how they attributed it.
22 They were willing --

23 A They were the buyer. They were the --

J.APP. 1351

1 THE COURT: Stop, sir.

2 BY MR. BETTIUS:

3 Q Were they not willing to pay \$1.9 million for
4 the operating assets?

5 A I understand what those assets are,
6 receivables, inventory.

7 Q License?

8 A License.

9 MS. BEACH: Your Honor, I object. He won't
10 let the witness finish. They're both going and I
11 understand that.

12 THE COURT: We've been through this. We've
13 been through this a couple of times.

14 MS. BEACH: There's so much argument going on
15 here from the questions, it just needs to be asked and
16 answered. I object.

17 BY MR. BETTIUS:

18 Q Is it a market transaction with the subject?

19 A Yes.

20 Q And let's take the total value of that
21 subject. It's \$1.92 million in cash, right?

22 A Approximately.

23 Q And we've got a 10-year lease at \$1 million a

JAPP. 1352

1 year; is that correct?

2 A Correct.

3 Q Now, we can discount that back for present
4 value and we can come to a value of that lease, can't
5 we?

6 A Well, they only operated for three years.

7 Q Looking at the transaction prospectively, it
8 has a value going forward of \$10 million and you've got
9 to discount that back; isn't that right?

10 A No, no, no. You're paying for the lease to
11 use the property going forward. All that was paid was
12 the value of those operating assets.

13 Q If we're looking at the value of the market
14 transaction going forward, the purchaser is obligating
15 itself to pay \$1 million for 10 years; is that correct?

16 A That's no different than someone renting a
17 store and signing a lease. They pay a certain amount
18 every year.

19 Q I understand that.

20 A The value of that store, though, is the only
21 -- the increased value above the expenses, including
22 the lease.

23 Q Mr. DenUyl, let me ask you the question. We

1 now have an amalgamation of rights being purchased, and
2 the obligations being purchased bring to the seller \$10
3 million in potential rental going forward; is that
4 correct?

5 A Yes.

6 Q And \$1.9 million in assets?

7 A Right.

8 Q The hospital has no value, in your testimony,
9 as a going concern; is that correct?

10 A Yes.

11 Q Then what do we attribute the value to? You
12 said the right to compete. What do you need to compete
13 in the marketplace?

14 A NO, no, no, no. You're confusing the dates.
15 The right to stop competition is what Inova wanted.
16 What they bought, according to their own books and
17 records, they bought -- paid very little for the
18 intangible value of the hospital. The rest went to all
19 the underlying assets, including payments for leases.

20 Q Then why would Inova come two years later and
21 pay \$5.8 million for HGV's position and then agree to
22 pay lease payments up to \$2 million a year until the
23 year 2005, Mr. DenUyl? You've got a worthless entity

1 here that's failing.

2 MR. BONO: Let him answer the question.

3 MR. BETTIUS: That is the question.

4 THE COURT: You tend to go on and on with
5 your questions.

6 MR. BETTIUS: I apologize.

7 BY MR. BETTIUS:

8 Q Why would they do that? Is that a market
9 transaction with the subject?

10 A Well, I've already testified that Inova had a
11 lot of reasons to do this, defensive reasons, referral
12 patterns. Furthermore, they didn't even pay \$5.8. The
13 true value was more like \$3 million.

14 Q Did they not write a check for \$5.8 million?

15 A Right. But they -- but a debt was assumed.
16 You have to net that out.

17 Q I understand that. So we've got a \$5.8
18 million payment and you said they had reason -- are
19 they a willing buyer?

20 A Yes.

21 Q Not under any compulsion to buy?

22 A Right.

23 Q You've got a willing seller?

J.APP. 1355

1 A Right.

2 Q Now, why isn't that a market transaction that
3 attributes value to a going business?

4 A It was, and I've shown that Inova made no
5 money, had to close the hospital.

6 Q I totally agree with you.

7 A Their reasons were not related to the value
8 of the license.

9 Q Well, how could they get into this
10 transaction without a license? Could a hospital
11 operate without a license?

12 A No.

13 Q Weren't they paying, in effect, if the assets
14 had no value as a going concern, as you've testified,
15 and the hospital's obsolete and unable to compete, what
16 are they paying for other than the license?

17 A Well, first of all, I didn't testify
18 regarding the value as of 1985, because we don't have
19 financial statements as of that date. But secondly,
20 and very importantly as Inova said, they paid for a lot
21 of non-pecuniary reasons related to the stand-alone
22 entity Jefferson Memorial. It was related to their
23 system and the defense of that.

J.APP. 1356

1 Q Would it be fair to say that the amalgamation
2 of rights that this transaction went down as a going
3 concern, correct?

4 A I'm sorry?

5 Q Both the Inova and HGV transactions were
6 going concern transactions; is that correct?

7 A Yes.

8 Q And you're telling me that there are mixtures
9 of reasons, some the license, some not the license?
10 You need a license to operate, right? Isn't that
11 correct

12 A Right. But I think that mischaracterizes
13 what I'm saying.

14 Q And they bought the tangible and intangible
15 operating assets?

16 A Yes.

17 Q Are you telling me it's so commingled you
18 can't separate it?

19 A Not at all. I'm talking about the operating
20 value of the hospital in 1982 when HGV paid just a
21 couple hundred thousand over the asset value and then
22 when Inova came in, they did pay some consideration
23 related -- unrelated to that stand-alone entity that

1 we're trying to figure out what the charity is worth.

2 Q Where is the value in the various rights of
3 the parties, the Respondents -- you tell the Court if
4 you can, sir, how to divide the purchase price, and
5 it's not just 200 over. They paid \$1.9 million, and
6 they paid a lease payment of \$1 million --

7 MS. BEACH: I object. He's arguing with the
8 witness, Your Honor.

9 THE COURT: Mr. Bettius, we've been through
10 this.

11 BY MR. BETTIUS:

12 Q Well, I want to know how you allocate the
13 value between what the Respondents have and what the
14 charity has in these two settings. Can you come to a
15 dollar value?

16 A Sure. I mean, if I can have Mr. Wilson's
17 report I can show you what HGV paid, the premium, it
18 was a couple of hundred thousand dollars. That would
19 be the premium and then in 1985 I did not do an
20 analysis because we did not have financial records.
21 But much of it, according to their own records, was
22 unrelated to that stand-alone entity value.

23 Q I'm trying to understand what you're telling
JAPP. 1358

1 me. How much do you attribute to the real estate and
2 how much do you attribute to the operations?

3 A The operations didn't have significant value
4 in 1982.

5 Q All right.

6 A The real estate had value. They were leasing
7 it for a significant sum of money.

8 Q So a single-purpose building, if we were to
9 take your analysis, is then worth all the money in the
10 transaction except for \$200,000?

11 A No. I'm just saying 1.7, approximately for
12 the value of the assets and then they had an ongoing
13 lease payment of \$1 million a year.

14 Q And you're telling me that the lease payment
15 is independent of the assets. How do we attribute the
16 value to the -- just tell me this. How do I attribute
17 the value to the real estate?

18 A They signed a lease to lease the real estate
19 for that amount. That tells us what the value of the
20 real estate is.

21 Q Would they have leased it without the license
22 and the ongoing operation of the hospital?

23 A No.

J.APP.1359

1 MR. BETTIUS: No further questions.

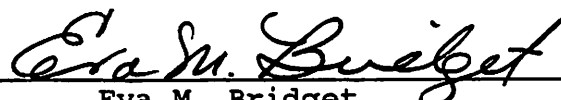
2 THE COURT: Thank you, sir. You're free to
3 go.

4 (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 30th day of March, 2000.



Eva M. Bridget
Verbatim Reporter

J.APP. 1361

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

----- -x
COMMONWEALTH OF VIRGINIA, et al., :
Complainants, :
v. :
LASZLO N. TAUBER, et al., :
Respondents. :
----- -x

COPY

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. 1362

APPEARANCES:

On Behalf of the Complainants:

MARC E. BETTIUS, ESQ.
DEBRA FITZGERALD-O'CONNELL, ESQ.
INA C. CHARVET, ESQ.
Lawson & Frank
6045 Wilson Boulevard, Suite 100
Arlington, VA 22205

RICHARD S. SCHWEIKER, JR., ESQ
Assistant Attorney General
Office of the Attorney General
900 Main Street
Richmond, VA 23219

ANTHONY J. TRENGA, ESQ.
Miller & Chevalier, Chartered.
655 15th Street, Suite 900
Washington, DC 20005

On Behalf of the Respondents Tauber, et al.:

STEPHEN G. COCHRAN, ESQ.
JAMES KINSEL, ESQ.
The Jefferson Law Firm, P.L.C.
6862 Elm Street, 7th Floor
McLean, VA 22101

GASPARE J. BONO, ESQ.
Long, Aldridge & Norman, L.L.P.
701 Pennsylvania Avenue, N.W.
Suite 600
Washington, DC 20004

BARBARA BEACH, ESQ.
Beach and Associates
416 Prince Street
Alexandria, VA 22314

PHILIP HIRSCHKOP, ESQ.
Hirschkop & Associates
108 North Columbus Street
Alexandria, VA 22314

KEVIN M. O'DONNELL, ESQ.
Henry & O'Donnell, P.C.
4103 Chain Bridge Road, Suite 100
Fairfax, VA 22030

J.APP. 1363

C O N T E N T S

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
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Robert DenUyl		4		
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EXHIBITS	IDENTIFIED	RECEIVED
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None.		
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J.APP. 1364

P R O C E E D I N G S

Whereupon,

ROBERT BRUCE DENUYL

was called as a witness and, after having been first
duly sworn by the Clerk of the Court, was examined and
testified as follows:

CROSS-EXAMINATION

BY MR. BETTIUS:

Q Mr. DenUyl, you understand Mr. Cobb, who
testified in this case, is also a valuation expert; is
that correct?

A I don't think he testified as a valuation
expert.

Q You didn't read his report?

A I did, yes.

Q Did he not make value judgments based on the
balance sheets to attribute values to Jefferson?

A I think his was more an accounting.

Q It's an accounting?

A Yes.

Q Well, he comes to -- based on an accounting
basis to a value of \$16 million in '92 in one scenario
and you come to zero. Are those very widely disparate

JAPP. 1365

1 numbers?

2 A What year are you talking about?

3 Q Pardon me?

4 A What year are you talking about?

5 Q 1992.

6 A Well, what he's done --

7 Q I didn't ask you what he's done. I've asked
8 you don't you come to widely disparate results.

9 A No. I think we're consistent in this.

10 Q In other words, if the Respondents are going
11 to pay zero, that's the same as paying \$16 million?

12 A No, you're mischaracterizing what Mr. Cobb
13 said.

14 Q Didn't Mr. Cobb say that based on the
15 investment of funds from 1982 at a certain rate, doing
16 exactly what you're doing, a valuation analysis, that
17 this hospital would generate \$10 million -- \$16
18 million, \$6 million of which would be subject to tax?
19 Do I misstate his report?

20 A Yes.

21 Q Well, tell me what he said.

22 MR. BONO: Your Honor, this is beyond direct.

23 I asked this witness no questions about Mr. Cobb, and
JAPP.1366

1 if Mr. Bettius wants to talk to Mr. Cobb, I'm sure
2 he'll cross-examine him.

3 MR. BETTIUS: We're going down the same line.
4 We've got two accountings, in effect, filed. He's here
5 testifying to a zero value. They've furnished in one
6 of their alternate accountings \$16 million, Your Honor.
7 The Court can read it. The conclusion is clear.

8 I want to understand where we are, who is
9 offering the accounting and who is offering the values.
10 I have --

11 THE COURT: I said earlier I thought they
12 could offer alternatives. I mean, if this is one
13 scenario they want to argue about and the other witness
14 has another opinion, they're free to offer that as
15 well.

16 MR. BETTIUS: I'm trying to understand what
17 accounting I am defending. Am I defending his analysis
18 of zero or am I defending Mr. Cobb's analysis of \$16
19 million? I don't know. Let's come back to that.
20 We'll approach it from a different direction.

21 THE COURT: All right.

22 BY MR. BETTIUS:

23 Q You understand, do you not, that we're

J.APP.1367

1 dealing here with two closely-held entities, all
2 controlled by the Respondents?

3 A Which two are you referring to?

4 Q All periods.

5 A I'm sorry?

6 Q Did JMHI or JMHC ever have any independence
7 from the Respondents?

8 A I can't comment from a legal standpoint.

9 Q Well, don't you think it's -- did you read
10 the Court's prior opinion?

11 A I did.

12 Q Did you read the part that said that the
13 Respondents were so motivated by their desire for
14 profit that they obliterated the charity?

15 A I did, yes.

16 Q Before you gave your testimony, did you think
17 it was appropriate to come here and see how they
18 obliterated the charity?

19 A No. I think my job was to evaluate what the
20 going concern value of the hospital was.

21 Q Well, when you're doing your analyses for
22 various attorneys general and you're looking at
23 closely-held corporations, don't you look to see if

1 there's some scrutiny about how the expenses are being
2 accounted for?

3 A In general. We have to rely on the financial
4 statements.

5 Q Well, let me go back and ask you this. It's
6 your testimony that based on hospital operations -- and
7 I'd say that by late 1981 the hospital was in very bad
8 condition, almost underwater; is that correct?

9 A From a cash flow standpoint, that's right.

10 Q All right. I'm going to show you the minutes
11 of the stockholders' -- who is in a better position to
12 judge the hospital at this period of time, you or the
13 people who were actually running it?

14 A Well, it depends on what the valuation is. I
15 don't think they have a valuation person.

16 Q I'm going to show you an exhibit which is
17 832.

18 We have a copy for the Court.

19 THE COURT: Go ahead.

20 MR. BETTIUS: It's 832.

21 BY MR. BETTIUS:

22 Q Would you take a look at that exhibit, sir?
23 Does it indicate that the hospital's functioning at its

JAPP. 1369

1 highest census since its founding?

2 A Yes.

3 Q Does it indicate that it's functioning at the
4 highest census of any hospital in Northern Virginia?

5 A Yes, and as I said, the revenues grew. It
6 also said that their profitability declined.

7 Q Where does it say that?

8 A At the bottom.

9 Q How did it decline? They adjusted expenses,
10 didn't they?

11 A The expenses are very high.

12 Q Let's talk about the expenses, Mr. DenUyl.
13 Have you analyzed any of the expenses between the
14 Respondents and the Corporation? Did you do an
15 analysis to see if the expenses were, in fact,
16 justified or legitimate?

17 A I looked at the financial statements.

18 Q Well, did you not have produced to you the 60
19 boxes of documents that detailed the history of the
20 hospital?

21 A I believe I looked at those that were
22 relevant.

23 Q Well, let me ask you a question, sir. Did

1 you look at the income statement? .

2 A Yes.

3 Q And you're indicating, as I understand, the
4 hospital wasn't able to pay rent, it had very little --

5 A No, no, no. That's not what I said. I said
6 it was -- it was a break-even operation at that time.

7 Q What was the rent that was due in '80 and '81
8 under the leases?

9 A I don't have that with me.

10 Q Wouldn't it have been more like \$120,000,
11 wouldn't it?

12 A It jumped after 1979 when they put the
13 additions on.

14 Q Well, I'm going to talk about that. It
15 jumped up by \$11,760, didn't it?

16 A It went up more than that.

17 Q Are you aware that -- I know it did jump up a
18 lot more than that, but did you know that the hospital
19 had a binding lease and representations to state
20 authorities that the value of the lease would never
21 exceed \$11,760?

22 A I heard your opening statement.

23 Q Did you examine documents that indicated

J.APP. 1371

1 that?

2 A Well, I looked at what they actually paid in
3 lease payments.

4 Q Well, would you tell me what rent they
5 actually paid in 1981?

6 A They didn't give me the financial statements.
7 I don't have them up here.

8 Q Do you have the basis for your report here?
9 Which financial statement do you want?

10 A Well, whenever you want me to tell you what
11 the rent was.

12 Q Let's look at 1981. While you're doing
13 that, what was the basis for lease payments in 1981?
14 You said there were some additions?

15 A Yes.

16 Q What lease amendment are you speaking to,
17 sir?

18 A I'm speaking to the addition. The addition
19 of the ICU, the Georgetown Lab.

20 Q All right, sir. You're reflecting income and
21 expenditures. I want to know what the rent provided
22 for under documents was and I'm going to ask you if you
23 know or you ever examined it?

J.APP.1372

1 A I don't know. I probably looked at it, but I
2 don't recall. I looked at what they were actually
3 paying.

4 Q Well, have you read Mr. Cobb's report that
5 we're limited to -- that the Respondents' expected
6 return from this hospital is limited to leases, the
7 1966 lease and amendments to the '66 lease?

8 A I can't speak to what Mr. Cobb said.

9 Q Well, before you can judge whether expenses
10 are reasonable or not -- let me withdraw that.

11 If I'm a person who can control the operation
12 of a hospital -- what were corporate tax rates at that
13 point in time?

14 A Forty-some percent.

15 Q Doesn't it behoove me to expense every cent I
16 can out of the hospital and distribute it to myself in
17 any way I can to keep it from being taxed?

18 A Well, you're assuming there were any
19 distributions made. I never saw that there were.

20 Q Well, distributions come in different ways,
21 don't they, Mr. DenUyl? If you're the landlord, you
22 can take it off as a landlord, can't you?

23 A Assuming your lease payment isn't reasonable

1 and they put on --

2 Q I'm not going to ask you to assume anything.
3 Let's assume I can control the lease payment any way I
4 want to. I can take off whatever I want, can't I?
5 Isn't that true?

6 A I don't know if it's true.

7 Q If I sign on both sides of the transaction --

8 MR. BONO: Your Honor, can I just ask Mr.
9 Bettius to let the witness finish his answer?

10 MR. BETTIUS: I didn't mean to interrupt him.

11 MR. BONO: He's interrupted him several
12 times.

13 THE COURT: You tend to -- your voice tends
14 to dive before you finish the answer. Try to keep your
15 voice up.

16 BY MR. BETTIUS:

17 Q If I can control the expenses just by signing
18 on both sides of the transaction, it behooves me to get
19 it up, doesn't it, the rent and other expenses?

20 A I don't know that it does.

21 Q I'm going to ask you, Mr. DenUyl, if the
22 hospital wasn't paying -- I'm using figures for the
23 income statement that I understand you and Mr. Cobb

1 relied on, in excess of \$400,000 and \$500,000 a year in
2 rental payments --

3 A What year are you talking about?

4 Q '80, '81 and '82. Tell me what rental
5 payments were being made in those years.

6 A Well, you were going to give me the financial
7 statements.

8 Q Do you not have any of your records with you?

9 A I don't have the financial statements.

10 Q Do you have an income statement?

11 A No, I didn't bring it up.

12 MR. COCHRAN: If I can interrupt counsel, I
13 have Mr. Cobb's exhibit book that has all the
14 financials in it.

15 MR. BETTIUS: Would you give it to him,
16 please?

17 THE COURT: Just hand it to the bailiff, I
18 think it's easier.

19 THE WITNESS: Thank you. Do you want '81?

20 BY MR. BETTIUS:

21 Q Yes. Would you look at page 41 of Mr. Cobb's
22 report?'

23 MR. COCHRAN: Your Honor, if the Court

1 please, may I pass up a set for the Court as well?

2 THE COURT: It would be very helpful.

3 BY MR. BETTIUS:

4 Q Do you see it, Mr. Cobb (sic)?

5 A What exhibit is Mr. Cobb's report?

6 Q Looking at page 41 --

7 A Which exhibit?

8 Q I'm looking at the income statement. That's
9 the only thing on page 41 that I see.

10 A I don't have his report right here. In this
11 big book, where is it? It's in the white book?

12 MR. COCHRAN: It would be in the white book
13 that you have there, Mr. DenUyl.

14 MS. BEACH: It's at U.

15 THE WITNESS: U. Thank you.

16 BY MR. BETTIUS:

17 Q As of 1979, Mr. Cobb, the office building was
18 complete and occupied by Respondents, wasn't it?

19 A DenUyl.

20 Q Mr. DenUyl, is that correct? By 1979 the
21 office building was up, complete and the lease had been
22 signed; is that correct?

23 A Thereabouts.

J.APP. 1376

1 Q Do you know what the date of the lease was?

2 THE COURT: You did interrupt him on that
3 one, Mr. Bettius.

4 MR. BETTIUS: I'm sorry.

5 THE COURT: He hadn't finish answering that
6 one.

7 BY MR. BETTIUS:

8 Q Do you know when they occupied the premises?

9 A I don't recall if it was -- when in '79.

10 Q Are you aware that they were caused to pay
11 rent before they occupied the premises?

12 A No.

13 Q Well, let's look at 1979. I'm going to ask
14 you what the reported rent was in '79, \$200,073?

15 A That's what Mr. Cobb mentions.

16 Q How did it go up to \$343,000 in '80? What
17 amendment took place that did that?

18 A I don't know. I know they increased it for
19 the new addition.

20 Q Well then, what caused the rent in 1981 to go
21 to \$535,089, Mr. DenUyl?

22 A I don't know.

23 Q What caused the rent to be \$437,138 in 1982?

JAPP.1377

1 A Well, it was a partial year, so it was
2 probably the prior year's rent.

3 Q Partial year? The year only ran for two
4 months, didn't it -- three months? HGV assumed
5 operations February -- strike that -- April 1 of 1982?

6 A That's when the deal was done, yes.

7 Q Well then, why are they paying \$437,000 in
8 rent?

9 A I don't know.

10 Q It really tells us we have to be very
11 cautious in these transactions, don't we, before we
12 express opinions about value to see if the expenses are
13 really legitimate; isn't that correct?

14 A Well, I don't think it's going to change my
15 opinion if you reduce the rent somewhat.

16 Q Well, I'm going to go back and ask you about
17 a lot of things. Were you aware that more than
18 \$230,000 of construction costs for the MOB were
19 diverted to the hospital? Did you read those minutes?

20 A Were paid for by the hospital?

21 Q That's correct. You didn't know that, did
22 you?

23 A I have read that. I don't know if it's true

1 or not.

2 Q Were you aware that the hospital was actually
3 paying two-thirds of the costs of maintenance and
4 operation of the doctors' office building?

5 A I don't know. If there was a triple net
6 lease, then it might have been appropriate.

7 Q Well, wait. The hospital was only operating
8 in, what, 22.5 percent of the space?

9 A I don't know what space they occupied at that
10 time.

11 Q Well, are you aware that \$1 million of the
12 costs of the medical office building were shifted --
13 ~~\$1.4 million~~ was shifted by a mortgage to the hospital?

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

15 Q Well, do you know what the debt service was
16 that was assumed by the hospital?

17 A It was not \$1 million of debt on the hospital
18 at that time.

19 Q There wasn't?

20 A No.

21 Q I'm going to ask you if you're aware that a
22 mortgage was taken out on the hospital premises in 1978
23 in the amount of \$1,400,000?

J.APP.1379

1 A Let's check the financial statement. I don't
2 think that's right. '78, did you say?

3 Q The mortgage is 1979. Excuse me.

4 A There's no mortgage shown on the financial
5 statements.

6 Q Well, I'm going to ask you to assume, Mr.
7 Cobb, that there was a mortgage in place and it was for
8 \$1.4 million.

9 A I'm Mr. DenUyl.

10 Q I'm sorry. I keep doing that. I apologize.
11 You don't have any --

12 A He's better looking than I am.

13 Q I think you're an attractive man, Mr. DenUyl.
14 I want the record to show that.

15 Now, are you telling me there's debt on this
16 institution that you're unaware of in your analysis?

17 A No, I'm not telling you that. I'm saying I'm
18 unaware that there is a mortgage on the hospital.

19 Q Well, do you know that in -- the proceeds of
20 that mortgage, \$400,000 of the proceeds, went to pay
21 off the original mortgage?

22 A I have seen no evidence of that.

23 Q You've seen no evidence of it?

J.APP. 1380

1 A No.

2 Q Well, it appears that you may be unaware of
3 some very significant transactions that dramatically
4 impact the value of the hospital; isn't that correct?

5 A No. I've looked through a lot of records and
6 I haven't seen any.

7 Q Did you read corporate minutes?

8 A I don't recall. I may have read some of the
9 corporate minutes.

10 Q Do you recall the administrator and the
11 hospital accountant indicating that it would be totally
12 inappropriate to do what they were doing in terms of
13 shifting these expenses back to the hospital for
14 operations of the medical office building?

15 A No, I'm not.

16 Q Well, if a debt was in place for \$1.4
17 million, would that be a significant transaction?

18 A Yes, but it's not in place. There's no debt
19 on it.

20 Q It's not on those records that you see, is
21 that what you're telling me?

22 A And I haven't seen anything in the cash flow
23 statements related to payments of those -- that

J.APP. 1381

1 mortgage.

2 Q It's interesting, isn't it? If those
3 mortgages were there and were being paid by the
4 hospital and these numbers are -- and these are the
5 same numbers that health care -- third-party payors
6 see, aren't they, Medicaid and Medicare?

7 A Yes, that's right.

8 Q And what if it was decided that they were
9 going to put these payments on the record so that they
10 wouldn't show, they would pay them out of after-tax
11 dollars so that they wouldn't show up to third-party
12 payors, would that kind of influence your opinion?

13 A Well, they have an audit done of the
14 hospital. I think that would have shown up in an
15 audit.

16 Q Let me ask you this. Don't we have -- as a
17 valuation expert are you telling us that you're going
18 to do valuations off of historical balance sheets? Is
19 that the way you do it?

20 A No, it's off of the historical income
21 statements and cash flow.

22 Q Well, let's go back and look at your original
23 report. Who owned what in 1971? What were the assets

JAPP. 1382

1 when you started liquidating this thing that didn't
2 have any value? Who owned what?

3 A You mean the charity at that time?

4 Q Yes. What did the charity own in '71?

5 A The operating entity and --

6 Q And the license?

7 A -- the license and the real estate assets
8 were held by JMHA.

9 Q Now, this 241 -- strike that.
10 This 240,000 shares of stock, who issued that
11 stock?

12 A JMHC.

13 Q No. JMHA; is that correct? JMHC -- that's
14 right. JMHC issued the stock. Who got the stock?

15 A JMHA.

16 Q And who were the members of JMHC and what
17 proportion did they share in the stock?

18 A Two hundred and forty thousand shares went to
19 JMHA and five thousand shares went out to JMHI.

20 Q Wasn't the stock distributed to the
21 Respondents in proportion to their share that they
22 previously held in the partnership of JMHC stock?

23 A No. They gave 240,000 shares to represent
J.APP. 1383

1 the real estate in proportion to the Extended Care
2 offer, an arm's length offer.

3 Q What's an arm's length offer, between the
4 Respondents and their own joint venture?

5 A No, between -- this was based on the Extended
6 Care offer for the hospital.

7 Q I'm not talking about the Extended Care
8 offer. Did not the Respondents receive stock in
9 precisely the proportion they owned assets of JMHA?
10 Isn't that exactly how it was reported on the tax
11 return?

12 A I don't know. You were talking about the
13 240,000 shares.

14 Q That's right. Who got it? The Respondents;
15 is that correct?

16 A Yes.

17 Q Who were all members of JMHA?

18 A You mean who individually got the shares?

19 Q Yes.

20 A I don't know.

21 Q Now, that stock's for land, isn't it?

22 A The building and land, yes.

23 Q The building. Never to be confused with

J.APP.1384

1 operations; is that correct?

2 A Yes, that's right.

3 Q Now, in terms of your analysis, you say C
4 gave I 5,000 shares of stock?

5 A Yes.

6 Q Do you understand the Court said that never
7 happened?

8 A Yes.

9 Q Now, didn't C also presumably assume the
10 liabilities of I?

11 A Yes.

12 Q And wasn't that subsequently repudiated in a
13 second transaction in 1975?

14 A Well, yeah, there was a sale and lease-back
15 in 1975.

16 Q And it was based on the fact that I was
17 supposedly in default of obligations that should have
18 been assumed by C if that transaction never took place;
19 is that correct?

20 A I don't recall the reason.

21 Q Well, let me ask you this. If C took all of
22 the assets and operating revenues of I and it took all
23 of the liabilities of I in '75, how could I be in

J.APP. 1385

1 default in '75?

2 A I don't know that I was in default. I don't
3 know exactly what you're referring to.

4 Q Well, you're liquidating the company. I'm
5 trying to find out who owns what and whose liabilities
6 are whose.

7 A I'm trying to determine the going concern
8 value of the operating entity in 1975, not liquidate.

9 Q Well, there was no liquidation in '73 or '75,
10 was there?

11 A No, I didn't say there was. I was
12 determining the going concern value at that time.

13 Q You had a going concern value of particular
14 interest to these Respondents, didn't you?

15 A I'm not sure what you mean.

16 Q Well, they had a single-purpose building,
17 didn't they?

18 A It was a hospital building, yes.

19 Q They're liable on a mortgage, right?

20 A Yes.

21 Q This thing goes out of business, or they
22 liquidate it as you say, in your liquidations that
23 you're doing they don't need the land, do they?

J.APP. 1386

1 A Again, I'm not doing liquidations.

2 Q Your value concern. Isn't value only
3 interesting to us if there's a sale or liquidation?

4 A No.

5 Q It's not?

6 A Well, if the Court determines those are
7 relevant dates for determining what the value was at
8 that time.

9 Q Did you read the Court's opinion that this
10 supposed increase of excess of assets over liabilities
11 in the defense isn't a defense, we had a going concern?

12 A Yes, I read the Court's opinion.

13 Q Now, what scenario -- in your scenario how
14 much value is given a going concern, zero; isn't that
15 right?

16 A Basically.

17 Q Not basically, it's absolutely true, isn't
18 it?

19 A Less than zero or nominal value.

20 Q So that means that the Court's opinion that
21 it had value as a going concern really isn't
22 appreciated, at least from your point of analysis; is
23 that true?

J.APP. 1387

1 MR. BONO: Objection, Your Honor. He's
2 mischaracterized --

3 BY MR. BETTIUS:

4 Q In your analysis, your analysis doesn't
5 indicate any value for the going concern?

6 A Yeah, I think the Court agreed with that.

7 Q You think that -- the Court said it had value
8 as a going concern, Mr. DenUyl. Did you read that in
9 the opinion?

10 MR. BONO: Your Honor, he's mischaracterizing
11 Your Honor's opinion. I'm sure the Court --

12 THE COURT: I'll sustain the objection.

13 BY MR. BETTIUS:

14 Q Now, Mr. DenUyl, in your hypothetical
15 liquidation, was the equipment lease a liability? In
16 the hypothetical valuation, was the lease -- what was
17 on your balance sheet?

18 A What date?

19 Q In 1973 was the equipment lease there?

20 A I'd have to go look. Do you want me to check
21 the financial statement?

22 Q Yes. I want you to tell me, was that one of
23 your liabilities?

JAPP. 1388

1 A I don't see an equipment lease.

2 Q It's a \$280,000 item. Do you have it there,
3 Mr. DenUyl?

4 A In '73?

5 Q Yes. It's \$280,000.

6 A It's not specifically identified.

7 Q Do you have a \$280,000 item there, sir?

8 A I don't see it.

9 Q Are you aware that Mr. Cobb, in his analysis,
10 carries that equipment lease as a liability? I just
11 want to find out if you people are talking about the
12 same thing.

13 A You'll have to ask Mr. Cobb.

14 Q What do you show about the 240,000 shares of
15 stock? Do they exist or not?

16 A I didn't value the shares of stock. I valued
17 it as a going concern value at the time.

18 Q I thought you said you did a valuation off
19 the balance sheet.

20 A No, you keep saying that.

21 Q None of yours is -- yours is just cash in and
22 cash out; is that correct?

23 A Well, I looked at the income generating --

JAPP. 1389

1 the cash flow generating capacity of the hospital and,
2 as an alternative, I looked at the book value, less the
3 relevant assets and liabilities.

4 Q To the extent that assets exceed liabilities,
5 wasn't that the design of the Respondents? Isn't that
6 the way they purposefully did it?

7 A I don't -- I don't have a reaction.

8 Q Are you aware of why they lost their
9 501(c)(3) exemption?

10 A Not specifically, no.

11 Q Did the hospital own any of its equipment?

12 A At what time?

13 Q '73.

14 A Yes, it owned some of its equipment.

15 Q What did it own? What do you show for
16 equipment?

17 A It's got some fixed equipment, major
18 moveable.

19 Q How much?

20 A Well, the fixed equipment's about \$88,000 in
21 book value and the major movables, \$161,000.

22 Q It's a 120-bed hospital at this point and
23 that's the totality of its equipment, operating

1 facilities, everything it owns? That's it?

2 A I don't know that that was particularly
3 unusual for that kind of facility at that time.

4 Q Well, let's go on a little bit further with
5 it. Did it have any capital that wasn't borrowed?
6 Didn't all of its working capital come from the loans
7 by Respondents on bonds?

8 A There were bonds outstanding, but it also had
9 its own working capital.

10 Q Where did it get its working capital? How
11 much working capital did it have?

12 A It generated working capital from its
13 operations.

14 Q Absolutely. What other working capital was
15 there, other than what it could get from patient
16 revenue?

17 A Well, accounts receivable were about \$1.1
18 million in 1973 and accounts payable \$332,000.

19 Q Mr. DenUyl, if this Court determines that
20 throughout the history of the hospital that the
21 parties' realistic economic expectations with respect
22 to these Respondents was limited to lease payments
23 under the '66 lease, do you understand what I'm saying?

J.APP. 1391

1 Do you understand my premise?

2 A I'm not sure what you're talking about.

3 Q If the Court rules that anything beyond that
4 is private inurement -- you work on hospitals all the
5 time; is that correct

6 A Yes.

7 Q What is private inurement?

8 A Where private parties benefit in a
9 not-for-profit situation.

10 Q Was there private inurement in the original
11 lease?

12 A In the '66 lease, I don't know.

13 Q You don't know that there was 10 percent
14 profit built into it?

15 A I haven't looked at the '66 lease since the
16 last trial.

17 Q Well, what's interesting is you've done an
18 opinion, as I understand it, that indicates that this
19 hospital had no value. They have closely held
20 operations here by Respondents. Have you ever done a
21 track to find out, especially in light of the ruling by
22 the Court, that they overcame, with their own personal
23 dealings the hospital, to the extent that they

JAPP.1392

1 obliterated its charitable existence if the expenses
2 were legitimate and proper? Did you ever do that kind
3 of analysis?

4 A Did I do an audit of all the expenses and
5 whether they were proper or not?

6 Q Off of the financial statements that you
7 have, did you ever do an analysis to determine what
8 they should have received and what they did, in fact,
9 receive from the revenues of the hospital?

10 A Who is they?

11 Q The Respondents.

12 A I don't know that they received anything.

13 Q And you don't know what happened, do you?
14 Did you ever track the legitimate expenditures of the
15 hospital to determine whether the money was being
16 siphoned off?

17 A I looked at the financial statements and the
18 financial records.

19 Q Please answer my question.

20 A I am answering your question.

21 Q Did you look at the --

22 A Let me finish.

23 THE COURT: Let him finish.

JAPP.1393

1 MR. BETTIUS: Excuse me.

2 THE WITNESS: I looked at the financial
3 records. I didn't see any evidence of what you're
4 alleging.

5 BY MR. BETTIUS:

6 Q All right. Let's talk about this. Do you
7 understand how the transaction, for instance -- the
8 sale and lease-back which was really between C and the
9 Respondents, was it not, JMHC, the Respondents?

10 A Yes.

11 Q And it dealt with the land, didn't it?

12 A Yes, and the building.

13 Q Okay. The buildings. You're right. It is
14 the building.

15 Now, in terms of that transaction, Mr.
16 DenUyl, how was it accomplished? How was it done?

17 A From a legal merger perspective?

18 Q No. What were the considerations and how
19 were they garnered and how were they exchanged? What
20 happened?

21 A In what year?

22 Q I'm talking about a memorandum of sale and
23 lease-back that was executed December 24, 1975 and

JAPP. 1394

1 subsequently acted on thereafter. How did that
2 transaction take place?

3 A From my lay understanding, the JV assumed the
4 assets and they also assumed the mortgage payment and
5 then gave some consideration on top of that for those
6 assets.

7 Q Well, did they not convert stock that had
8 been issued two years before at \$4 to bonds at \$6?

9 A There was a conversion of 20 percent of that
10 stock.

11 Q Are you sure?

12 A That's what's in the financial statement.

13 Q Isn't it true that the consideration -- I'm
14 just trying to test your knowledge about these
15 transactions, because they materially affect the
16 conclusions in some respects of what people got.

17 MR. BONO: Your Honor, I object. Counsel now
18 is testifying.

19 MR. BETTIUS: I'll withdraw it.

20 MR. BONO: It may not materially affect the
21 conclusion.

22 THE COURT: Restate the question, Mr.
23 Bettius.

J.APP. 1395

1 BY MR. BETTIUS:

2 Q Let me ask you a question. Did they not
3 supposedly pay \$240,000 in addition to the mortgage?

4 A Yes.

5 Q Where did the --

6 A To I.

7 Q Now, this hospital that's struggling, did it
8 receive the \$240,000?

9 A I believe so.

10 Q What did it receive? Would you be surprised
11 that it received \$11,000 in cash and the rest in
12 converted bonds?

13 A Well, it relieved an obligation.

14 Q It relieved -- when did stock become an
15 obligation? Stock is an equity obligation, not a debt
16 obligation; isn't that right?

17 A I understand there were other bonds.

18 Q There were other bonds?

19 A Yes.

20 Q Why would a corporation in financial
21 difficulty, Mr. DenUyl, convert a non-specific equity
22 debt into a funded bond debt and give people a 50
23 percent profit over what they put in 2 years before?

J.APP. 1396

1 Isn't that what happened?

2 A Well, I think what happened was at that time
3 they had some extra money from that transaction and
4 they redeemed some of the bonds, up to 20 percent.

5 Q What extra money? I thought you said there
6 was no money.

7 A They paid an additional \$240,000 when they
8 did that transaction, so then that was used to redeem
9 some of the bonds.

10 Q I don't think you understand, Mr. DenUyl.
11 Are you telling me that they got \$240,000 in cash and
12 they redeemed bonds? Is that your understanding?

13 A There was a redemption of bonds, yes.

14 Q For what? What did they redeem? They
15 redeemed the bonds -- what were the bonds issued for?

16 A The bonds were used -- there were some that
17 were converted from stocks to bonds.

18 Q Yes, sir. That was 80 percent of the
19 previous stock, 60,000 shares of stock was converted to
20 bonds at \$6; is that correct?

21 A Yes.

22 Q That was given to the hospital? Instead of
23 \$240,000, the hospital got bonds? It converted its

J.APP.1397

1 stock, which was a non-specific obligation, to bonds
2 and then accepted the bonds; is that correct?

3 A Yes. They accepted the bonds, yes.

4 Q Why would a hospital in trouble -- do you
5 know what the book value of the building was at that
6 time?

7 A '73?

8 Q '75, sir.

9 A '75. Okay. About \$500,000.

10 Q Are you aware that the Respondents themselves
11 -- I don't know what set of books -- the Respondents
12 themselves, do you recall they said it was 10 percent
13 of the book value, the \$240,000 was 10 percent of the
14 book value?

15 A No, I don't recall.

16 Q If we find that in the records -- Mr. DenUyl,
17 if we find that in the records, would that indicate to
18 you that the Respondents calculated a book value of
19 \$2.4 million? So they would have exchanged a
20 building --

21 MR. BONO: He posed a question --

22 THE COURT: You asked a question and I didn't
23 hear an answer.

JAPP. 1398

1 MR. BETTIUS: I didn't hear an answer either.

2 THE WITNESS: I wanted the financial
3 statements. I don't recall what you're referring to.
4 The book value at this time was about \$500,000.

5 BY MR. BETTIUS:

6 Q What was the effect of this transaction on
7 the hospital, do you know?

8 A The hospital was relieved of their mortgage
9 obligation and started paying a lease.

10 Q Did you ever read a letter from Mr.
11 Friedman -- Dr. Friedman to Dr. Tauber describing the
12 effect of the transaction?

13 A I don't recall.

14 Q This is the administrator memorandum, Dr.
15 Friedman's letter. Did you ever look at any of the
16 corporate documents at or about this time?

17 A Some of them I've looked at, yes.

18 Q Did you see a memorandum dated January 2,
19 1976, Exhibit 617, that said the hospital redeemed
20 60,000 shares of stock at \$6 per share with 15-year, 8
21 percent interest bearing bonds valued at \$360,000? The
22 hospital redeemed \$230,000 of these bonds from partners
23 of the Joint Venture as payment to their obligations to

J.APP.1399

1 the hospital.

2 This transaction left the hospital with
3 \$129,500 of this 1972 bond issue outstanding. Thus,
4 the \$129,000 of this bond issue requires a yearly
5 interest expense of \$10,360. That's going to be paid
6 to the Respondents, right, the issue, because they have
7 the bonds?

8 A Yes.

9 Q The transaction with the Joint Venture did
10 not provide any cash to the hospital corporation since
11 the hospital bonds were used to buy the Venture's
12 obligation. In effect, this transaction has added
13 \$30,000 per year of expense, increased our cash
14 requirements by that amount.

15 Since the agreement was a net lease, all
16 expenses which existed before the sale of the Joint
17 Venture continue as hospital expenses. In addition to
18 the \$30,000 yearly lease question, seriously -- I
19 question seriously whether Blue Cross will allow this
20 \$30,000 lease payment as part of the costs under its
21 contract.

22 Were you aware that was the characterization
23 of the transaction?

J.APP.1400

1 A Yes.

2 Q Do you think that's -- in your analysis of
3 the hospital, is that private inurement?

4 A I don't quite understand the transaction.

5 Q Well, you've got a company you say is short
6 of cash. They convert stock, which they never have to
7 pay, for bonds. Don't they give a 50 percent return on
8 the '72 bond issue if it's redeemed in '74?

9 A That's not a 50 percent return because they
10 had it for more than a year.

11 Q Well, it's 25 percent and then -- well, it's
12 almost 50 percent. How much is it, Mr. DenUyl?

13 A Well, it was issued -- the investment was
14 made in '72, and that's in, what, '76?

15 Q No. The transaction took place in '75.

16 A Well, when is that document you're reading?
17 I thought you said it was '76.

18 Q He's recording the transaction. Do you know
19 when the transfer took place?

20 A '75, I think.

21 Q Now, there was a letter from the hospital
22 administrator reflecting on profitability -- from the
23 hospital president. Did you see a memorandum to Dr. --
JAPP. 1401

1 a letter from Dr. Tauber dated April 22, 1976, which is
2 Exhibit 426B?

3 Did you see a letter that says I fully
4 appreciate your position; I want to make clear that the
5 differences between you and me were fully discussed and
6 no further discussion is necessary; our differences are
7 not reconcilable.

8 Then he goes on in the letter to say, as to
9 your comment to Dr. Walter about the hospital being in
10 the red -- and you say the hospital's in the red during
11 this period of time; is that correct?

12 A Well, it was for -- break-even. It had
13 positive net income, but it was marginal.

14 Q Does Dr. Friedman report, as to your comment
15 to Dr. Walter about being in the red, I want to point
16 out that the hospital has shown a net profit last year
17 and is showing a net profit this year to date of more
18 than \$150,000; the only added financial burden the
19 hospital has over the last year is a payment of bond
20 interest for the 20 percent stock conversion to bonds
21 that you had put through and approved by the
22 stockholders?

23 Does that tell you what happened to the rest

J.APP. 1402

1 of that 1982 (sic) stock?

2 A I've already testified that I know what
3 happened to that '82 stock.

4 Q Well, at \$6 -- I don't think you do, Mr.
5 DenUyl, and we'll test that now. At \$6 a share, how
6 many shares do we have to redeem to get \$240,000?

7 A Forty thousand shares.

8 Q Now, if it takes 40,000 to do that, that's
9 not 20 percent, is it?

10 A I'm not sure where you're going with this.

11 Q The point is that there was only 20 -- after
12 they did the redemption there was still 20 percent of
13 the shares still outstanding; isn't that correct?

14 A No, they redeemed them.

15 Q Didn't they take 80 percent of the stock, 80
16 percent of the stock?

17 A No. ~~My understanding is they took 20 percent~~
18 ~~of the stock and converted it to bonds, and then they~~
19 ~~took all of the 60,000 shares and converted that.~~

20 Q You're a financial expert. Let's take the
21 stock, 60,000 at \$4.

22 A How much?

23 Q Sixty thousand shares at \$4.

J.APP. 1403

1 A Okay.

2 Q What percentage of that stock at \$6 do we
3 have to convert to get to \$240,000?

4 MR. COCHRAN: Your Honor, if the Court
5 please, we can all make the calculation.

6 BY MR. BETTIUS:

7 Q It's 80 percent?

8 THE COURT: I can do that, Mr. Bettius. Ask
9 the question.

10 BY MR. BETTIUS:

11 Q If we converted 80 percent, what happened to
12 the remaining 20 percent? Wasn't all of the stock
13 converted?

14 A All of the 60,000 shares were converted.
15 I've already testified to that.

16 Q Okay. It was converted in '75?

17 A Yes.

18 Q So the hospital that's in difficult financial
19 circumstances, from your point of view, has converted
20 its stock to bonds and liquidated it and given the
21 Respondents a substantial profit; is that correct?

22 A Well, I don't know that they had a
23 substantial profit. I think they actually gave them

J.APP.1404

1 only \$120,000-some in cash. That's what was on the
2 financial statements.

3 Q The hospital only -- who got \$120,000?

4 A The people that owned 60,000.

5 Q They got \$221,000, didn't they?

6 A That was the investment. I think what they
7 actually received in cash, according to that letter,
8 was \$129,000.

9 Q This letter?

10 A Yes.

11 Q I'm going to give you the letter and I want
12 you to show me that, sir.

13 A That's what was remaining on the bond,
14 actually. They didn't receive it in cash.

15 Q Now we're talking about the bonds. Those
16 bonds --

17 MR. BONO: Your Honor, he was explaining
18 exactly what --

19 THE COURT: I've got to say, Mr. Bettius, I
20 haven't the foggiest idea what you're talking about
21 right now. I'm sitting here and I've got an expert who
22 has testified, in effect, and I was going to ask him
23 the question, that he never analyzed these expenses.

J.APP.1405

1 Is that correct?

2 THE WITNESS: Yes.

3 THE COURT: You looked at the numbers and
4 said based on the numbers, and you never went and made
5 the kind of determination that the Court may have to
6 make as to the legitimacy of those expenses, did you?

7 THE WITNESS: No.

8 THE COURT: We've spent an hour doing this
9 with this gentleman who said at the outset, basically,
10 I never analyzed these expenses.

11 MR. BETTIUS: Then I move to strike his
12 testimony, Your Honor, on the basis of relevance. I'm
13 going to undercut the --

14 THE COURT: No. I think part of the problem
15 here, Mr. Bettius, is that the Respondents have a
16 certain view as to what their accounting should
17 encompass and they presented evidence to support that
18 view.

19 You have a different view of what the
20 accounting should encompass, and I'm going to allow you
21 to present evidence in support of your view. I'm going
22 to have to decide which one of the sides is correct.
23 So I'll let them do that.

J.APP. 1406

1 You have gotten into all of the things that
2 are your theories. I understood in your opening
3 statement that because of the commingling and because
4 of the self-dealing, that perhaps the Court should not
5 separate out these various entities and say this is
6 protected and this is not or this is subject to the
7 accounting and this is not.

8 MR. BETTIUS: Your Honor --

9 THE COURT: This gentleman got on the stand
10 and he said, look, I did a numbers evaluation. I
11 looked at the data and I said based on the revenue
12 going up and the expenses going up, this thing was of
13 no value or nominal value at the time. --

14 MR. BETTIUS: It's critical, Your Honor, that
15 I really communicate to the Court that they're never
16 supposed to have private inurement from the operations
17 of a charity.

18 THE COURT: I understand that.

19 MR. BETTIUS: What we have here, right in
20 front of the Court at this moment, is a transaction
21 where bonds of the operating entity -- the stock of
22 this operating entity has nothing to do with the
23 charity, are suddenly converted out of operating assets

J.APP. 1407

1 at a profit to the Respondents --

2 THE COURT: I understand that that's your
3 argument, Mr. Bettius. But for purposes of this
4 witness, he said he didn't do this kind of analysis.

5 MR. BETTIUS: Well, I'm going to ask -- I'll
6 withdraw that and go on to the next line.

7 BY MR. BETTIUS:

8 Q Was a new lease executed in 1975?

9 MR. BONO: Your Honor, I feel obligated to
10 make just one brief comment.

11 THE COURT: All right.

12 MR. BONO: If this is supposed to show
13 private inurement, it doesn't do that at all. All of
14 these bonds --

15 MR. BETTIUS: That's legal argument, Your
16 Honor.

17 MR. BONO: Let me just make a point.

18 THE COURT: Both of you make your arguments
19 to me, not to this witness. Let's get on with the
20 examination of the witness, please.

21 BY MR. BETTIUS:

22 Q Was a new lease executed, Mr. DenUyl?

23 A I believe so.

J.APP.1408

1 Q How did its terms differ from the '66 lease?

2 A I don't know. I know they paid \$150,000,
3 approximately. I don't remember the terms of the
4 lease.

5 Q Was it an increase in rent?

6 A Was it an increase in rent?

7 Q Yes.

8 A Yes.

9 Q What was that increase based on?

10 A Based on the increased value of the entity, I
11 guess. I don't recall the lease. I'm not sure.

12 Q Did you find any consideration flowing
13 between the parties that supported an increase in rent?

14 A Well, you had a lot of inflation during that
15 period of time that would suggest that the rent would
16 go up.

17 Q Didn't the 1966 lease suggest that they had a
18 lease for 99 years?

19 A Yes, and they had certain adjustments
20 according to the CPI.

21 Q Are you telling me that this new lease was
22 based on CPI adjustments or was it a cancellation of
23 the other lease?

J.APP.1409

1 A I think it was a new lease.

2 Q Do you concede, based on your -- you have to
3 have an understanding, do you not, of who owns what in
4 the transaction? What right did JMHC have to be
5 dealing with the lease rights or operational rights of
6 the charity in 1975? Had they acquired the assets of
7 the charity or its operating rights?

8 A They acquired ~~the real estate~~, so they had a
9 right to lease the real estate.

10 Q You're saying that C had the real estate in
11 1976?

12 A No, I'm saying JV had the real estate.
13 Therefore, it started charging C lease expenses.

14 Q When did JV get the real estate?

15 A In '75.

16 Q Now, didn't JV -- wasn't there an existing
17 lease outstanding from '66?

18 A I don't know if it was canceled or what.

19 Q You didn't see that transaction?

20 A No, I didn't.

21 Q Are you aware that the Respondents signing on
22 both the part of the lessor and the lessee purported to
23 cancel, on behalf of JMHI, the lease in 1975? Are you

J.APP. 1410

1 aware of that?

2 A Not specifically.

3 Q Are you aware that the Court said that there
4 was no right to cancel the lease, that any action taken
5 by JMHI after 1973 was void, without legal effect?

6 MR. COCHRAN: If the Court please, this is to
7 no effect, absolutely no effect. He can't testify as
8 to whether there was fair consideration or not. He's
9 mixing up Corp. with Inc.

10 MR. BETTIUS: Your Honor, we're going to
11 start, from this point on, up to 1982, dividing
12 revenues on the basis of lease amendments. It's
13 important that we track the propriety of those lease
14 amendments and whether they're validly executed.

15 THE COURT: Again, that's fine, Mr. Bettius,
16 but that may not be this witness. That's what I tried
17 to say earlier.

18 MR. BETTIUS: I understand that, Your Honor.
19 He's expressed value judgments about entities. If the
20 Court's telling me that we're not going to lay any
21 value or the Court's not going to receive this as
22 evidence of what those values are, I don't have any
23 problem with that, because I think this is a very

J.APP.1411

1 theoretical analysis.

2 THE COURT: He's entitled to express his
3 opinion and I can consider the basis for his opinion.
4 It's your argument, not with him, not with this
5 particular witness, but with Respondents that all of
6 these things mean that those expenses that he's
7 considered are not legitimate and should not have been
8 considered.

9 MR. BETTIUS: Your Honor, this testimony --

10 THE COURT: All I'm saying is you may be at
11 the wrong time with this particular witness.

12 MR. BETTIUS: Your Honor, I understand what
13 you're saying, but I want you to please understand that
14 they're offering this in support of an accounting
15 scenario.

16 THE COURT: I understand that.

17 MR. BETTIUS: I can't imagine -- I tried to
18 say at the beginning of this testimony it has no
19 relevance to an accounting scenario until you prove
20 that the underlying financial foundations of it are
21 real.

22 If you're ripping off the charity -- not
23 ripping off -- if you're moving assets and liabilities

1 back and forth, until you establish that as a
2 foundation -- and that's been my objection to this from
3 the beginning -- what value is it?

4 If Your Honor tells me that they're going to
5 have to lay a foundation to support this testimony,
6 I'll sit down right now. This witness is telling you
7 that the value and the argument that they continually
8 make is their accounting is based on a liquidation at
9 book value, a liquidation at asset value in 1973.

10 Judge, that's their accounting. I promise
11 you that is their accounting. There was no liquidation
12 in '71, '73, '82, and there never has been a
13 liquidation. That's why this Court has jurisdiction.
14 They're going to tell you that these are -- these are
15 liquidations that took place.

16 I'm supposed to sit here and say well, they
17 can say -- a witness can come up here and establish a
18 liquidation value as the premise of their accounting
19 and I can't attack whether that liquidation value is
20 correct or not.

21 THE COURT: Of course you can. All you've
22 gotten from this gentleman is a series of he doesn't
23 know because he didn't do that kind of analysis.

J.APP. 1413

1 MR. BETTIUS: Well, then, I'm going to ask
2 Your Honor to reserve on the admission of this
3 testimony until they back it up, until there's
4 foundation laid.

5 THE COURT: It's in. The only question is
6 what weight do I give to it.

7 MR. BETTIUS: All right, sir. Under those
8 circumstances, I can sit here and ask this witness
9 questions all day. If I can't inquire as to the valid
10 basis for the expenses and the analysis, then I don't
11 know what value the analysis has for my examination.

12 THE COURT: You already said he didn't do
13 that kind of analysis, as I understood it. He didn't
14 analyze the expenses to see if they were valid or not.

15 MR. BETTIUS: Your Honor, it's only one
16 opinion here, yours, that counts.

17 THE COURT: That's what he said.

18 MR. BETTIUS: I just don't believe it has any
19 relevance.

20 MR. COCHRAN: Your Honor, he stated his basis
21 and he used the same basis as their expert, and that's
22 the --

23 MR. BETTIUS: That's not true.

J.APP. 1414

1 THE COURT: Let's stop.
2 MR. BETTIUS: Thank you.
3 (End of partial transcript.)

J.APP. 1415

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

J.APP. 1416

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

----- -x
COMMONWEALTH OF VIRGINIA, et al., :
Complainants, :
v. :
LASZLO N. TAUBER, et al., :
Respondents. :
----- -x

COPY

In Chancery
No.: 96-1241

PARTIAL
TRANSCRIPT

VOLUME II

Alexandria, Virginia

Wednesday, February 2, 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 9:00 a.m., before Eva M.
Bridget, Verbatim Reporter, when there were present on
behalf of the respective parties:

J.APP. 1417

APPEARANCES:

On Behalf of the Complainants:

MARC E. BETTIUS, ESQ.
DEBRA FITZGERALD-O'CONNELL, ESQ.
INA C. CHARVET, ESQ.
Lawson & Frank
6045 Wilson Boulevard, Suite 100
Arlington, VA 22205

RICHARD S. SCHWEIKER, JR., ESQ
Assistant Attorney General
Office of the Attorney General
900 Main Street
Richmond, VA 23219

ANTHONY J. TRENGA, ESQ.
Miller & Chevalier, Chartered.
655 15th Street, Suite 900
Washington, DC 20005

On Behalf of the Respondents Tauber, et al.:

STEPHEN G. COCHRAN, ESQ.
JAMES KINSEL, ESQ.
The Jefferson Law Firm, P.L.C.
6862 Elm Street, 7th Floor
McLean, VA 22101

GASPARE J. BONO, ESQ.
Long, Aldridge & Norman, L.L.P.
701 Pennsylvania Avenue, N.W.
Suite 600
Washington, DC 20004

BARBARA BEACH, ESQ.
Beach and Associates
416 Prince Street
Alexandria, VA 22314

PHILIP HIRSCHKOP, ESQ.
Hirschkop & Associates
108 North Columbus Street
Alexandria, VA 22314

KEVIN M. O'DONNELL, ESQ.
Henry & O'Donnell, P.C.
4103 Chain Bridge Road, Suite 100
Fairfax, VA 22030

J.APP. 1418

WITNESS:

PAGE

Laszlo N. Tauber, M.D:

Cross-examination by Mr. Bettius

4

EXHIBITS

IDENTIFIED RECEIVED

Complainant's:

Exhibit 00

54

Exhibit 000

110

Trial:

Exhibit 945

56

58

Exhibit 898

71

71

Exhibit 904

79

79

Exhibit 910

100

100

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P R O C E E D I N G S

Whereupon,

LASZLO N. TAUBER, M.D.

was called as a witness and, after having been previously duly sworn by the Clerk of the Court, was examined and testified as follows:

CROSS-EXAMINATION

BY MR. BETTIUS:

Q Good afternoon, Dr. Tauber.

A Good afternoon, sir.

Q Would you try, as best you can, sir, to keep your voice up?

A I try my best.

Q Dr. Tauber, would it be a fair statement that in 1971 JMHC just stepped into the shoes of JMHI?

A I would not say step in the shoes.

Q You wouldn't do that?

A I would not characterize it step in the shoes. Jefferson Memorial Hospital, Inc. ceased to exist and Jefferson Memorial Hospital Corporation took over.

Q Doctor, do you recall to whom the assets of JMHA were transferred in 1971, what entity?

J.APP. 1420

1 A First of July 1971 that was a partnership
2 called Jefferson Memorial Hospital Associates. All the
3 assets were transferred to Jefferson Memorial Hospital
4 Corporation.

5 MR. BETTIUS: Could we show the doctor a copy
6 of Exhibit 230, please? These are documents already in
7 the case. I'll direct him to the pages if you would
8 give it to him. This is a tax return, U.S. partnership
9 return. I have it as Exhibit 230.

10 BY MR. BETTIUS:

11 Q Let me show you my copy, Doctor. Does this
12 document -- can you tell me who the purported taxpayer
13 is in this document?

14 A Jefferson Memorial Hospital Associates.

15 Q Doctor, do you see a transaction on that
16 return that reflects to whom the assets were conveyed?
17 Take your time to read it.

18 THE COURT: Do you want to tell him where on
19 the form?

20 MR. BETTIUS: I think he's looking at it
21 right now.

22 THE WITNESS: I think I reached the page.
23 What is your question, Mr. Bettius?

J.APP. 1421

1 BY MR. BETTIUS:

2 Q Who does that reflect the building and
3 equipment were transferred to, Doctor, and on what
4 date?

5 A On June 30, 1970 they were reduced to zero,
6 the assets, with a distribution of stock received from
7 Jefferson Memorial Hospital, Inc. in exchange for all
8 liabilities of Jefferson Memorial Hospital Associates.

9 Q So you refer to that transfer of land and
10 equipment having been made to Jefferson Memorial
11 Hospital, Inc.; is that correct?

12 A ~~THIS IS A MISTAKE.~~ It is not correct.

13 Q Why is it a mistake, Doctor?

14 A Number one, Jefferson Memorial Hospital,
15 Inc., a non-profit organization, never had stock. We
16 created that one in exchange for all assets for the
17 stocks. The accountant who reported this on the income
18 tax return made a mistake designating it erroneously.
19 It is not Jefferson Memorial Hospital, Inc., but
20 Jefferson Memorial Hospital Corporation, as reflected in
21 the financial statement. He misspoke.

22 MR. BETTIUS: Show the witness Exhibit 235,
23 please.

JAPP. 1422

1 BY MR. BETTIUS:

2 Q That mistake is made twice on the same
3 document if it's a mistake. There are two references
4 to that transfer and they're both referred to as having
5 been made to Inc. I'll let the Court read the
6 document.

7 Doctor, do you recognize this document?

8 A Which one?

9 Q Exhibit 235.

10 A Excuse me. This is Exhibit 235?

11 MR. HIRSCHKOP: Is that the one in the book?

12 He doesn't know which one to look at.

13 THE COURT: The one in the book.

14 BY MR. BETTIUS:

15 Q The one in the book, Doctor.

16 A Excuse me.

17 Q I'd like you to look at page --

18 A Excuse me, Mr. Bettius.

19 MS. CHARVET: Can we take a break for one
20 moment? Water has spilled.

21 THE WITNESS: It is all right. I cleaned it
22 already. I'm sorry.

23 BY MR. BETTIUS:

J.APP. 1423

1 Q I'd like you to look at page -- do you see
2 these little numbers on the bottom, Doctor?

3 A Yes, on the right-hand side.

4 Q 002912.

5 A Yes, sir.

6 Q Doctor, what is that document entitled?

7 A Excuse me, Mr. Bettius. I don't understand
8 your question.

9 Q Is this document entitled Plan and Agreement
10 of Reorganization for Merger of Jefferson Memorial
11 Hospital, Inc. with and into Jefferson Memorial
12 Hospital Corporation?

13 A I read it. Just a minute. Okay?

14 MR. BETTIUS: Certainly.

15 Your Honor, I realize we're going over old
16 ground.

17 BY MR. BETTIUS:

18 Q Is that document signed by anybody?

19 A Yes, it was signed.

20 Q You signed it, Doctor?

21 A For Jefferson Memorial Hospital, Inc., I
22 signed it as president.

23 Q Yes, sir. Would you turn over to page 2919

J.APP. 1424

1 where the notary appears?

2 A Yes, sir.

3 Q Do you know who that notary public is?

4 A Yes.

5 Q Who is it?

6 A Ms. Bostic.

7 Q Who is she?

8 A She was a secretary to the administrator of
9 the hospital.

10 Q Doctor, would you go back to page 002912?

11 A 0029?

12 Q 12.

13 A Yes, sir.

14 Q I'm sorry, Doctor. I misled you. 2914

15 A 2914?

16 Q 2914, Doctor.

17 A Yes, sir.

18 Q Would you read the first sentence of the
19 paragraph numbered 1?

20 A Yes.

21 Q Would you read it out loud, please?

22 A Very hard for me to read.

23 Q I'm sorry, Doctor. Let me read it and you
JAPP. 1425

1 tell me if you agree with me.

2 As promptly as practical, after the effective
3 date of the merger --

4 A Excuse me.

5 MR. COCHRAN: Your Honor, if the Court
6 please, the document says what it says.

7 MR. BETTIUS: Your Honor, we went through
8 recitations of what documents said all morning. I
9 think I'm entitled to get from the witness -- I'll do
10 it the way Mr. Bono did it.

11 MR. COCHRAN: Your Honor, if he wants to ask
12 does he have an understanding --

13 MR. BETTIUS: Fine.

14 THE WITNESS: Can I read it?

15 THE COURT: Let's try having a question and
16 then if there's an objection to the question I'll rule
17 on it.

18 MR. BETTIUS: Yes, sir.

19 BY MR. BETTIUS:

20 Q Is it your understanding, Doctor, that the
21 way this merger was to take place was that each holder
22 of an outstanding certificate or certificates
23 representing the shares of JMHI common stock shall

J.APP. 1426

1 surrender the same to JMHC or to an agent appointed by
2 JMHC?

3 A That was the taxpaying form. That was not
4 the case.

5 Q That's another mistake?

6 A Yes, because Jefferson Memorial Hospital,
7 Inc. was never a stock corporation. Therefore, they
8 could not issue common stock the 1st of nothing. It
9 was a non-stock corporation.

10 Q Doctor, you describe in that -- it is
11 described in that tax return, is it not, that what has
12 occurred is a mere change of name?

13 A No, it was a mistake on the part of the
14 accountant.

15 Q That's another mistake?

16 A Yes, it is, unfortunately, a mistake.

17 Q So if it was stated that it was the same
18 corporation that had just changed its name in place of
19 incorporation, that's another mistake; is that correct?

20 A It was, as I told you, Jefferson Memorial
21 Hospital, Inc. never was a stock corporation.
22 Therefore, they could not exchange stocks.

23 Q Did JMHC -- I, rather -- did JMHI just change

1 its name or was there much more to the transaction than
2 that?

3 A Much more to the transaction.

4 Q So this document reflects a mistake; is that
5 correct?

6 A It's full with mistakes.

7 Q Now, let me show you, Doctor, your first -- a
8 return that you filed with the state in 1971, and it's
9 Exhibit 236. Did you make the same mistake again,
10 Doctor?

11 A Let me see it.

12 MR. HIRSCHKOP: Your Honor, I'm going to
13 object to the form of the question. He said it was an
14 accountant's mistake, not a mistake he made.

15 THE COURT: Rephrase the question, Mr.
16 Bettius.

17 MR. BETTIUS: Well, with all due respect to
18 Mr. Hirschkop, he signed and notarized the other
19 statement.

20 THE COURT: I understand.

21 BY MR. BETTIUS:

22 Q Does that return bear a signature, Dr.
23 Tauber?

J.APP. 1428

1 A I see one signature. Let me see another. I
2 see one signature, that was a signature of counsel,
3 Cannon and Mitchell.

4 Q Now, does that document -- what does that
5 document recite the date of incorporation of JMHC was?

6 A I don't understand.

7 Q Right on the first line, Doctor, do you see
8 -- does that document say that JMHC was formed in 1964?
9 I'm sorry. Date of incorporation. Would you read the
10 date of incorporation that's recited there for JMHC?

11 A February 18, 1963.

12 Q 1963?

13 A In Maryland. And that was Jefferson Memorial
14 Hospital, Incorporated of Maryland.

15 Q Well, ~~JMHC was never a Maryland corporation,~~
16 was it?

17 A Jefferson Memorial Hospital Corporation was a
18 Maryland corporation.

19 Q When was it formed, Doctor?

20 A I think in 1971, just before -- immediately
21 before the 1st of July before it took over the
22 hospital.

23 Q Doctor, are you aware that year after year

1 JMHC filed tax returns using JMHI's tax identification
2 number?

3 A I did not notice at the time. When I looked
4 at it again, it was a mistake, and the financial
5 statement reflected what it was. It was an error on
6 the part of the accountant.

7 Q Doctor, would it be fair to say that even
8 until 1994 that those filings continued in the name --
9 in the tax ID number of Jefferson Memorial Hospital,
10 Inc.?

11 A For my part I can tell you again Jefferson
12 Memorial Hospital, Inc. ceased to exist officially on
13 the 18th of April 1973, and if any referral to this
14 name was present in the tax return, it's a mistake.

15 Q Doctor, are you acquainted with the law firm
16 of Spector, Cohen, Gadden and Rosen?

17 A If you would show it to me, then I might --

18 Q I will in a moment, Doctor. Do you recall
19 that a decision was made to invest in aggressive tax
20 shelters in the 1970s, one being the Lost Creek
21 Partnership?

22 A Yes, sure. Excuse me. What date you say?

23 Q It was 1978, wasn't it, Doctor?

J.APP. 1430

1 A I understand that you said '70. '78, it
2 might be, yes.

3 Q Who made that investment? Was it Jefferson
4 Memorial Hospital Corporation?

5 A I do not know whether it was Jefferson
6 Memorial Hospital Corporation or the Joint Venture or
7 any other partnership who participated in this coal
8 venture.

9 Q Well, if the Corporation -- what kind of
10 condition was the Corporation in in 1978, Doctor? Was
11 it healthy?

12 A 1978 it was the same situation, that they did
13 not have enough capital to run the place, and needed
14 always capital. The so-called tax shelter, it was, at
15 that time, perhaps the only tax shelter which could be
16 used. It was the coal mine. It was the only exception
17 the government granted for tax shelters. They
18 participated in not only this venture, but many other
19 ventures, many others all over the country.

20 Q Doctor, I think you've answered my question.
21 If you don't have an income, why are you investing in
22 aggressive tax shelters?

23 A Because if you don't have any income or you

J.APP. 1431

1 have taxable income on paper, there is a big
2 difference, you still cannot have enough cash, but you
3 can have taxable income. Therefore, you needed a tax
4 shelter on a profit-making corporation, even if you
5 don't have the money. On paper you can have income,
6 many things and you want to offset it. That was the
7 purpose of it.

8 Q Was JMHI doing any business in 1981?

9 A Jefferson Memorial Hospital, Inc., number
10 one, I tell you, it was ceased officially on the 18th
11 of April 1971. If they refer, it was a mistake on the
12 accountant. But certainly a non-profit organization
13 does not pay taxes, certainly it does not need any tax
14 shelter.

15 Q Doctor, I'm going to exhibit a document to
16 you which is Exhibit 938, and ask you if will tell me
17 who filed the tax appeal in the United States Tax Court
18 in 1981? Who does that pleading reflect is the party
19 complainant?

20 A Again, I don't --

21 Q Would you just answer my question, Dr.
22 Tauber?

23 A It was Jefferson Memorial Hospital, Inc.
J.APP. 1432

1 Q Do you understand that petition to be -- to
2 contest an assessment against Jefferson Memorial
3 Hospital, Inc. in connection with a tax shelter called
4 Lost Creek Partnership?

5 A Yes. Later all the tax shelter, they claim
6 it was dissolved and that was the law firm, you
7 mentioned it here, from Philadelphia.

8 Q They made another mistake?

9 A As far as the name erroneously again and
10 again. They have nothing to do with that.

11 Q They put the name of the purported taxpayer,
12 didn't they, Doctor?

13 A I cannot answer anything. What I said
14 before, it was a mistake and they erroneously used the
15 name, but that was a for-profit corporation.
16 Otherwise, no tax shelter was justified to take.

17 Q Doctor, you indicated that there initially
18 was a mortgage of \$800,000 on the hospital?

19 A Yes. When we started it was an \$800,000
20 first mortgage, correct.

21 Q The actual costs ultimately were over
22 \$1,060,000 did you say?

23 A No, I said around \$1,055,000.

J.APP. 1433

1 Q Well, isn't it true that JMHI was required
2 to, and, in fact, did pay all costs over \$950,000?
3 Isn't that what the lease provided?

4 A Would you be kind to repeat that? I did not
5 understand what you said.

6 Q I'm sorry. Is it not true that under the
7 JMHI lease in 1966, that the hospital was required to
8 pay all costs -- strike that -- the original lease in
9 '64, that the hospital was required to pay all costs
10 over \$950,000? Do you recall that?

11 A I recall only that rental payment as lessee,
12 Jefferson Memorial Hospital, Inc. was supposed to pay
13 the partnership which we decided will be equal amount,
14 which is the mortgage payment. That would assure us
15 that no extra money was required.

16 Q Doctor, a simple yes or no will suffice. Do
17 you recall that as part of an addendum to the '64
18 lease, executed on 11/30/64, that the hospital was to
19 pay all costs over \$950,000?

20 A Would you be kind to show me?

21 Q Doctor, I refer to the paragraph that says
22 lessee agrees to reimburse lessor for all building
23 costs in excess of \$950,000, which is the second

J.APP. 1434

1 paragraph under provision 2 of the lease. The lease
2 speaks for itself.

3 A Please ask the question and I'll answer it.

4 Q Are you aware that the hospital, in fact,
5 paid those costs?

6 A It was a triple net lease. The hospital --

7 Q I'm sorry, Doctor, is that question not
8 capable of being answered yes or no?

9 A Ask me, sir.

10 Q Did the hospital, in fact, pay those costs?

11 A Yes.

12 Q Did you cause an amendment to the lease to be
13 issued in 1966? Do you remember that?

14 A Where, sir?

15 Q Not in this document. Did you subsequently
16 amend the lease which originally required a payment of
17 about \$40,000 a year in 1966? Did you require a new
18 rental?

19 A I don't remember, but if you show me a
20 document, I will answer it.

21 Q Well, Doctor, are you familiar with the fact
22 that when the IRS revoked the tax-exempt status of JMHI
23 one of the grounds was that you executed a new lease

J.APP. 1435

1 that required the hospital to pay for improvements that
2 had already been paid for and that that was private
3 inurement? Do you recall that transaction?

4 A I don't recall.

5 Q Those documents are in evidence and have been
6 previously submitted to the Court.

7 In the 1966 lease, Doctor, did you provide
8 for a 10 percent profit to yourself and the other
9 physicians from the operation of the lease on the
10 building? Do you recall that?

11 A No.

12 Q I'll come back to that point in a moment.
13 You have no recollection of that?

14 A No. No, sir.

15 Q In your representations, Doctor, to -- let me
16 show you, Doctor, what was admitted in the previous
17 trial as Exhibit 364.

18 MR. BONO: Your Honor, I'm going to object
19 for two reasons. One, this is far beyond direct.
20 Secondly, if you're just talking about documents that
21 are already admitted in evidence and testified to, you
22 don't need this exercise. The evidence is already in.

23 He can make whatever arguments he wants in
J.APP. 1436

1 closing argument. The document --

2 THE COURT: Objection's overruled.

3 MR. HIRSCHKOP: Your Honor, I'm wondering,
4 while the doctor's looking at that, if counsel could,
5 when he identifies a document by number, just state so
6 the record's really clear what the document is.

7 MR. BETTIUS: I'd be delighted to do that,
8 Mr. Hirschkop.

9 THE COURT: He's been doing that pretty much.

10 MR. BETTIUS: I'm talking about a letter on
11 the letterhead of Jefferson Memorial Hospital, Inc.,
12 signed by Bernard Krakow and it's entitled Steps Taken
13 in the Acquisition of Land and the Construction of the
14 Building for Jefferson Memorial Hospital Corporation.

15 MR. HIRSCHKOP: Thank you.

16 BY MR. BETTIUS:

17 Q I ask you to direct your attention, Doctor,
18 to paragraph 4. I'll just ask you, Doctor, do you
19 recall that paragraph 4 provided that it was decided
20 and accepted unanimously that the hospital
21 corporation's rent would be computed on the following
22 basis: mortgage payment of \$70,800, plus 10 percent of
23 the money invested?

JAPP. 1437

1 A Yes, that's what it is down, the \$70,800.

2 Q At this time, Doctor, were you applying to
3 the Treasury Department for 501(c)(3) exemption?

4 A You asked a question?

5 Q Do you remember, Doctor, that you were
6 applying for 501(c)(3) exemption in --

7 A Which document is that?

8 Q No, no. I'm just asking for your
9 recollection. Were you applying to the IRS for
10 exemption?

11 A We applied for tax-exempt status, yes.

12 Q Do you recall, Doctor, in connection with
13 that application for exemption, discussions with the
14 government about whether there were obligations to
15 lease equipment by and between the Joint Venture and
16 the doctors?

17 A Connected with the tax-exempt application.

18 Q Had you caused the hospital -- had you
19 entered into a transaction with JMHI where JMHI was to
20 lease the equipment as well as the building from your
21 Joint Venture?

22 A No, it was not exactly that. No. The
23 hospital leased the facilities and needed additional

J.APP. 1438

1 equipment that they did not have the money to buy.
2 Therefore, not the partnership but another entity was
3 formed through an investment group which purchased the
4 equipment, leased it to the -- Jefferson Memorial
5 Hospital, Inc. and that's all that I can tell you, but
6 not a partnership.

7 Q Doctor, I'm going to show you Exhibit 362, a
8 letter from Bernard Krakow to the Internal Revenue
9 Service and direct your attention to paragraph 5, which
10 says this lease for equipment was canceled, and all
11 equipment was purchased at invoice cost from the
12 vendors.

13 Does that refresh your recollection of what
14 happened to the equipment?

15 A Excuse me. I cannot read the paragraph. Do
16 you have a better copy.

17 Q Does Mr. Krakow -- His Honor will read it.
18 It's in evidence and we'll do it that way.

19 In 1966 do you recall that a letter was
20 written by you to Blue Cross/Blue Shield on the
21 letterhead of Jefferson Memorial Hospital, which stated
22 that the equipment is leased to Jefferson Memorial
23 Hospital, Inc. at no obligation on the part of the

J.APP. 1439

1 hospital, that Jefferson Memorial Hospital Associates
2 takes the depreciation of the building and the
3 equipment as the only income and waived all future
4 compensation?

5 Do you recall writing the letter that's in
6 front of you, Doctor?

7 A Just a second, sir, let me read it. Yes,
8 sir.

9 Q Doctor, in terms of your grant of 501(c)(3)
10 status and the way you operated the Corporation, did
11 you represent, or did Mr. Krakow -- strike that.

12 Did you represent in a letter written on
13 August 8, 1966 to the government -- and I'm referring
14 to Exhibit 603 -- represent to the government that
15 since all of us have excellent practices, we,
16 therefore, decided that any money realized from the
17 operation of the hospital for eventual -- realized from
18 the operation of the hospital for eventual extension
19 and improvement of medical care, and also, if possible,
20 for lowering the cost of hospitalization.

21 Isn't that what you told the government you
22 were doing in this hospital?

23 A Ask the question. Let me read it and I can

JAPP.1440

1 answer. Yes, sir. What is your question?

2 Q Did you reveal to the government that you had
3 amended the lease to provide for 10 percent profit and
4 you had, in that lease, charged the hospital for
5 improvements which it had constructed?

6 A I really don't understand the question.

7 Q Well, Doctor, let's suppose in this
8 accounting, as a beginning point, it's relevant to
9 determine -- Doctor, what's private inurement, in your
10 understanding?

11 A Beg your pardon?

12 Q What is private inurement?

13 A I don't know.

14 Q You don't know what private inurement means?
15 Do you know what private benefit means to the doctors?

16 A Private benefit?

17 Q Yes.

18 A Benefit to someone, right?

19 Q Yes, benefit. Excuse me. You never
20 understood, as the head of this hospital, what private
21 inurement was?

22 MS. BEACH: Your Honor, that's been asked and
23 answered.

JAPP. 1441

1 THE COURT: He said he didn't know what it
2 was.

3 BY MR. BETTIUS:

4 Q Did you know that you were representing to
5 the government that you would never take anything out
6 of the hospital because you had excellent practices?

7 A That was all my concept about the hospital,
8 correct, but I did not -- Mr. Bernard Krakow, our tax
9 lawyer, handled the whole tax issue.

10 Q Well, in terms of defining the realistic
11 economic expectation of the parties, when you created
12 the corporation and when you operated -- started
13 operations of the hospital, you never wanted to make
14 any money, did you?

15 A I told only as a lessor to the lessee was the
16 only income we were looking for and nothing else.

17 Q Did you understand that you weren't permitted
18 to make any money from the operation of the hospital or
19 its assets?

20 A We never made any profit.

21 Q Doctor, the accounting will tell us that.

22 A Only lessor and lessee relationship and
23 nothing else.

J.APP. 1442

1 Q Nothing else?

2 A That's correct.

3 Q When did that change, Doctor?

4 A As far as we're concerned, it never changed.

5 Q So as far as I understand your testimony, you
6 never received anything, nor did any of your
7 associates, except rent from hospital operations; is
8 that correct?

9 A Rent paid by the lessee to the lessor.

10 Q As a spokesman for JMHJV and JMHI and JMHC,
11 you would want the Court to account for operations of
12 the hospital on that basis; is that right?

13 A That's correct.

14 Q Thank you. Now, Doctor, I was looking --
15 trying to understand what was the mortgage on the
16 building at the time of this offer from Extended Care?

17 A When Extended Care had --

18 Q Let me refresh your recollection, Doctor.
19 That letter is August 28, 1970.

20 A Yes. It was originally a \$900,000 mortgage
21 and it was a 20-year amortization schedule, which was
22 around 6 percent fixed rate, and I do not know what was
23 the balance at that time, but whatever it is, we

J.APP. 1443

1 started to pay it on constant payment on it, and
2 whatever the balance was August 1970, the schedule
3 would show it to you.

4 Q What we would have basically, then, if we
5 recalculated the mortgage, there'd be a mortgage of
6 \$800,000; whatever that balance was, we'd have to add
7 to that an additional mortgage for the '68 expansion;
8 is that correct?

9 A No.

10 Q There's more mortgage?

11 A The mortgage was, on day 1, \$800,000. During
12 the construction, before we finished the building, we
13 applied for and received an additional \$100,000 that we
14 called the junior mortgage, at the same rate. So the
15 total was \$900,000.

16 Q During the period of 1970, were you planning
17 any major expansions to the hospital?

18 A Up to 1970?

19 Q Yes. In 1970 were you looking to do any
20 major expansions?

21 A The only expansion that we had at that time,
22 to add the west wing with nearly 24 beds. That is 12
23 rooms, what we called the west wing.

JAPP.1444

1 Q Now, were you planning that in 1970?

2 A 1968 was two years before '70.

3 Q Now, other than those improvements, in 1970
4 were you planning any additional improvements of
5 significant size?

6 A Planning?

7 Q Yes.

8 A I was planning all the time.

9 Q Were you committing yourself to any more
10 mortgage money or was the situation so tight you
11 couldn't have borrowed any more?

12 A No, we could not borrow any more.

13 Q Doctor, you've been tendered this Extended
14 Care lease, do you expect someone that bargains with
15 you to understand exactly what it is they're buying and
16 you, what you're selling?

17 A Yes.

18 Q Why would Extended Care believe that your
19 mortgage was \$2,160,000?

20 A That Extended Care letter does not reflect
21 anywhere how much mortgage we have. The \$2,160,000 is
22 a purchase price. There is not a single word in this
23 letter which reflects mortgage.

JAPP.1445

1 Q Well, the purchase price was \$2,160,000?

2 A Yes, but not mortgage. The \$2,160,000 offer.

3 Q Well, the letter directs itself to the
4 purchase price being based on \$18,000 a bed, doesn't
5 it, Doctor?

6 A That's correct. If you multiply 120 beds by
7 \$18,000, you get \$2,160,000.

8 Q Well, doesn't it say that Extended Care will
9 purchase all of the assets of Jefferson Memorial
10 Hospital, Inc. and Jefferson Memorial Hospital
11 Associates for \$700,000 and shares of stock?

12 A No.

13 Q That doesn't say that?

14 A No.

15 Q Then it says -- doesn't it talk about buying
16 the stock of Jefferson Memorial Hospital, Inc.?

17 A They could not buy stock from Jefferson
18 Memorial Hospital, Inc., because Jefferson Memorial
19 Hospital, Inc. never had stock.

20 Q Everybody was making that mistake, weren't
21 they, Doctor?

22 A I would not say everybody. Some people.

23 Q Doesn't the Extended Care offer say that they

1 will purchase all of the assets of Jefferson Memorial
2 Hospital, Inc. and Jefferson Memorial Hospital
3 Associates for \$1,100 in cash?

4 MS. BEACH: Your Honor, I'd like to object.
5 The letter speaks for itself. There are three options
6 of an offer and they're not all one option. I believe
7 they're being misrepresented. The letter speaks for
8 itself.

9 MR. BETTIUS: Well, you know, Your Honor, it
10 just wasn't presented that way by Mr. Bono.

11 THE COURT: Go ahead, Mr. Bettius.

12 MR. BONO: Your Honor, I object to that
13 comment.

14 THE COURT: Go ahead.

15 BY MR. BETTIUS:

16 Q Doctor, the offer wasn't accepted, was it?

17 A It was not accepted.

18 Q If it's not accepted, how can it be a basis
19 of value?

20 A That is the best way to establish a mortgage
21 value of any real estate, to bring in an offer on a
22 contract. That is the best way to appreciate an
23 appraisal value.

J.APP. 1447

1 Q An offer that you don't accept?

2 A It was the best -- not only the best, but the
3 only offer we received, and that is on the table. That
4 is -- the reason we did not accept it was that Extended
5 Care existed for less than one year and if you read it,
6 you see it, and they want to offer stock. Extended
7 Care stocks indicated at that point that everybody
8 takes the risk in a speculative value of the stocks.
9 There are other restrictions that we could not sell it
10 for a certain period of time, and certainly my feeling
11 was then, and now too, that I am not changing brick and
12 mortar for paper.

13 That was the reason. This is the only
14 written offer that we received.

15 Q Doctor, didn't you previously testify in this
16 case that you never intended to go out of business and
17 you always intended to operate the hospital?

18 A You quote me correctly, me personally. I
19 have a fiduciary duty to the partners ~~and I have to ask~~
20 the opinion of every single person. What I personally
21 want, that doesn't count. What the group wanted, the
22 partners wanted together, no matter what I like. You
23 ask me, yes. I did not come here to make a fortune.

J.APP.1448

1 It was my dream to start the hospital, establish it,
2 but that does not mean that I can force my partners to
3 accept my view.

4 Q Very appropriate, Doctor. Your doctors had
5 another plan at that time, didn't they? They were
6 going to go to Wall Street and sell 240,000 -- the rest
7 of 1 million shares that were left out of the issuance
8 of 240,000 shares at \$10 a share, weren't they? Isn't
9 that the plan that they had?

10 A I don't know what plan they had. Mr. Reeves,
11 he is dead now, made the suggestion that since no
12 entity in the market, since we had only the license to
13 operate the place and not the physical plant, and --
14 that was the reason why we exchanged the physical plant
15 for 240,000 shares at \$4. What price we wanted to
16 have, what price they agreed, I have no idea.

17 Q Doctor, later on in your discussions with Dr.
18 -- in your testimony with Mr. Bono this morning in
19 response to his direct examination, did I hear you say
20 that JMHC assumed JMHI's obligations in 1971?

21 A That's correct.

22 Q Was one of those obligations the Palmer
23 contract?

JAPP. 1449

1 A One of the -- yes.

2 Q Was it the settlement of the Palmer contract?

3 A Mr. Thorpe Richards handled that one.

4 Q Could you answer that yes or no?

5 A Would you be kind to ask again?

6 Q Was one of the supposed assets a settlement
7 of the Palmer -- liabilities a settlement of the Palmer
8 contract?

9 A That was one part of the liabilities, yes,
10 the Palmer -- the obligation to Dr. Palmer. Correct.

11 Q Well, wasn't the Palmer contract actually a
12 liability of JMHC?

13 A No, because JMHC didn't even exist when the
14 liability arose. The liability was started on the 15th
15 of March 1965. When we opened, we did not have the
16 money to pay the pathologist. The Corporation was
17 formed in July 1971, and this amount accrued
18 previously.

19 Q Doctor, I'm going to tender to you Exhibit 89
20 and ask you if it refreshes your recollection of who
21 settled the Palmer contract. Look on page 2, if you
22 will, Doctor, where that red tab is, who proposed --

23 MR. COCHRAN: Your Honor, excuse me. The
JAPP. 1450

1 question now is who settled it. The question that he
2 asked previously is whose was it. They're two
3 different questions, so this can't --

4 MR. BETTIUS: Let me just rephrase the
5 question.

6 BY MR. BETTIUS:

7 Q Who entered into a settlement with Dr. Palmer
8 of the contract dispute?

9 A Mr. Thorpe Richards.

10 Q What company? What entity entered into a
11 settlement with Dr. Palmer?

12 A It was -- he was and he is still our agent
13 and --

14 Q What company was responsible for the
15 settlement with Dr. Palmer?

16 A The company was the Jefferson Memorial
17 Hospital, Inc.

18 Q Would you look, sir, at page 2 of that
19 document? I'm talking about item 4. Tell me if that
20 represents when and how the settlement offer was
21 accepted? Wasn't it voted on in a meeting?

22 A Yes, sir --

23 THE COURT: Just a minute, folks. Don't both
J.APP. 1451

1 talk at once.

2 BY MR. BETTIUS:

3 Q That settlement was accepted at a corporate
4 board meeting on October 19, 1971, wasn't it?

5 A It was Tuesday, October 19, 1971. At that
6 time Jefferson Memorial Hospital, Inc. did not exist.
7 ~~Therefore, Jefferson Memorial Hospital Corporation.~~

8 Q So this became not an obligation of I, it was
9 an obligation of settlement undertaken by C, wasn't it?

10 MR. BONO: Your Honor, I'd have to object.
11 This is blatant mischaracterization of the facts. This
12 is a hearing of Corp dissolving this obligation.
13 There's no dispute about that. The ~~obligation~~ had been
14 ~~transferred~~ from Inc. to Corp.

15 The witness testified that the initial
16 obligation arose prior to July 1, 1975, when Inc. --

17 THE WITNESS: '71.

18 MR. BONO: '71. Excuse me -- when Inc. was
19 operating the hospital with Dr. Palmer. Now he's
20 twisted what is very clear documentation with respect
21 to the Palmer contract. He's twisting the documents
22 and he's twisting the facts for no good reason. This
23 is just inappropriate questioning.

J.APP. 1452

1 MR. BETTIUS: Your Honor, first that's a
2 direct attack on counsel and I want to answer it.
3 These are the board minutes of JMHC. Mr. Bono then had
4 Dr. Tauber testify that the assets and liabilities were
5 again assumed in a series of corporate meetings for the
6 assets and liabilities of I, and one of those
7 liabilities recited in there is the Palmer contract.
8 Now, who is twisting things?

9 THE COURT: Let's just everybody calm down.
10 I don't understand your objection, quite
11 frankly, Mr. Bono. I'll allow you to conduct a
12 redirect examination to straighten it out. But in
13 cross-examination Mr. Bettius is entitled to call
14 attention to these documents and ask the doctor what
15 they mean or what his understanding of them is.

16 MR. HIRSCHKOP: Your Honor, could I --

17 THE COURT: Wait. Wait. No, no, no. We're
18 not doing this, Mr. Hirschkop. You can either go back
19 over here and sit and I'll have one counsel jump up,
20 but I'm not having this game. I'm not having this.

21 MR. HIRSCHKOP: We represent separate
22 clients.

23 THE COURT: I understand that. I understand

J.APP. 1453

1 that.

2 Ask your question, Mr. Bettius.

3 MR. BETTIUS: Yes, sir.

4 BY MR. BETTIUS:

5 Q Was not one of the purported considerations
6 for the supposed sale and lease-back the assumption by
7 C of I's pieces of land and obligations that existed
8 because of an alleged default? Isn't that really what
9 was supposed to have happened?

10 A What's suppose to happen is Jefferson
11 Memorial Hospital Corporation assumed assets and all
12 the liabilities of Jefferson Memorial Hospital, Inc.

13 Q And I want to take those liabilities one by
14 one that are specifically referenced in that meeting.
15 Is one of the liabilities specifically referenced the
16 Palmer contract?

17 A Correct.

18 Q Is that correct?

19 A That's right.

20 Q Liability for the Palmer contract arose under
21 a settlement conducted by Jefferson Memorial Hospital
22 Corporation, didn't it?

23 A No.

J.APP. 1454

1 MR. BETTIUS: Well, Your Honor, I'll let the
2 minutes speak for themselves on that issue.

3 BY MR. BETTIUS:

4 Q Now, after 1971 you said they never
5 transacted -- JMHI never transacted any further
6 business; is that correct?

7 A That's correct.

8 Q The other alleged ground of default was the
9 failure of JMHI to pay its bond obligations; is that
10 correct?

11 A That's correct.

12 Q Well, if JMHI's liabilities had been assumed
13 in 1971, how could they be in default of bond
14 obligations? Wouldn't those defaults be C's
15 obligations if they had previously assumed the
16 liabilities in '71?

17 MR. BETTIUS: Your Honor, is that too --

18 THE COURT: You lost me.

19 MR. BETTIUS: All right.

20 BY MR. BETTIUS:

21 Q Is it not true that you said that the assets
22 and liabilities of I were assumed by C in '71; is that
23 correct?

J.APP. 1455

1 A That's correct.

2 Q Now, if I never did any business after '71,
3 all of its liabilities can be recognized right there in
4 1971, can't they?

5 A Correct.

6 Q And that would assume responsibility for
7 future payments on bonds and past payments on bonds,
8 wouldn't it, Doctor?

9 A Everything, whatever the liability was of
10 Jefferson Memorial Hospital, Inc., was assumed by the
11 Corporation.

12 Q In '71?

13 A 1st of July 1971.

14 Q Well, if there was a default either prior to
15 or after '71 it was the liability of C, wasn't it?

16 A That's correct.

17 Q Well, how could C, as consideration for the
18 transfer of all of its assets and liabilities, first,
19 have a liability for the Palmer contract and, secondly,
20 for defaults on bonds that it had assumed, purportedly,
21 as I understand your testimony, in '71?

22 A Well, again, I repeat it. The Corporation
23 had an obligation to take over the -- all the

J.APP. 1456

1 liabilities which occurred during the time that
2 Jefferson Memorial Hospital, Inc. was operating. That
3 one, the obligation of the Palmer contract, did not
4 settle yet. We did not pay out on the contract. They
5 made certain negotiations and that still in October was
6 not finished. That was the obligation of the
7 Corporation.

8 Q Doctor, if I've assumed an obligation in '71,
9 and that obligation was in default, or subsequent
10 defaults occur, how can I go back and then, in '75, say
11 there is a default if I'm responsible for the payment?
12 It's no longer I's default, it's C's default, isn't it?

13 A That's correct.

14 Q So the consideration for C assuming I's
15 liability was the assumption of its own liabilities?
16 Is that what you're telling the Court?

17 A What do you mean own liability?

18 Q Well, I think the evidence is clear on the
19 issue. If you look at the corporate minutes, isn't it
20 clear that Mr. Richards -- the prime liabilities in the
21 1975 sale and lease-back described in that fashion by
22 Mr. Richards in the meeting where the resolution's
23 approved to assume these liabilities, is the Palmer

JAPP. 1457

1 contract and defaults on alleged JMHI bonds which you
2 say were previously assumed in '75?

3 A Which document?

4 Q We're going to show you the documents.

5 MR. HIRSCHKOP: Your Honor, while he's
6 looking at that, if you prefer I go back over there, I
7 will.

8 MR. BETTIUS: I'm sorry?

9 MR. HIRSCHKOP: I couldn't see but the top of
10 his head from over there.

11 THE COURT: You can stay there.

12 MR. HIRSCHKOP: If it bothers you, I'll go
13 back.

14 THE COURT: That's all right.

15 MR. BETTIUS: Dr. Tauber's voice is doing
16 very well, I think.

17 THE COURT: That's okay. Mr. Hirschkop
18 couldn't see him.

19 MR. BETTIUS: You're welcome to sit here,
20 Phil.

21 MR. HIRSCHKOP: I don't think that's
22 necessary.

23 BY MR. BETTIUS:

JAPP. 1458

1 Q Dr. Tauber, would you --

2 THE COURT: Which document are you referring
3 to, Mr. Bettius?

4 MR. BETTIUS: Your Honor, I'm sorry. It is
5 the minutes of the board of directors special meeting
6 and it's December 11, 1974, and they purport to be the
7 minutes, I believe, of JMHC.

8 BY MR. BETTIUS:

9 Q Do you recall that the motion was -- that
10 upon motion duly made and seconded and unanimously
11 carried, it was moved that Jefferson Memorial Hospital
12 Corporation acquire the assets of Jefferson Memorial,
13 Inc., a Maryland corporation, at the appraised fair
14 market value thereof, in consideration of which
15 Jefferson Memorial Hospital would take all the
16 liability of Jefferson Memorial Hospital, Inc. on
17 certain bonded indebtedness on bonds issued by
18 Jefferson Memorial Hospital, and would further enter
19 into an agreement to indemnify and hold Jefferson
20 harmless from any liabilities which the Corporation may
21 be subject to.

22 And in a description -- do you recall that
23 motion, Doctor?

J.APP. 1459

1 A I read it, sir. Again, I tell you that you
2 are right. Jefferson Memorial Hospital Corporation and
3 all the obligations for all the liabilities of
4 Jefferson Memorial Hospital, Inc. on the 1st of July
5 1971. That was the end.

6 Q Now, you were aware that JMHI could transact
7 no business in 1975 at all; is that correct?

8 A Not at all, because it ceased to exist.

9 Q Well, can you tell me how it could have a
10 corporate board meeting at which it agreed to sell its
11 assets and exchange them -- sell its assets in exchange
12 for assumption of its liabilities?

13 MR. BETTIUS: I mean, it's already been ruled
14 by the Court, Your Honor.

15 BY MR. BETTIUS:

16 Q I want you to tell me, if you recall, how the
17 issue was presented to the supposed directors of JMHI
18 as to why they should enter into this transaction?

19 MR. BONO: Your Honor? I'm going to object
20 to the question, Your Honor, as calling for a legal
21 conclusion on the witness' part. The directors at that
22 time are operating by operation of law as trustees in
23 dissolution. They can take actions to dissolve and

J.APP. 1460

1 sell off and pay liabilities of the dissolving
2 corporation.

3 It's calling for a legal conclusion. Mr.
4 Bettius is asking this witness how can they act to do
5 this.

6 MR. BETTIUS: Your Honor, Mr. Bono has made
7 the exact point of the entirety of this testimony this
8 morning. They have no right to act as a corporation
9 and they didn't purportedly act as a --

10 THE COURT: I thought your question was what
11 was his recollection as to how this came up.

12 MR. BETTIUS: Well, my question --

13 THE COURT: I didn't hear a question about,
14 you know, how could you do this if the corporation, in
15 fact, had been dissolved. That's what I understood.

16 MR. BETTIUS: That's right. In fact, Your
17 Honor, again we have a collateral attack. If Mr.
18 Bono's objection is correct, the Court ruled that none
19 of the actions purportedly taken as a corporation were
20 valid. So this purported -- I don't know why we went
21 into it this morning. I'm only doing it because we
22 did. All of these actions are void.

23 MR. BONO: Your Honor, respectfully there was

J.APP. 1461

1 never any ruling by this Court as to what actions fell
2 within an ongoing business or what actions fell within
3 the purview of trustees acting in dissolution. The
4 evidence was never argued to this Court. It wasn't an
5 issue in the first trial and I would respectfully
6 submit there never was any finding as to that regard by
7 this Court or the Supreme Court of Virginia.

8 THE COURT: There was never a claim in the
9 first trial that these people were acting as trustees,
10 was there, Mr. Bono?

11 MR. BONO: The issue never came up, Your
12 Honor. Therefore, it was never litigated.

13 THE COURT: Frankly, I've lost track of your
14 question, Mr. Bettius. I thought you had asked the
15 doctor to describe the circumstances in which this came
16 up, not a legal conclusion.

17 MR. BETTIUS: What I find interesting about
18 the objection, Your Honor, is it really goes to the
19 heart of what I was doing this morning. He's retrying
20 the first case, and this accounting is, in effect, if
21 you look at it, a motion for a new trial, because he's
22 basically saying these assets were exchanged when they
23 clearly weren't.

J.APP. 1462

1 The Supreme Court said any of the actions
2 purportedly taken on behalf of JMHI after '73 are void,
3 and that includes the cancellation of the lease and all
4 the other activities.

5 MR. BONO: Your Honor, absolutely not.

6 THE COURT: Let's get on. I'll hear all of
7 this argument at the appropriate time, maybe. For now,
8 would you ask a question so I can -- repeat the
9 question that you asked that gave rise to all of this.

10 MR. BETTIUS: Excuse me, Your Honor. One
11 moment. Would the Court indulge me a moment? I've
12 lost track of where I am.

13 THE COURT: All right.

14 MR. BETTIUS: Your Honor, I'm going to submit
15 to the Court, rather than go through any of this
16 torturous exercise, that the assets purportedly sold
17 and exchanged are reflected in Exhibit 138. They're
18 clearly delineated. If Your Honor would read those
19 minutes, I think you'll come to the same conclusion.

20 BY MR. BETTIUS:

21 Q Now, this appraisal, supposedly, of the real
22 estate that took place, did you ever see that
23 appraisal, Doctor?

J.APP. 1463

1 A Which appraisal, sir?

2 Q The appraisal of JMHI's land that supposedly
3 formed the basis for this transaction.

4 A Would you be kind to show it to me.

5 MR. COCHRAN: Mr. Bettius, are we talking '71
6 or '75 now?

7 MR. BETTIUS: I'm talking about the appraisal
8 that's in '75, the appraisal for Thorpe Richards,
9 Esquire. It's a previous trial exhibit. It's 881 and
10 I think it's dated right around the date of that
11 meeting. I don't know -- yes, it is November 15, '74.

12 THE WITNESS: What was your question?

13 BY MR. BETTIUS:

14 Q In that appraisal, the appraiser was
15 directed, was he not, to ignore the fact that there was
16 a building on the property and that it was being used
17 for a hospital?

18 A What appraisal are you asking --

19 Q Right where that little red --

20 A The land? The land appraisal?

21 Q Yes.

22 A The land appraisal is always, every time --
23 the appraisal value of the land without improvements.

J.APP. 1464

1 Q It was improved, though, wasn't it, Doctor?

2 A Sir, you ask a question and I answer.

3 Q The land was --

4 THE COURT: Let him finish.

5 MR. BETTIUS: Excuse me.

6 THE WITNESS: Any land appraisal on any real
7 estate is always based on the land without any
8 improvement and it stated here that the land is
9 appraised on the basis of the best use, the most
10 efficient use. Always the land appraisal is based
11 without any improvement.

12 They take into consideration what is -- can
13 be used the best. The best use in this report is
14 residential, certainly not as a hospital. The value of
15 the land definitely was decreased by having the
16 improvement of a single-purpose building.

17 BY MR. BETTIUS:

18 Q Doctor, I understand your expertise as a real
19 estate developer and an appraiser, but I just want you
20 to tell me was the appraiser instructed to appraise
21 this land in a condition that didn't represent what was
22 on it?

23 A I did not order the appraisal.

1 Q I didn't ask you that, Doctor. Well, I think
2 the appraisal speaks for itself. I'll move on.

3 A It is absolutely just based on the land
4 without any improvement, because I never in my whole
5 experience with real estate development ever saw any
6 appraisal of the land which was not stipulated with no
7 improvements.

8 Q Doctor, if we wanted to understand what JMHI
9 could use the land for, whether it was more valuable or
10 less valuable, you had to look at it and say there's a
11 building on it, you've got to do something with it,
12 don't you? You just disregard that in trying to
13 determine what's something worth, what's actually been
14 done to it?

15 A Mr. Bettius, I repeat it and I stand by it,
16 that no land appraisal ever was made, in my opinion, in
17 my practice, which took into consideration the
18 improvements, because that's what they call land value
19 for the best use. A hospital is not the best use.

20 Q Are you aware, Dr. Tauber -- and you were
21 here when Mr. Richards testified, weren't you, in this
22 case --

23 A Yes.

J.APP. 1466

1 Q -- that he never saw the Reeves letter so he
2 didn't know about the IRS situation as described by
3 Reeves in the merger that was contemplated?

4 A Excuse me, sir. Would you repeat the
5 question?

6 Q That Mr. Richards never saw the Reeves
7 letter, remember that?

8 A I don't remember it. I don't understand why
9 because he saw it with me.

10 Q Do you remember he testified that the doctors
11 never told him the merger was not complete?

12 A That is his testimony, but as far as I
13 remember he knew everything from day one.

14 Q Well, Doctor, I think this is very important,
15 because if you all told him what was being conveyed
16 back and forth, and he already thought C had it, that's
17 why he didn't make provision for C to get the
18 operations; isn't that right? How could he have
19 intended those documents to convey C's assets when he
20 thought they'd already gotten them in a merger?

21 MS. BEACH: Your Honor, I'm going to object,
22 the --

23 THE COURT: Objection sustained.

J.APP. 1467

1 MR. BETTIUS: Your Honor, my reference is to
2 the prior record and I've given him --

3 THE COURT: You asked him how Mr. Richards
4 could --

5 MR. BETTIUS: Sorry, your Honor.

6 BY MR. BETTIUS:

7 Q Do you remember that he said he was not
8 advised that JMHC had not qualified to do business in
9 Virginia?

10 A That was Mr. Thorpe Richards' testimony. As
11 far as you ask me, he knew ~~everything~~ from day one.

12 Q I understand that.

13 A Correct.

14 Q Do you recall he testified that he did not
15 know that JMHI had lost its corporate franchise?

16 A I repeat my answer. Mr. Thorpe Richards --

17 MR. COCHRAN: I will stipulate as to the
18 testimony.

19 MR. BETTIUS: Well, Your Honor, yesterday
20 they said that he was told to make everything right,
21 and today Dr. Tauber said that he accomplished this
22 supposed transaction, which I think is void anyway, and
23 I never wanted to go here, Your Honor.

J.APP. 1468

1 I think all of these issues have been
2 precluded. We put Friedman on the stand, we put Dr.
3 Tauber on the stand. I'm perfectly willing to submit a
4 list to the Court, rather than go through prolonged
5 agony, of what Mr. Richards said he didn't know. If
6 you'll stipulate --

7 MR. COCHRAN: The transcript will show it.
8 The question is, Dr. Tauber, did you do something
9 different, did you understand something different.

10 MR. BETTIUS: If I'm going to try my case,
11 I'd like to try it.

12 MR. COCHRAN: Maybe that's appropriate. But
13 Mr. Richards testified --

14 THE COURT: Objection is sustained.

15 I can read Mr. Richards' testimony again if I
16 have to, Mr. Bettius. I have it in my office.

17 MR. BETTIUS: I'm going to ask Your Honor to
18 do just that. May I pass up a sheet of the relevant
19 pages?

20 THE COURT: Show it to counsel.

21 MR. BETTIUS: I'm giving them a copy. I'm
22 giving them a copy.

23 MR. BONO: Your Honor, I object.

J.APP. 1469

1 THE COURT: I'm going to read it all.

2 MR. BETTIUS: All right. Fine. I'd still
3 like to offer that as an exhibit.

4 MR. BONO: Your Honor, I object.

5 MR. BETTIUS: It's an exhibit.

6 THE COURT: Objection sustained.

7 MR. BETTIUS: Will you mark it for
8 identification, Your Honor?

9 THE COURT: Certainly. I'll mark it as 00 to
10 distinguish it from the others.

11 (Whereupon, Complainant's
12 Exhibit No. 00 was marked
13 for identification.)

14 BY MR. BETTIUS:

15 Q Dr. Tauber, do you recall previously
16 testifying in this proceeding that JMHI did not
17 transfer its license?

18 A Nobody can transfer license.

19 Q Wasn't the license always in JMHI?

20 A JMHI had the license as long as they operated
21 the hospital, which ceased 1st of July 1971. And it
22 was never disputed that the license cannot be
23 transferred.

JAPP. 1470

1 Q And one of the critical things about this
2 hospital, Doctor, is a law was passed in 1973 called
3 COPN, wasn't it, certificate of public need?

4 A Right.

5 Q And from that moment on Jefferson was
6 grandfathered from those provisions, was it not?

7 A It was grandfathered. They had the license
8 at the time, Jefferson Memorial Hospital Corporation,
9 and it could not be transferred.

10 Q Isn't it true, Doctor, that everyone who ever
11 operated Jefferson operated as a lessee or as the
12 holder of the license of Jefferson?

13 A Yeah, I think so.

14 Q In fact, HGV -- the documents clearly show
15 that HGV operated under the preexisting license, don't
16 they?

17 MR. BONO: Objection, Your Honor.

18 THE WITNESS: Excuse me? You called it --

19 THE COURT: Just a minute. Wait. Wait.

20 MR. BETTIUS: I'm sorry.

21 MR. BONO: Objection, Your Honor. The
22 documents show just the opposite.

23 THE COURT: The document speaks for itself.

J.APP. 1471

1 We've spent most of the day having Dr. Tauber read
2 documents, both sides.

3 MR. BONO: I'll specifically refer the Court
4 to paragraph 4 of the Health Group of Virginia lease
5 which is already in evidence.

6 THE COURT: Go ahead, Mr. Bettius.

7 BY MR. BETTIUS:

8 Q Do you recall --

9 MR. BETTIUS: Your Honor, I'm just going to
10 place it in evidence. I'm going to offer Exhibit 945,
11 which is a letter. It came from Tauber production
12 24108 that talks about the status of the license and
13 indicates that HGV is operating under the prior
14 license.

15 (Whereupon, Trial

16 Exhibit No. 945 was marked
17 for identification.)

18 THE COURT: Show that to counsel.

19 MR. BETTIUS: I've given him a copy.

20 THE COURT: That's a letter?

21 MR. BETTIUS: Yes, sir. It's Exhibit 945.

22 BY MR. BETTIUS:

23 Q All right. Dr. Tauber, now, do I J.APP.1472

1 understand --

2 MR. HIRSCHKOP: Pardon me. Do you want him
3 to read that?

4 MR. BETTIUS: No, I'm just offering it to the
5 Court and let the Court come to its own conclusions
6 about the document.

7 THE COURT: All right. Let's get on with the
8 questions. Doctor?

9 THE WITNESS: Yes, sir.

10 THE COURT: I haven't ruled on it yet.

11 MR. BONO: Your Honor, I'll just point out
12 that Mr. Bettius was asking the witness whether the
13 license was held by I. The letter, which will speak
14 for itself, refers to the license being issued to
15 Jefferson Memorial Hospital Corporation.

16 MR. BETTIUS: Your Honor, he indicated that
17 Corp. just two --

18 THE COURT: I understand.

19 MR. BETTIUS: Thank you, Mr. Bono.

20 THE COURT: Do you have any objection to the
21 exhibit, Mr. Bono?

22 MR. BONO: I do not.

23 THE COURT: All right. It's admitted.

J.APP. 1473

1 (Whereupon, Trial Exhibit No.

2 945 was received in evidence.)

3 MR. HIRSCHKOP: If Your Honor, please, when
4 he gets to a suitable point, perhaps we could take a
5 short break. I've been watching the doctor.

6 MR. BETTIUS: I'm sorry, Mr. Hirschkop.

7 THE COURT: How much longer are you going to
8 be, Mr. Bettius?

9 MR. BETTIUS: Your Honor, I've got
10 considerably more examination.

11 THE COURT: We'll take a recess.

12 THE WITNESS: I feel all right.

13 THE COURT: You feel all right?

14 THE WITNESS: Yes.

15 THE COURT: Can you go some more?

16 THE WITNESS: Yes.

17 THE COURT: All right. The doctor says he
18 wants to go some more. We'll go for a little while.

19 BY MR. BETTIUS:

20 Q Doctor, I have to confess I wasn't clear this
21 morning. I have to make sure that I understand your
22 position. The totality of the 60,000 shares issued in
23 '72 were redeemed in the '75 period; is that correct?

J.APP. 1474

1 A I think it was redeemed in 1972, issued
2 60,000. It was converted to bonds.

3 Q I think we can account for them. First, you
4 needed about 80 percent of the stock to exchange for
5 bonds to exchange for the hospital. It took about 80
6 percent of the stock to get to \$240,000; is that
7 correct?

8 A No, not correct. The 240,000 shares at \$4
9 value --

10 Q No, it's 60,000, Doctor.

11 A Would you ask it once more?

12 THE COURT: Let me him answer, Mr. Bettius.

13 Go ahead, Doctor.

14 THE WITNESS: Two hundred forty thousand
15 shares at 4 percent (sic) was issued on the 1st of July
16 1971, and -- at that time when we swap. Later, in 1972
17 an additional 60,000 shares were issued at \$4 and the
18 hospital received \$240,000, which is 4 times 60,000.

19 And immediately they converted it at \$6 per
20 rate for \$360,000 face value bonds. That's what
21 happened and I testified that's correct. There was
22 \$28,480 payment, but the rest of the bond earned zero,
23 which reflected the whole cost to the hospital. The

J.APP. 1475

1 money that they received was 2.4 percent.

2 BY MR. BETTIUS:

3 Q Doctor, isn't it true that only the 1972
4 shares were eligible to participate in the swap for
5 bonds to redeem the hospital?

6 A It has nothing to do with anything in the
7 hospital.

8 Q Doctor, let me be very clear. Is it not true
9 that the participation for the exchange of stock for
10 bonds was limited to a redemption of 1972 stock and not
11 the original stock?

12 A I don't know. I cannot answer it. It
13 doesn't make any difference, it was told to us, whether
14 it was issued in '71 or '72. The only thing we --

15 Q Doctor, I think I can give you a reference
16 that will clear that up.

17 A Sure.

18 Q I'll come back to it.

19 MS. BEACH: Your Honor, could he please
20 finish his sentence? He was saying the only thing we,
21 and then Mr. Bettius --

22 THE COURT: I thought he'd already answered
23 the question. The doctor tends to go on and on.

J.APP. 1476

1 BY MR. BETTIUS:

2 Q Doctor, was the purchase price of the
3 building, the \$240,000 cash, was that referred to as 10
4 percent of the value of the hospital, plus the
5 assumption of the mortgage? Do you recall that, where
6 that figure of \$240,000 came from?

7 A The 240,000 shares, not dollars.

8 Q No. You were buying the building, correct?
9 The total consideration was the assumption of its
10 mortgage and an additional \$240,000 which was
11 ultimately taken care of in bonds. How did you come to
12 that value of \$240,000? Wasn't that 10 percent of the
13 value of the hospital?

14 A No, it wasn't related.

15 Q Where did -- excuse me, Doctor. I'm sorry.
16 Where did the \$240,000 number come from?

17 A That was the \$240,000 which was cash
18 obligation of the Corporation that when we made the
19 swap was reversed. Then we took back the physical
20 plant, the mortgages, the bond obligations and then
21 \$240,000 assuming cash liability of the Corporation.

22 Q Doctor, what did the Corporation owe \$240,000
23 for?

JAPP. 1477

1 A I cannot tell you now what, but I know that
2 they had no money and they borrowed money and that was
3 the \$240,000 on the books and that's what they took
4 over.

5 Q You're telling me that Mr. Cobb or someone,
6 an accountant, will show me a \$240,000 obligation? If
7 there was a \$240,000 obligation, why did they get
8 anything except just the assumption of the mortgage?

9 A It was \$240,000, which was the obligation of
10 the Corporation, and that's -- when they reversed the
11 swap the Joint Venture assumed the \$240,000 obligation.

12 Q Are you telling the Court that the Corp. owed
13 \$240,000 and was paid \$240,000?

14 A No. Money was not exchanged.

15 Q I know that.

16 A The Partnership took responsibility for the
17 \$240,000 obligation of ~~the Corporation~~. That's what I
18 testified before, ~~and that's what~~ I told you before,
19 many times.

20 Q Doctor, if the hospital owed someone
21 \$240,000, why would it be paid \$240,000?

22 A That was the consideration reversing the swap
23 and the Partnership assumed the initial \$240,000

J.APP. 1478

1 obligation of the Corporation.

2 Q Well, the obligation that was -- there was no
3 obligation assumed, bonds were transferred, and they
4 were canceled to pay \$240,000 that was owed to the
5 hospital, weren't they?

6 A Right. In the form of Mr. Linton's
7 memorandum, it stated \$230,500 was redeemed was the
8 word used, to cancel the Partnership obligation, the
9 assumed obligation, of \$240,000.

10 Q I want you to get -- let's get Mr. Linton's
11 memorandum out again. It is to me very difficult to
12 understand, Doctor, why you would pay a corporation
13 \$240,000 if it owed you \$240,000, and then cancel your
14 corporate bonds as well.

15 MR. BONO: Your Honor, he's representing that
16 the Corporation owed \$240,000 to the Partnership.
17 That's not the testimony. If I need to go through this
18 again on redirect I will, but I thought the
19 testimony --

20 MR. BETTIUS: Your Honor, he didn't say --
21 excuse me.

22 MR. BONO: -- this morning was very clear and
23 very precise. If it isn't, let me explain, and then if

J.APP. 1479

1 Mr. Bettius wants to clarify it --

2 MR. BETTIUS: I want it from the witness,
3 Your Honor.

4 MR. BONO: He's already testified and
5 obviously it's not clear to Mr. Bettius and I can tell
6 it has not, in fact, been clear to the Court.

7 THE COURT: Just a minute. I don't recall --
8 I may be wrong -- but I don't recall that Dr. Tauber
9 said that \$240,000 was -- I thought he talked about it
10 as some sort of general cash obligation.

11 MR. BONO: Correct.

12 THE COURT: I don't think he said it was owed
13 to the partners or to the Corporation or anybody else.

14 MR. BONO: Absolutely, Your Honor.

15 THE COURT: That still raises the question of
16 -- well --

17 BY MR. BETTIUS:

18 Q How did you get to the value, Doctor?

19 MR. BONO: That's a different question.

20 MR. BETTIUS: Thank you, Mr. Bono.

21 BY MR. BETTIUS:

22 Q How was this \$240,000 value arrived at, just
23 that it owed \$240,000 to someone else?

JAPP.1480

1 A They were -- they had \$240,000 obligation
2 and --

3 THE COURT: Stop right there. To whom was
4 that obligation owed?

5 THE WITNESS: I don't know. I have no idea
6 who it was. The \$240,000, whether it was a vendor, I
7 cannot speculate. I know it was consideration in
8 reversing the swap and the Partnership assumed \$240,000
9 obligation for the Corporation, and that became
10 obligation of the Partnership.

11 BY MR. BETTIUS:

12 Q Doctor, did anyone go out and appraise the
13 building to see what it was worth?

14 A No, I don't think so.

15 Q Do you think it was only worth \$240,000 over
16 the mortgage?

17 A I have no idea.

18 Q Okay. Thank you, Doctor. Doctor, I'm going
19 to show you the minutes of a meeting of your -- strike
20 that.

21 I'm sorry. It's a letter to Mr. Richards
22 from you dated May 25, 1975, and for purposes of just
23 moving things along, I've underscored a part of the

J.APP.1481

1 letter in yellow. You can read the whole thing if you
2 want, but I'm going to ask you if this refreshes your
3 recollection, Doctor, as Exhibit Number --

4 MR. BETTIUS: I'm sorry, Mr. Cochran. I
5 apologize. The exhibit number is 403.

6 BY MR. BETTIUS:

7 Q Does this refresh your recollection as to
8 what stock was to be used in the exchange of the
9 building?

10 Doctor, I assure you the only question I'm
11 going to ask you about this letter is on that first
12 page about what stock was used. Doesn't it indicate it
13 was the '72 stock?

14 A Yes. What is the question, sir?

15 Q It was the '72 stock that was used in the
16 redemption; is that not correct?

17 A That's correct.

18 Q And I think the numbers now will begin to add
19 up. It would take 80 percent, would it not, of the
20 1972 stock issue to raise \$240,000 if a conversion to
21 bonds took place at \$6 a share? Am I right about that,
22 Doctor? If we convert 80 percent of the stock to \$6
23 bonds, we've got \$240,000; is that right?

J.APP. 1482

1 A Eighty percent of what?

2 Q Of the 60,000 shares.

3 A That's 48,000.

4 Q Yes, sir. You took those at \$6 -- exchanged
5 those for \$6, we got \$240,000, don't we?

6 A No.

7 MR. COCHRAN: No, you don't. You take 40,000
8 and --

9 MR. BETTIUS: I'm sorry. I think everybody
10 understands where I am.

11 MR. COCHRAN: Do it the other way.

12 MR. BETTIUS: I've got you.

13 BY MR. BETTIUS:

14 Q Doctor, if we wanted to redeem the additional
15 20 percent for bonds, we'd have all of the '72 issue
16 accounted for?

17 MR. COCHRAN: Your Honor, if the Court
18 please, his math is wrong. It's 60-40.

19 MR. BETTIUS: That's right.

20 MR. COCHRAN: One-third, two-thirds. Let's
21 be consistent.

22 MR. BETTIUS: All right.

23 BY MR. BETTIUS:

J.APP. 1483

1 Q Is it not true that the 20 percent of the
2 additional stock that was redeemed was the rest of the
3 '72 issue?

4 A The '72 issue was 60,000 shares that were --
5 how much we did we say, 20 percent? That would be
6 12,000.

7 Q In fact, if we looked at the retained
8 earnings statement in your 1977 financial statement,
9 you see that the stock is back down to about --

10 A I don't have any papers.

11 Q Let me show you this, Doctor. Do you agree
12 this transaction had been completed by 1977? Is that,
13 correct, all the bonds had been redeemed by '77?

14 A Mr. Bettius, let me see it.

15 THE COURT: Would you tell counsel what it
16 is?

17 MR. BETTIUS: I'm looking, Mr. Cochran, and
18 gentlemen, at Exhibit 205. I would ask you to look at
19 the respective --

20 MR. COCHRAN: What is it, Mr. Bettius, 205?

21 MR. BETTIUS: It's a financial statement and
22 it's 205.

23 MR. COCHRAN: 1977?

1 MR. BETTIUS: Yes, sir. It's '77 and it
2 shows the '66 stock -- '76 stock and the '77 stock
3 balances.

4 BY MR. BETTIUS:

5 Q They're right back around the 205,000 level,
6 are they not, Dr. Tauber, 206,000, 207,000?

7 A I don't understand.

8 Q Do you see the shares represented to be
9 outstanding there, Doctor?

10 A That is authorized shares, 1 million.

11 Q Right. What's left?

12 A Issued and outstanding is 205,982 and 207 --

13 Q I'm sorry. Nobody could hear that, Doctor.

14 A Excuse me, sir. It is authorized 1 million
15 shares, issued and outstanding 205,982 and 207,814.

16 Q Originally, Doctor, we had 305,000; is that
17 correct? After the '72 stock issue we had 305,000
18 shares out, didn't we?

19 A We had originally 240,000 and then 5,000 to
20 Jefferson Memorial Hospital, Inc. and then 60,000. You
21 are correct.

22 THE COURT: We're going to take a short
23 recess, Mr. Bettius, about ten minutes.

J.APP. 1485

1 (Whereupon, a brief recess was taken.)

2 BY MR. BETTIUS:

3 Q Dr. Tauber, you indicated that after 1975 you
4 were -- had planned to build -- if I say the third
5 floor, the MOB space, can we agree that we're dealing
6 with the third floor that's used by the hospital?

7 A Correct.

8 Q Now, did that require a COPN? Do you recall
9 whether it did or not?

10 A I don't know.

11 MR. BETTIUS: Your Honor, based on a decision
12 I'm now moving ahead past '75, and I just need a
13 minute.

14 Mr. Cochran, I'm going to show the witness
15 Exhibit 898, and ask him if he recognizes this
16 certificate of public need.

17 THE WITNESS: The copies on the first page?

18 BY MR. BETTIUS:

19 Q Do you recognize that as a certificate that
20 pertains, sir, to the third floor MOB space?

21 A I think so.

22 Q Yes, sir. Do you notice a limitation imposed
23 on the certificate as to cost? What does it say there,

JAPP.1486

1 Doctor?

2 A That total license and bed capacity upon
3 completion not to exceed 120 beds in the hospital. It
4 means that --

5 Q That's not what I'm referring to, Doctor.
6 I'm referring to the language which says the total
7 license bed capacity shall not exceed 120, and then it
8 says total reimbursable cost to third-party payors not
9 to exceed \$11,760.

10 A Correct.

11 Q Now, do you recall --

12 MR. BETTIUS: Your Honor, I'm going to move
13 this exhibit.

14 (Whereupon, Trial
15 Exhibit No. 898 was marked
16 for identification.)

17 MR. COCHRAN: No objection.

18 THE COURT: All right. It's admitted.

19 (Whereupon, Trial Exhibit No.
20 898 was received in evidence.)

21 BY MR. BETTIUS:

22 Q Do you recall that at the time that the
23 question of COPN approval was discussed that there --

1 what you represented the total cost of the third floor
2 MOB space to be?

3 A I personally don't, because I was not
4 involved.

5 Q Was it represented to be \$98,000?

6 A Most likely. I cannot answer it, because I
7 did not handle it. The administration did it.

8 Q Do you recall that in order to assure the
9 public health facilities people that the cost would
10 never exceed \$11,760, that you caused a lease to be
11 issued to Jefferson Memorial Hospital for 20 years at
12 \$11,760 for this space?

13 A No, I understood that only \$11,760 will be
14 used toward the third-party payor. That doesn't mean
15 that the rent is accepted.

16 Q Let me first show you a letter that you wrote
17 to Leslie Peters and ask you if you recognize this
18 letter?

19 MR. COCHRAN: Exhibit number, sir?

20 MR. BETTIUS: It is Exhibit 893. It's
21 December 9, 1976.

22 BY MR. BETTIUS:

23 Q Who is Leslie Peters, Doctor?

JAPP. 1488

1 A I think that he is at that time the chairman
2 of the board and president of the Corporation.

3 Q Did you write a letter that says this is in
4 reply to your request concerning the estimated
5 construction costs for the proposed second story
6 addition and parking area to be made available for the
7 addition. The estimated construction costs of the
8 parking spaces, and you go on, and then you turn to the
9 -- these are other issues. You turn to, the allocation
10 of \$98,000 to the hospital distributed over a 20-year
11 lease arrangement of \$11,760 is the total sum we will
12 expect Jefferson Memorial Hospital to be obliged for.

13 Do you remember that?

14 A Yes, it is my signature.

15 Q And do you know that this letter was used to
16 submit to state authorities so that you could get a
17 COPN for the building?

18 A I suppose so.

19 Q Yes. And did you then, Doctor, cause a lease
20 to be executed for the amount of -- in the amount of
21 \$11,760 -- a lease was then executed for 20 years for
22 this space that you previously described this morning,
23 Doctor, was it not, for \$11,760 for 20 years?

J.APP. 1489

1 A Right.

2 Q Do you recall that?

3 A Yes. I really do not recognize it.

4 Q All right. Thank you, Doctor. Doctor,
5 notwithstanding the commitments that were made, did you
6 cause a lease amendment to be executed in 1978 to that
7 lease?

8 A Yes. If you would show me, please, the
9 documents?

10 Q I'm just going to ask you if you recall it.
11 Doctor, I think I incorrectly said that was an
12 amendment to the MOB lease. You amended the 1975
13 lease, did you not, in 1978?

14 A Show me the document, sir.

15 Q Doctor, we've asked that it be produced. The
16 only reference I can give you to it is that you
17 referenced it in your 1982 HGV lease, and I'll come to
18 that in a moment.

19 To see if I can refresh your recollection,
20 Doctor, as to how all of this came about to state
21 authorities, I'm going to show you board minutes of
22 your -- of the Jefferson Memorial Hospital dated
23 February 16, 1977, which are Exhibit 178, which I'll

J.APP.1490

1 move into evidence at this time.

2 MR. BONO: I think it's already in, Your
3 Honor.

4 MR. BETTIUS: I'm sorry.

5 THE COURT: All right.

6 MR. HIRSCHKOP: Your Honor, while he's
7 reviewing those, Mr. Bettius said they were board
8 minutes of JMH, but he didn't go beyond that. Is it
9 the Joint Venture?

10 MR. BETTIUS: No, sir. They're of the
11 Corporation.

12 MR. HIRSCHKOP: Corporation. Thank you.

13 MR. BETTIUS: I'll be careful if I get into
14 Venture documents. I'll delineate. Thank you for
15 reminding me.

16 BY MR. BETTIUS:

17 Q Dr. Tauber, I don't know if you've had a
18 chance to get to it, but apparently there was an
19 over-bed situation in Northern Virginia at that time
20 that they reflected as a surplus of 385 excess beds.
21 Were COPNs getting harder to get then?

22 A Yes. Yes, sir.

23 Q And they were concerned, were they not, that

JAPP. 1491

1 the construction costs might be understated, so to
2 ameliorate their concerns did you not enter into this
3 lease to assure them that that would be your total
4 compensation? Is that a fair statement?

5 A That's a fair statement.

6 Q Doctor, what I'm referring to is, and I'm now
7 going to hand you a document that Mr. Bono referred to
8 this morning, which is Trial Exhibit Number 325, and
9 it's the amendment to the original lease executed in
10 1982 in connection with the HGV transaction.

11 Doctor, would you look where it talks about
12 an amendment -- where it speaks to an amendment dated
13 December 31, 1978 and see if that refreshes your
14 recollection that the lease was amended in 1978 in
15 reference to construction of the medical office
16 building?

17 MR. BETTIUS: Have I lost the Court, Your
18 Honor?

19 THE COURT: I've got it.

20 THE WITNESS: Yes, sir. What is the
21 question?

22 BY MR. BETTIUS:

23 Q Doctor, it reflects the fact that the lease--

1 was amended in 1978 to have the hospital assume
2 liability for the \$1.4 million mortgage, doesn't it?

3 A Right.

4 Q Now, do you remember your telling the judge
5 this -- excuse me -- this morning that that \$1.4
6 million mortgage was taken out for two purposes?

7 A The \$1,400,00 mortgage was a blanket mortgage
8 to pay off the first mortgage that was existing and
9 then it was a blanket mortgage on the hospital as well
10 as the medical building. Then I thought all the
11 doctors would pay for their offices. They were willing
12 to subordinate this first mortgage and that's the
13 reason why we got the contribution --

14 Q Well, Doctor, it appears that the \$1.4
15 million mortgage was for construction of the medical
16 office building and because it was a blanket, it paid
17 off the balance; is that correct?

18 A It's not exactly correct, because the medical
19 office building cost \$2,665,000.

20 Q I understand, Doctor, but \$1 million of that
21 we know now was for purposes of the medical office
22 building and \$400,000 for the blanket, right, to pay
23 off the original mortgage?

JAPP. 1493

1 A No. We had -- I don't know exactly, the
2 \$500,000 was the mortgage. We repaid that money and
3 were left with around \$900,000. Again, I repeat it was
4 a blanket mortgage on both buildings.

5 Q Doctor, the existing mortgage on the building
6 at that time was \$491,000 -- I'm sorry -- \$391,000; is
7 that correct? Does that sound about right?

8 A Excuse me. Let me answer. If you have a
9 document that shows it, I don't dispute it. Usually 20
10 years, 6 percent interest, the loan will be paid off
11 approximately one-half after 10 years. So it might be
12 the same. It would be around \$400,000.

13 MR. COCHRAN: We'll stipulate to that, Your
14 Honor.

15 THE COURT: Let's make it clear what you're
16 stipulating to.

17 MR. COCHRAN: That the balance on the
18 mortgage being paid off was \$391,000 and change.

19 BY MR. BETTIUS:

20 Q So that left approximately \$1 million to go
21 to construction of the medical office building, Doctor?

22 A Right.

23 MR. BETTIUS: That's been stipulated. Your

1 Honor, I'm going to move Exhibit 904.

2 (Whereupon, Trial

3 Exhibit No. 904 was marked

4 for identification.)

5 MR. COCHRAN: No objection.

6 THE COURT: All right, 904 is admitted.

7 (Whereupon, Trial Exhibit No.

8 904 was received in evidence.)

9 MR. BETTIUS: Doctor, let me take this back
10 and clear this up for you.

11 The Exhibit 325 referred to was the amendment
12 to -- the '82 amendment, was that put in as a different
13 number by you this morning, Mr. Bono, or did you offer
14 it?

15 MR. BONO: In fact, I never discussed this
16 document this morning.

17 MR. BETTIUS: Okay. Then I will.

18 MS. BEACH: Your Honor, which document is
19 this? I'm sorry.

20 MR. BETTIUS: Have all the board minutes been
21 moved, Mr. Bono, from '76 on?

22 MR. COCHRAN: They haven't, but we'll
23 stipulate.

1 MR. BETTIUS: Everything's stipulated, Your
2 Honor. All board minutes are in and the previous board
3 minutes, 178, has been referred to where they discuss
4 the costs and they're going to put in the lease.

5 BY MR. BETTIUS:

6 Q Dr. Tauber, is it your recollection that
7 based on reading the '82 amendment to the lease, that
8 from 1978 on the hospital assumed liability for the
9 mortgage? Do you recall that?

10 A Yes, but I read it, but I had a personal
11 endorsement requirement. This loan is personally
12 endorsed by Laszlo N. Tauber.

13 Q I understand, but you entered into an
14 amendment irrespective of how the loan was made that
15 made the hospital responsible for the mortgage; isn't
16 that correct? That means they paid it?

17 A Yes. They don't pay, I personally have to
18 pay. I personally guaranteed it and it is stated in
19 paragraph 6.

20 Q Now, the hospital didn't occupy any of the
21 MOB space until substantially later, did it? When was
22 the MOB space occupied, do you remember?

23 A I don't know, except immediately when we

J.APP. 1496

1 finished the building.

2 Q It wasn't until the spring of 1969, was it,
3 Doctor?

4 A '69?

5 Q '79. I'm sorry. The spring of '79. I'm
6 losing my decades.

7 A I don't want to make exact dates.

8 THE COURT: He said he doesn't know exactly.

9 THE WITNESS: It took approximately one year
10 to construct it.

11 BY MR. BETTIUS:

12 Q Doctor, we do have a document, do we not,
13 that shows that there was another lease amendment for
14 this same space in 1980; is that correct?

15 A You refer to this one, yes.

16 Q And did that amendment specifically recite
17 that the rent for the hospital was now going to be
18 raised to \$240,000 a year?

19 A I don't know. If they pay the mortgage
20 payment, would have ben approximately \$150,000 --
21 \$152,000.

22 MR. BETTIUS: I'm going to show this to Mr.
23 Cochran first to see if I can get a stipulation.

J.APP. 1497

1 BY MR. BETTIUS:

2 Q Dr. Tauber, do you recall, pursuant to the
3 lease amendment, that the rent for the MOB space was
4 raised to \$240,000 a year, based on 12 percent -- based
5 on a 12 percent calculation of value?

6 MS. BEACH: Your Honor, let me just object
7 only because of the time this is going to take.
8 There's nothing in the document that states what's been
9 handed to Dr. Tauber. We all looked at it to try to
10 stipulate to it. I'm just trying to save some time.
11 If he's going to look in that document for those
12 numbers, he's not going to find them.

13 It's a long document. It's eight pages.

14 MR. BETTIUS: Where it comes directly into
15 play, Your Honor, the amount of that amendment is
16 clearly reflected in the '82 lease where they talk
17 about the '80 amendment and it values it at \$240,000 a
18 year.

19 THE COURT: How is this document going to
20 help Dr. Tauber recall? He says he doesn't recall.

21 MR. BETTIUS: I'll move this document into
22 evidence as the operative lease agreement.

23 BY MR. BETTIUS:

J.APP. 1498

1 Q Do you recall what that document recites as
2 consideration, Doctor, for the lease amendment?

3 A Mr. Bettius, I did not see this document. I
4 have to read it.

5 MR. BETTIUS: Let me see if I can get a
6 stipulation.

7 MR. COCHRAN: We'll stipulate. The
8 document's in evidence already.

9 THE COURT: Which number is it, Mr. Bettius?

10 MR. COCHRAN: It's 324.

11 MR. BETTIUS: Your Honor, it is 324. It
12 recites the cost of such expansion, renovation and
13 updating and it's referring to the medical office
14 building.

15 BY MR. BETTIUS:

16 Q Dr. Tauber, in terms of that 12 percent
17 number, that relates to a '75 lease, doesn't it?

18 A Mr. Bettius, I cannot comment on it. I did
19 not read this one. It's 20 or I don't know how many
20 years ago.

21 Q Do you recall any provision in the 1966 lease
22 that allows you to have a 12 percent profit for any
23 construction by the Joint Venture?

JAPP. 1499

1 A I don't remember.

2 Q Do you recall that that provision occurs in
3 the '75 lease, that you were to get 12 percent override
4 on any improvement that was constructed by the Joint
5 Venture?

6 A No, I don't remember.

7 MR. BETTIUS: Your Honor, we'd like those two
8 leases read by the Court to determine --

9 THE COURT: I'll look at as many of these
10 exhibits as I can, Mr. Bettius.

11 MR. BETTIUS: I understand.

12 We would like a stipulation that there is no
13 provision in the 1966 lease for a 12 percent override.

14 THE COURT: It speaks for itself.

15 MS. BEACH: Your Honor, I also --

16 THE COURT: It's either in there or it's not.

17 MR. BETTIUS: Very well. I'm trying to keep
18 the Court from having to read a lot of documents.

19 MS. BEACH: There's no 12 percent figure
20 anywhere. If we could see the 12 percent figure we'd
21 respond to it. There's no 12 percent figure, Your
22 Honor.

23 THE COURT: I'll read the exhibits. J.APP.1500

1 BY MR. BETTIUS:

2 Q Now, Dr. Tauber, what basis, in light of a
3 lease and certificate of need that commits expenses to
4 \$11,760 a year, is there for having the hospital assume
5 and pay a \$1.4 million mortgage?

6 A The \$1.4 million mortgage, as I mentioned,
7 approximately \$400,000 was paid on the old first
8 mortgage. Of the new money was available only \$1
9 million. That \$1 million was used on the blanket
10 mortgage of the hospital and the medical building.

11 Q Aren't the two documents inconsistent,
12 Doctor?

13 A I don't see any inconsistency at all. I see
14 it that \$1 million cash money came in and they paid
15 \$400,000, and this \$1 million was secured on the
16 original hospital building and the addition which is
17 the medical office building.

18 Q When we go to account for the reasonable
19 economic expectations of the parties and private
20 inurement in this accounting, Doctor, I'm going to ask
21 you now if \$400,000, roughly \$391,000, of the doctors'
22 original equity contribution, the \$800,000 building
23 mortgage, plus \$100,000 addition is now being paid back

J.APP.1501

1 by the hospital operations?

2 A No. It is paid back from the rent on the --
3 the lessee paid to the lessor, which was directly paid
4 to the mortgage company or the Partnership and the
5 Partnership paid the mortgage. But that was an
6 established rental payment which resulted from an
7 original \$900,000 mortgage.

8 Q Doctor, if we took \$400,000 of that mortgage
9 money and paid off the original mortgage, isn't that
10 your part and your fellow joint venturers' part of the
11 original contribution to the hospital?

12 A No.

13 Q No?

14 A No.

15 Q Then where did that mortgage -- what was that
16 mortgage originally taken out for, Doctor?

17 A To build the hospital and equipment and any
18 necessary moveable and fixed equipment to open the
19 hospital.

20 Q Thank you, Doctor.

21 MR. BONO: I'd like to interject a continuing
22 objection to this line of questioning, because all of
23 these questions and all of these transactions are in

1 the post-1975 time period. The only entities operating
2 and referenced on these documents are private entities,
3 Jefferson Memorial Hospital Corporation, and Jefferson
4 Memorial Hospital Joint Venture.

5 As such, there is no private inurement. They
6 are private, for-profit entities that are operating in
7 this time period. As such, there's no private
8 inurement. I would like to have a standing objection
9 to this entire line of questioning.

10 THE COURT: All right. It's noted.

11 Go ahead, Mr. Bettius.

12 BY MR. BETTIUS:

13 Q Isn't it true that operations of Jefferson
14 Memorial Hospital as a charity continued in 1971 -- in
15 1973 without interruption? I mean, if you were a
16 patient in the hospital, if you were anyone dealing
17 with the hospital, a creditor, Blue Cross/Blue Shield,
18 there was absolutely no interruption of the hospital as
19 a going concern, was there, Dr. Tauber?

20 A No, there was no interruption. Only the
21 non-profit -- so-called non-profit organization was
22 changed on the 1st of July, 1971 to a for-profit.

23 Q And is it not true that C -- if C has any

JAPP. 1503

1 claim to operate the hospital at all, it's because of
2 this purported merger in 1971? Where did C get any
3 rights to operate this hospital other than that
4 purported --

5 MR. BETTIUS: Am I going back, Your Honor,
6 into a bad area?

7 THE COURT: Yes.

8 MR. BETTIUS: Won't go there. Withdraw the
9 question.

10 MR. HIRSCHKOP: Does that means he's finished
11 for the afternoon, Your Honor?

12 MR. BETTIUS: Oh, no.

13 THE COURT: I don't think so.

14 MR. BETTIUS: I don't think so either.

15 BY MR. BETTIUS:

16 Q Now, as we proceed into 1981, was this
17 hospital obsolete and outdated?

18 A How can I tell you? I cannot answer it. It
19 was -- every hospital is obsolete, because every day
20 you have to improve it. There's no such thing as
21 modern. It has to be improved continuously all the
22 time.

23 Q Was Jefferson suffering from a disability in

1 terms of competition with other hospitals? Was it not
2 operating well in conjunction with other hospitals?

3 A Would you be kind to repeat the question?

4 Q Yes, Doctor. I don't know that I was very
5 clear.

6 MS. BEACH: I object, Your Honor. He's not
7 here testifying as to other hospitals. I don't know
8 how he would have that information available to him to
9 compare it to other hospitals operations.

10 THE COURT: Objection's overruled.

11 BY MR. BETTIUS:

12 Q Do you remember telling us before that
13 Jefferson had the first structured parking, it had the
14 first medical office building on the campus and it had
15 a number of improvements, the first ICU?

16 A That's correct.

17 Q Would it be your testimony that Jefferson was
18 keeping up as well as other area hospitals were with
19 the technology?

20 A With service.

21 Q Pardon me?

22 A With service.

23 Q With service?

J.APP. 1505

1 A That's correct.

2 Q If you were sick as a patient, would you want
3 to go to Jefferson or some other hospital in the area?

4 A Me?

5 Q Yes.

6 A Only to Jefferson.

7 Q And you encouraged everyone that you -- of
8 the staff to use Jefferson, did you not?

9 A That's correct.

10 Q In fact, Jefferson in 1981 had the highest
11 census of any hospital in Northern Virginia, didn't it?

12 A The highest census, yes, I think so.

13 Q And if it was unable to compete, you
14 certainly couldn't judge it by the census numbers it
15 was driving, could you?

16 A No. The census is not a reflection, because
17 we filled our hospital with more non-paying patients
18 than any so-called non-profit organization.

19 Q Doctor, do you recall the testimony in the
20 former trial that you were recovering 97 percent of
21 your accounts receivable?

22 A I don't. Ninety-seven percent?

23 Q Yes, sir.

J.APP. 1506

1 A No, I don't, because it was, perhaps, a
2 mischaracterization. We had 97 percent or 95 percent.
3 I don't think 97 percent. We had 95 percent, maybe out
4 of them 50 percent was paying, and 40, 45 percent did
5 not pay a single penny.

6 The census, when you establish it, may not
7 ask how many paying and how many non-paying patients.
8 Now we have stated that census was a reflection of the
9 profitability of the hospital, and it's not.

10 Q Doctor, to the extent that you're not
11 recovering your payments, that's reflected on your Blue
12 Cross/Blue Shield annual audit, isn't it?

13 A No.

14 Q No?

15 A No. The non-payment is the people who did
16 not have a single penny and did not have any insurance.

17 Q In terms of the hospital's operating costs,
18 Doctor, aren't they driven by the number of charity
19 patients it treats?

20 A No, no. I told to you that whenever we did
21 not get reimbursement from Blue Cross/Blue Shield or a
22 third-party payor, it was not an important item. The
23 important item was that sometimes 40 percent of the

JAPP.1507

1 patients did not pay a single penny.

2 Q What percentage?

3 A Maybe 40 percent. I cannot quote you on
4 that. We had patients from Armenia that cost us
5 \$27,500. We took not a single penny reimbursement.

6 Q Doctor, it's your testimony that 40 percent
7 of the patients at your hospital were being treated for
8 free?

9 A I did not say that. I guessed it.

10 Q You guessed it?

11 A I cannot tell to you percentage-wise, because
12 we never looked into how many percentage paid and how
13 many did not pay. Our only goal was give care to the
14 patients.

15 MR. BETTIUS: Your Honor, in this regard
16 we'll submit the corporate letter to the stockholders
17 dated October 7, 1981, which is part of Exhibit Number
18 832, and it's signed by Leslie Peters, president.

19 BY MR. BETTIUS:

20 Q Doctor, did there come a time in 1979 when
21 the doctors became involved in discussions on how they
22 were going to allocate costs of operation for their new
23 medical office building?

J.APP. 1508

1 A I don't understand.

2 Q Do you recall that you decided that all of
3 the expenses of operation and maintenance would be paid
4 by the hospital and a charge would be made to the
5 physicians of 50 cents a foot for their space?

6 A I testified before that in consideration the
7 office owners are willing to subordinate their asset,
8 that is the offices, with a blanket mortgage, because a
9 blanket mortgage is secured on both buildings. The
10 record shows that it was a 9 percent interest rate.
11 Otherwise, we would not be able to get a loan, and,
12 therefore, in compensation the doctors who did get this
13 reimbursement of expenses of 50 cents did not benefit
14 the Partnership. It benefitted only the individual
15 doctors who took offices there.

16 Q Let's go back. I'll come to that in a
17 moment, Doctor. In the face of this \$11,760 limitation
18 on costs, did you incur certain cost overruns in the
19 construction of the building that added up to \$223,000?

20 A There's two different items.

21 Q I know that. I'm sorry. I'm disjointed and
22 I want to go back now and deal with did you have cost
23 overruns in the amount of \$223,000 that were residing

J.APP. 1509

1 in Westwood, your personal company, at that time?

2 A It was definitely a large -- much larger
3 expense to construct the building, but we obligated
4 ourselves to the third-party payors that we will not
5 claim more for this addition than \$11,000 per year.
6 The rest we have to accept.

7 Q Doctor, my question really pertained to did
8 you find yourself with \$223,000 worth of costs in your
9 corporation that your fellow physicians wouldn't pay
10 for their office space?

11 A I don't know. I don't remember that. Show
12 me.

13 Q Doctor, let me show you these minutes. I'm
14 referring to the minutes identified -- I think they're
15 in -- Exhibit 835, where we discussed \$223,000, Doctor?

16 MR. COCHRAN: Did you say 835 was the exhibit
17 number?

18 MR. BETTIUS: Yes.

19 BY MR. BETTIUS:

20 Q And do you recall that you made a motion that
21 the hospital should pay these costs?

22 A It was a larger overrun.

23 Q Doctor, did you make a motion that the

J.APP. 1510

1 hospital should pay these costs?

2 A Yes, I made the motion.

3 Q And was it over the objection of the
4 accountant and the administrator because of your
5 \$11,760 a year commitment, and don't they specifically
6 tell the doctors that in these minutes?

7 A That's two different items. We never claimed
8 from the third-party anything more than \$11,000
9 deductions.

10 Q Doctor, that's not my question. Did you not
11 pass these costs to the hospital over the objection of
12 the accountant and the administrator?

13 A I don't recall an objection. It's
14 recommendations.

15 Q Let me ask you if I correctly represent to
16 the Court, both Mr. Linton and Mr. Mermelstein, they
17 are the accountants, Dr. Tauber, and are they the
18 administrator of the hospital? That's what these two
19 gentleman did?

20 A Yes. Mr. Linton was the administrator. Mr.
21 Mermelstein was the accountant.

22 Q Did they not point out -- both Mr. Linton and
23 Mr. Mermelstein pointed out that the hospital is paying

JAPP. 1511

1 the mortgage, which is in large part used to pay for
2 the building and is also paying \$11,760, which was
3 agreed to, the cost of the third floor for hospital
4 use. Mr. Linton pointed out that he felt it would
5 likely be in conflict with the Virginia certificate of
6 need law to assume this \$223,000 note, regardless of
7 what they were for, and he would not recommend it,
8 there was a lengthy discussion on the issue. A motion
9 was made and duly seconded that the hospital will
10 assume the notes totalling \$223,000.

11 Is that right? Is that what happened?

12 A Right.

13 Q It was voted, was it not, to pay these out of
14 after-tax dollars so that they wouldn't be reported to
15 the COPN authorities and the third-party payor? Is
16 that how you did it?

17 A It was after the tax payment, because that
18 was a loan and it was repaid.

19 Q Doctor, if there was any strain on capital,
20 the ability to fund capital improvements in -- in this
21 period of 1979, wasn't it as a result of the diversion
22 of rent and monies from hospital operations to the
23 medical office building in this period of time?

1 A No, it was much less.

2 Q Did you not, in that meeting, have it pointed
3 out by Mr. Linton --

4 MR. BETTIUS: I'm talking, Your Honor, at
5 page 01513.

6 BY MR. BETTIUS:

7 Q -- where he says, even us leasing the
8 equipment, there is a limit on how much we can spend or
9 obligate the hospital for in any given year. Your
10 decision to pay for certain costs on the new building
11 from profits, not to ask or to pass on expenses to
12 third-party payors, is going to put a terrific strain
13 on the hospital's ability to have any funds available
14 for capital improvements.

15 Is that what happened?

16 A The report here said that the hospital had
17 only 36 percent and it was not a --

18 Q Doctor, that has nothing to do with the
19 question I asked you.

20 A What is the question?

21 MR. BETTIUS: I'll submit the document, Your
22 Honor.

23 THE COURT: All right.

J.APP. 1513

1 BY MR. BETTIUS:

2 Q Dr. Tauber, did the doctors also evidence an
3 unwillingness to pay the costs of operation of their
4 own medical suites?

5 A I answered this question already that it was
6 an agreed and subordinated --

7 Q Doctor, that's not my question. Did they not
8 want to pay the costs of operating their own private
9 medical offices?

10 A I answered this question.

11 Q Is that true?

12 A I told you.

13 Q And did you pass off to the hospital
14 two-thirds of the operating expenses of the doctors'
15 office space, even though the hospital was occupying
16 only 22.5 percent of the medical office building?

17 A No.

18 Q No?

19 A No. I just told you again, when I said that
20 50 cents they were covered and above 50 cents, whatever
21 it was, the hospital paid for it in consideration that
22 they elect to have the first mortgage in the blanket
23 mortgage.

J.APP. 1514

1 Q Do you recall Mr. Linton telling you, the
2 doctors, the attached is an expense statement which
3 shows the break-out in detail, plus the doctors'
4 offices fair share of expenses for their offices was
5 \$75,436, but the doctors paid the hospital only \$24.02.
6 Is that what happened?

7 A It was -- the doctors made sure that they
8 will pay \$27 per square foot.

9 Q I'm talking about maintenance expenses,
10 Doctor.

11 THE COURT: Let the doctor finish the answer,
12 Mr. Bettius.

13 THE WITNESS: Twenty-seven dollars and then
14 it was agreed there was an allowance made.
15 Incidentally it cost more money. Therefore, we
16 absorbed it, as I recall, the Corporation and the Joint
17 Venture, that was a way to get these doctors in to
18 support the hospital. At the same time --

19 BY MR. BETTIUS:

20 Q Doctor, I didn't ask you why. I asked you
21 are you --

22 THE COURT: That was not responsive, Mr.
23 Bettius.

J.APP. 1515

1 BY MR. BETTIUS:

2 Q I'm asking are you paying two-thirds of the
3 expenses of the operations of the doctors' operating --
4 office space?

5 A I cannot answer to you.

6 MR. BETTIUS: Your Honor, I'll submit Exhibit
7 910.

8 (Whereupon, Trial
9 Exhibit No. 910 was marked
10 for identification.)

11 MS. BEACH: Excuse me. I believe what he was
12 trying to testify to is some subsidies he did to get
13 the doctors in, and that accounted for the difference.
14 That's why you saw the look on my face.

15 MR. BETTIUS: Your Honor, you've got the
16 hospital administrator telling them --

17 THE COURT: I'll let the document in and I'll
18 let you clear it up on redirect if you have to.

19 (Whereupon, Trial Exhibit No.
20 910 was received in evidence.)

21 BY MR. BETTIUS:

22 Q Doctor, are you -- I think we've already
23 covered this -- in 1981, the IRS allowed -- disallowed
JAPP. 1516

1 the investment in the Lost Creek joint venture; is that
2 correct?

3 A Yes.

4 Q Ultimately that issue was lost in the Tax
5 Court?

6 A It was completely disallowed.

7 Q Now, in 1981 were you receiving offers to
8 purchase the hospital?

9 A '81?

10 Q Yes, sir.

11 A I don't recall.

12 MR. BETTIUS: Your Honor, that's in that
13 corporate stock folder, to speed this up, and in those
14 previous minutes that deal with '81 being the best year
15 in the hospital's history from a census point of view.
16 There's also a motion made on the floor to consider
17 sale, and we'd like Your Honor to read that.

18 THE COURT: That wasn't the question that you
19 asked Dr. Tauber.

20 MR. BETTIUS: No.

21 BY MR. BETTIUS:

22 Q Was there an offer to purchase the hospital
23 in 1981?

JAPP. 1517

1 A I don't remember.

2 MR. BETTIUS: I'll have to go through it
3 then.

4 MR. COCHRAN: The document will speak for
5 itself.

6 MR. BETTIUS: All the documents speak for
7 themselves. I had to sit, Your Honor, through hours
8 this morning of listening to people tell me that the
9 doctors paid for all of this, and the doctors paid for
10 these improvements and they paid for the MOB and they
11 paid for the fourth floor.

12 I'm going to prove, Your Honor --

13 THE COURT: I missed something, then, this
14 morning, Mr. Bettius. What you're talking about now he
15 says he doesn't recall an offer to buy the hospital in
16 1981.

17 MR. BETTIUS: I understand.

18 BY MR. BETTIUS:

19 Q Doctor, do you have in front of you the
20 shareholders -- the letter to stockholders in 1981, the
21 special stockholders meeting?

22 A This one?

23 Q Yes, sir. Look at that.

J.APP. 1518

1 MR. COCHRAN: Exhibit number, Mr. Bettius?

2 MR. BETTIUS: We're talking about Exhibit

3 835.

4 BY MR. BETTIUS:

5 Q By December 2 of 1981, Doctor -- and I'm

6 going to show you this -- negotiations were

7 underway --

8 THE COURT: Which one are you looking at?

9 MR. BETTIUS: Your Honor, I'm looking at 858.

10 BY MR. BETTIUS:

11 Q -- negotiations were underway to lease the

12 hospital, were they not?

13 A Yes, sir.

14 Q Doctor, negotiations were underway to lease

15 the building; is that correct?

16 A That's correct.

17 Q Even prior to that in October of 1971, at a

18 stockholders' meeting --

19 MR. COCHRAN: '81.

20 MR. BETTIUS: I'm sorry?

21 MR. COCHRAN: You said '71.

22 MR. BETTIUS: I'm losing decades again.

23 BY MR. BETTIUS:

J.APP. 1519

1 Q On October 7, 1981, and I'm referring to
2 Exhibit 832 --

3 MR. BETTIUS: Perhaps I can get a stipulation
4 from counsel and it will go faster.

5 Your Honor, the stockholders' meeting, I
6 think we have a stipulation of October 7, 1981, reports
7 that there are offers to purchase the building and the
8 company is not interested in a purchase, but it would
9 entertain proposals to lease.

10 Is that agreed, Mr. Cochran?

11 MR. COCHRAN: That's agreed.

12 MR. BETTIUS: Thank you.

13 BY MR. BETTIUS:

14 Q Now, actual negotiations were underway by the
15 time of this document, is that correct, Dr. Tauber?

16 A Yes. I did not see the other document that
17 you referred to.

18 Q I'm talking about the document you have
19 before you.

20 A December 2, 1981, yes.

21 Q And those negotiations are with HGV, are they
22 not?

23 A Yes, sir.

J.APP. 1520

1 Q Now, you previously testified that COPNs were
2 getting difficult to get, is that correct, in this time
3 period?

4 A Yes.

5 Q Now, if HGV wanted to enter the market and
6 built a hospital, what would they have had to do,
7 Doctor, to build a new hospital?

8 A It would depend on where.

9 Q Pardon?

10 A Where? Which location?

11 Q In Alexandria. In the Northern Virginia
12 area. If they didn't buy Jefferson and they wanted to
13 compete in this market, what would they have to do?

14 A Apply for the certificate of public need.

15 Q They would also have to acquire a site, would
16 they not?

17 A Yes, they'd have to buy a site.

18 Q Get it zoned, correct?

19 A Not correct. Maybe they acquire land which
20 is zoned already.

21 Q Build the building; is that correct?

22 A Yes.

23 Q And, Doctor, are start-up years for a

J.APP. 1521

1 hospital particularly expensive? When you start a
2 hospital you've got the first patient, the first baby,
3 but you've got to have a hospital ready for the whole
4 -- it has to be fully manned and operating even if it
5 only has one patient, doesn't it?

6 A Even if it has one patient.

7 Q Isn't the most expensive thing in a hospital
8 an empty bed?

9 A Yes, that's what I quote all the time.

10 Q So in terms of a hospital coming into
11 operation, it's much more economical and easier to buy
12 an existing facility, isn't it?

13 A I don't know.

14 Q Well, HGV, if it wanted to compete in this
15 market area, it had to either do that or go through the
16 steps we've just outlined; isn't that correct?

17 A Again, that is a business judgment. I don't
18 know whether they were satisfied. I have no idea. I
19 can answer only what we have --

20 Q Is there -- excuse me.

21 A -- not what they want.

22 Q Is there any doubt in your mind that HGV was
23 interested in buying a going concern?

J.APP.1522

1 A I don't know. They came to us and they
2 wanted to lease it. What they desired, whether they
3 wanted to buy it later, I have no idea.

4 Q Well, they bought it as a going concern,
5 didn't they?

6 A Beg your pardon?

7 Q They bought it as a going concern, didn't
8 they?

9 A They did not buy it. They leased it as a
10 going concern.

11 Q Doctor, you're exactly right and I apologize.
12 That's exactly it. They operated it under a lease, did
13 they not?

14 A That's correct.

15 Q The operations under that lease were --
16 again, no patients were disturbed, there was no public
17 notice, just operations as the day before; isn't that
18 correct?

19 A Public announcement or not, they operated a
20 hospital. They introduced themselves as a new outfit.
21 I have no idea what they did.

22 Q You were medical director, were you not,
23 under HGV?

J.APP. 1523

1 A Yeah, I was medical director.

2 Q And that was part of the lease deal, wasn't
3 it?

4 A What do you mean part of the lease?

5 Q You had a side letter agreement with HGV that
6 made you medical director, did you not?

7 A Yes. I continued as the medical director.
8 Right.

9 Q Now, when you went to work the day before the
10 sale and you went to work the day after the sale, it
11 was as if, from the standpoint of operations, nothing
12 happened; isn't that correct?

13 A Only the administration changed.

14 Q The patients' billings weren't disrupted,
15 everything continued as it had before; is that correct?

16 A I was not involved in the patient billing.
17 That was taken over by the administration.

18 Q Now, there were two parts to this -- are you
19 all right, Doctor?

20 A Yes, I'm all right.

21 MR. BETTIUS: Your Honor, this is a good time
22 to stop for the day.

23 THE WITNESS: I would like to drink something
J.APP. 1524

1 for my voice.

2 MR. HIRSCHKOP: Is it possible that Mr.
3 Bettius might wrap up his whole examination today?

4 MR. BETTIUS: I'm going to finish. I've got
5 to go all the way through '92.

6 MR. HIRSCHKOP: Perhaps it's a good time to
7 recess, Your Honor.

8 MR. BETTIUS: I've got an hour or more, Your
9 Honor.

10 Your Honor, this is a transaction where we're
11 really getting into the money in this hospital and I
12 think it's important to reflect what happened and who
13 got paid what. I'll try to finish if you want.

14 THE COURT: No. I'm not going to put any
15 undue strain on the doctor or counsel or me. Let's go
16 for a bit and see what happens.

17 MR. BETTIUS: All right.

18 BY MR. BETTIUS:

19 Q Doctor, money was received by the physicians
20 in this transaction on -- both as stockholders and as
21 joint venturers; isn't that correct?

22 A That's correct.

23 Q I'd like to focus your attention on the

J.APP. 1525

1 payments that were to be received for the operating
2 assets and the right to conduct operations under the
3 lease. Do you remember how much money was paid, \$1.92
4 million? Is that about right?

5 A I don't know, but the records will show it.

6 MR. BETTIUS: I think we have a stipulation,
7 Your Honor, that the physicians received \$2,157,505.39.

8 MR. COCHRAN: The stipulation is that was
9 paid to Jefferson Corporation.

10 MR. BETTIUS: That's correct.

11 THE COURT: All right.

12 MR. BETTIUS: Your Honor, I'll -- this has
13 not been previously marked. Is there any objection to
14 it?

15 Your Honor, we will call this, I guess, 000.

16 THE COURT: We'll mark it with 000.

17 (Whereupon, Complainant's
18 Exhibit No. 000 was marked
19 for identification.)

20 MR. BETTIUS: Has that been given a number,
21 Your Honor?

22 THE COURT: 000.

23 MR. BETTIUS: 000.

J.APP. 1526

1 BY MR. BETTIUS:

2 Q Dr. Tauber, approximately \$909,000 of that
3 issue was used to redeem stock; is that correct?

4 A I don't remember. Show me the documents,
5 please.

6 MR. BETTIUS: Is there a stipulation to that?

7 THE COURT: Well, let's do this. I'm going
8 to adjourn for the evening. If you want to stay here
9 for a few minutes and counsel confer on additional
10 stipulations for the morning, maybe that will help us
11 speed things up.

12 We will adjourn until 10:00 tomorrow morning.

13 Mr. Bettius, I'm going to give you back these
14 two numbered exhibits. I'll ask counsel to hold onto
15 all of the exhibits until completion of the trial.

16 (End of partial transcript.)

17 * * * * *

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

J.APP. 1528

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

----- -X
COMMONWEALTH OF VIRGINIA, et al.,
Complainants,
v.
LASZLO N. TAUBER, et al.,
Respondents.
----- -X

ORIGINAL

In Chancery
No.: 96-1241

PARTIAL
TRANSCRIPT

VOLUME III

Alexandria, Virginia

Thursday, February 3, 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. 1529

APPEARANCES:

On Behalf of the Complainants:

MARC E. BETTIUS, ESQ.
DEBRA FITZGERALD-O'CONNELL, ESQ.
INA C. CHARVET, ESQ.
Lawson & Frank
6045 Wilson Boulevard, Suite 100
Arlington, VA 22205

RICHARD S. SCHWEIKER, JR., ESQ
Assistant Attorney General
Office of the Attorney General
900 Main Street
Richmond, VA 23219

ANTHONY J. TRENGA, ESQ.
Miller & Chevalier, Chartered.
655 15th Street, Suite 900
Washington, DC 20005

On Behalf of the Respondents Tauber, et al.:

STEPHEN G. COCHRAN, ESQ.
JAMES KINSEL, ESQ.
The Jefferson Law Firm, P.L.C.
6862 Elm Street, 7th Floor
McLean, VA 22101

GASPARE J. BONO, ESQ.
Long, Aldridge & Norman, L.L.P.
701 Pennsylvania Avenue, N.W.
Suite 600
Washington, DC 20004

BARBARA BEACH, ESQ.
Beach and Associates
416 Prince Street
Alexandria, VA 22314

PHILIP HIRSCHKOP, ESQ.
Hirschkop & Associates
108 North Columbus Street
Alexandria, VA 22314

KEVIN M. O'DONNELL, ESQ.
Henry & O'Donnell, P.C.
4103 Chain Bridge Road, Suite 100
Fairfax, VA 22030

WITNESS:

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Laszlo N. Tauber, M.D.:

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EXHIBITS

IDENTIFIED RECEIVED

None.

|

JAPP. 1531.

P R O C E E D I N G S

Whereupon,

LASZLO N. TAUBER, M.D.

was re-called as a witness and, after having been first
duly sworn by the Clerk of the Court, was examined and
testified as follows:

REDIRECT EXAMINATION

BY MR. BONO:

Q Dr. Tauber, I'd like to hand you the Extended
Care letter, which is Exhibit A. On cross-examination
you were asked some question relating to the impact or
relationship of the mortgage in connection with the
\$2,160,000 figure there. I'd like to just ask you to
explain the relationship of the mortgage and the
\$25,000 and the \$2,160,000 figures and its impact on
the ratio that you testified about.

A The ratio, the \$25,000 to \$2,160,000, is not
changing. The \$2,160,000 was to be paid, subject to
the mortgage. Therefore, if you have \$600,000
mortgage, then above the \$600,000 mortgage the cash
would come in. So the total consideration was \$2.16
million cash-wise, minus the existing mortgage.

Q And was the mortgage to be assumed by

J.APP. 1532

1 Extended Care?

2 A I don't know whether they assume it or
3 whatever it is, but according to this one it was
4 assumed and they pay only the difference between
5 \$2,160,000 minus the existing mortgage.

6 Q Dr. Tauber, let me show you what's been
7 marked as Exhibit 235, which you were asked about in
8 your cross-examination by Mr. Bettius. This is the
9 1972 tax return. You received a number of questions
10 about the tax returns compiled by the accountants,
11 which you testified mistakenly used the term Inc.

12 I'd like to direct your attention to this
13 very same tax return that you were asked about and I,
14 for your convenience, have tabbed the pages I want to
15 direct my question to.

16 If you look at the pages, Dr. Tauber, where I
17 have the Post-its marked, does the note written by the
18 accountant expressly refer to Jefferson Memorial
19 Hospital Corporation?

20 A Yes, it states 1st of July 1971 Jefferson
21 Memorial Hospital Corporation received all the assets
22 and liabilities of Jefferson Memorial --

23 MR. BETTIUS: That's a different return, Your
J.APP. 1533

1 Honor.

2 MR. BONO: Your Honor, the record will
3 reflect that Mr. Bettius handed Dr. Tauber Exhibit 235.

4 THE COURT: Go ahead, Mr. Bono.

5 MR. BETTIUS: What page are we on?

6 THE COURT: Which page of the return is that
7 tab on, do you know?

8 THE WITNESS: 002921.

9 MR. COCHRAN: 921.

10 MR. BONO: 2921?

11 MR. COCHRAN: Yes.

12 MR. BONO: Page 2921.

13 BY MR. BONO:

14 Q Dr. Tauber, would you continue your reading?

15 A Yes, sir. The Jefferson Memorial Hospital
16 Associates, a partnership whose partners are the sole
17 stockholders of Jefferson Memorial Hospital
18 Corporation, in exchange for 240,000 shares of the
19 corporation's common stock. The distribution was made
20 in the same proportion as the shares in the
21 partnership.

22 MR. BETTIUS: Your Honor --

23 MR. BONO: Thank you.

J.APP.1534

1 MR. BETTIUS: -- it's not proper examination.
2 The questions I asked were on the tax return of JMHA.
3 There was never any reference other than to have him
4 read. Your Honor can sort this out. I didn't ask him
5 anything about this, the A -- the Inc. transfer in
6 connection with this document, the Inc. transactions on
7 A's books to I. We're totally mixing apples and
8 oranges. When the Court sees the returns, I think it
9 will be clear.

10 THE COURT: Objection's overruled.

11 BY MR. BONO:

12 Q Now, Dr. Tauber, I'd like to show you what's
13 previously been marked Exhibit 000, which is the
14 closing document you were asked about.

15 With the Court's permission, I'd like to hand
16 this up to the witness.

17 Dr. Tauber, you were asked a number of
18 questions about the purchase price that was paid by HGV
19 in the total amount of \$2,157,505.39 on your cross. Do
20 you recall that, Doctor?

21 A Yes, sir.

22 Q All right. Now, does this closing letter
23 reflect how that total purchase price was allocated and

JAPP.1535

1 to which items it was being paid for?

2 A Yes, it is itemized.

3 Q Now, if you look at --

4 MR. BONO: Your Honor, the letter will speak
5 for itself in describing the items. I won't go through
6 them.

7 BY MR. BONO:

8 Q If I can direct your attention, Dr. Tauber,
9 to item number 7, which says plus 15 percent of the sum
10 of items 1, 2, 3, 4, 5 and 6 above. Dr. Tauber, is
11 that the payment made by HGV for the intangibles?

12 A Yes, I think so. That was the amount of
13 money they indicated as the value of the intangibles.

14 Q Now, other than the monies paid with respect
15 to items 1 through 6 identified in this letter, did HGV
16 pay any other monies for the purchase price?

17 A No.

18 Q Now, were there any additional monies paid by
19 HGV for any ongoing concern value or value to the
20 license?

21 A No.

22 MR. BETTIUS: Your Honor, that's a
23 conclusion. They obviously didn't buy this hospital

J.APP. 1536

1 not to operate it. I object to it as a conclusion as
2 to what they did and why they did it.

3 THE COURT: Objection's overruled.

4 BY MR. BONO:

5 Q Dr. Tauber, I'd like to show you Exhibit 337,
6 which you were asked about in cross-examination.

7 A Yes, sir.

8 Q Now, Dr. Tauber, that's an assignment of
9 lease document that you were asked about. My question
10 is, does that assignment of lease recite various
11 considerations that were given to Jefferson Memorial
12 Hospital Corporation in return for the assignment of
13 lease?

14 A That's correct.

15 MR. BONO: Your Honor, I'll just let the
16 document then speak for itself.

17 BY MR. BONO:

18 Q Now, Dr. Tauber, I'd like to show you what's
19 been marked as Exhibits 338 and 339, which were the --
20 which are a copy -- which are the Inova lease and the
21 agreement to lease that you were asked about on your
22 cross-examination as to whether -- which document
23 governed.

J.APP. 1537

1 My question is, were these documents both
2 prepared by Inova's lawyers?'

3 A That's correct.

4 Q And the law firm identified in those
5 documents, is that Miles and Stockbridge?

6 A Yes, sir.

7 Q And those were Inova's lawyers; is that
8 right?

9 A Yes, sir.

10 Q Now, if you turn to the Post-its that I've
11 noted, which are some of the attachments to the
12 agreement to lease, do they specify that the agreement
13 to lease is in addition to the lease agreement that's
14 entered on the same date?

15 A Excuse me, Mr. Bono? Which ones that you
16 refer --

17 MR. BONO: May I approach?

18 THE COURT: Yes.

19 MR. BETTIUS: Your Honor, my question is why
20 you have two leases for the same place. I don't think
21 this is cross-examination.

22 THE COURT: It's not cross. It's redirect
23 examination, Mr. Bettius. It's proper.

J.APP.1538

1 MS. BEACH: Proof of this transaction --

2 MR. BETTIUS: Your Honor, I don't think
3 counsel should be instructing the witness.

4 MS. BEACH: I'm not instructing. I read it,
5 Your Honor. I read it.

6 MR. BETTIUS: Okay.

7 THE COURT: All right, Mr. Bono, what's your
8 question?

9 BY MR. BONO:

10 Q Dr. Tauber, my question is, does the
11 agreement to lease specifically say that it is --

12 MR. BETTIUS: Which one, Mr. Bono?

13 MR. BONO: Exhibit 339, the agreement to
14 lease.

15 BY MR. BONO:

16 Q -- specifically say that it is in addition to
17 the other lease agreement that is entered into on July
18 3, 1985 with Inova?

19 A That's correct.

20 Q And does the body of the letter of the
21 agreement to lease, if you turn to the front page of
22 Exhibit 338, specifically reference the July 3, 1985
23 lease agreement with Inova?

J.APP. 1539

1 A That's correct.

2 THE COURT: Thank you.

3 MS. BEACH: You're welcome, Your Honor.

4 BY MR. BONO:

5 Q Dr. Tauber, I'd like to show you what's been
6 marked as Exhibit 325, about which you were asked in
7 your cross-examination. This is a lease amendment that
8 -- you were asked about the provision that provided
9 that Jefferson Memorial Hospital Corporation would be
10 responsible for the \$1.4 million mortgage. Do you
11 recall that question?

12 A Yes, sir.

13 Q Now, if you look to the -- I think it's the
14 third paragraph of that amendment, does it provide
15 that, pursuant to that amendment, that obligation on
16 the mortgage is now being transferred to Jefferson
17 Memorial Hospital Joint Venture?

18 A That's correct.

19 Q And what is the date of that document?

20 A This is February 10, 1982.

21 Q And at that time was the mortgage -- did the
22 mortgage become the obligation of the Joint Venture?

23 A That's correct.

J.APP. 1540

1 Q Now, when the -- when Jefferson Memorial
2 Hospital Corporation originally assumed that mortgage
3 obligation, what was the consideration given to
4 Jefferson Memorial Hospital Corporation for the initial
5 assumption of that mortgage?

6 A Originally it was, as I told before, the
7 obsolete building --

8 MR. BETTIUS: Your Honor, I'd like to see the
9 document.

10 THE COURT: Objection's overruled. He can
11 testify if he knows.

12 MR. BETTIUS: We've asked for this document
13 over and over in production and it's never been given
14 to us.

15 MR. BONO: Well, Mr. Bettius --

16 THE COURT: He can still testify if he knows.

17 THE WITNESS: This was aimed, at first, to
18 refurbish the hospital and to add additional space,
19 it's not increasing the number of beds. We had 120
20 beds, no more. It was a much better facility than what
21 we had before.

22 BY MR. BONO:

23 Q What space, now, are you just referring to?

J.APP. 1541

1 A I'm referring now to the third floor of the
2 King Street Medical Building.

3 Q What additional consideration was given to
4 Jefferson Memorial Hospital Corporation?

5 A Additional consideration was -- at that time
6 was, as I mentioned yesterday and Dr. Friedman said
7 he'd do, that he liked the hospital and therefore the
8 support of the going concern is placed at a very
9 dangerous level.

10 Therefore, I suggested and it was accepted,
11 that we will attract other doctors, that we build a
12 five-story building, what we call the King Street
13 Medical Building, of which the third floor is the
14 hospital's and then the rest will be sold to different
15 practitioners, hoping that they will support the
16 hospital. That was necessary at that time and it was
17 practiced by other hospitals as well.

18 Q Now, with respect to -- I think you earlier
19 testified that the Medical Office Building cost
20 approximately \$2.6 million to build?

21 A It cost around \$2,665,000, yes.

22 Q And the \$1.4 million mortgage that was
23 assumed by the Corporation in 1978, \$400,000 of that

J.APP. 1542

1 was used to cover the initial mortgage; is that correct?

2 MR. BETTIUS: Your Honor, I'm going to
3 object. We're going over the same thing.

4 MR. BONO: No.

5 THE COURT: He just asked a question about
6 that. I've heard about that transaction for a day and
7 a half now, Mr. Bono. Just ask your question about it.

8 BY MR. BONO:

9 Q Is it correct, Dr. Tauber, that the
10 additional monies, approximately \$1.6 million to build
11 the Medical Office Building, was paid for by the
12 physicians?

13 A Correct.

14 MR. BONO: I'm sorry, Your Honor. Just a
15 second.

16 THE COURT: All right.

17 MR. BONO: I have to track down one exhibit.
18 With the Court's permission I'd like to hand
19 up to Dr. Tauber Exhibit 947.

20 BY MR. BONO:

21 Q Dr. Tauber, in your cross-examination you
22 were about to explain the situation with the fourth
23 floor and Health Group of Virginia, and my question is,

1 would you please explain what you were going to testify
2 to at that time?

3 A As I told before, that is \$500,000 was
4 offered by Health Group that they will help us to get
5 the financing, but they had so many contingencies and
6 so expensive, we never took it, because previously, as
7 I told before, it required that Citibank approves my
8 personal credit and I had to sign for it and pay a high
9 interest rate and there was no help. Health Group, I
10 felt, if they had their own money, they could do it.
11 It was a mistake and that's the reason why we never
12 took the \$500,000.

13 MR. BONO: I have no further questions, Your
14 Honor.

15 THE COURT: All right.

16 MR. BETTIUS: Just --

17 THE COURT: No, sir. A day and a half is
18 enough.

19 MR. HIRSCHKOP: I have a few.

20 THE COURT: All right, Mr. Hirschkop. He's
21 entitled to do a redirect. He represents Dr. Tauber.

22 REDIRECT EXAMINATION

23 BY MR. HIRSCHKOP:

--
J.APP.1544

1 Q Dr. Tauber, you were shown some tax returns
2 on cross-examination. During this period in the 1970s,
3 did you have interests in numerous businesses?

4 A Yes, I did.

5 Q And partnerships?

6 A Yes.

7 Q And over the course of a year, would it be
8 fair to say, sir, that you had to sign at least 100 or
9 more tax returns --

10 MR. BETTIUS: I'm going to object to the
11 relevance of that. Each tax return is the
12 responsibility of the taxpayer, Your Honor.

13 THE COURT: Objection's overruled.

14 THE WITNESS: Yes, I did.

15 BY MR. HIRSCHKOP:

16 Q And did you rely on your lawyers and
17 accountants in giving you tax returns and draft K-1s
18 and numerous other documents on partnerships to sign
19 that they be accurate?

20 A Yes. I delegated all of these functions and
21 I received it and I signed it and the only question I
22 had is, is everything all right. They said yes. I
23 just signed it.

J.APP. 1545

1 Q And was one of the lawyers upon whom you
2 relied for advice Thorpe Richards?

3 A Yes. Thorpe Richards, yes, but he never
4 prepared any federal income tax returns for me.

5 Q And had Thorpe Richards represented you in
6 numerous other matters other than --

7 MR. BETTIUS: Your Honor, this isn't on the
8 issue. Excuse me. I'll let Mr. Hirschkop complete his
9 question.

10 BY MR. HIRSCHKOP:

11 Q Had Thorpe Richards represented you in the
12 1970s in other matters; you or businesses in which you
13 were involved, other than matters relating to this
14 hospital?

15 A That's correct.

16 Q Did you have extensive dealings with Thorpe
17 Richards?

18 A Yes, I did. We used him as our Virginia
19 lawyer when we had buildings. He was our lawyer. He
20 did tax appeals. That's correct.

21 Q Were all of your documents relative to this
22 hospital open to Thorpe Richards?

23 A Yes. He was, from day one, our lawyer and,
J.APP. 1546

1 as a matter of fact, still our resident agent.

2 Q During the period of time he represented the
3 hospital when Dr. Friedman asked him to come in, when
4 you asked him to look at things, was he welcome and
5 open to talk to all other lawyers who had represented
6 the hospital's interests?

7 A He was always there and he had -- he was our
8 lawyer. We had all the documents available for him and
9 it was never closed to him.

10 Q You testified earlier yesterday that an
11 accountant and a lawyer both advised you about letting
12 the charter run on Incorporated, do you recall that?

13 MR. BETTIUS: Your Honor, the Court has
14 previously ruled advice of counsel is not a defense in
15 the matter.

16 THE COURT: That was gone into yesterday. Go
17 ahead, Mr. Hirschkop. You're sort of plowing old
18 ground here.

19 MR. HIRSCHKOP: Yes. I'm just trying to
20 clear one point up I think is important.

21 THE WITNESS: I told it very specifically
22 that the advice that we drop Jefferson Memorial
23 Hospital, Inc. of Maryland was according to our tax

J.APP. 1547

1 lawyer, Mr. Bernard Krakow. He was the one. Thorpe
2 Richards didn't have any part in it.

3 BY MR. HIRSCHKOP:

4 Q And Mr. Krakow was completely available to
5 Mr. Richards; is that correct?

6 A They were very good friends, as a matter of
7 fact. If I remember correctly, some tax issues Mr.
8 Richards needed, he consulted Mr. Krakow.

9 Q In drafting all the deeds and the papers to
10 put things in proper order, did you ever discourage Mr.
11 Richards from doing the lawyer-like thing and
12 checking --

13 MR. BETTIUS: Your Honor, I object.

14 MR. HIRSCHKOP: Let me finish the question.

15 THE COURT: Rephrase that one, Mr. Hirschkop.
16 I'll tell you that.

17 MR. HIRSCHKOP: Okay, Your Honor.

18 BY MR. HIRSCHKOP:

19 Q Did you in any way try and discourage Mr.
20 Richards from checking with the state of Virginia or
21 the state of Maryland as to the status of these various
22 groups?

23 MR. BETTIUS: Your Honor, I object.

JAPP. 1548

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

2 THE WITNESS: I did not tell him what to do.

3 He was the lawyer and I did not instruct him what to
4 do. Do the right thing and I trusted him 100 percent.
5 I accepted always whatever he said.

6 BY MR. HIRSCHKOP:

7 Q In all of your extensive dealings with Mr.
8 Richards, did you always answer his questions to the
9 best of your ability?

10 A Yes.

11 MR. HIRSCHKOP: Nothing further. Thank you,
12 Your Honor.

13 THE COURT: Thank you, Doctor. You may
14 return to your seat.

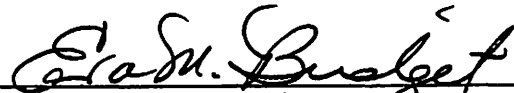
15 (End of partial transcript.)

16 * * * * *

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 30th day of March, 2000.



Eva M. Bridget
Verbatim Reporter

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

-----X
COMMONWEALTH OF VIRGINIA, et al.,
Complainants,
v.
LASZLO N. TAUBER, et al.,
Respondents.
-----X

COPY
In Chancery
No.: 96-1241

PARTIAL
TRANSCRIPT
VOLUME III

Alexandria, Virginia

Thursday, February 3, 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. 1551 --

APPEARANCES:

On Behalf of the Complainants:

MARC E. BETTIUS, ESQ.
DEBRA FITZGERALD-O'CONNELL, ESQ.
INA C. CHARVET, ESQ.
Lawson & Frank
6045 Wilson Boulevard, Suite 100
Arlington, VA 22205

RICHARD S. SCHWEIKER, JR., ESQ
Assistant Attorney General
Office of the Attorney General
900 Main Street
Richmond, VA 23219

ANTHONY J. TRENGA, ESQ.
Miller & Chevalier, Chartered.
655 15th Street, Suite 900
Washington, DC 20005

On Behalf of the Respondents Tauber, et al.:

STEPHEN G. COCHRAN, ESQ.
JAMES KINSEL, ESQ.
The Jefferson Law Firm, P.L.C.
6862 Elm Street, 7th Floor
McLean, VA 22101

GASPARE J. BONO, ESQ.
Long, Aldridge & Norman, L.L.P.
701 Pennsylvania Avenue, N.W.
Suite 600
Washington, DC 20004

BARBARA BEACH, ESQ.
Beach and Associates
416 Prince Street
Alexandria, VA 22314

PHILIP HIRSCHKOP, ESQ.
Hirschkop & Associates
108 North Columbus Street
Alexandria, VA 22314

KEVIN M. O'DONNELL, ESQ.
Henry & O'Donnell, P.C.
4103 Chain Bridge Road, Suite 100
Fairfax, VA 22030

WITNESS:

PAGE

Laszlo N. Tauber, M.D.:

Cross-Examination by Mr. Bettius

4

EXHIBITS

IDENTIFIED RECEIVED

None.

J.APP. 1553__

P R O C E E D I N G S

Whereupon,

LASZLO N. TAUBER, M.D.

was re-called as a witness and, after having been first
duly sworn by the Clerk of the Court, was examined and
testified as follows:

CROSS-EXAMINATION

BY MR. BETTIUS:

Q Good morning, Dr. Tauber.

A Good morning, Mr. Bettius.

Q Dr. Tauber, I'm going to proceed this
morning, and as I told the Court, perhaps I can cut
this examination short and get you off the stand, if
that's all right. I'm sure it is.

A Thank you.

Q I think when we recessed yesterday, Doctor,
we were discussing the 1982 HGV lease. Do you recall
that?

A Yes, sir.

Q There is a document that was entered into on
February 10, the day before the HGV lease, which was an
amendment to the 1975 lease. Do you recall amending or
causing an amendment to be made to the 1975 lease

JAPP:1554

1 between Jefferson and JMHC?

2 A Would you be kind to show that?

3 Q Yes, sir.

4 A Yes, sir.

5 Q If you'll notice, Doctor, one of the things
6 that is stated in the document in the consideration for
7 the lease is the right to cancel the lease after six
8 months' notice in the '75 lease is waived.

9 Do you know if that provision was in the '66
10 lease?

11 A The original lease?

12 Q Yes.

13 A I don't recall, sir.

14 Q So the consideration, at least insofar as
15 that's recited, really relates to a lease that JMHI was
16 not party to; is that correct?

17 A That's correct.

18 Q In addition, it stipulates that the new
19 permanent mortgage in the amount of \$1.4 million, which
20 is the sole obligation of Jefferson Corporation, is now
21 assumed by the Respondents; is that correct?

22 A That's correct.

23 Q And as I understand your testimony, that \$1.4

J.APP. 1555

1 million mortgage was placed in the hospital, Jefferson
2 Memorial Hospital, in order to pay costs for the
3 medical office building and to shift or to pay a
4 portion of the blanket, that portion of the blanket
5 which was the original mortgage; is that correct?

6 A Not exactly. The \$1,400,000 new mortgage was
7 acquired and we paid off the \$400,000, approximately
8 \$400,000 -- you mentioned \$391,000 -- original mortgage
9 that they secured in 1965. We applied for \$1,400,000.
10 The new money was approximately \$1 million.

11 That \$1 million was needed to build the King
12 Street medical building, which the King Street medical
13 building cost around \$2,065,000.

14 Q Yes. I believe we covered that. Doctor, had
15 you simply forgotten or had it slipped you all's mind
16 that you had committed to the state that you would
17 never charge more than \$11,000,760 a year to the --
18 strike that -- \$11,760 a year to the costs to be paid
19 by the hospital?

20 A No. That \$11,000 was agreed upon that we
21 will not create any expenses above that amount of money
22 when we applied for Medicare reimbursement or Blue
23 Cross or any third-party reimbursement.

J.A.P.P. 1356

1 Q Didn't you assure health facilities of that
2 commitment by providing a 20-year lease at \$11,760 a
3 year?

4 A That was -- excuse me -- we pledged that we
5 will not apply any more money as far as expenses are
6 concerned on the third floor than \$11,000. When we
7 applied for reimbursement from Medicare or third-party
8 payors, we cannot use any higher amount than \$11,000.

9 Q Doctor, did you read the corporate minutes
10 where you indicated in order to -- it looked like -- in
11 the minutes it reflects it looks like you were losing
12 the hearing, that you weren't going to get it, and in
13 order to preserve the posture of the COPN application
14 that you gave them this lease?

15 A No. The COPN application basically was not
16 required, because that \$11,000 payment was the limit
17 what you can charge as an expense without getting
18 approval of the COPN.

19 Q What happened to that \$11,760 lease? Did you
20 cancel it?

21 A That lease was -- as far as I remember, that
22 lease I recall the amount of money we can claim from
23 the third-party reimbursement.

JAPP. 1557

1 Q So you didn't really view it as a binding
2 legal document, just a limit on what you could charge?

3 A That's correct.

4 Q Now, Doctor, do you remember how you
5 allocated the \$1 million annual payment of rent between
6 the Joint Venture and JMHC in the amendment?

7 A As far as I remember, the \$1,400,000 was the
8 obligation of Jefferson Memorial --

9 Q I don't think you understood my question.
10 I'm sorry, Doctor. As between the Joint Venture and
11 Jefferson Memorial Hospital, how was the \$1 million a
12 year rent payment allocated? Who got what?

13 A Jefferson Memorial Hospital Corporation was
14 responsible for the \$1,400,000 mortgage payment, that
15 was my -- and the document showed it. I saw it
16 yesterday too. That was the obligation of the
17 Jefferson Memorial Hospital.

18 Q Doctor, probably I haven't stated the
19 question right. Did you keep \$900,000 for the Joint
20 Venture and \$100,000 went to the Corporation? Is that
21 how the proceeds were allocated? It's in the document.

22 A Would you be kind to show me, because the
23 only answer I can give you --

JAPP. 1558

1 Q It's right here in the document I just showed
2 you, Doctor.

3 A This one?

4 Q Yes, sir.

5 MR. BETTIUS: I'm sorry, Mr. Bono. It's 325.

6 BY MR. BETTIUS:

7 Q It says, if you look, Doctor, that \$100,000
8 annually the lessee will retain. Jefferson Memorial
9 Hospital gets to keep \$100,000 and your Joint Venture
10 gets \$900,000?

11 A I see that.

12 Q Do you remember what the methodology employed
13 was to decide who got what?

14 A Up to the time that we entered the Health
15 Group contract, it was the sole responsibility of
16 Jefferson Memorial Hospital Corporation. And then,
17 when we canceled it and took over, it was \$100,000
18 retained by the lessee -- that was Jefferson Memorial
19 Hospital Corporation -- and they were relieved from the
20 guarantor of the mortgage.

21 Q Was this then an arbitrary allocation of that
22 money based on these facts, or was it a studied
23 application?

J.APP. 1559 --

1 A I think a studied application.

2 Q Wasn't the reason that you left the \$100,000
3 in there to service the bonds that the doctors had?

4 A I cannot answer this.

5 Q Well, if, in fact, that's true, in effect,
6 all the proceeds were taken from the Corporation?

7 A The Corporation ceased to exist already and
8 the Health Group of Virginia took over. That's what
9 canceled it.

10 Q Doctor, let me see if I can help you.

11 MR. BETTIUS: Can the witness be shown
12 Exhibit 863?

13 MS. CHARVET: I'll turn to the exhibit,
14 Doctor.

15 MR. BETTIUS: Mr. Hirschkop, these are the
16 minutes of the board of directors of February 8, 1982.

17 BY MR. BETTIUS:

18 Q I'm referring to Roman numeral six, Dr.
19 Tauber, which is new business.

20 A Business discussed?

21 Q New business, Doctor, Roman numeral six. If
22 I may approach you, I'll show you the reference I'm
23 making.

J.APP. 1560

1 Here, Doctor.

2 A This is only business here. Yes, sir. I've
3 read it.

4 Q All right. Do you recall now that the
5 \$100,000 was left to service the bonds which the
6 Respondents had previously received?

7 A In the minutes I read that the \$100,000 was
8 left in to service the interest on the bonds and
9 supervise the functions of Health Group and other
10 activities, keep the records, so that is the only
11 function.

12 Q Doctor, whether you used a charitable
13 corporation or a non-charitable corporation, why did
14 you use the corporation at all in this transaction or
15 in the operations of the hospital?

16 A As I read it again, in our minds we acted
17 always as Jefferson Memorial Hospital. That was a
18 for-profit hospital, again, in order to avoid any
19 personal liabilities on the sponsors, because I was
20 holding some bond entity and other responsibilities.
21 In case of a suit, liabilities, this would determine
22 that that would not be a factor, the sponsors that
23 owned the physical plant..

JAPP.1561 --

1 Q Doctor, you were aware all through this
2 period of time that corporate tax rates were very high,
3 weren't you?

4 A I don't remember it was high. I remember the
5 doctors' rate, tax rate, the individuals were --

6 Q I think your expert thinks it's about 46
7 percent. If money were left in that corporation, it
8 would result in double taxation, wouldn't it, Doctor,
9 if you ever were to get any benefits?

10 A No, we did not talk about that one, because
11 if the Corporation had a 46 percent, as you said, I
12 don't think that is correct, because this corporation
13 would have not more -- if I'm correct, not more than
14 20, 25 percent taxes.

15 Q How much, sir?

16 A Twenty, twenty-five percent taxes, because
17 you have to make a lot of money to get to that bracket
18 for a corporation to pay 46 percent.

19 Q We're talking about \$900,000 a year here,
20 aren't we, Doctor? One million a year, that's a lot of
21 money.

22 A A lot of money by any standard. I don't
23 think it was 46 percent.

J.APP. 1562

1 Q Well, in any event --

2 A Secondly, if you ask anyone, that Corporation
3 as we know it can pay out earned compensation to the
4 executives and they reduce the actual taxable income,
5 subject to taxes. So there would be no double taxation
6 there.

7 Q Well, that presented a lot of problems in
8 this hospital among the Respondents themselves. They
9 fought over whether somebody got a free meal, didn't
10 they?

11 A No. There was no free meal.

12 Q They were abolished because some of the board
13 members objected to other attending physicians getting
14 free meals, didn't they?

15 A Would you be kind to specify what free meals
16 means?

17 Q Wasn't there a period -- well, I'll let the
18 records speak to that. In addition, Doctor, they were
19 fighting over who got \$5 to read electrocardiograms,
20 weren't they?

21 A Five dollars for reading electrocardiogram
22 was accepted remuneration, what every hospital paid.
23 We paid \$5. Some of them charged \$10 for reading them.

1 That's a service.

2 Q In the fall of '74 they started fighting
3 amongst each other because some of the people had
4 laboratories and weren't getting earnings; isn't that
5 true, that some of the --

6 MR. COCHRAN: If the Court please, this is
7 minutia that is perhaps borderline relevant.

8 THE COURT: What's the purpose of this, Mr.
9 Bettius?

10 MR. BETTIUS: Your Honor, the issue is that
11 every dollar was taken out of this corporation that
12 could be taken out of it, when it was a charity, when
13 it wasn't a charity, to avoid taxation.

14 THE COURT: Let's get to that. I mean,
15 talking about whether they got free meals or how much
16 they're charging for each service is counterproductive,
17 quite frankly.

18 MR. BETTIUS: The doctor said a method of
19 taking it off was salaries. These people were --
20 that's the point that I'm trying to make. Nobody
21 wanted anybody to get anything. In fact --

22 THE COURT: I'll sustain the objection.

23 THE WITNESS: Mr. Bettius --

JAPP. 1564

1 THE COURT: Just wait for the next question,
2 please, Doctor.

3 THE WITNESS: Sorry.

4 BY MR. BETTIUS:

5 Q Dr. Tauber, you indicated, I think, that the
6 hospital itself had 40 percent of its patients as
7 charity patients; is that correct?

8 A We never made the statistics how many
9 percent, but I know a large percentage. I proved my
10 point that they did not pay anything. If a person was
11 a non-paying patient, we had to give them use of the
12 operating room, use of materials and to a lesser
13 degree, manage the people, give intravenous medications
14 and many other things which they're not paying.

15 Q Do you recall your testimony in the former
16 trial that doctors wouldn't come to the emergency room
17 until they found out if patients had insurance?

18 A I testified on my own behalf never in my life
19 did --

20 Q Doctor, I'm not talking about --

21 MS. BEACH: Your Honor --

22 THE COURT: Just a minute, Mr. Bettius, let
23 him answer.

J.APP. 1565

1 MR. BETTIUS: I don't think it's responsive.

2 THE COURT: Well, I've got to hear it to make
3 sure.

4 THE WITNESS: That I -- never in my life did
5 I ever ask anybody whether they had insurance, whether
6 they can pay or they cannot pay, day and night.

7 BY MR. BETTIUS:

8 Q Doctor, I'm not questioning whether you
9 admitted patients. I'm not talking about the way you
10 practiced medicine. I'm talking about the hospital and
11 the totality of physicians. You have no idea what they
12 did, do you?

13 A I would not say I did not have any idea. The
14 hospital did not practice medicine; the physicians
15 practiced medicine.

16 Q Well, isn't the point, Doctor, that they
17 started to even track the number of Medicaid and
18 Medicare patients that doctors were admitting? They
19 started keeping track of that on a
20 physician-by-physician basis, didn't they?

21 A I don't remember that.

22 Q Do you recall, Doctor, I asked you the
23 question many of the physicians wouldn't respond until
JAPP. 1566

1 they found out if a patient had insurance and you said
2 unfortunately, yes, that's true? Do you remember that?

3 A Yes. I came in and took their place. That's
4 what I remember.

5 Q Doctor, the transaction with HGV also
6 required HGV to pay in excess of \$2 million for the
7 tangible operating assets of Jefferson Memorial
8 Hospital, didn't it?

9 A No, sir.

10 Q Doctor, this was given to me yesterday by
11 your counsel. It's Exhibit 000. It is a
12 reconciliation of payments -- it's 166.

13 A Which one, sir?

14 MR. BONO: Your Honor, I just want to make
15 one single objection. This document was not just given
16 to Mr. Bettius yesterday. This was produced in the
17 normal course of production in this case, months, if
18 not years ago.

19 And so the fact that another copy was given
20 to him yesterday is irrelevant. This impression that
21 it wasn't produced is wrong.

22 MR. BETTIUS: I wasn't trying to create that
23 impression.

J.APP. 1567

1 THE COURT: All right.

2 THE WITNESS: Yes, sir.

3 BY MR. BETTIUS:

4 Q Was \$2,157,505.39 paid to Jefferson Memorial
5 Hospital for its operating assets and the right to use
6 its license?

7 MR. BONO: Objection to the form of the
8 question, Your Honor. The objection is there's no
9 basis for the question that the \$2 million -- it is
10 what it is. He's asking Dr. Tauber to explain the
11 item. The letter specifies in detail and speaks for
12 itself what it is.

13 THE COURT: Dr. Tauber can answer, Mr. Bono.
14 I don't understand that objection. It's not a rule of
15 evidence objection. I'm not sure what your objection
16 is. If the evidence might show something contrary --

17 MR. BONO: The objection is the document
18 speaks for itself.

19 THE COURT: The doctor can answer if he
20 knows.

21 BY MR. BETTIUS:

22 Q Doctor, didn't you testify yesterday you now
23 understand the license wasn't transferable and that the

J.APP. 1568

1 state, in fact, wrote a letter that's already been
2 admitted in this case as Exhibit 169, that operations
3 were continued under the existing license?

4 A The operator was changed, because I know that
5 license cannot be transferred.

6 Q Thank you, sir. So we have \$2 million -- for
7 whatever it's for that's shown on this document, you
8 received \$2,157,505; is that correct?

9 A No. We have it here, the item that 80
10 percent of the patients' accounts receivable, which was
11 \$2,211,483. The second item was 100 percent.

12 Q You may have misunderstood my question. You
13 received in addition to rent -- there was a payment for
14 the operating assets of Jefferson Memorial Hospital; is
15 that correct?

16 A No.

17 Q No?

18 A No.

19 Q Who owned the accounts receivable, Doctor?

20 A The Corporation.

21 Q Who owned the equipment, Doctor?

22 A Whatever is listed here, 100 percent.

23 Q Just go down the list and tell me --

JAPP. 1569

1 MS. BEACH: Your Honor, I'm going to object.
2 Obviously who owns the equipment is -- apparently what
3 Dr. Tauber was stating what was listed here was the
4 equipment that was conveyed. He needs to be able to
5 answer the question.

6 THE COURT: Mr. Bettius was rephrasing the
7 question. Go ahead, sir.

8 BY MR. BETTIUS:

9 Q I'm trying to understand, Doctor, are all of
10 these items operational assets or do they have to do
11 with the building?

12 A These are operations, not with the building.

13 Q All right. Now, do you recall what you did
14 with that money? When I say you, I mean the Joint
15 Venture. Did you take \$909,000 of it, Doctor, and
16 redeem stock at \$7 a share?

17 A I would like to see that document. I don't
18 remember. Show it to me.

19 Q All right.

20 MR. BETTIUS: May the doctor be shown Exhibit
21 167 -- I'm sorry -- 865, the minutes of the board of
22 directors meeting of March 10, 1982.

23 May I have a stipulation, Mr. Cochran, that

JAPP.1570

1 the \$1,923,521 was subsequently adjusted to reflect the
2 number of \$2 million, the number shown on the exhibit?

3 MR. COCHRAN: Yes.

4 MR. BETTIUS: Your Honor, within these
5 minutes, Exhibit 865, the final reconciliation of what
6 was paid was not \$1,923,521; it was, in fact, the
7 \$2,157,505.39.

8 THE COURT: All right.

9 BY MR. BETTIUS:

10 Q Do you recall, Doctor --

11 A Yes.

12 Q Excuse me, sir.

13 A Yes, sir. I read it and I recall it, that
14 that amount of money would be received, that the
15 difference comes from who had the stocks. It was
16 redeemed and they put in a CD to have enough money left
17 when the mortgage balloons and we -- they will be able
18 to pay their obligations.

19 Q Well, those are two transactions I'd like to
20 discuss with you. We have a stipulation, Doctor, that
21 all of the '72 issue had been redeemed in the sale and
22 lease-back and exchange for bonds that had occurred in
23 1975. These 129,865 shares would relate to the

J.APP. 1571

1 original 245,000 that were issued in 1971?

2 A Correct.

3 Q If we look at that, Doctor, as a result of
4 transactions, \$391,000, I think, is the previous
5 testimony that was paid against the blanket mortgage.
6 Now, with respect to considerations issued originally
7 for the land, there is another \$909,000; is that
8 correct?

9 A It states that we have received \$1,923,000
10 for the accounts receivable and 13 other items included
11 in the formula.

12 Q Would I be correct, Doctor, if I indicated to
13 you now that about \$1.2 million has been paid against
14 the contribution of the doctors' participation in this
15 contract totally from operations of the hospital?

16 A This is an account which was paid by Health
17 Group of Virginia and this is what was itemized, the
18 receivables and prepaid items, and that was tangible.
19 The intangible was around \$218,000.

20 Q If the previous testimony has indicated that
21 \$391,000 from the blanket mortgage was used to pay off
22 the original mortgage, and that now we have \$909,000
23 being paid for the original 240,000 shares of stock,

J.APP. 1572

1 that adds up, if my math is correct, Doctor, to \$1.2
2 million; is that correct?

3 A If you say so. I did not make the
4 calculation here. But we have on this place another
5 obligation, too, and in order to achieve that lease
6 from Health Group of Virginia --

7 Q I can't hear you, Doctor.

8 A In order to receive --

9 THE COURT: Wait one second, Doctor. Let the
10 noise go by. All right. Go ahead.

11 THE WITNESS: In order to receive that rent
12 payment from Health Group of Virginia, we obligated
13 ourselves to build a new medical building attracting
14 more doctors. That is the North Beauregard building.

15 BY MR. BETTIUS:

16 Q Doctor, I'm going to give you the HGV lease
17 and I'm going to ask you if you can find that
18 commitment anywhere.

19 THE COURT: We went through this yesterday.

20 MR. BETTIUS: Yes, sir.

21 BY MR. BETTIUS:

22 Q In fact, Doctor --

23 MS. BEACH: Your Honor, let me object. There

1 is a reference in that lease that proposed building --

2 THE COURT: Ms. Beach, do you want to get on
3 the stand? These objections that the doctors may not
4 square with other evidence are not proper objections.
5 You can object to the form of a question or to the
6 admissibility of evidence.

7 MS. BEACH: Your Honor, I --

8 THE COURT: We covered this yesterday.

9 MR. BETTIUS: I'm about to close the loop on
10 it, Your Honor, if I might.

11 THE COURT: All right.

12 MR. BETTIUS: Would someone show the doctor
13 Exhibit 947?

14 BY MR. BETTIUS:

15 Q Isn't it true, Doctor, that the only interest
16 that HGV ever had with respect to an addition to the
17 hospital was to act as a financier, a potential
18 financier?

19 A Excuse me, Mr. Bettius.

20 MR. BETTIUS: Does Your Honor have a copy of
21 the letter?

22 THE COURT: No.

23 THE WITNESS: Yes, sir.

J.APP. 1574-

1 BY MR. BETTIUS:

2 Q There was never any more than a discussion
3 was there, Doctor, and the potential that HGV might act
4 as a financier?

5 A No. This letter I do remember well. It
6 stated that they are offering us the \$500,000 loan.
7 The \$500,000 loan was the balloon loan. That means
8 that after two years, it will balloon and to be paid
9 back, and that the condition was 13 percent interest
10 and Citibank would approve it and that I personally had
11 to guarantee it. I told them if I had to guarantee a
12 loan, I don't need Health Group's intervention, I can
13 go to Citibank directly. So, therefore, it was a
14 proposition which, as far as I know, we never accepted.

15 Q Doctor, don't they indicate in this letter
16 that if you build this facility, it's going to disrupt
17 their operations and they might want an adjustment to
18 the rent downward?

19 A No, sir. It probably would be constructed,
20 because one building will be built on North Beauregard,
21 which is around 200 feet apart from the building where
22 we operate the facilities.

J.APP.1575

23 Q Doctor, I'm not questioning whether their

1 reasons were justifiable or not. They say as a lessee,
2 business interruption is, obviously, of great concern
3 to us. As with the previous point, we wish to work
4 with you to develop a design solution which precludes
5 the need to have significant areas of the east and west
6 nursing units out of service.

7 For example, use of small parcels for the
8 outside walls of the second story would preclude the
9 need to evaluate -- evacuate patients for safety
10 reasons. It is hard for us to quantify the potential
11 for business interruption at this stage in developing
12 the design solution. We also assume that any
13 adjustment to the lease payment would require bringing
14 Jefferson Memorial Hospital Corporation in as a party
15 to the agreement.

16 Now, they're talking about renegotiating the
17 lease if you have to build this addition, aren't they?

18 A No, sir.

19 Q All right. The letter speaks for itself.

20 A I explained it to you.

21 Q In the minutes that we have up there, Doctor,
22 which are Exhibit 863, when you're talking about
23 business discussed, isn't it clear that --

J.APP. 1576

1 A I did not answer your question --

2 Q In discussions at the board meeting on
3 February 8, isn't it clear that you're talking about
4 some future possibility of construction of this new
5 facility?

6 A I looked over this document that you
7 presented to me, and it has nothing to do with the
8 office building to be built on North Beauregard Street.
9 Now, I know that we talked about to erect the fourth
10 floor above the existing wing, it might jeopardize the
11 function of Health Group running the hospital. It has
12 nothing to do with the Beauregard building.

13 Q I just want your testimony. The judge is
14 going to read the documents. It's your understanding
15 that by virtue of this lease, you had a commitment to
16 construct an addition to this hospital called the
17 fourth floor; is that correct? That's your
18 understanding of the obligations you have under this
19 lease?

20 A No, sir.

21 Q I'll leave the area, Doctor. Now, with
22 respect to this obligation to assume the mortgage, you
23 had the money in the bank to pay the mortgage, didn't

J.APP. 1577

1 you, from the hospital's operating -- from the money
2 paid for the hospital's operations, you put the money
3 in the bank to pay the mortgage for the fourth floor,
4 didn't you, when it became due in 1984?

5 A It was a loan and on the date when it was due
6 -- whenever it was due, it was decided, according to
7 the resolution here, that each person who had personal
8 guarantee on the loan -- when I personally guaranteed,
9 that meant that all the --

10 Q Doctor, you're not being responsive to my
11 question. You put the money in the bank. You took the
12 rest of the \$2 million, you put it in the bank, and
13 when it was time to pay the mortgage, you used that
14 money to pay the mortgage; isn't that correct?

15 A That's correct.

16 Q Thank you. So at this point the totality of
17 the land's been paid off and you also had the money in
18 the bank to pay the mortgage and you do pay the
19 mortgage, don't you?

20 A Excuse me, sir. What did you say about the
21 land? You asked a question --

22 Q The land and buildings were subject to a
23 blanket mortgage. We've established, I think, \$1.2

1 million, which was more than adequate to pay all of
2 those obligations, has already been received by you in
3 cash and now you have \$1.4 million in the bank to pay
4 off the mortgage when it becomes due, and that's
5 exactly what you do, isn't it, Doctor?

6 A No. The land was --

7 Q Not the land, the building, Doctor.

8 THE COURT: Let him finish.

9 MR. BETTIUS: I'm sorry.

10 THE WITNESS: You tell me the land and the
11 building.

12 BY MR. BETTIUS:

13 Q Let me rephrase the question, the building,
14 which is your contribution.

15 A That's right. The building. Now, the thing
16 was that -- that we paid 9 percent interest on the
17 mortgage. Receiving that money, we put it in the bank,
18 hoping that we will earn more than 9 percent interest
19 on the CDs; and, when the balloon payment is due, then
20 we do not have any worry, we have the money available
21 like a sinking fund to provide that we are able to pay
22 off the mortgage. It was a business decision which I
23 think was sound, and that's what I would do today too.

1 Q It paid off in the end much more than the
2 mortgage, didn't it, Doctor?

3 A We paid only the mortgage which was due.

4 Q You don't think it was used to pay anything
5 in addition to that?

6 A I don't know. Certainly I did not distribute
7 that money, because I kept it like a sinking fund to
8 have enough money available to pay on the mortgage when
9 it balloons.

10 Q Didn't one of your partners invest the money
11 and do very well with those investments?

12 A I was not an investment advisor to anybody.
13 I have no idea. You have to ask them. They were
14 responsible that whenever the mortgage balloons, they
15 have the money and we don't have to go out and ask for
16 money.

17 Q Doctor, you elected to proceed with the
18 fourth floor addition with the hope that you could get
19 a COPN; isn't that correct?

20 A This question you're asking, to clarify, it
21 was never a part of the Health Group of Virginia
22 contract. There was absolutely, positively no --

23 Q I'm sorry, Doctor, I didn't understand you.

JAPP.1580

1 THE COURT: Doctor -- ask your question
2 again, Mr. Bettius, about the fourth floor.

3 BY MR. BETTIUS:

4 Q You elected to go ahead and build the fourth
5 floor addition to the hospital without getting a COPN
6 first, isn't that correct, hoping that you would be
7 able to get one?

8 A I don't recall that we had to ask for any
9 COPN for that one, because when we built it we did not
10 increase the number of the beds, not by a single bed.
11 It was only that we wanted to improve the facilities
12 and supply necessary common areas, a waiting room for
13 the patients, respiratory therapy, cardiology and so
14 on. That has not added a single bed. Therefore, we
15 did not have a reason to ask for a certificate of
16 public need.

17 Q Doctor, when you began to talk to your
18 partners about building the fourth floor, do you
19 remember telling them that this was quite a speculative
20 undertaking, hoping there would be need for additional
21 hospital beds? At the present time there is no
22 indication that we will be able to succeed to add
23 additional beds to the hospital. I felt that these two

J.APP. 1581

1 additions were of paramount importance to the success
2 of the hospital. I undertook this transaction.

3 Do you remember that letter, Doctor?

4 A Yes, I told you many times that in 1965 when
5 we built the hospital --

6 Q I just asked you if you remember the letter,
7 Doctor.

8 A I remember that letter.

9 Q I'm going to ask you, Doctor, to look at
10 Exhibit 948.

11 MR. HIRSCHKOP: Your Honor, I'd like to pose
12 an objection. He reads a portion of the letter into
13 the record before he asks, and when the doctor tries to
14 explain what that means -- I think you're entitled to
15 hear it. What is the purpose?

16 MR. BETTIUS: I'm about to let him do that
17 right now.

18 MR. HIRSCHKOP: Okay.

19 THE COURT: I thought that's why he showed
20 him the letter, Mr. Hirschkop.

21 MR. HIRSCHKOP: He tried to explain and he
22 cut him off at that point.

23 THE COURT: What's your next question, Mr. --

1 Bettius?

2 MR. BETTIUS: I want the doctor to tell me --

3 THE WITNESS: Yes, sir.

4 BY MR. BETTIUS:

5 Q Did you ever get a COPN for the fourth floor?

6 A I cannot tell you. I did not know that we
7 needed it and if we built it, I'm sure if it was needed
8 that we obtained it.

9 Q Well, if you were going to put extra beds in
10 there or additional beds, you needed a COPN, didn't
11 you, Doctor?

12 A Mr. Bettius, there was ~~never~~ at that stage or
13 anytime there was ~~additional beds~~ on the fourth floor.
14 There was not a single bed.

15 Q I didn't ask you that. You were anticipating
16 in this letter, were you not--

17 A I hoped --

18 THE COURT: Just wait for the question.

19 BY MR. BETTIUS:

20 Q You were hoping, then, to get other beds; is
21 that correct?

22 A In the future, yes.

23 Q And, in fact, your construction company did

J.APP. 1583

1 all of the construction out on the job site, didn't it?

2 A No, not my contracting company.

3 Q Westwood?

4 A No.

5 Q Did you do the fourth floor addition?

6 A What do you mean I did?

7 Q Did your company do it?

8 A No.

9 Q Who did it?

10 A Independent contractor, and I don't even
11 remember the name because they are bankrupt already.
12 They have nothing to do with it.

13 Q Did they ever complete it past being a shell?

14 A I beg your pardon?

15 Q Did they build anything other than shell
16 space?

17 A No, no. They built the shell, only the
18 shell.

19 Q Only the shell. Why did it stop at only
20 being the shell, Doctor?

21 A Because we did not know what we use it for.
22 We wanted to finish it and that was -- again, I made
23 the contract with an outside contractor who finished

JAPP. 1584

1 it, and that was the time that we had to assure Health
2 Group of Virginia that during the construction
3 operations it will not be disturbed.

4 Q HGV never entered into any lease nor any
5 letter of intent or indication of intention to rent
6 that space, did they?

7 A That's correct.

8 Q Thank you. Now, is it not true, Doctor, that
9 the investment of the monies that were paid to
10 Jefferson Memorial Hospital in connection with that \$2
11 million from Health Group of Virginia ultimately paid
12 the great majority of fourth floor costs?

13 A Paid for?

14 Q The money that you received from HGV was
15 invested and it paid not only the mortgage, it paid off
16 most of the expenses of the fourth floor; is that
17 correct?

18 A I would not say that.

19 Q Doctor, I'm going to show you a letter --

20 MS. BEACH: Your Honor, while Mr. Bettius is
21 looking for the letter, I'd like to make an objection
22 on relevancy. There's been testimony already that the
23 I lease was \$38,000, the HGV lease was \$62,000. What

JAPP. 1585

1 is the relevance of what HGV did when the lease there
2 was for so much more space than I ever had an interest
3 in?

4 THE COURT: Objection's overruled.

5 MR. BETTIUS: I'm going to refer, Mr.
6 Cochran, to Exhibit 971, a letter of December 8, 1971
7 and it is styled Dear Investor, and it's from Dr.
8 Tauber.

9 THE COURT: What's that number, Mr. Bettius?

10 MR. BETTIUS: I'm sorry, Your Honor. It's
11 971.

12 MR. BONO: Your Honor, I think Mr. Bettius
13 misspoke. I think it's dated 1991.

14 MR. BETTIUS: I'm sorry.

15 MR. BONO: I think you may have said 1971.

16 MR. BETTIUS: Your Honor, I'm now losing two
17 decades at a time. 1971.

18 MR. BONO: '91.

19 MR. BETTIUS: '91.

20 MS. CHARVET: It's Exhibit 457.

21 MR. BETTIUS: It's 457.

22 MR. COCHRAN: December 8 is 1971.

23 MR. BETTIUS: It is 971.

JAPP. 1586

1 BY MR. BETTIUS:

2 Q Dr. Tauber, in this Alzheimer's facility
3 you're building, do you have any extra beds? I'm
4 sorry, Your Honor.

5 A Mr. Bettius, the hospital is not functioning.

6 Q Dr. Tauber, I'm going to refer you to page --

7 A Let me read it.

8 Q I'm sorry. It's signed by Leslie Peters.

9 A Yes, sir.

10 Q Do you see the reference -- and I'm talking,
11 Doctor, it's one, two, three, four, five, six, seven --
12 the eighth page, Doctor. It says at the time we
13 erected the fourth floor, it was practically built by
14 the successful marketing on different securities by Dr.
15 Leslie Peters.

16 A Excuse me, sir. What page is that, 10360?

17 MR. COCHRAN: 10364.

18 THE WITNESS: 64?

19 THE WITNESS: We're at Dr. Peters.

20 BY MR. BETTIUS:

21 Q Right here, Doctor.

22 A Yes, sir. What's the question?

23 Q Now, Doctor, those are the securities that

JAPP. 1587

1 were purchased from the \$2 million payment from HGV;
2 isn't that correct? Part went to the mortgage?

3 A I don't know where the money came from, but I
4 know that Dr. Peters took the responsibility and was
5 successful on the market, which I had no part of it,
6 and we very graciously handed it over to the
7 partnership for the cost of erecting the fourth floor.

8 Q Now, Doctor, by -- did there come a time when
9 you declared HGV to be in default of their lease
10 obligation to you? Do you recall that?

11 A Health Group of Virginia?

12 Q Yes. Did you declare Health Group in default
13 because they weren't properly tracking accounts
14 receivable?

15 A I don't remember.

16 MR. BETTIUS: Can the witness be shown
17 Exhibit 866? Those are the minutes.

18 MR. HIRSCHKOP: While the witness is looking
19 at that, I wonder if I could ask through the Court of
20 Mr. Bettius how long he anticipates his cross to
21 continue?

22 MR. BETTIUS: Not very long, Mr. Hirschkop.
23 We're moving now, I hope, very quickly through the

J.APP. 1588

1 Inova transaction and I'll be finished with that.

2 MR. HIRSCHKOP: Thank you.

3 BY MR. BETTIUS:

4 Q Referring to other business, Doctor, on page
5 03862.

6 A Yes, sir.

7 Q Do you recall in that meeting you indicated
8 to your fellow board members you had instructed the
9 attorney to send a letter of default to HGV?

10 A Yes. I don't recall that I did this.

11 Q Doctor, is it true at that time you then
12 discussed getting the hospital back and options that
13 you might have if you got the hospital back?

14 A No. That -- knew that Health Group made a
15 very lucrative deal and I did not know that they wanted
16 to continue it, because they came to me through Richard
17 Levy, who was their man and who was the administrator
18 of the hospital, who suggested why we do not take it
19 back and they will run it for us or other people would
20 be interested. I had negotiations -- let me see -- not
21 negotiations, but inquiries by other entities who were
22 interested to do it.

23 But as far as we're concerned, 75 percent of

J.APP. 1589

1 the people agreed with me, that we don't want to go
2 back to running the hospital, not for us. We don't
3 have a going concern, which I would be satisfied with.
4 We don't have the capital. So I favored to replace
5 Health Group of Virginia, if needed, with a much
6 stronger entity, and that's the reason why we
7 considered it.

8 Q Doctor, the hospital had \$2 million in cash
9 capital, didn't it, that you distributed to yourself
10 and saved to pay off your mortgage obligations?

11 A Mr. Bettius --

12 MR. COCHRAN: That's been asked and answered.

13 THE COURT: We've been through that, haven't
14 we, Mr. Bettius?

15 THE WITNESS: Yes, sir.

16 THE COURT: Just a minute, Doctor. We've
17 been through this.

18 MR. BETTIUS: The witness said they had no
19 capital, Your Honor. I'm just pointing out to him why
20 isn't that capital, if you don't distribute it to
21 yourselves and use it to pay off the mortgage of the
22 Joint Venture, why doesn't the hospital.

23 BY MR. BETTIUS:

J.APP. 1590--

1 Q The hospital doesn't have capital because all
2 the money's been given to the joint venturers; isn't
3 that true?

4 A No, sir. That amount of money was like a
5 sinking fund to meet the obligation of the bond payment
6 or the mortgage. The only amount of money as capital
7 is if we put a new mortgage on the building, which that
8 would -- we positively did not want to do it. There
9 was no capital. You could get the capital if you get a
10 new mortgage. I did not want to and I did not advise
11 my partners that we should put a penny mortgage on the
12 building.

13 Q Doctor, as I understand the testimony, you
14 received \$2 million and you doctors personally assumed
15 the mortgage. Why is it now an obligation of the
16 hospital to pay the mortgage that you've just assumed?
17 Why isn't that capital for the hospital?

18 A Mr. Bettius, I answered to you this one, that
19 originally the Corporation was liable for the mortgage
20 of only \$400,000, provided I personally give the
21 guarantee. This is the usual way, I guarantee
22 personally, all the other partners, according to their
23 percentage, guaranteed the amount of money.

JAPP. 1591

1 So basically I am responsible, but I am only
2 15.81 percent owner of the place. This is the
3 responsibility for the other people.

4 Q Doctor, if I read your own documents, you're
5 telling me that the consideration for you getting the
6 \$900,000 -- the \$1 million a year rent is that you're
7 assuming the mortgage from the hospital and now you're
8 still saying it's an obligation of the hospital, aren't
9 you?

10 A No. The hospital was relieved from the
11 obligation, retaining only \$100,000, which was paid to
12 the Corporation to oversee the activity and the
13 function of the Health Group of Virginia, plus paying
14 interest on bonds. That covered that amount. There
15 was no mortgage responsibility on the Corporation.

16 Q In any event, Doctor, the money that was paid
17 to the operational assets of the Corporation, I think
18 you testified, went to the mortgage. I think the Court
19 will come to its own conclusion.

20 You decided at this meeting that we're
21 discussing in Exhibit 866, that you agreed you would
22 continue the lease with a goal to linking up with a
23 larger, well-financed organization. Is that what you

J.APP. 1592

1 all decided to do?

2 A That's what we tried to do. And basically,
3 we could not do anything with the Health Group of
4 Virginia and I know that we were willing to walk away,
5 because if my memory is correct, the president of the
6 Corporation received money for the entity and he made
7 it and he wanted to walk out. So we don't know what
8 would happen and we went looking for other operators to
9 take over the hospital.

10 Q If they wanted to walk out, Doctor, why did
11 you declare them in default of their lease?

12 A Because when they wanted to walk out, they
13 did not walk out, the indication was -- that was proper
14 and current business. We had to look for a replacement
15 in advance before we are hit, before we walk away. I
16 don't know what was the structure. The put the money
17 out and the corporation was a strong corporation or
18 whatever it is, so naturally we had inquiries. They
19 approached us, many people, and even their own, the
20 administrator of the hospital for Health Group of
21 Virginia, Mr. Richard Levy, and he suggested we would
22 take it back and it he told me that it's 95 percent,
23 you lost money, you did not make any money and we had

J.APP. 1593

1 only 60 percent and 23 made \$2 million a year. We know
2 how to run the place.

3 Q Doctor, as I understand your testimony, you
4 had a hospital that didn't have any capital and you
5 decided to call the present operator in default and go
6 look for a new operator. Isn't it true, Doctor, in
7 fact, that you had a hospital here that a lot of people
8 wanted to buy?

9 A No. A lot of people, no, only wanted to take
10 over the operation. I don't recall --

11 Q I'm sorry. Take over the operation. A lot
12 of people --

13 A I don't recall a single entity who wanted to
14 buy it.

15 Q You don't recall anyone who wanted to buy?

16 A I don't remember.

17 Q In fact, if we read these minutes, isn't it
18 true that on at least two occasions you have offers to
19 purchase and you informed the prospective purchasers we
20 don't want to sell, we want to lease? Didn't that
21 happen on occasions that are reflected in these
22 minutes?

23 A Yes. That was our decision that some people

JAPP. 1594

1 like. I really don't remember. If we get a good
2 price, let's walk away. That's what it states in the
3 paper. Seventy-five percent of the people decided they
4 would rather continue to lease. That means that we go
5 on doing surgery and medical practice in the hospital,
6 in Jefferson.

7 Q Doctor, in these very minutes one of the
8 options discussed was selling, and you decided, rather,
9 you wanted to link up with a larger provider; isn't
10 that right? You went through the options of what you
11 could do if you defaulted HGV?

12 MR. BONO: Your Honor, that's been asked and
13 answered.

14 THE COURT: I thought he said that.

15 MR. BETTIUS: I'll move on anyway. Okay.
16 I'm sorry.

17 BY MR. BETTIUS:

18 Q Now, did there come a time, Doctor, when you
19 began negotiations with Fairfax Hospital?

20 A Yes, sir.

21 Q As I understand it, your testimony -- I think
22 it's going to be important for future witnesses -- is
23 that Fairfax wanted to link up with Georgetown and

JAPP. 1595 --

1 bring them in on a cooperative venture? It was
2 Fairfax's idea to bring Georgetown into the deal?

3 A No.

4 Q I thought I heard that yesterday.

5 A You misunderstood me then.

6 Q Okay. Then Fairfax -- it wasn't the idea of
7 Fairfax Hospital to bring Georgetown in?

8 A No.

9 Q Whose idea was that?

10 A My idea.

11 Q Your idea. Did Fairfax want to be associated
12 with Georgetown?

13 A They are associated with Georgetown, because
14 they have a common program. When they saw that I was
15 leaning 100 percent toward Georgetown, then they
16 approached me and they came to me and asked could I
17 work out some joint venture with Georgetown and Fairfax
18 Hospital together. Fairfax never wanted to go to
19 Georgetown.

20 That was a compromise because I was 100
21 percent pro-Georgetown and 100 percent against Inova.

22 Q Why did you sign with Inova, Doctor? Was the
23 money better?

J.APP.1596 --

1 A That's a good question. If you will let me
2 tell, I'll explain to you.

3 Q Yes, please.

4 A Because Georgetown was not in a position
5 financially.

6 Q Georgetown wouldn't meet the financial terms
7 that Fairfax was willing to offer; isn't that correct?

8 A At that time they did not talk about the
9 money part. They talked about what could be expended
10 and they were looking at our place. They were very
11 anxious to come to Northern Virginia to look at the
12 market and that was the tendency of all the District
13 hospitals, to be affiliated with a Northern Virginia or
14 Maryland hospital.

15 They did not have the money. Since they
16 looked over our so-called going concern, the support of
17 the doctors, they did not find enough support from our
18 staff that they would care to undertake the
19 transaction. That's the reason why they said they
20 cannot do it.

21 And then Fairfax came to me and made the
22 suggestion that Georgetown offer Fairfax a joint
23 venture, and Fairfax went so far that they were willing

1 to advance for seven years, that is, the remainder of
2 the Health Group of Virginia lease --

3 Q Doctor, you went way beyond the question I
4 asked. Let me ask you this --

5 A You asked me the question --

6 Q Isn't it true that even after you signed the
7 deal with Fairfax, you were still negotiating with
8 Georgetown to see if they would come up with more money
9 or at least the same money as Fairfax, even after you
10 signed the deal?

11 A No.

12 Q Let me show you some records, Doctor.

13 A Show it to me.

14 Q Do you recall the date --

15 MR. COCHRAN: Your Honor, what's the
16 materiality of this?

17 THE COURT: What is the purpose of this, Mr.
18 Bettius? I mean, the deal is done. I mean, the deal
19 with Inova -- with Fairfax is a done deal. What is the
20 purpose of this?

21 MR. BETTIUS: Your Honor, it appertains to
22 the fourth floor. What happened -- and I intend to
23 prove it if the Respondents make me -- is that they --

J.APP. 1598

1 want to take in later years fourth floor money away by
2 virtue -- not only in this lease, but further in the
3 year 2005, the fourth floor.

4 It was -- if they'll stipulate it, the fourth
5 floor was a bargaining position. Fairfax didn't want
6 it. Georgetown didn't want it. It was the basis of
7 whoever would pay more for the fourth floor got the
8 deal, and that those negotiations continued beyond the
9 signing of the Fairfax deal.

10 MR. BONO: Your Honor, I'd like to make an
11 objection -- continuing objection to this entire line
12 of questioning. The Commonwealth has submitted an
13 accounting, because I understand what they're relying
14 upon. Their only basis -- their only basis for the
15 accounting of the Inova lease money in the settlement
16 is the 1966 old lease that JMH had that stated in
17 their accounting their only basis -- their expert
18 witness testified to that in his deposition, and that
19 was what the opening statement of Mr. Bettius said.
20 That's their basis.

21 If that's their basis and now he's changing
22 his theory in the middle of this trial, that is not
23 fair to the Respondents, nor appropriate. The

J.APP. 1599

1 Commonwealth's theory on those monies is the possessory
2 interest arising from one document, the 1966 lease.
3 That's the case they've presented in discovery. That's
4 the case they've presented in the expert report.

5 This is totally, totally inappropriate, and I
6 object to this entire line.

7 MR. BETTIUS: Your Honor, I'm delighted --

8 MR. BONO: If this is the Commonwealth's
9 theory, they've changed their case and they should not
10 be permitted to do this at this late date in the middle
11 of this trial.

12 MR. BETTIUS: First of all, I don't know what
13 Mr. Bono's talking about. He's defending his first
14 accounting that they withdrew.

15 MR. BONO: Absolutely not. Absolutely not.

16 MR. BETTIUS: Please let me have a moment.

17 In the second accounting that's submitted by Mr. Cobb,
18 he bases the totality of their entitlement to the '66
19 lease. I don't think Mr. Cobb's going to deny that.
20 That's the only valid lease that ever existed, because
21 the Court said that the cancellation of the '66 lease
22 by JMHI in '75 --

23 THE COURT: The original question that

J.APP. 1600

1 generated all of this was whether or not Dr. Tauber
2 continued to negotiate with Georgetown for the lease
3 deal after the Inova or Fairfax Hospital deal was
4 signed.

5 MR. BETTIUS: That's correct.

6 THE COURT: The objection is sustained as to
7 that question. If you have something you want to ask
8 about the fourth floor and some other things, I'll
9 overrule that objection and you can inquire about it.

10 MR. BETTIUS: Yes.

11 BY MR. BETTIUS:

12 Q Was the fourth floor the ultimate bargaining
13 point between the three parties involved as to who
14 would pay the most for it?

15 A Absolutely not.

16 Q All right. Now, Dr. Tauber, did you --

17 MR. BETTIUS: Your Honor, I've got to get
18 into -- I'll tell you, I'll submit this on the minutes.

19 THE COURT: Ask whatever question you want to
20 ask, Mr. Bettius.

21 MR. BETTIUS: All right.

22 THE COURT: We'll hear if there's an
23 objection.

JAPP. 1601

1 BY MR. BETTIUS:

2 Q Did you continue to negotiate with Georgetown
3 and send them a letter that said that you were going to
4 your board that afternoon and they could either meet
5 the deal or it was going to Fairfax? Did you write
6 such a letter to Georgetown?

7 A We negotiated with Georgetown and Fairfax,
8 and since Georgetown's offer was --

9 Q A yes or no will do, Doctor.

10 A I negotiated until such time that I signed
11 the lease with Fairfax.

12 Q And did it come down to the fourth floor,
13 Doctor?

14 A It was one part of the consideration.

15 MR. BETTIUS: Your Honor, in this regard, I'm
16 going to submit Exhibit 955A. I'm just going to submit
17 it.

18 BY MR. BETTIUS:

19 Q The fourth floor was a shell, was it not,
20 Doctor, when Fairfax got it?

21 A It was a shell. I would not say a shell,
22 because we had the corridor in it.

23 Q The corridor. What did Fairfax use it for, --
JAPP.1602

1 if ever?

2 A What they used for? For one and a half years
3 they did not use it. And then, when the government of
4 Virginia --

5 Q I'm sorry?

6 A When the government of Virginia made the
7 issue they have a place where they don't utilize, then
8 that --

9 Q I'm sorry. I didn't understand you.

10 A That they don't utilize and only pay rent.
11 They pay the rent and they did not use anything. In
12 the original agreement that we had with Fairfax, we
13 anticipated that Fairfax, with their great power, they
14 will be able to get additional beds. And if you read
15 that contract, it clearly states that any additional
16 beds which will be obtained above 120 beds will be
17 charged at the rate of \$8,000 per bed.

18 And as far as I know -- not only I know, this
19 is the fact, that they never succeeded, but that they
20 ask for it but never succeeded. Therefore, they
21 converted the place to a -- badly needed additional
22 facilities to the hospital, like respiratory center,
23 cardiac catheterization center, diabetic center and --

J.APP. 1603

1 then recovery room for the outpatient surgeries and so
2 on. That improved tremendously the hospital.

3 Q Doctor, why do we find two signed leases for
4 the hospital or portions of the hospital on the same
5 day?

6 A May I see it, please?

7 Q Yes.

8 THE COURT: Tell them what you're referring
9 to.

10 MR. BETTIUS: Exhibits 339 and 338.

11 THE WITNESS: Mr. Bettius, do I have to read
12 the whole document?

13 BY MR. BETTIUS:

14 Q No. One is the Fairfax lease for the
15 totality of the building and it cites the rent, and
16 then you have a separate lease for the fourth floor. I
17 want to know which lease controls.

18 A If they were both signed, then both leases
19 control.

20 Q Well, Doctor, they both cover the same space
21 or a portion of the same space. One is for the fourth
22 floor and the other lease covers the whole hospital and
23 a portion of the fourth floor. Why would you sign two

J.APP. 1604

1 leases on the same day that covered the same piece of
2 real estate?

3 A I see that this is a copy. It is a
4 duplication.

5 Q I'm sorry, sir?

6 A It is a duplication, as I see it.

7 Q But both documents are signed as if they're
8 effective documents. Do you know why you did that,
9 Doctor?

10 MS. BEACH: Your Honor, may I just object and
11 ask the relevance of it? It was done.

12 MR. BETTIUS: I want to know which one
13 controls.

14 THE COURT: Objection's overruled.

15 MR. BONO: Objection, Your Honor. That calls
16 for a legal conclusion.

17 THE COURT: Objection's overruled.

18 THE WITNESS: We signed it.

19 THE COURT: Stop, Mr. Bettius. Go ahead,
20 Doctor, finish your answer.

21 THE WITNESS: I signed it and we signed it.
22 Inova signed it, I signed. It is binding and I really
23 have to have time to go over on everything as to what_

J.APP. 1605

1 is the difference between the two. But the date is 3rd
2 of July on both.

3 BY MR. BETTIUS:

4 Q They're both fully executed documents, right?

5 A Fully executed documents. It speaks for
6 itself.

7 Q Now, Doctor, what happened to JMHC's interest
8 in the lease proceeds? What did they get out of this
9 Inova lease?

10 A Nothing. Nothing more than what you asked
11 before --

12 Q Now, in both -- excuse me. Repeat that,
13 please. I didn't hear it, Doctor.

14 A They did not get anything more than what was
15 given to them in 1982, that is, the \$100,000 to take
16 the responsibility to overlook the operation of the
17 hospital and the interest on bonds and additional
18 expenses related to their function.

19 MR. HIRSCHKOP: Your Honor, I wonder if it's
20 an appropriate time for the morning break?

21 THE COURT: How much longer are you going to
22 be, Mr. Bettius?

23 MR. BETTIUS: About five minutes.

JAPP. 1606

1 THE COURT: All right.

2 BY MR. BETTIUS:

3 Q Now, Dr. Tauber, that's -- let me show you
4 this document dated July 3, 1985, called assignment of
5 lease, Exhibit 337, and ask you if you want to reflect
6 on this and indicate, perhaps, that maybe you were
7 mistaken?

8 A Which one is that, sir?

9 Q It's a fact, Doctor, that C got nothing; is
10 that correct?

11 A Which one?

12 Q C got nothing; isn't that correct?

13 A I don't understand.

14 Q C got nothing?

15 A That's right. It is an assignment.

16 Q And the purported agreement canceled -- the
17 consideration was the cancellation of their obligations
18 under the 1975 lease; is that correct, Doctor?

19 A Just a second, sir. It is a release of any
20 liability of Jefferson Memorial Hospital Corporation or
21 Jefferson Memorial Hospital of Alexandria.

22 Q Doctor, what liability was there at this
23 point? All of the mortgages had been paid; isn't that

J.APP. 1607

1 correct?

2 A I don't know. I cannot -- you have to show
3 me.

4 Q Didn't you previously testify they were due
5 in '84 and you used these funds to pay them off?

6 A I did not know it was exactly '84. Whenever
7 the date was, that money was preserved to pay the loan
8 payment. I cannot tell you exactly now, and I don't
9 remember what was the exact date. As far as the
10 obligation's concerned, I said it before. The only
11 obligation they had, they had to supervise it, that's
12 one function, and to pay the interest on the bonds and
13 that's all. Therefore, they had no more obligations.

14 Q HGV was paid \$5.8 million. They didn't just
15 walk away. It cost \$5.8 million to have them walk
16 away, didn't it, Doctor?

17 A Excuse me? You said HGV? They received --
18 you said HGV --

19 Q HGV received \$5.8 million to walk away,
20 didn't they?

21 A As far as I am concerned. I never saw the
22 document. I was never a witness there and I did not
23 know what they pay for it.

J.APP. 1608

1 Q Doctor, can you explain why, in connection
2 with this transaction, a new corporation called JMHI
3 was created and the Fairfax lease was assigned to JMHI?
4 Were you aware that that happened?

5 MR. BONO: Your Honor, just so there's no
6 confusion with this reference to JMHI, the record has
7 already demonstrated in this case and in evidence
8 already submitted, that JMHI -- just so there's no
9 confusion -- is a new corporation that was set up by
10 Health Group of Virginia --

11 MR. BETTIUS: No, no, by Inova.

12 MR. BONO: By Inova. Excuse me. It is a
13 separate Tennessee corporation, set up and totally
14 owned by Inova, having nothing whatsoever to do with
15 any corporation, entity having to do with the original
16 JMHI or Corp., and I don't want there to be any
17 confusion.

18 MR. BETTIUS: I know. I don't want there to
19 be either.

20 THE COURT: I understand.

21 BY MR. BETTIUS:

22 Q The state authorities would think JMHI was
23 the operator, wouldn't they, Doctor?

J.APP. 1609 --

1 MR. BONO: Objection, Your Honor. He
2 can't --

3 THE COURT: I'm sorry. Stop. Ask the
4 question again. I'm sorry. I didn't hear your
5 question.

6 BY MR. BETTIUS:

7 Q Regulatory authorities would think the
8 hospital was being operated by JMHI, wouldn't they,
9 Doctor, whether it's Tennessee or Virginia?

10 MR. BONO: Objection, Your Honor.

11 THE COURT: Objection sustained.

12 MR. BONO: Thank you.

13 MR. BETTIUS: I'm going to offer the document
14 anyway, Your Honor. It's 194. The doctor may not be
15 able to comment on it.

16 Court's indulgence. I'm sorry. It's Exhibit
17 340.

18 THE COURT: I'm sorry?

19 MR. BETTIUS: It's 340.

20 THE COURT: All right.

21 BY MR. BETTIUS:

22 Q Now, Doctor, there came a time, did there
23 not, when you became very concerned --

J.APP. 1610--

1 MR. BETTIUS: Your Honor, I'm going to be
2 about 10 more minutes.

3 BY MR. BETTIUS:

4 Q Dr. Tauber, do you need a little rest?

5 A No, no. I would like to finish.

6 Q All right. I'll get it done, Doctor. There
7 came a time, did there not, you became concerned about
8 Fairfax Hospital's ability to continue at Jefferson
9 based on the declining census; is that correct?

10 A I was never concerned about their ability.
11 Only I was concerned if they were willing to continue
12 operate.

13 Q You very squarely, on a number of occasions,
14 placed the blame for the failure of the venture between
15 your group and Fairfax on your own Respondents, didn't
16 you, Doctor?

17 A On my Respondents, yes. I emphasized many
18 times verbally, and I wrote letters to the people, and
19 our own group has to realize the more they support
20 Jefferson Hospital, the safer the operation of Fairfax
21 Hospital in that location. Unfortunately, very few of
22 them followed my advice.

23 Secondly, I blamed Inova when they came in

J.APP. 1611

1 and they promised they send more to Jefferson Memorial
2 Hospital. And what happened actually from all the
3 patients they had, they were so busy they transferred
4 to other hospitals and not to Jefferson.

5 Secondarily, we have evidence on that one,
6 where Inova charged two or three times as much fee for
7 the outpatient at Jefferson Hospital than they charged
8 at their own facilities. That was clear-cut evidence
9 to me that they want to get out of it and later, which
10 I suspected, that's what Mr. Singleton reported to the
11 board of trustees that they do defensive and offensive
12 action. Defensive to block George Washington,
13 Georgetown, Washington Hospital Center, Children's
14 Hospital and even negotiating with Johns Hopkins to
15 come in, they did not want to have competition.

16 And that was the case, that I was afraid that
17 the census goes down and I was afraid that an
18 organization which has lobbyists in Richmond, staying
19 there for three, four, that the Health Department will
20 revoke our license as an under-utilized facility.
21 Therefore, I did not see any other way to secure our
22 position and I negotiated with them a settlement.

23 Q Doctor, isn't it clear that by December of --

J.APP.1612

1 1990, the issue was clearly drawn that Fairfax couldn't
2 -- had the obligation to continue to maintain the
3 license, but that you were afraid that they would lose
4 the license and be able to get out of the hospital
5 obligation?

6 A I did not say that. I never said that they
7 could not, because I was well aware that this Inova
8 Corporation had a surplus over \$50 million, that they
9 could, but that they would want to do it. If they
10 actually want to close the facility, no competition can
11 enter into Northern Virginia market, then they achieve
12 their goal and they don't need it. It was worthwhile
13 for them to just close the place.

14 MR. BETTIUS: Show the doctor Exhibit 456.

15 BY MR. BETTIUS:

16 Q After explaining the situation of declining
17 census, didn't you say it was virtually impossible or
18 it makes it almost impossible for them to keep the
19 hospital open with so many unoccupied beds? It is a
20 shame that doctors still practicing and collecting
21 large amounts of cash flow from the rental property
22 don't support the hospital? Wasn't that your position?

23 A I mentioned -- just a few minutes ago, I --
JAPP. 1613

1 testified that a plan was placed on our staff, some
2 members of our staff were needed and they did not
3 support the place. That's correct. That was one part
4 of the point. The other part was --

5 THE COURT: You've already answered.

6 BY MR. BETTIUS:

7 Q Did you reflect to your fellow venturers that
8 their basis in this transaction was nearly zero?

9 A Excuse me, sir, would you ask again?

10 Q Did you reflect to your fellow doctors that
11 their basis in this transaction was nearly zero?

12 A That's correct.

13 Q And that they had little or no money invested
14 in this project?

15 A I would not say that, but they recouped their
16 expenses during these years.

17 Q Doctor, in 1991, when you were explaining the
18 joint venture potential with Fairfax, did you reflect
19 the following statement: At the time we erected the
20 fourth floor, it was practically built by the
21 successful marketing on different securities by Dr.
22 Peters. That is the reason --

23 THE COURT: Go ahead and finish it, Mr.

JAPP. 1614

1 Bettius, but it sounds awfully familiar.

2 MR. BETTIUS: Again, Your Honor, I want to
3 show who paid for it. I simply want to show you paid
4 for it.

5 THE COURT: I thought that's what you'd asked
6 him about and he said he didn't know where the
7 securities came from.

8 MR. BETTIUS: Your Honor, this is his letter
9 and it's his reflection.

10 THE COURT: Show it to him if you want.
11 Which exhibit?

12 MR. BETTIUS: It's 971.

13 THE COURT: I think he's seen that one.

14 MR. BONO: Yes, Your Honor. It's the
15 exact --

16 THE COURT: That's the one he looked at and
17 said that he didn't know where the securities came --

18 MR. BETTIUS: No, Your Honor, it's not.

19 THE COURT: 971 is the one I have marked.

20 MR. BETTIUS: There are several 1991 letters.
21 This directly says it, Your Honor.

22 You're right, it is the same one. It is the
23 same one. I apologize.

JAPP. 1615 --

1 THE COURT: Is there another part of it?

2 MR. BETTIUS: Yes. It's repetitious.

3 THE COURT: Come up and show that to him. If
4 it's something that contradicts what he said, you're
5 entitled to show that.

6 BY MR. BETTIUS:

7 Q Do you recall making that statement, Dr.
8 Tauber?

9 MS. BEACH: Your Honor, I object.

10 THE COURT: Which one?

11 MS. BEACH: This is a letter signed by Leslie
12 Peters and it has been testified to before that he did
13 not write this.

14 MR. BETTIUS: That's true.

15 THE COURT: All right.

16 BY MR. BETTIUS:

17 Q Doctor, perhaps I have something that you
18 wrote that may help you, Exhibit 974, a memorandum
19 about group A and B members. I'm referring, Doctor --
20 you may obviously want to read the whole thing.

21 A Yes, sir. What is the question?

22 Q Did you write that, Doctor, discussing the A
23 and B members?

J.APP. 1616 --

1 no money in the transaction?

2 A May I have that?

3 Q Yes, sir.

4 MS. BEACH: The number, please?

5 MR. BETTIUS: It is 805.

6 MR. HIRSCHKOP: While he's reading that, Your
7 Honor, I would like to inquire which last five minutes
8 we're into right now?

9 THE COURT: With Mr. Bettius' estimates of
10 time, I'm looking at about four for one. So in the
11 future when he estimates time we'll just multiply by
12 four.

13 MR. BETTIUS: I'm losing decades, Your Honor.
14 Dr. Tauber isn't very quick sometimes in his responses.

15 THE COURT: He has to read the documents. I
16 understand.

17 MR. HIRSCHKOP: He spent 15 minutes figuring
18 out the 971 wasn't written by him.

19 MR. BETTIUS: I don't want to have a fight
20 with Mr. Hirschkop.

21 THE COURT: It didn't start out as a fight,
22 but it looks like it's getting there.

23 Give the doctor a chance to read the exhibit

J.APP.1617

1 A Yes, sir. I don't see my signature. Do you
2 have it on that copy?

3 Q Doctor, it's produced from the records of the
4 hospital. Who administered the partnership, the A, the
5 B members and kept track of all of that?

6 MS. BEACH: Your Honor, let the record
7 reflect that that is incorporated in Exhibit 971 by Dr.
8 Peters. It is page 2 of Dr. Peters' 971 exhibit.

9 MR. BETTIUS: If that's the case, Your Honor,
10 I'll accept Ms. Beach's representation.

11 MS. BEACH: Why don't you all check it out.

12 MR. BETTIUS: She's right, Your Honor.

13 THE COURT: All right. No need to read any
14 more, Doctor. All right, Mr. Bettius, let's move on.

15 MR. BETTIUS: One minute, Your Honor.

16 BY MR. BETTIUS:

17 Q Doctor, did you reflect in a memorandum to
18 venture members in '89 that since practically none of
19 the investors have any money in this venture, I would
20 like to allocate \$1.1 million to be paid in October
21 2005 to our employees?

22 A Yes.

23 Q Is it true that the venturers had practically
JAPP. 1618

1 and then you ask your question. Mr. Bettius, what's
2 your question?

3 THE WITNESS: Yes.

4 BY MR. BETTIUS:

5 Q Was it your statement, as expressed in that
6 letter, that the investors had practically no money in
7 the transaction?

8 A At that time, yes.

9 Q Doctor, very frankly, was your position
10 always that without operations at that hospital it was
11 a white elephant? Is that correct, that if you didn't
12 have operations conducted in it, it was a
13 single-purpose building and it was a white elephant?
14 That was your term, wasn't it?

15 A The building is a hospital. If we don't have
16 a tenant, it's a single-purpose building, it is a
17 burden, right.

18 Q And, Doctor, to conclude, when did anyone
19 ever acquire from JMHI its rights to operate that
20 hospital? In what transactions or what transaction do
21 you maintain divested the charity of its right to
22 operate?

23 A Which JMHI are you referring to, Tennessee or
JAPP. 1619

1 Maryland?

2 Q I'm sorry, sir?

3 A Which JMHI did you refer to, Tennessee?

4 Q The charity.

5 A The charity, the Maryland.

6 Q Maryland, yes. Which transaction did that?

7 A The transaction, it was, to our best
8 knowledge, 1st of July 1971.

9 Q Thank you.

10 A From then on, there was nothing.

11 Q I'm sorry?

12 A From then on there was nothing.

13 MR. BETTIUS: Thank you.

14 (End of partial transcript.)

15 * * * * *

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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