**IN THE**

**SUPREME COURT OF VIRGINIA**

**AT RICHMOND**

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**RECORD NO. 011150**

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

Appellants-Respondents,

v.

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

Appellees-Complainants.

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**JOINT APPENDIX**

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

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| COMMONWEALTH OF VIRGINIA, et al., Complainants, v. LASZLO N. TAUBER, et al., Respondents. | In Chancery No.: 96-1241 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:

APPEARANCES:

On Behalf of the Complainants:

MARC E. BETTIUS, ESQ.
DEBRA FITZGERALD-O'CONNELL, ESQ.
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On Behalf of the Respondents Tauber, et al.:

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

2 Whereupon,

3 ARTHUR H. COBB

4 was called as a witness and, after having been first

5 duly sworn by the Clerk of the Court, was examined and

6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. COCHRAN:

9 Q Mr. Cobb, could you give us your full name

10 and present business address, please?

11 A Arthur H. Cobb, C-o-b-b. My business address

12 if 4010 IBS Center, Minneapolis, Minnesota 55403.

13 Q By whom are you employed and in what

14 capacity?

15 A I'm employed by Cobb and Associates, Limited.

16 I'm the president of that firm.

17 Q I take it you testified in the first trial of

18 this matter?

19 A I did.

20 Q And during the course of the work that you

21 have done since then, have you uncovered anything that

22 alters your opinions in any significant way?

23 A From the last trial, no.

1 Q What was the task that you were given to do
2 for this accounting stage of the case?
3 A I was asked to make considerations of various
4 of the materials, including this Court's ruling, the
5 ruling by the Supreme Court of the state of Virginia --
6 Commonwealth of Virginia, various financially related
7 documents, for example, the 1966 lease; various of the
8 financial statements and notes to the financial
9 statements of JMHI, JMHC.
10 I made consideration of some of the lease
11 transactions and surrounding events related to Health
12 Group of Virginia and Inova. From those you make an
13 independent accounting of the assets, liabilities of
14 JMHI.
15 Q To what extent, if any, were you instructed
16 by counsel or by the client as to how to prepare your
17 accounting?
18 A I wasn't.
19 Q Did you view your role as an advocate for the
20 respondents or an independent accountant?
21 A As an independent.
22 Q Are you a member of AICPA?
23 A I am.

1 Q And what is AICPA?

2 A It's the American Institute of Certified

3 Public Accountants. It's the primary industry

4 association of certified public accountants.

5 Q In what way, if any, was your work on the

6 accounting impacted by the rules of the AICPA?

7 A The AICPA provides general standards that

8 apply to all work that a CPA undertakes related to the

9 customary work of a CPA or for which they hold

10 themselves out and identify themselves as being a CPA.

11 Q Was your accounting done in accordance with

12 generally accepted accounting principles?

13 A To the extent that they're generally accepted

14 accounting principles in that regard, yes. There are

15 not specific generally accepted accounting principles

16 that apply to this type of accounting.

17 Q And could you explain to His Honor the

18 various parts of your report, and if you could focus on

19 why we seem to have A and B includes A and so forth?

20 A Okay. The report is complex to read, at

21 best. It starts with introductory material, and from

22 that I identified from my reading my determination of

23 the method of accounting and the time period that that

1 included.

2 I was concerned that my role -- where my role

3 or understood my role was to provide the Court with

4 information upon which to make some rather complex

5 decisions, and I felt it was important to identify

6 alternative time periods and, therefore, alternative

7 scenarios so that there was information available to

8 encompass the time period from 1971 through 2000 --

9 September 30, 2005.

10 Q And did you attempt to make your accounting

11 consistent with the dictates of this Court and the

12 Virginia Supreme Court's decision?

13 MR. BETTIUS: I'm going to object. That

14 requires the witness to make a legal conclusion.

15 THE COURT: Objection's overruled.

16 THE WITNESS: As I understood them, yes.

17 BY MR. COCHRAN:

18 Q Could you briefly describe for the Court the

19 work you did in connection with the first trial?

20 A My work related to the first trial was to

21 undertake an analysis of the fair market value of

22 Jefferson Memorial Hospital as of June 20, 1971, as

23 encompassed in JMHI and then separately and

1 progressively to make a similar analysis estimate of
2 JMHC, the Corporation, as of April 18, 1973 and as of
3 January of 1975.
4 Q And in connection with that what kinds of
5 meetings did you conduct and what kinds of documents
6 did you review?
7 A Starting with the meetings, I had meetings.
8 And to my recollection most, if not all, were by way of
9 telephone, at least up to the time of my preliminary
10 report, with Dr. Tauber and there may have been others,
11 discussing the operations of the hospital, the history
12 of the hospital, development in terms of real estate of
13 the hospital establishing the hospital's operations.
14 That discussion included the hospitals operations for
15 only 1975.
16 I also conducted a tour of hospitals in
17 Northern Virginia, many of which I had been to in the
18 1970s, but I went back through and considered those
19 hospitals. I gathered information regarding hospital
20 admissions, market share, staffing patterns and the
21 like in the Northern Virginia area.
22 I made considerations of the values of
23 hospital chains and groups such as Extended Care, HCA.

1 I made considerations of the acquisitions of small or
2 smaller hospitals by the large chains in that time
3 period, and considerations of transactions in the
4 Middle Atlantic states as well.
5 I made considerations of the asset values,
6 the market values and the income approach values
7 indicated for Jefferson Memorial Hospital, Inc. or
8 Jefferson Memorial Hospital Corporation for the dates
9 that I considered.
10 Q And what additional work have you done in
11 connection with this accounting?
12 A All of the information that I had before
13 stopped as of, I think, June 30, 1975. So I received
14 information, first, past June 30, 1975. I also
15 received or revisited information prior such as the
16 1966 lease. I received financial statements for time
17 periods after 1975. I received copies of lease
18 documents, various materials from time periods from
19 1975 through October 1, 2005 as being the prospective
20 payments under the Inova letter agreement and
21 settlement agreement.
22 I paid special attention to the financial
23 statements, the notes to the financial statements, to

1 understand the operations of Jefferson Hospital as
2 reflected in those materials up until 1982, and to
3 understand a series of lease payments from 1982
4 forward, and settlement payments thereafter.
5 Q Did both you and Mr. Wilson rely upon those
6 financial statements as the primary financial documents
7 on which to base the accounting?
8 MR. BETTIUS: I'm going to object to him
9 testifying what Mr. Wilson relied upon. That's our
10 expert and he'll testify what he relied upon.
11 MR. COCHRAN: Your Honor, he said in his
12 report --
13 THE COURT: Rephrase the question.
14 BY MR. COCHRAN:
15 Q Did both you and Mr. Wilson rely upon the
16 financial statements as the primary document upon which
17 you based your accounting?
18 A There's a series of them, so it's not
19 singular.
20 Q Documents.
21 A Yes. For the time period -- time periods
22 prior to 1982, I believe Mr. Wilson and myself both
23 focused primarily on the financial statements, at least

1 as a starting point of our analysis.

2 Q To what extent, if any, did you view the 1966

3 lease as a significant document?

4 A I think it is a significant document.

5 Q And why is that?

6 A The 1966 lease is the primary document that

7 gave JMHI rights to, access to the physical facilities

8 that then existed, which comprised Jefferson Memorial

9 Hospital. There are related leases. There's a 1968

10 lease and there are land leases. That series of leases

11 allowed JMHI to operate within -- on the land and

12 within the buildings at 4600 King Street.

13 Q And what adjustments, if any, did you make to

14 the financial statements in order to come up with your

15 accounting?

16 A The financial statement that I started with

17 was the JMHI balance sheet as of June 30, 1971, and

18 that amount on its face indicated a shareholders

19 deficit of $392,568. So I took that as a starting

20 point and I can explain why if you want.

21 But then in sequence, I next paid attention

22 to and analyzed not the additional balance sheets yet,

23 but the statements of income and expense. And what I

1 was looking to do was to identify earnings, results of
2 operations generated by hospital operations that were
3 recorded in financial statements that included not only
4 hospital operations, but also hospital properties.
5 Q And what were the adjustments that you found
6 it necessary to make to come up with accurate
7 statements for the purposes of the accounting?
8 A I have an overhead. It would help if I could
9 use an overhead.
10 MR. COCHRAN: Your Honor, may he come down
11 and use the overheard?
12 THE COURT: All right.
13 BY MR. COCHRAN:
14 Q Let the Court and counsel know what page of
15 your report you're showing us.
16 A This is an update of page 41 of the report.
17 It's an update based on discussions that we had
18 starting yesterday afternoon and into yesterday evening
19 with Mr. Wilson and his associate, Amy, identifying
20 similarities and differences we had in identifying
21 areas where the differences weren't material or where
22 there were meaningful compromises to be reached,
23 because there just wasn't sense in fighting over this.

1 MR. BETTIUS: Mr. Cobb's representation is
2 totally correct, Your Honor.
3 THE COURT: All right.
4 MR. BETTIUS: In one area we've agreed to
5 disagree, not because of the amount of the adjustment,
6 but because of the philosophy. I think Mr. Cobb's
7 going to explain that.
8 THE COURT: Okay.
9 THE WITNESS: There's several areas where
10 they're philosophy and some of them are very
11 substantive.
12 I'll speak a little bit on behalf of Mr.
13 Wilson, and as I go astray, please correct me.
14 MR. BETTIUS: Your Honor, would it be
15 appropriate for my expert to come up and --
16 THE COURT: Go ahead and finish your
17 sentence, Mr. Bettius.
18 MR. COCHRAN: I don't object to his expert
19 coming up where he can see this plainly, Your Honor.
20 He can come up over here.
21 THE COURT: All right.
22 MR. BETTIUS: Are these calculations on the
23 sheet, Mr. Cobb?

1 THE WITNESS: Yes.

2 MR. BETTIUS: That's all right, Mr. Wilson.
3 You know these. You have these numbers at hand, don't
4 you?

5 MR. WILSON: No, I don't. It would be much
6 easier to have a copy.

7 MR. BETTIUS: We were only given one copy.
8 Have you got another copy, Mr. Cobb?

9 THE WITNESS: I gave five or six to Mr.
10 Cochran.

11 MR. COCHRAN: Here you go. Your Honor, I
12 think I put some extra copies up there with the exhibit
13 books if you would like to follow along on a copy as
14 opposed to on the screen.

15 THE COURT: Go ahead.

16 THE WITNESS: Your Honor, the top part of
17 this schedule is nothing more than a recasting of the
18 individual years' income statements across the top for
19 1972 to 1982, and each one is a fiscal year that ended
20 June 30.

21 Those financial statements, because the
22 parties acted as though there was a merger, which now,
23 as I understand as a point of law there was not, those

1 financial statements include the operations of JMHI,
2 the hospital operating company, and of JMHA, the
3 property ownership company.
4 So taking this as the best information
5 available, which recorded the revenues from operations
6 and other sources, the deductions from revenue and all
7 of the expenses, it gave us the pictures that were
8 taken in the current time periods of the receipts, the
9 disbursements from a revenue and expense point of view
10 of the entire operations.
11 But we knew that that included -- as did Mr.
12 Wilson, we knew that that included items that were not
13 related to the operation f the hospital, but rather
14 were related to the ownership of the land and the
15 building. So what we've done is come down after the
16 midpoint, down to where I've drawn the income line, the
17 net income line. There are no changes. That's simply
18 what the financial statements report.
19 And then we've identified items that relate
20 to land, building and equipment, and we've added those
21 back, so as to take out the land, building ownership
22 amounts. For example, you can see building
23 depreciation. If JMHI was the tenant and did not own

1 We then identified that the ownership items
2 need to be taken out, and now we need to put back in
3 lease items. So we go back and we find the building
4 lease -- I'm sorry. I've gone ahead of myself. We
5 find a building lease starting in, without pulling the
6 screen down, 1975 at $112,000.
7 But we take that out, because that building
8 lease wouldn't have existed because we honor, in
9 effect, the 1966 lease. Because we honor the 1966
10 lease in this model, we have to take out the 1975 lease
11 payments. So we've taken out the 1975 lease. We've
12 trued up the rest of the leases. There's a line item,
13 loss on disposable land and building. There is a
14 partnership amount, and this is the Lost Creek amount
15 that was recorded. That also was taken out of JMHI.
16 BY MR. COCHRAN:
17 Q Mr. Cobb, if I could interrupt you, the Lost
18 Creek is the coal mine tax shelter?
19 A Yes, it is. So we've taken that out of the
20 picture, in effect. Now we have to put back in the
21 leases that were there, would have been there, so we go
22 back and revisit the 1966 hospital lease, the 1968
23 hospital addition and what we've all called land lease

1 and land lease 2, and have put those back in so we
now have an operating basis.

Now, here's our first difference, and the dollars are not stunningly large, but I think they're important. What we've done is identify that there was a capital contribution of the $240,000 related to the 60,000 shares that have been discussed. In the accounting statements it doesn't show up as $240,000. It shows up as about $221,000.

So we made the consideration, based on analysis of the hospital years ago and recently, that the hospital had to have that cash. The hospital was thinly capitalized, undercapitalized. It needed that cash to continue to support its operations, its ongoing renovations, placements of equipment, working capital, what have you.

The $221,000 that came in with the 60,000 shares came in as stock. However, JMHI -- and in effect what we're doing is looking at the amounts as though JMHI had continued. We'll truncate that in a while.

JMHI could not have issued stock. It was a non-stock company. It still needed that money. So we

1 have assumed in our model that stock was not sold, but
2 there was a subordinated loan. So the individuals that
3 bought the stock now, in our model, instead of buying
4 stock made loans.
5 We've identified a borrowing rate of over 9
6 percent. I don't remember the number as I stand here.
7 I think it's about 9.3, 9.5 percent. We've said that
8 there has to be a cost of that debt. So we included
9 for two years, those being 1974 and 1975, interest
10 expense related to that debt.
11 MR. BETTIUS: Mr. Cobb, not to interrupt you.
12 Your Honor, that's one of our threshold objections.
13 Your Honor, they proceeded trading stock for bonds and
14 imposing an interest rate on it.
15 THE COURT: I understand the objection.
16 MS. BEACH: Your Honor, the revised copy of U
17 is sitting on the witness stand. Let me have it. Do
18 you have a copy of that?
19 THE WITNESS: As Mr. Bettius identified, this
20 is our first departure. Not only, I think, between
21 ourselves and Mr. Wilson, but also the first
22 philosophical departure as well. As I said, we
23 understand that the money was desperately needed.

1 Without the money the hospital couldn't have continued
2 and it's unable to issue stock.
3 So then we have totals coming down of what
4 our adjustments are, and, but for these two entries, we
5 agree with the adjustments. There's some compromises
6 in the adjustments that I think are reasonable
7 compromises.
8 We then looked at our adjustments and came
9 back up and found that in each of these years there
10 were taxes paid and that JMHI was a taxpaying
11 organization, having lost their 501(c)(3). So we
12 calculated the effect of the tax rate that was reported
13 on the financial statements, and we have taxed the
14 differences that we created out of our adjustments,
15 based on that tax rate.
16 So you see, for example, that in 1972,
17 whereas there was a report of net income after taxes of
18 $208,009, after adjustments, including an adjustment of
19 the taxes, we come up with $201,745, I think, or
20 thereabouts.
21 In Mr. Wilson's, his would be slightly
22 different in that year because of the tax difference.
23 As I understand what Mr. Wilson has done, whatever

1 taxes were paid, they were paid. That's water under
2 the bridge and we'll leave it be. We're not going to
3 tax it incrementally.
4 MR. BETTIUS: Stipulated, Your Honor.
5 THE WITNESS: So what we've done and Mr.
6 Wilson, in this analysis is brought it forward for each
7 and every year. That's given us a picture of hospital
8 operations earnings separate from hospital real estate
9 ownership and it gives us a measure of a split or the
10 lack of merger, if you will, of JMHA and JMHI.
11 BY MR. COCHRAN:
12 Q Can you explain to the Court, Mr. Cobb, why
13 it is that you believe it's appropriate to tax the
14 incremental increases in income?
15 A There's several considerations made. One,
16 the simple fact that JMHI was a taxpaying entity,
17 having lost the 501(c)(3), having never been tax exempt
18 in the state of Virginia, that even putting this back
19 in the form of JMHI, there are in existence a number of
20 charities that are not exempt from federal income
21 taxes. It doesn't mean that they're not charitable and
22 good and true in their activities, it just means that
23 they are not exempt from federal taxes.

1 So we looked at -- I was aware of the
2 existence of taxpaying charities and the fact that this
3 very charity, JMHI had been a taxpaying entity.
4 Q Mr. Cobb, what is the starting date you used
5 for your accounting and why did you choose that date?
6 A The starting date I used was June 30, 1971,
7 and I used that because I had understood that the
8 Court's ruling established that as of June 30, 1971 the
9 purported merger did not exist and I didn't identify
10 any information that caused me to go back prior to
11 that.
12 What I wanted to look at in an accounting, is
13 I wanted to record assets, liabilities, earnings and
14 the like. So I looked at the assets that existed
15 before the merger. The merger would have been -- was
16 or would have been effective July 1 of '71. So I took
17 the 1971 fiscal year financial statement and identified
18 the assets and liabilities recorded therein and took
19 that as the starting date.
20 Q And can you explain to the Court why you came
21 up with an accounting through April 18, 1973 as your
22 primary accounting?
23 A I read the Court's order numerous times, as

1 you can imagine, but I identified that the Court had
2 found that in 1971, at the time of the change to for-
3 profit, the corporation had value and going concern
4 value, growing revenues, but an erratic pattern of
5 earnings, but that the value of the corporation didn't
6 exceed its liabilities.
7 Then further in the Court's order, and this
8 is a paragraph on what I have as page 6, in addition
9 it's clear under Virginia law, Maryland law being
10 similar, that directors of a dissolved corporation
11 become formal trustees upon dissolution and hold for
12 the benefit of the creditors and shareholders, if for
13 profit or for the public if non-profit.
14 Since the Court finds that no merger of JMHI
15 and JMHC has occurred and that the transactions by
16 directors of JMHI are void, the assets remained in JMHI
17 until its dissolution. At the time of dissolution,
18 these assets passed into and remained in the hands of
19 Respondents as trustees.
20 From there I went to the Supreme Court
21 ruling, and the Supreme Court being the Supreme Court
22 of the Commonwealth of Virginia. I identified in my
23 copy what is page 14, that the charter revocation, and

1 that's the charter revocation by the state of Maryland
2 on April 18, 1973, the charter revocation terminated
3 JMHI's corporate existence and powers and it could no
4 longer function as a corporation. Cloverfields
5 Improvement Association versus Sea Breeze Properties,
6 Inc.
7 MR. BETTIUS: Your Honor, we would move to
8 exclude any evidence based on that hypothesis as being
9 totally contrary to Handshaw, which requires that you
10 are not to receive any benefit, direct or indirect,
11 before or after dissolution.
12 What we're going to do now is interpose a
13 hypothetical dissolution and Respondents will continue
14 on operating with all of the assets of the charity and
15 not account for profits accruing from those. We
16 believe that's contrary to law. At this point it
17 becomes not relevant material.
18 THE COURT: Objection's overruled.
19 MR. COCHRAN: Thank you, Your Honor.
20 THE WITNESS: Continuing from that date
21 forward, the Defendants' (sic) actions purportedly
22 taken as corporate officers and not done to wind up or
23 liquidate the business were without effect, because

1 there was no corporation for which to act. The
2 corporate assets had automatically transferred to the
3 directors as trustees.
4 So I understood that any actions not taken as
5 of the date of dissolution and thereafter, any actions
6 not taken to wind up or liquidate the corporation, were
7 without effect. So I looked at a winding up, a
8 dissolution as of April of 1973.
9 BY MR. COCHRAN:
10 Q Can you describe in general how the hospital
11 performed financially from its inception until April
12 1973?
13 A The hospital, as people have said, did have
14 increasing revenues, but the hospital had not been
15 substantially profitable and it had erratic earnings.
16 It had not generated substantial amounts of monies with
17 which to compensate professional administration, with
18 which to establish reserves and the like.
19 The hospital, financially, was not strong.
20 Q And did you calculate or carry forward the
21 financial operations through April 18, 1973 and arrive
22 at a number?
23 A I did.

1 Q And do you have a schedule that reflects that
2 calculation?
3 A I do. If I could use another overhead it
4 would be helpful.
5 MR. COCHRAN: Your Honor, Mr. Cobb will be
6 referring to page 25 of his accounting. There is a
7 revised page up there on the witness stand, that if he
8 didn't already pass it up to you, he should pass it up
9 to you.
10 THE COURT: I have it.
11 MR. BETTIUS: I've got page 25, but not the
12 revised one.
13 MR. COCHRAN: Do you have page 25 there, Your
14 Honor?
15 THE COURT: I have it.
16 THE WITNESS: Your Honor, I started with the
17 premise that I wanted to account for not only the
18 operations which we looked at on the last schedule, but
19 the assets and liabilities of the corporation. I
20 wanted to do it in a fashion that by the time you get
21 to the last page with the accordion foldout -- it's
22 tedious, but in the same fashion -- so that I went from
23 balance sheet, looked at annual changes to the next

1 balance sheet, annual changes, to the next balance
2 sheet, so that on a year-by-year-by-year basis the
3 information available was reflected, although in a
4 tedious fashion.
5 If we understand the first pass of it and the
6 first set, then it replicates itself on through. So I
7 started, as you see, with a column of June 30, 1971,
8 and that's nothing more than the financial statement
9 balance sheet for JMHI at June 30. I took that as the
10 starting point. That's the day before the now
11 non-existent merger.
12 BY MR. COCHRAN:
13 Q Did Mr. Wilson take a different starting
14 date?
15 A He did, but in a different fashion. Mr.
16 Wilson started in 1965 or '66 without looking and did,
17 per se, start with the balance sheet, he related it to
18 more earnings driven.
19 Then to some extent there's a natural overlap
20 in that. The earnings, in effect, drive the
21 shareholders deficit. There are changes as those
22 earnings and the cash from those earnings are absorbed
23 into the assets.

1 Although there's a difference and a
2 significant difference in that when you bring the
3 numbers forward to obtain the deficit, they actually
4 start to narrow, so it's not a catastrophic difference.
5 I thought it was important, especially
6 understanding the necessity, as I found it, of
7 accounting for the assets, that I really wanted to
8 incorporate fully the balance sheet.
9 So the first column is the balance sheet from
10 the financial statements. And then I've gone through
11 and I've recorded the changes from -- the best way to
12 do this is to say what the second full column is. The
13 second full column is the June 30, 1972 balance sheet.
14 You'll see, especially if your eyes are
15 better than mine, that some of the numbers are in bold.
16 The bold numbers come directly from and only from the
17 financial statements, so they're not numbers that I've
18 calculated or recalculated based on the earnings or
19 what have you; they are the balance sheet numbers.
20 One of the things that I did was I discussed
21 with Dr. Tauber, I made consideration for financial
22 statements, to identify the balance sheet amounts
23 related totally or primarily to operations so that we

1 didn't have balance sheet amounts that related to the
2 ownership of the land and the building, except to the
3 extent that JMHI's balance sheet included land.
4 As I understand it, they owned 20 percent of
5 the land, but the balance sheet included 100 percent of
6 the cost of the land.
7 So I want to move from the June 30, 1971
8 balance sheet to the June 30, 1972 balance sheet and
9 then on to the June 30, 1973 balance sheet. The first
10 thing I looked to move was earnings.
11 And I wanted to record not total earnings
12 from JHMC's financial statement, because that's the
13 financial statement entity at that time, but I wanted
14 hospital operations earnings. So I went back to the
15 schedule we just went through and I found 1972 earnings
16 of $201,745.
17 And what I'd like to show you is that exact
18 number close to retained earnings, and it is close to
19 retained earnings exactly. We also identified there
20 was some double recording of an asset, so we've
21 identified a lease agreement liability of $280,000, and
22 accounting should eliminate that. If that liability
23 doesn't exist, the company is really more valuable in

1 that context.

2 So we have removed the $280,000. Coming

3 across years we have zeroed it out and we have included

4 the $280,000 directly to the value, in effect, the

5 stockholders' equity in the company and we've taken the

6 $280,000 and added that to the $201,745 earnings.

7 So we've come to the balance sheet and the

8 first thing we've done is we have increased the value

9 of this business, in effect, by the earnings that we

10 determine and to record the lease.

11 We're aware that wherever there's a debit,

12 there at least should be a credit, so you can see we

13 had our credits for the $280,000 and we have the debit;

14 now we have the earnings amount and you can see we've

15 come up, and in our model we've assumed the entire

16 earnings amount of $201,745 would go into cash. We

17 know that's not really true, but in the accounting

18 model, that takes care of it.

19 Q Why is that not really true or not

20 necessarily true?

21 A A common lay misconception is net income is

22 cash, and it's not. For example, if I go into Hecht's

23 and I buy a sweater for $30 on December 27th to get an

1 after-Christmas sale, Hecht's writes down $30 of sales,
2 but they don't have any cash, they have an accounts
3 receivable. They may not get the cash until next year.
4 So you have expenses and revenues that may
5 not have brought cash into the business yet. As a
6 general proposition, those are timing differences, and
7 over a period of time net income would be a pretty
8 decent measure, but not always.
9 You may remember Mr. DenUyl had a schedule, I
10 think it was Tab 2 of his, where he had calculated cash
11 flow amounts. Although there were positive earnings,
12 there was a negative cash flow.
13 So we've then gone through each one of the
14 amounts and we've identified the change from year to
15 year and posted all of those changes. Here we have a
16 debit and we find the offsetting credit, the cash.
17 MR. BETTIUS: Mr. Cobb, let me just object.
18 One of our objections, Your Honor, in their
19 accounting every transaction is assumed to be cash.
20 THE WITNESS: I would say --
21 THE COURT: Wait. It's noted for the record,
22 Mr. Bettius, but if you have an objection to make to
23 the evidence, you can make it.

1 MR. BETTIUS: The objection is a hypothetical
2 is in every transaction. It affects the earnings.
3 It's treated as cash.
4 THE COURT: Your objection's noted.
5 THE WITNESS: And, in fact, every
6 transaction, whether it's earnings or not, we have
7 posted to cash.
8 MR. BETTIUS: Objection, that's hypothetical.
9 THE WITNESS: What it shows is, and I'll use
10 accounts receivable, as revenue went up, accounts
11 receivable went up from $741,431 to $930,905. Accounts
12 receivable increased $189,474. That tells me that
13 $189,000 of the revenue hasn't yet been collected. I
14 posted the net result of revenue to cash, the earnings,
15 so I need to post the fact that some of that isn't
16 collected to cash.
17 Mr. Bettius may characterize it as
18 hypothetical, but that, in fact, is how the accounting
19 model works.
20 So we've identified all the items and posted
21 them through. Then I'll just go quickly through the
22 next year, because we don't have the one-time lease
23 adjustment. The next year we start with an earnings

1 amount and the earnings amount comes from the last
2 schedule. Wherefore, 1973 we have $135,340, we've
3 brought that forward and posted it to equity.
4 We've also brought it forward and posted it,
5 in effect, to cash. We've gone down and we've sorted
6 out receivables. The receivables again increased,
7 $224,059. Again, that's cash not collected. So we
8 have brought that up to the cash amount as well, and
9 likewise through all the assets.
10 What it shows us is that as of June 30, 1973,
11 we're really trying to get to April of 1973, I think
12 the 18th. We don't have monthly financial information,
13 let alone daily, so we've gone to June 30, 1973 in this
14 fashion.
15 And what we found on this balance sheet, as
16 you can see, is a slight cash deficit, greatly
17 increased receivables in a 24-month time period and
18 total assets of $1,664,000 and we've done the posting
19 likewise to accounts payable.
20 So, for example, some of the inventory that
21 we purchased we may not have paid for yet, some of the
22 expenses on the income statement we may not have to
23 issue paychecks until July 5th, but we owe people for

1 11 days of work, so we have a payable there.

2 So, again, we're flowing through the income

3 statement line items and the balance sheet to trace the

4 payables and the other liabilities, and we find that in

5 an accounting sense on a cost basis, there is equity

6 reported and positive equity of over $224,000 on a

7 total asset base of $1,664,000.

8 And then through our alternatives, Your

9 Honor, we've really done the same thing. The schedules

10 that get terribly long will have debit, credit and year

11 end, debit, credit and year end and it goes all the way

12 out through 2005, respecting some significant changes

13 in the character of what's going on in the financials.

14 MR. BETTIUS: Do you have another copy of

15 that sheet, Mr. Cobb?

16 THE WITNESS: Here you are. I have them with

17 me.

18 MR. BETTIUS: Thank you very much.

19 BY MR. COCHRAN:

20 Q Mr. Cobb, did you calculate the present value

21 of that $224,000 as of today?

22 A I did.

23 Q And what is that number?

1 A I don't know. It must be in the back.

2 MR. BETTIUS: I'll get your sheet. He gave

3 us a copy of that.

4 THE WITNESS: It's a new handwritten sheet.

5 MR. COCHRAN: Thank you very much, Mr.

6 Bettius.

7 THE WITNESS: Your Honor, may I look in the

8 file?

9 MR. BETTIUS: Your Honor, I think Mr. Cobb

10 gave me a copy of that.

11 MR. COCHRAN: We have it.

12 MR. BETTIUS: You have it?

13 THE WITNESS: Yes, I've got it. Thank you.

14 To calculate present value I have to know the

15 amount that I'm effectively investing. And the first

16 consideration I made is if the hospital had been

17 liquidated or wound up at that time period, what would

18 have been left. And as we saw, the balance sheet shows

19 that the answer to that is $224,517.

20 In a strict liquidation it is highly unlikely

21 that that amount would be achieved. In a liquidation,

22 for example, the inventory probably would realize less

23 than is there; inventories, for all purposes, always

1 do.

2 The land and equipment recorded on the books,

3 the equipment portion, used hospital equipment now, as

4 in the early 1970s, had little to no value. Accounts

5 receivable in a liquidation setting typically bring in

6 anywhere from 70 to 85 percent. We see that, for

7 example, in the HGV transaction where there's a

8 discount.

9 So my expectation, reasonable expectation,

10 would be in a true liquidation there would be nominal,

11 if any, amounts left to invest.

12 MR. BETTIUS: Same objection.

13 THE COURT: I understand. You've made that

14 point, Mr. Bettius.

15 THE WITNESS: The first question is how much

16 to invest. I believe that in a liquidation in this

17 time period it would have been a nominal to zero

18 amount. The balance sheet shows us $224,000 and I'll

19 deal with that.

20 Then you need to consider a rate of return.

21 I understand there's a statutory rate in Virginia of 9

22 percent, it is a Commonwealth rate rather than a

23 federal rate. I'm familiar with various investment

1 vehicles and investment alternatives and investment
2 philosophies.
3 There are investment philosophies that would
4 hold that these trustees would invest in only the most
5 secure of investments, federal-type of instruments that
6 would yield amounts down around, say, 5.
7 But I've looked at this based on having a
8 reasonably large portfolio, which this really isn't.
9 What I said is if I'm a trustee, I would want to invest
10 this in a diversified portfolio. I would not want to
11 put it all into bonds, nor would I want to put it all
12 into stocks.
13 To the extent that I put it into bonds, I
14 don't want to put it into high-risk bonds,
15 corporate-type bonds. I want very secure bonds. So
16 for a bond portion of this I've looked at intermediate
17 Treasury bonds, and those are generally around 10-year
18 terms. I've also looked at putting one half of it in
19 stocks. I would not want to put it in the stock of
20 Ward Foods, which was a Fortune 500 in 1973 and was
21 bankrupt and dissolved itself in 3 or 4 years, nor
22 would I want to put it all in IBM, which has had ups
23 and downs and obviously, all in all, ups.

1 So I've looked at measure of investment and
2 equity in a diversified portfolio of stocks that would
3 perform as did the S and P 500. The S and P 500
4 represents about 80 percent of the New York Stock
5 Exchange, so it's an extremely diversified measure.
6 And what I found in looking at those amounts,
7 as reported, I looked at the Lehman Intermediate Bond
8 Index from 1972 forward. I looked at the S and P 500,
9 including dividends coming forward. I found a blended
10 rate of about 13.35 percent, considerably higher than
11 the prejudgment interest rate or the statutory rate,
12 considerably higher than what I understand a number of
13 pension plans, insurers, conservative investors have
14 received.
15 I believe it's a somewhat aggressive rate,
16 but I honestly don't believe it's an inappropriate
17 rate.
18 BY MR. COCHRAN:
19 Q Is it in excess of the rate that Ms. Moore
20 has calculated?
21 A Effectively, yes,
22 Q Approximately how much more?
23 A Ms. Moore's rate comes in, on a blended

1 basis, a little under 9.

2 MR. BETTIUS: I'm going to object to the

3 relevancy of the comparison, Your Honor. Ms. Moore

4 didn't invest it in a hospital.

5 THE COURT: Objection's overruled. I didn't

6 hear your last answer.

7 THE WITNESS: Ms. Moore's rate comes in under

8 9.

9 THE COURT: Under 9.

10 THE WITNESS: My investment, once there's a

11 liquidation in '73, there's no investment in a

12 hospital. It's a stock and bond investment, but it is

13 invested in a hospital up to June 30, '73.

14 BY MR. COCHRAN:

15 Q And if we were to assume that we had that

16 $224,000 to invest from June 30, '73 onward, at your

17 rate of return, what is the number as of today?

18 A I came forward to December 31, 1999, and I

19 get an amount -- I get an amount after taxes, but the

20 amount before taxes is $6,226,895.

21 MR. BETTIUS: Would you do it one more time?

22 THE WITNESS: Sure. It's $6,226,895. And

23 what that means is if I had invested $224,517 on June

1 30, 1973 and had achieved a 13.35 percent rate and I
2 did not make any distributions out of the trust for
3 charitable or any purposes at all, I made no payments
4 out of the trust for accounting fees, legal fees,
5 whatever, and I was able to not pay any taxes year to
6 year to year, but only taxes at the end, I would have
7 the $6,226,895.
8 MR. BETTIUS: Mr. Cobb, because we don't have
9 the calculations and my experts are going to be working
10 on this, did you compound those? Just tell me what the
11 compounding was.
12 THE WITNESS: They are compounded annually.
13 MR. BETTIUS: Annually?
14 THE WITNESS: Annually.
15 MR. BETTIUS: So if we do an annual
16 compounding, we'll get your numbers?
17 THE WITNESS: If you have a Hewlett-Packard
18 calculator, the present value is $224,517, end is
19 26.15, the high is 13.35.
20 MR. BETTIUS: Thank you, sir.
21 THE WITNESS: I then made the consideration,
22 as I said in talking about the operations, I looked at
23 this as though it was taxable. I assume that there

1 were not taxes year to year to year, so when I
2 compounded, Your Honor, I was able to compound based on
3 the highest amount. I didn't have to earn something
4 one year, pay part to taxes. I, rather, earned it and
5 was able to earn on it again and again.
6 MR. BETTIUS: Your Honor, we object and it's
7 one of the great philosophical debates that we have.
8 This check's written to the Commonwealth in December of
9 1999 and it goes to charitable purposes; we don't pay
10 taxes.
11 THE COURT: Your objection's noted.
12 BY MR. COCHRAN:
13 Q Would you continue, Mr. Cobb?
14 A Yes. So what I've done at kind of the end of
15 the run, I took the $6,226,000, and said now that I'm
16 at December 31, I am going to have to -- as I was going
17 to have to sooner or later, and probably in reality
18 some of it would have been sooner, I'm going to have to
19 pay something on taxes, because I am a taxable
20 enterprise, therefore, as I've looked at it, a taxable
21 trust.
22 We've looked at the basis in that and we have
23 calculated the capital gains based on a 20 percent

1 capital gains rate federal and six percent Commonwealth
2 of Virginia. So we have taxed it at a rate of 26
3 percent, and that leaves us, using 13.35 percent, with
4 $4,666,276.
5 Would it be helpful to write those on a chart
6 so you can see them?
7 Q It would be, yes.
8 A Your Honor, I made the calculation not only
9 at 13.35 percent, but also at 9 percent, and 9 percent
10 would be more akin to a bond rate. I don't know if
11 it's statutory or prejudgment rate, Your Honor. You
12 may refer to it as the statutory rate. The comparable
13 number, instead of $4.6 million is $1,690,247.
14 Each of those is based on the proceeds of
15 $224,000. For example, if the proceeds are zero, the
16 values in the future are zero. If I had nothing to
17 invest, if my assets were consumed by my liabilities
18 and upon liquidation of winding up I had zero, I would
19 have zero to invest and zero at any investment rate
20 grows to zero.
21 Q Is it your opinion that the number is zero as
22 of April 18, 1973?
23 A I believe that had Jefferson Memorial

1 Hospital, Inc. prevailed to April of 1973 and had been
2 liquidated, that there would not have been -- there
3 wouldn't have been anything other than minimal
4 proceeds.
5 Q And does the number, the $224,000 number,
6 reflect any allowance for the obligations under the
7 1966 or 1968 leases?
8 A In terms of that being a continuing
9 liability, no. It assumes -- the liabilities that we
10 looked at on the balance sheet does not include a
11 liability for future payments under the lease.
12 Q As of June 30, 1973, did the hospital have
13 any operating reserves of any nature?
14 A No.
15 Q Should they have had an operating reserve?
16 A Yes, they should have.
17 Q And what would that have been and why should
18 they have had it?
19 MR. BETTIUS: Your Honor, the operations of
20 the hospital continued just as they were shown on that
21 balance sheet, if he's correct. So he's creating a
22 hypothetical reserve that they never had in continued
23 operations. Objection.

1 THE COURT: Your objection's noted.

2 THE WITNESS: During this general time

3 period, prudent management of a hospital indicated that

4 a hospital would attempt to retain cash reserves of

5 approximately two months' worth of expenses or

6 operating needs. That's not to say that all hospitals

7 did that.

8 Many hospitals did and many hospitals had

9 amounts over that. That was generally considered to be

10 a prudent amount of working capital in operating

11 reserves.

12 Q And to what extent, if any, would it have

13 been prudent to have both the sinking fund and a

14 capital reserve fund as well?

15 A Very much so. I think there was even a

16 requirement of a sinking fund that didn't exist. One

17 of the things that was then -- was accelerating then

18 versus its history is the rapi

19 d advancement of medical technology in the form of

20 medical equipment. It became incumbent upon hospitals

21 to be able to acquire then-current equipment and to

22 upgrade and maintain their facilities to a changing

23 environment.

1 A great number of hospitals in that regard
2 were, for example, doing something that's called
3 funding their depreciation. If you look at an income
4 statement, you subtract out depreciation, but that's
5 not a cash expense. So a number of hospitals were
6 taking an amount equal to the depreciation and were
7 investing that to establish future cash amounts with
8 which to make capital acquisitions and capital
9 improvements.
10 Q If we closed the books as of June 30, 1973,
11 what happens to the stock that was purchased for
12 $221,000?
13 A In our analysis we didn't treat it as stock,
14 because JMHI was a non-stock company. So in our
15 analysis we treated it as debt. In the math, when we
16 got to the end of the run and money had not been there
17 that long, it's my recollection that it came in in
18 December of '72, I don't really remember the specific
19 month. So we get to that time period and we paid that
20 off as debt.
21 So the $221,260 we, in effect, cash out
22 dollar for dollar, for $221,260.
23 Q And can you explain the term thinly

1 capitalized?

2 A Doesn't have much money. There's many

3 sources of capital, although sometimes in talk of

4 litigation capital comes into a company by way of debt

5 or equity. It's the monies, the resources, that I use

6 to fund my business.

7 So I can go to General Electric Capital and

8 they'll provide a lease for equipment. I can go to

9 stockholders and they'll buy stock. I can go to the

10 bank and they'll lend money. Those monies are capital.

11 That's on the credit side of the balance sheet.

12 What do I do with the money? With the money

13 I invest in the facilities that I need. I invest in

14 people. I invest in the accounts receivable. So in

15 context, as thinly capitalized has been used here, as

16 I've heard it used, it's tended to relate more to the

17 hospital not having the kinds of reserves we just

18 talked about.

19 Q Of what significance, if any, is it that the

20 hospital was thinly capitalized or lacking in reserves?

21 A It impacts the strength of the hospital to

22 survive swings, transitions in its business. It

23 impacts the hospital's ability, for example, to

1 compensate individuals for all the services they
2 provide, administrative or otherwise.
3 It impacts the hospital's ability to purchase
4 equipment, to upgrade equipment, to maintain state-of-
5 the-art equipment and plant. It's a critical resource
6 in the hospital in the 1973 time frame where health
7 care was changing and changing very rapidly.
8 Q How, if at all, does it impact the ability of
9 the hospital to invest its net income?
10 A It impacts it dramatically. This hospital
11 needed all the cash that it had from operations. You
12 saw, for example, that accounts receivable increased
13 very greatly. So all of the dollars reflected in the
14 revenue were not coming in the door. They were tied up
15 in receivables yet to be received.
16 So the hospital needed the net income, the
17 earnings, year to year to year to use in its
18 operations.
19 Q Are you familiar with other hospitals which
20 are set up similar to the way Jefferson Memorial
21 Hospital was with a separate operating and separate
22 ownership entity?
23 A Yes.

1 Q How unusual is such a structure in the health
2 care industry?
3 MR. BETTIUS: Objection, Your Honor. This is
4 a charity. It's not a general hospital.
5 THE COURT: Objection's overruled.
6 THE WITNESS: Especially before the Reagan
7 era tax reforms, there were a number of hospitals,
8 typically smaller hospitals, typically physician-owned
9 hospitals as opposed to charities, where the hospital
10 property, plant and equipment would be owned by a
11 corporation or a partnership owned by a physician
12 group. There might be the odd town council member of
13 whoever as well, but primarily by physician groups.
14 The facilities would then be leased to an
15 operating company and the operating company, from time
16 to time, would be a 501(c)(3), but more of them tend to
17 be taxpaying enterprises. And that wasn't a common
18 phenomenon, nor would I call it uncommon, especially
19 for smaller hospitals.
20 Akin to that and increasingly common through
21 the '70s and '80s would be a hospital establishing,
22 say, a specialty care facility, say a CAT scanner unit
23 or an MRI unit or a medical office building. It would

1 be owned by a partnership and leased for operating
2 purposes by a for-profit or not-for-profit hospital.
3 So it's not an unusual type of structure, nor
4 is it -- for the hospitals most of us think of, Johns
5 Hopkins, Cleveland Clinic, Houston Medical Center, Mayo
6 Clinic, it's not how they're structured, although the
7 Mayo Clinic is far closer than people would imagine.
8 But at the same time it was not uncommon for
9 smaller, say, 180-bed community hospitals.
10 Q And what is the next date that you came up
11 with as an appropriate cutoff date for your accounting,
12 Mr. Cobb?
13 A I looked at 1975.
14 Q And can you explain to the Court why you
15 looked at that date?
16 A I can. I had understood from my
17 considerations of the hospital operations and my
18 discussions with Dr. Tauber that the hospital had
19 continued to struggle from an earnings point of view,
20 capital point of view and operational point of view
21 into 1975, and that there had been an attempt to deal
22 with some of that by another reorganization and the
23 establishment of JMHJV.

1 I found a breaking point there in terms of
2 operations, also a transition in an ownership
3 structure. So for those reasons and others that don't
4 come to mind, I looked at 1975 as a break point.
5 Q And if you look at -- excuse me. Before you
6 look at 1975, how did the hospital do in the time frame
7 June 30, '73 through June 30, '75?
8 A If I can put this overhead back up, because
9 there are, in effect, two answers, the hospital's
10 reported earnings in the form of JMHC in '74 was
11 $10,388. That is going to be absorbed into
12 receivables, inventory, what have you.
13 In 1975 it was $122,000. So although the
14 hospital had positive earnings, the earnings continued
15 to be erratic. 1974 was a very poor -- a very poor
16 year. So there was a problem in that regard.
17 In the adjusted amounts, I'll use ours, we do
18 have differences in this scale that are significant
19 from Mr. Wilson's, the gain of $10,388 became a loss of
20 $11,289, primarily due to the interest that we have
21 calculated related to the $221,000.
22 In the next year the $122,000 became $99,000
23 primarily because of the interest. There is a cost of

1 capital we're starting to see related to the lack of
2 capital that existed prior.
3 Q If the hospital had not received this
4 $221,000 in 1972, how would it have impacted its
5 performance in '74 and '75?
6 A It would have created substantial
7 difficulties for the hospital to continue it's
8 financial operations. It would have had to look for
9 alternative sources of capital.
10 Q Did you determine a net number that would
11 have accrued as of June 30, 1975?
12 A I did.
13 Q What is that number?
14 A I'll put it up. The net number from going
15 through the balance sheet in exactly the fashion we
16 described at June 30, 1975, is $530,913. And then that
17 -- again, that's the balance sheet amount, and that
18 includes, in effect, the impact of the $221,000; that
19 is, the impact of the $221,000 sustaining operations
20 for those two years.
21 Q And did you calculate the present value of
22 that sum using both 9 percent and 13.35 percent?
23 A I did, in exactly the same fashion.

1 Q Could you show those numbers for Your Honor?

2 A Yes. Keeping in mind they're the same as the

3 $224,000, I expect it would be lower in liquidation. I

4 also expected the $533,000 to be substantially lower in

5 liquidation. But the $533,000 invested at 13.35

6 percent would have grown to $8,667,490. At a 9 percent

7 rate it would have grown to $3,405,105. Each of those

8 amounts are after capital gains taxes. So those are

9 after-tax amounts, not before-tax amounts.

10 As Mr. Bettius pointed out, that's a

11 philosophical difference to tax or not to tax.

12 Q I take it that that's a philosophical

13 difference that carries forward throughout your

14 accounting?

15 A It does. All the way through our analysis we

16 have taxed. And absent the period up to 1982, Mr.

17 Wilson hasn't taxed. Up to 1982 the only taxes Mr.

18 Wilson reflected were the reported taxes. So he's been

19 very narrow and very true to the financial statements

20 in that regard.

21 MR. BETTIUS: That's the basis for our

22 continuing objection.

23 THE COURT: All right.

1 BY MR. COCHRAN:

2 Q And what is the next cutoff date that you

3 came up with and why did you choose that date?

4 A The next cutoff date is June 30, 1982. And I

5 looked at June 30, 1982, because that's the time -- I

6 actually looked at March 31, 1982, but I only have a

7 June 30 financial statement. As of March 31, 1982,

8 there was not a Jefferson enterprise, A, C, I, JV,

9 whatever letter. There wasn't a Jefferson enterprise

10 operating the hospital.

11 The operations were in the hands of and the

12 responsibility of HGV, Health Group of Virginia. So

13 past the March time period of '83, and not only through

14 the Health Group of Virginia time period, but the Inova

15 time period and thereafter, I didn't identify that

16 there was a Jefferson enterprise operating the

17 hospital.

18 Q Why do you believe that that's an appropriate

19 cutoff date?

20 A One, because there wasn't a Jefferson

21 enterprise. Two, and as I understood it, at that

22 juncture there was a determination that the Jefferson

23 operating people, management, governance, were not able

1 to make a reasonable go of the hospital enterprise,
2 that the financial operations had remained up and down
3 and there still was thin capitalization. There were
4 lease burdens and liabilities and there was a decision
5 at that point to cede the management and operations
6 over to a third party.
7 Q As part of your investigation did you review
8 the lease agreement between HGV and Jefferson Memorial
9 Hospital corporation?
10 A I read the lease agreement.
11 Q And did you also review the May 3, 1982
12 letter marked as 000 here which calculates the
13 receivables and other assets that HGV purchased?
14 A I don't know what 000 is.
15 Q You should have in that stack of papers a
16 March 3, 1982 document which is a letter to Mr. Sloan.
17 A I have a May 3rd.
18 Q Excuse me. May 3rd.
19 A I have it.
20 Q Is that one of the documents that you
21 reviewed?
22 A I read and analyzed this, yes.
23 Q Based upon your review of that document and

1 the review of the lease between HGV and Jefferson
2 Memorial Hospital Corporation, what, if anything, did
3 you conclude regarding any premium that was paid?
4 A The letter identifies -- from my analysis of
5 the letter, it identifies what has been called a
6 premium of 15 percent. It's on the second page. It's
7 the $281,413.75
8 Q What does that premium represent?
9 A Generally what's here is an acquisition of
10 various of the assets and assumption of various of the
11 liabilities. And then in addition, there is an amount
12 calculated as 15 percent of the net of assets and
13 liabilities considered.
14 By my analysis of this, that amount relates
15 to purchases of various of the other assets, intangible
16 assets, if you will. That includes the goodwill, the
17 employee base that's in place, the physician base in
18 place, the referral patterns, the value of the name,
19 the recognition, the value of the hospital license.
20 It's all a variety of the intangibles that were
21 reflected or seen between HGV and the seller.
22 Q Immediately preceding the sublease with HGV,
23 what was the hospital's financial situation?

1 A Again, I'll go back to two answers, the
2 as-reported and the hospital itself. The hospital,
3 when it was JMHC, continued through 1992 to report
4 fairly low earnings, the highest earnings being
5 $157,882 in fiscal year 1980, but with ups and downs
6 and hovering, say, between $107,00 and $150,000. So
7 the hospital was not doing especially well in terms of
8 its overall financial performance.
9 On an adjusted basis -- and most of these
10 numbers are similar to Mr. Wilson's, but they are
11 different because of the taxes -- on an investment
12 basis, a similar pattern. The hospital has not been
13 generating substantial amounts of earnings, although
14 revenues had gone up greatly and admissions had gone up
15 greatly. The expenses tracked with that.
16 Revenues are good and wonderful, but if
17 they're not generating profits, they're always suspect.
18 So the profits are suspect. The profits are not
19 accelerating, they're not growing. They're not
20 providing the kind of capital that the hospital would
21 have, should have, wanted to have to maintain its
22 position, new equipment, presence in the marketplace,
23 physician recruitment and the like.

1 Q In 1982, we see a substantial increase in
2 income from $178,000 the prior year to slightly over
3 $500,000. To what was that attributed?
4 A I've got to get out of my thoughts a little
5 bit. I think that's in part because the -- that was
6 the equipment lease.
7 Q I'm talking about the income.
8 A I'm sorry. As I recall, it has to do with
9 the fact that the HGV transaction occurred before the
10 end of fiscal year 1982. So what we're seeing is part
11 of the gain related to the HGV transactions.
12 So there's a little noise in the financial
13 information. There's always some noise in these
14 financial statements. There's a little more noise in
15 the 1982 because of the accounting for the HGV
16 transaction.
17 Q So to some extent they were looking at some
18 of this $2.1 million that had come in prior to June 30,
19 1983?
20 A That's what I recall. The hospital's really
21 not doing any better. It's pretty much in a steady
22 state, or as steady a state as the case may be.
23 Q Would you describe the hospital as of March

1 31, 1982 as a financially healthy entity?

2 A No.

3 Q Why is that?

4 A It had increasing revenues, which meant that

5 there was more activity going on, more use of the

6 physical facilities, and those increased activities

7 were not creating additional profits. Further, the

8 1982 financial statements show that the total assets

9 had grown -- I'll use the 1981, because it's pre-HGV --

10 in 1981 total assets had grown to over $3 million and

11 total capital to $1.1 million.

12 However, a fair amount of that capital was

13 applied in the business and that capital was not

14 generating the profits. So it's not a financial dynamo

15 or financially strong. It's just kind of there.

16 Q And if you had been asked to offer an opinion

17 as to Jefferson Memorial Hospital Corporation's

18 financial viability as of that date, without

19 consideration of the HGV transaction, what would that

20 have been?

21 A I would not have expected Jefferson Memorial

22 to have a long future plant. By its physical plant and

23 by its financial operations, I believe it was a

1 hospital that was destined to be closed and probably in
2 the not too distant future.
3 MR. BETTIUS: I'm going to object to that as
4 speculative, Your Honor. We're here accounting for
5 operations, not speculating about what was going to
6 happen. We know what happened.
7 THE COURT: Objection's overruled.
8 MR. COCHRAN: Thank you, Your Honor.
9 BY MR. COCHRAN:
10 Q Was there a provision in the 1966 lease that
11 addressed the tenant's right to sublet the premises?
12 A There was.
13 Q What did that provision say?
14 MR. BETTIUS: Again, I'm going to object,
15 Your Honor. There was a subletting. A subletting did
16 occur and the Respondents made a judgment that that was
17 the best way to maximize the assets. It doesn't matter
18 -- and there was no bargaining over this issue.
19 The sublease was executed. Now they want to
20 go back and create bargaining with their own
21 beneficiary. I don't think you can bargain with your
22 own beneficiary. Your Honor has previously ruled that
23 all transactions with the charity's assets, and that's

1 what all of these transactions are, where they
2 participate on both sides are void.
3 I think any attempt to modify the
4 relationship between these parties by now creating a
5 bargaining transaction is inappropriate.
6 THE COURT: Objection's overruled.
7 MR. COCHRAN: Thank you, Your Honor.
8 BY MR. COCHRAN:
9 Q I would call your attention, Mr. Cobb, to
10 Exhibit 5 in your exhibit book, page 8, paragraph 6.
11 A That's where I am as well. The paragraph
12 reads in its entirety, the lessee may not sublet the
13 leased premises or any portion thereof without the
14 written consent of the lessor.
15 Q What significance, if any, do you attach to
16 that paragraph?
17 A It shows that there is either a prohibition
18 or the potential prohibition of subletting.
19 Q If you were the CPA advising the board of
20 directors for Jefferson Memorial Hospital Corporation
21 in 1982, what would your advice have been as to what to
22 do about a sublease with HGV?
23 MR. BETTIUS: That's speculative, Your Honor.

1 I don't care what his advice would have been. That's a
2 totally speculative issue.
3 THE COURT: Objection's overruled.
4 THE WITNESS: Can you restate the question?
5 BY MR. COCHRAN:
6 Q If you were a certified public accountant
7 advising the board of directors of the Corporation as
8 of 1982, what would your advice have been as to what to
9 do about the sublease with Health Group of Virginia?
10 A Whether to sublease?
11 Q Whether to sublease or -- I should rephrase
12 it. To do a sublease with your landlord, the Joint
13 Venture.
14 A So what my advice would be to JMHC regarding
15 the sublease?
16 Q Regarding negotiating a sublease with your
17 Joint Venture.
18 A Get what you can. Anything you get is
19 probably good fortune.
20 Q And would your advice be any different if you
21 know that JMHC was a corporation in dissolution and the
22 directors were acting as trustees in dissolution?
23 A I don't know.

1 Q And what is the number that you've come up
2 with, the net number, as of March 31 -- I should
3 actually say June 30, 1982?
4 A Again, going through the process year to year
5 to year, as we went through the balance sheet carrying
6 to June 30, 1982, we end up with a balance sheet value
7 of $1,885,897.
8 That, invested at 13.35 percent to December
9 31, 1999, is $16,933,492 and at -- I'm sorry, that's
10 wrong. That's $13,021,118 and at 9 percent it's
11 $6,801,599. Again, each of those amounts, the 13.35
12 percent amount and the 9 percent amount are after
13 taxes, capital gains taxes.
14 Q By March 31, 1982, what has happened to the
15 60,00 shares of stock that were purchased in '72 and
16 created the $221,000 in proceeds?
17 A There has been, in effect, an exchange of
18 shares of stock for a note, a note with a face amount
19 of $360,000.
20 Q A note or a bond?
21 A I'm sorry. A bond with a face of $360,000
22 and a face coupon rate of 8 percent.
23 Q By exchanging the 60,000 shares at $4 a share

1 for $360,000 in bonds with an 8 percent face rate, what
2 is the rate of return?
3 A As best I understand your question, it's
4 about 14 percent, 14 to 15 percent.
5 Q And is that number more or less as a result
6 of the fact that no interest would have been paid in
7 '72 through '75?
8 A More.
9 Q How did you treat the stock for bond
10 conversion?
11 A I treated it as though there was a conversion
12 as reflected in the financial statements. That's one
13 of the things that we discussed with Mr. Wilson and his
14 associate was how that had worked and the information
15 behind it.
16 MR. COCHRAN: Your Honor, I have no further
17 questions. I would like that the easel be marked as
18 Respondents' Exhibit EE. I would move that into
19 evidence, together with Mr. Cobb's accounting, the
20 exhibits to his accounting and the three revised pages.
21 (Whereupon, Respondents'
22 Exhibit No. EE was marked
23 for identification.)

1 THE COURT: Did you see EEE?

2 MR. COCHRAN: Two Es.

3 THE COURT: All right. It will be marked.

4 Any objection, Mr. Bettius?

5 MR. BETTIUS: Just the objections I've had,

6 Your Honor.

7 THE COURT: Other than those objections?

8 MR. BETTIUS: No.

9 THE COURT: Those objections are noted and

10 they both will be admitted.

11 (Whereupon, Respondents' Exhibit

12 No. EE and was received

13 in evidence.)

14 MR. COCHRAN: Thank you, Your Honor.

15 THE COURT: We'll take a short recess before

16 -- well, let me ask, is there any other counsel, Mr.

17 Bono?

18 MR. BONO: Yes, Your Honor, just a few

19 questions.

20 THE COURT: Give me an estimate, roughly.

21 MR. BONO: Fifteen minutes.

22 THE COURT: All right. We'll take a short

23 recess.

1 MR. HIRSCHKOP: I may have five minutes, Your
2 Honor.
3 THE COURT: All right. We'll take a short
4 recess.
5 (Whereupon, a brief recess was taken.)
6 THE COURT: Mr. Bono?
7 MR. BONO: Thank you, Your Honor.
8 DIRECT EXAMINATION
9 BY MR. BONO:
10 Q Mr. Cobb, on your easel chart which has been
11 marked as an Exhibit for 1973 you wrote 000?
12 A Underneath the balance sheet?
13 Q Yes.
14 A Yes.
15 Q What did you mean when you wrote 000?
16 A The balance sheet amount of $224,517 is the
17 accounting amount determined there. However, if you
18 were to assume a liquidation and winding up of
19 operations, then we go into the marketplace to identify
20 what we would expect to get for the individual assets,
21 even in a liquidation.
22 We'd go through, for example, and find an
23 accounts receivable amount, and this was on one of the

1 overheads -- I can put it up if you like -- of
2 $1,154,964. In a liquidation it is unheard of that you
3 realize 100 percent of your receivables. As soon as
4 someone realizes they are not in operation anymore, you
5 don't get paid at the same rate.
6 The usual payment rates can go as low -- can
7 go under 50 percent, but are generally in the 50 to 75
8 percent area, and typically at the higher end of that.
9 A hospital with a preponderance of
10 third-party payers, Blue Cross/Blue Shield, Medicare,
11 insurers, tend to be at the higher range when you
12 analyze their receivables, but you don't get dollar for
13 dollar.
14 Likewise inventory of $23,413, the inventory
15 has to be packaged up, restocked, find a seller. There
16 are encumbrances to that. Inventories typically do not
17 realize first dollar amount in this kind of setting.
18 Then property, plant and equipment. If you
19 look at the last year for which I had detail on the
20 property, plant and equipment, it was 1971.
21 And on a cost basis the land, land
22 improvement, which is a relatively small amount, fixed
23 equipment and major moveable equipment totaled

1 $580,688, with $305,807 of that being major moveable
2 equipment.
3 The fixed equipment of $123,498 is that, it's
4 fixed. The location is that it's bolted to a wall, a
5 floor, it's built in, an oxygen system, a paging
6 system, for example. Those coming out of a hospital
7 have little to no value. Moveable equipment has some
8 value, but generally speaking not great.
9 So if you look at the nature of the assets
10 and you assume a liquidation and the kind of amounts
11 typically realized out of hospitals closing, I don't
12 believe it's a reasonable expectation that in that type
13 of liquidation that anywhere near 100 percent of the
14 assets would be realized.
15 I would expect that the amounts realized
16 could easily be reduced by as much as $224,000. If
17 that were so, then the proceeds after the assets were
18 taken to the marketplace and deductions, cost of sale
19 occurred, the net proceeds are then available to pay
20 off the liabilities, and liabilities are much harder to
21 have decreasing amounts than assets, obviously.
22 So a decreased asset amount going to the full
23 liability amount could be expected to erode the

1 $224,000 accounting equity amount, because I set a
2 nominal amount or zero.
3 Q Now, am I correct that the $224,517 amount on
4 your chart for June of 1973 is simply book value?
5 A That's what it's often referred to.
6 Q And is there a difference between book value
7 and fair market value?
8 A Absolutely.
9 Q And can you explain what that difference is?
10 A Sure.
11 MR. BETTIUS: Your Honor, his testimony
12 equates to a liquidation. A liquidation is the
13 antithesis of fair market value. I don't see what the
14 relevance is. He's taking him -- unless it's a new
15 area.
16 MR. BETTIUS: Objection's overruled.
17 THE WITNESS: The example that I've given
18 teaching accounting and in presentations, because it's
19 dramatic, is DuPont. In the late 1700s Thomas
20 Jefferson asked E.I. DuPont to build a black powder
21 plant. So he went to the Brandywine Creek in northern
22 Delaware and he bought land. I don't know the acres or
23 the price, but let's say that he spent $40,000 for that

1 land.

2 Technically, if you come to DuPont

3 Corporation's balance sheet today, that land is carried

4 at its cost. It's cost is $40,000. If DuPont went to

5 sell that land today, it might be worth $40,000 an acre

6 or a half acre or whatever. So an accounting financial

7 statement records assets at cost basis and then

8 depreciates them or marks them to market variously, but

9 generally on a cost basis.

10 That cost basis does not necessarily reflect

11 what you could liquidate them for. It has implications

12 of replacement cost and depreciation. But book value

13 does not necessarily mean fair market value in total.

14 The indicated value of a given asset does not

15 necessarily mean the fair market value of that

16 particular asset, especially in a liquidation setting.

17 Q Now, if we were to look at the accounts

18 receivables in 1973 that you mentioned, what is that

19 figure?

20 A One million one hundred fifty-four thousand

21 nine hundred and sixty-four dollars.

22 MR. BONO: May I approach, Your Honor?

23 THE COURT: All right.

1 BY MR. BONO:

2 Q Now, what was the accounts receivable number

3 for June 30, 1973?

4 A One million one hundred fifty-four thousand

5 nine hundred and sixty-four dollars.

6 Q That's what's on the books?

7 A Correct. That's what was reported on the

8 balance sheet of JMHC on June 30, 1973.

9 Q Now, typically what is the expected

10 collections on the receivables in this situation?

11 A In a liquidation?

12 Q In a liquidation.

13 A Fifty to seventy-five --

14 MR. BETTIUS: Your Honor, may I have a

15 continuing objection with respect to --.

16 THE COURT: You've noted that objection.

17 THE WITNESS: Fifty to seventy-five percent,

18 but for a hospital provider, certainly towards the high

19 end of that. We see that reflected with HGV, which is

20 at 85 percent.

21 BY MR. BONO:

22 Q All right. So what number, in your opinion,

23 would we use?

1 A I would use 75, but with HGV at 85, I think
2 it's really nice to be able to benchmark something to a
3 transaction of this hospital within a 24-month time
4 period. So in this context, respective of the
5 documents, I'd use 85 percent. It's safer.
6 Q Mr. Cobb, would you please make that
7 calculation, taking the accounts receivables and
8 multiplying it by 85 percent?
9 A It's $981,719.
10 Q Can I ask you to just do the simple
11 subtraction, what is the difference between the booked
12 accounts receivables and the $981,000?
13 A The difference is $173,245. I rounded the
14 cents.
15 Q Okay. Now, you mentioned in your testimony
16 the equipment. You addressed fixed equipment and major
17 moveable equipment. I believe you testified that one
18 of those has little -- would have little or no resale
19 value
20 A Fixed equipment typically has little to no
21 resale value.
22 Q And what is the booked amount of fixed
23 equipment?

1 A We have a cost number and then we have a net
2 book value number. The original cost, as reported here
3 of the fixed equipment, was $123,498. The depreciated
4 value is $88,213.
5 Q And did I understand from your testimony that
6 that equipment you would not expect to be able to
7 generate any resale money from that?
8 A It's usually a very limited amount. There
9 are some instances where you have to pay to have it
10 removed. There are some instances where, in the late
11 1970s, I walked through hospitals in the midst of
12 closure where they just left that because they didn't
13 want to have to unbolt it or pull it away from the
14 walls.
15 Q And if I were to use a number to account for
16 the fact that that equipment has little or no reslae
17 value, what number would you think we should use?
18 A I think an estimate would be 20 percent of
19 the original cost as opposed to the depreciated value.
20 Q So what would that be?
21 A The cost of the fixed equipment is $123,498.
22 Q You said 20 percent of that?
23 A Is what I expect you would recover.

1 Q You would recover. All right. Would you
2 make that calculation for us?
3 A Sure. Twenty-four thousand seven hundred
4 dollars, rounding the cents.
5 Q Now, taking that into account from what was
6 on the books as book value, what would be the net
7 deduction that would result from taking this into
8 account?
9 A You have to come over to the book value as of
10 1973, and we don't know the book value as of 1973,
11 because the financial statements don't tell us book
12 value item by item by item. But what we do know is
13 that the total book value June 30, 1971, and this was
14 on the page that we went through, is $433,000, and the
15 book value at June 30, '73 is $427,585.
16 So assuming that the fixed equipment portion
17 went down only slightly, say to $80,000, we would
18 reduce the $80,000 by the 247.
19 Q Would you please do that calculation?
20 A Fifty-five thousand three hundred.
21 Q Now, is there a separate adjustment that
22 should be made for moveable equipment?
23 A Yes.

1 Q And what would that be?

2 A The moveable equipment in this kind of

3 setting typically generates between 50 and 70 cents on

4 the dollar. If it's old moveable equipment, it can

5 approach zero, especially in this time period as

6 medical technology changed.

7 But knowing that this is 1965, new

8 construction and equipped throughout, I'm assuming that

9 even in the intervening eight years it's maintained

10 some currency. I expect that there would be an ability

11 to realize someplace in the 50 to 70 percent range.

12 Q So let's just assume we'll go with the 70

13 percent number and be conservative.

14 A All right.

15 Q What is the book value number of the major

16 moveable equipment?

17 A 196,261 as of June 30, 1971.

18 Q One-ninety-six?

19 A 196,261.

20 Q And should we then use 70 percent?

21 A No, we should use 70 percent of the cost.

22 The cost was $305,807.

23 Q 305,807?

1 A That's right.

2 Q Would you please do that calculation for me?

3 A It's $214,065.

4 Q Would you do the math to make the deduction

5 from the cost, book value to the 214 --

6 A Again, we don't know the book amount, in

7 effect, of the total moveable equipment. We know that

8 in 1971 it was $196,000 and that it would have gone

9 down. I'd say it would have gone down to $175,000. It

10 means that we would add value of about $39,065 from the

11 major moveable equipment.

12 Q So that would be a plus?

13 A If your other two are minuses, this one would

14 be a plus.

15 Q Now, the land that's booked --

16 A All right.

17 Q -- this has a book value of $147,456; is that

18 correct?

19 A That's correct.

20 Q Now, was it your -- is it your understanding

21 that that book value on the land includes the entirety

22 of the land?

23 A To my understanding, that's 100 percent of

1 the land, although JMHI owned 20 percent of the land.
2 I understand there were discussions over that as well.
3 I understand that the financial statements included all
4 of the land to reflect to Blue Cross total value of the
5 land, and therefore, an asset base.
6 Q So if we were to adjust that book value to
7 the 20 percent owned by JMHI, would we take the book
8 value and multiply it by 20 percent?
9 A That would be a start. We know from the time
10 the land was acquired until this time period there was
11 a land transaction, the Gondor land transaction, that
12 indicates that the value of the land doubled. So we
13 would get 20 percent, provide for doubling and, in
14 effect, have 40 percent, still from a book value point
15 of view.
16 Q All right. Would you tell me -- would you
17 make that adjustment and tell me what numbers you're
18 using to do that adjustment.
19 A The cost basis of the land is $147,456, and
20 20 percent of that $29,491.
21 Q 29,491 dollars?
22 A Two times that to reflect the doubling
23 indicated in the Gondor transaction of $58,982, and

1 that would be deducted from the carrying value of
2 $147,456, indicating how you're doing it, I think a
3 minus of $88,474, again rounding the cents.
4 Q Now, one of the other assets that is listed
5 here at book value you mentioned is inventories?
6 A This is true.
7 Q What was the book value of the inventories?
8 A 23,413 dollars.
9 Q And are inventories able to be sold at their
10 book value in a liquidation?
11 A Not typically, no.
12 Q What would be the typical scenario for
13 inventories?
14 A From my experience, 50 to 75 percent. I know
15 of some that have been at 100 and some that have been
16 substantially less.
17 Q In your opinion, what percentage would you
18 use in this situation?
19 A Again, the hospital is very tightly run, so I
20 would assume that the supplies inventory is fairly
21 current and would reach the higher end of that, about
22 70 percent.
23 Q All right. What is, then, the book value of

1 the inventories?

2 A The book value is $23,413.

3 Q The percentage you wanted to use is 70

4 percent?

5 A Which is $16,389.

6 Q I'm sorry?

7 A 16,389.

8 Q All right. And then what adjustment would

9 you make to the book value?

10 A 7,024 dollars.

11 Q That would be a negative?

12 A Yes.

13 Q That's 7,000 --

14 A 024.

15 Q 024. Are there any other adjustments that

16 should be made with respect to the assets?

17 A There may be some in the other assets. Other

18 assets very often include, for example, prepaid amounts

19 which often are not recoverable in a liquidation

20 scenario. As I sit here at any rate, I don't know what

21 comprised the other assets.

22 Q Let me just stop this analysis at this point

23 and ask you to total up the deductions we have listed,

1 including the one addition as well.

2 A Can you read the amounts to me?

3 Q Yes. They're $173,245, $55,300, plus

4 $39,000. Now we're back to another negative, $88,474,

5 and $7,024.

6 A The total is $285,043.

7 Q That's $285,043?

8 A Correct.

9 Q As I recall from where we started, the book

10 value number was on $224,517?

11 A That's correct.

12 Q Now, my question is, the analysis that we

13 just did, Mr. Cobb, would that be an explanation of why

14 you had testified that the numbers should be 000 for

15 1973?

16 A Yes. If there were a liquidation, I would

17 expect that the asset values reported would not be

18 realized, and that by the time they were realized,

19 there would be zero or nominal value.

20 MR. BONO: Your Honor, could I mark this as

21 an exhibit?

22 MR. BETTIUS: Your Honor, we object to it,

23 certainly.

1 THE COURT: All right. EEE.

2 (Whereupon, Respondents' Exhibit

3 No. EEE was marked for

4 identification and received

5 in evidence.)

6 THE COURT: We'll mark it.

7 MR. BONO: Thank you.

8 BY MR. BONO:

9 Q Now, Mr. Cobb, let me also address now 1975.

10 A All right.

11 Q To what document should we look that would

12 show the book value number of $533,913?

13 A I provided to Mr. Cochran this morning, after

14 our discussions with Mr. Wilson and his associate, Amy,

15 the revised calculations of the spreadsheets. And

16 going through the process as we discussed, the balance

17 sheet, the operations, the debits and the credits

18 coming through, there is a column that reports the June

19 30, 1975 financial statement balance sheet, including

20 in bold, as I said, the numbers directly from the

21 statement and then in non-bold the numbers that are the

22 result of the terminations of earnings and the like.

23 I don't know if that's been marked or not.

1 Q Do you have an extra copy of that particular
2 exhibit, Mr. Cobb? Is this page 25 of your report?
3 A It's 41, the income statements side, and 41
4 doesn't show the balance sheet result.
5 Q It's another document we're referring to?
6 A Yes. I have one here.
7 MR. BONO: I'm sorry, Your Honor.
8 MR. BETTIUS: Do you want to use mine? Is
9 this the balance sheet?
10 THE COURT: Mr. Bono, come up and see what
11 Mr. Cobb has.
12 THE WITNESS: It just goes through all the
13 years and on the second page --
14 THE COURT: It's something else. It's
15 another document. It's not what you all gave me. It's
16 not page 25 or page 41. It's something else.
17 MR. BETTIUS: Your Honor, I was wondering if
18 at some time we could take a short recess and get
19 everybody copies of the papers, because apparently
20 they're in very short supply.
21 THE COURT: All right.
22 MR. BONO: That would be appreciated, Your
23 Honor. This was just done overnight.

1 THE COURT: I understand.

2 MR. COCHRAN: Your Honor, I think it's page

3 77, which also should have been passed up.

4 MR. BETTIUS: We have a copy as well, Your

5 Honor.

6 MR. BONO: Your Honor, I have an extra copy

7 to give to the Court.

8 MR. BETTIUS: We don't have 75. You don't

9 have 75 either?

10 MR. COCHRAN: No, this is 77.

11 MR. BETTIUS: It's 77?

12 MR. COCHRAN: Yes.

13 MR. BONO: I'm sorry, Your Honor, about that

14 delay.

15 BY MR. BONO:

16 Q Mr. Cobb, with respect to the 1975 figure --

17 A All right.

18 Q -- what items of assets do we need to look at

19 to analyze the book value figure that you have there of

20 $533,000?

21 A Okay. On the second page, the first column

22 is a debit column. The second column is a credit

23 column. The third column is the June 30, '75 balance

1 sheet. It results from the reported balance sheet and
2 the operating statements that we went through, the ones
3 that were developed that are similar to Mr. Wilson's.
4 So the third column is the June 30, '75
5 balance sheet. You'll see that the next-to-the-last
6 number is the total stockholders' equity of $533,913.
7 That's the number on the easel.
8 Q Right. Now, to speed things up, can I ask
9 you, Mr. Cobb, to go to the easel, go to a third blank
10 page, and just do the adjustments on the equipment and
11 the inventories and the land that we did for 1973? I
12 think you could it in about a tenth of the time I could
13 do it.
14 MR. BETTIUS: If we ever needed a
15 demonstration that those were speculative, Your Honor,
16 the testimony would be between this and that. This
17 never occurred. We'll stipulate that he made these
18 calculations and if it were admissible and relevant
19 they'd be less than zero.
20 MR. BONO: Your Honor, there is a fundamental
21 difference between simply book value numbers and what
22 is fair market value in a dissolution of any matter.
23 There is no way that these trustees could have taken

1 that book value to, in fact, have generated the income,
2 because you have to have real assets to invest.
3 This is the only realistic way to view this.
4 THE COURT: Well, I've already ruled that
5 we're going to do this and we're going to go through
6 this exercise because this is the Respondents' view of
7 how this accounting should be done.
8 MR. BETTIUS: All right.
9 THE COURT: I'm sorry to overrule Mr.
10 Bettius' objections a number of times, but --
11 MR. BONO: I'm sorry, Your Honor. I was just
12 responding.
13 THE COURT: Let me ask you why do we have to
14 go through the exercise again? Are we going to do it
15 for '75 and then for '82 as well?
16 MR. BONO: No, not for '82, Your Honor,
17 there's a different thing on '82. I want to have an
18 understanding of what the deduction -- the number is
19 not in the record and it's important for this Court to
20 see what the number is.
21 MR. HIRSCHKOP: Your Honor, may I make a
22 suggestion? Perhaps -- we know what the question's
23 going to be. Mr. Cobb can bring those figures in the

1 morning. We're not going to get to cross-examination
2 tonight, I suspect.
3 THE COURT: I don't know if we are or not.
4 I'm still thinking about that. What we'll do is I'll
5 take a short recess. You give the bailiff any
6 documents you want copied and I'll make copies for
7 everybody. While we're doing that, Mr. Cobb, if you'd
8 make those calculations.
9 MR. HIRSCHKOP: Thank you.
10 THE COURT: All right.
11 (Whereupon, a brief recess was taken.)
12 THE COURT: What we're going to do is finish
13 the examination of Mr. Cobb by the Respondents' counsel
14 and then we'll adjourn for the evening. We're going to
15 start at 9:00 tomorrow, however. All right.
16 BY MR. BONO:
17 Q Mr. Cobb, have you done the adjusted
18 calculations with respect to the book value for 1975?
19 A I made similar calculations, yes.
20 Q And would you explain those calculations?
21 A The balance is lower, 15 percent of that
22 that, the reduction down to 85 percent, is $144,290.
23 We don't know the components of the fixed assets, so I

1 would just leave those right where they were, knowing
2 that they would have depreciated somewhat and also
3 knowing there were some acquisitions in there that we
4 don't know about.
5 The inventory value changed upward by about
6 $5,000, so I recalculated that to be $8,849. I added
7 the amounts up, the amounts are negative but for the
8 $39,000, and that calculates to an adjustment of
9 $257,908.
10 Q And would we deduct that from the book value
11 figure that you had indicated initially for -- for June
12 30, 1975?
13 A As a measure of the liquidation value of the
14 individual assets, that would reduce the 533 by
15 approximately $250,000.
16 Q Now, Mr. Cobb, I'd like to refer you to
17 what's been -- the closing letter May 3, 1982 that you
18 testified to a little while ago. This is the letter
19 from Mr. Mitchell to Mr. Sloan.
20 A All right. I have it.
21 Q Now, I'd like to direct your attention to
22 item number 7, which is the 15 percent number?
23 A Yes. Yes.

1 Q That is $281,413.75?

2 A That's correct.

3 Q I believe you testified that that was the

4 payment for the intangibles?

5 A That's how I understand it.

6 Q Now, the intangibles -- I'm trying to speed

7 this along and I hope I'm not being repetitive -- would

8 include what items?

9 A The trade name, the license, the in-place

10 medical staff and related referral patterns, the

11 nursing staff, the technical staff, administrative

12 staff, the books, records, systems, practices in place.

13 All of the intangibles that make the business work.

14 Q And would that also include the ongoing

15 business value?

16 A It would, or at least an indication or

17 measure.

18 Q Now, would you please calculate -- I know

19 you've calculated the present value numbers for the

20 book value, would you please make similar calculations

21 of the intangible value from June 3, 1982 to -- I think

22 you calculated to December 31, '99, using your two

23 interest rates?

1 A So what you'd like me to do is take the
2 $281,413 and bring that forward?
3 Q Correct.
4 A All right. Okay. What I've done is taken
5 $281,413.75 and set that as the present value. I've
6 taken a 13.35 percent annual rate to be compounded. I
7 took it for 17.5 years, which comes from June 30, '82
8 to December 31, '99. I then have reduced the resulting
9 value by capital gains taxes and that results in
10 $1,869,845. You have 9 percent there?
11 Q Yes, 9 percent, the two percentage rates you
12 had testified to earlier.
13 A I've taken $281,413.75 at 9 percent per year
14 compounded for 17.5 years and then I reduced the result
15 by capital gains and it results in $941,768.
16 Q Now, would it be correct, Mr. Cobb, that
17 those figures, if we were to want to assess the value
18 of the operating license, that that would be some
19 measure less than those figures?
20 A Yes, because those figures would include
21 other intangibles as well.
22 Q If we wanted to assess just the ongoing
23 business value, would that likewise be some figure less

1 than the total paid for the intangibles?

2 A Not necessarily, no. The ongoing business

3 value really comprises and centers around the group of

4 intangibles. There may be an intangible you can't

5 extract out, but the two are really pretty closely

6 related.

7 Q So if the question were what was the ongoing

8 business value of the hospital operations for which

9 Health Group of Virginia paid in March of 1982, would

10 that be a fair measure?

11 A Maybe. I haven't evaluated it in that

12 context, but the HGV transaction as a whole certainly

13 could stand as a measure.

14 Q Now, Mr. Cobb, I'd like to refer you to the

15 first report that you did in this proceeding, which is

16 Exhibit 710 that's already been admitted in evidence.

17 A All right.

18 Q I'd like to refer you to page 33, your

19 conclusions.

20 MR. BETTIUS: I don't see conclusions on page

21 33.

22 MR. BONO: This is the first report Mr. Cobb

23 did in the first trial, which is Exhibit 710.

1 BY MR. BONO:

2 Q Do you have that, Mr. Cobb?

3 A I do.

4 Q What was the -- in the first paragraph of

5 your conclusions, what conclusion did you reach?

6 A There are two. As of June 30, 1971, JMHI had

7 no acquisition value as a marketplace measure. A plan

8 of agreement/reorganization for merger with JMHC,

9 whereby all of the net assets of JMHI as of June 30,

10 1971 would be exchanged for 5,000 shares of stock in

11 JMHC was reasonable.

12 Q Now, with respect to that conclusion, is it

13 still your conclusion that the acquisition of all of

14 the net assets of JMHI as of June 30, 1971, in exchange

15 for 5,000 shares of JMHC would be a reasonable

16 transaction?

17 A Yes.

18 Q All right. And what -- would you explain the

19 basis upon which you reached the conclusions that the

20 issuance of 5,000 shares for those assets was

21 reasonable?

22 MR. BETTIUS: Your Honor, the Court ruled it

23 never happened. Are we going to go back and try the

1 first case again? Because then I've got to go back
2 through all of the assumptions again. That testimony
3 is in, the Court's heard it and I think it's
4 unreasonable to go back and do this.
5 Mr. Bono said he had 15 minutes. I know my
6 estimates haven't been that good either, but if we're
7 going to back and attack '71, I don't know what the
8 relevance of that is.
9 MR. BONO: I'm not --
10 THE COURT: I'm going to overrule the
11 objection.
12 MR. BONO: Thank you.
13 THE WITNESS: I know this is antiquity, but I
14 had evaluated JMHI in the context of a fair market
15 value and found the value. I found value for the
16 assets, but that value was consumed by its liabilities,
17 and that's how the marketplace would look at it.
18 So if JMHI had no marketplace value, I'm JMHI
19 holding zero, and somebody will give me something for
20 the zero, if the something's 5,000 shares of IBM or of
21 an enterprise that has some sort of prospect, I'm
22 ahead.
23 BY MR. BONO:

1 Q Now, I'm going to ask you to assume, Mr.
2 Cobb, that -- that there's a constructive trust of the
3 nature placed on these 5,000 shares of JMHC.
4 A All right.
5 Q Now, as I understand, if that were to be
6 done, what analysis would we look to in order to
7 evaluate the value and profits that should be
8 attributed to those 5,000 shares?
9 MR. BETTIUS: Continuing objection.
10 THE COURT: I understand.
11 THE WITNESS: We'd first want to look at the
12 benefits, either in monies available paid over the
13 intervening years, or monies in existing assets. And
14 whatever those amounts would be, we would look at the
15 participation of the 5,000-share interest.
16 So, for example, if we go back to the
17 original time of issuance, supposed issuance or what
18 have you, there were 240,000 shares, is what I
19 remember, that went to JMHA and 5,000 that were to have
20 gone to JMHI. So 5,000 by 245,000, I think is 2.04
21 percent. I calculated it.
22 That proportion of whatever those benefits,
23 cash and assets, 2.04 percent of those assets and

1 benefits, would fall to the shareholder of those
2 shares. That's assuming that, over time, the 5,000's
3 position has not been diluted by additional shares and
4 has not increased by the redemption of shares, but has
5 remained in the pro rata position by the time you're
6 trying to measure it up.
7 BY MR. BONO:
8 Q Now, assuming that happens, that those 5,000
9 shares are not diluted --
10 A All right.
11 Q -- what would those 5,000 shares be entitled
12 to with respect to the acquisition in 1982 by Health
13 Group?
14 A The acquisition by Health Group?
15 Q If I understand, you testified that as of
16 June 30, 1982, there was a book value of $1,888,000?
17 A That's true.
18 Q And if we were to allocate on a pro rata
19 basis that book value to the 5,000 shares that we've
20 been talking about under the percentage you've just
21 testified about, what would be the allocated amount?
22 A At that point in time?
23 Q Yes.

1 A It's $1,885,000. We divided by 245,000, we
2 get a per share amount. We multiply that by 5,000. We
3 get $38,469.39. That's a little over 2 percent of that
4 amount.
5 That's just the -- that's just the JMHI
6 portion. There would also be that same proportionate
7 interest in the JMHA portion, so it would be a higher
8 amount than the $38,000.
9 Q Your percentage was 2.04 percent; is that
10 correct?
11 A That's correct.
12 Q And we would take the $1,885,000?
13 A I just rounded it to $1,885,000.
14 Q All right. You would multiply it by 2.04
15 percent?
16 A It's about $38,450, but that's -- that's, in
17 effect, the JMHI portion, because the $1.8 million
18 comes from the analysis of income between myself and
19 Mr. Wilson and then running through the balance sheet
20 to get the net book value.
21 What we've done is, in effect, put together
22 the schedule of the amounts that relate to hospital
23 operations. We don't have in that values that would

1 relate to the property and equipment.

2 So the 5,000 shares, as I would understand

3 it, would have been shares in a combined entity, JMHC,

4 which included both the operations and the physical

5 asset base.

6 Q And then what -- in light of that, what

7 adjustment would we make to the $38,450 figure?

8 A I don't know.

9 Q But there would be some upward adjustment?

10 A There would be an upward adjustment.

11 Q Let me just ask you, do you have an opinion

12 as to the magnitude of that adjustment?

13 A Not as I sit here today.

14 Q Now, we can easily calculate the present

15 value of that using your analysis, correct?

16 A I don't know who we is, but, yes, I think so.

17 Q You could.

18 A Okay.

19 Q I stand totally corrected. Would you please

20 make those calculations for us, because I certainly

21 could not do that.

22 A Taking $38,450 as the present value, 13.35

23 percent annual interest rate compounded for 17.5 years,

1 reducing it for capital gains results in $255,480. The
2 same calculation using 9 percent results in $128,675.
3 THE COURT: I think you said 408, not 480.
4 THE WITNESS: I meant to say 480. It is 480.
5 MR. BONO: Maybe I did write it wrong. Thank
6 you.
7 BY MR. BONO:
8 Q Now, Mr. Cobb, you mentioned that the lease,
9 the 1966 lease, had a no subletting provision.
10 A It did.
11 MR. BETTIUS: That's not what he said at all,
12 Your Honor. It was without consent. It makes a lot of
13 difference.
14 THE COURT: Rephrase the question, Mr. Bono.
15 BY MR. BONO:
16 Q You addressed the provision dealing with
17 subletting in the 1966 lease; is that correct?
18 A I did. I think Mr. Bettius is correct. It
19 does say without the written consent of the lessor.
20 Q How did that provision enter into your
21 analysis and conclusions?
22 A That JMHI would not have had an ability to,
23 by itself, sublet the facilities; that it may have had

1 some opportunity to negotiate in participation --

2 MR. BETTIUS: Your Honor, this is all

3 repetitious. I objected to it before and Your Honor

4 let it come in. He basically said they didn't have a

5 bargaining position. It's absolutely cumulative at

6 this point.

7 THE COURT: Objection's overruled.

8 THE WITNESS: That they may participate for

9 negotiation in holding some position. That would be

10 encumbered by whether or not they were able to maintain

11 operations, because that's also a provision of the

12 lease. But they don't, per se, have a right to sublet,

13 which is a negative to the extent that they could

14 diminish that negative would be through some sort of

15 bargaining or negotiating process.

16 BY MR. BONO:

17 Q And as a result of that sublet, is that why

18 you testified that the analysis should end in 1982?

19 A That's part of it. The rest of it, as I

20 said, was after 1982, the middle of 1982, there was not

21 a Jefferson enterprise that operated the hospital. It

22 was operated by HGV and then Fairfax and then

23 ultimately closed in 1992.

1 Q Now, just one other quick area, Mr. Cobb; you
2 testified about the 1972 stock issuance that was
3 converted into bonds?
4 A Yes.
5 Q My question is, have you done an analysis as
6 to whether that transaction resulted in any private
7 inurement to the Respondents?
8 A I made an analysis.
9 Q Would you please explain that analysis to the
10 Court?
11 A Sure. Can I use the easel?
12 Q Please.
13 A There is an issuance that brought in, from
14 the financial statements, a little over $221,000. That
15 was later converted and exchanged for a bond. So the
16 first thing I wanted to do was to understand the terms
17 of the bond.
18 MR. BETTIUS: Could you speak up a little,
19 Mr. Cobb?
20 THE WITNESS: I'm sorry. The first thing I
21 wanted to do was understand the terms of the bond and
22 the face amount. The face amount of the bond was
23 $360,000. And contrary to the general perception, that

1 doesn't mean the bond is worth $360,000. That starts
2 to tell us the money that I will get for investing in
3 the bond.
4 The next thing I looked at was the face rate
5 or the coupon rate of 8 percent. That also doesn't
6 tell me I'm going to get 8 percent on my investment.
7 It allows me to calculate the cash that I'm going to
8 get from my investment. So what this mean is that --
9 as I understood from yesterday it was a 15-year bond,
10 previously I had understood it was a 20 -- that I will
11 get, assuming payment structure, $28,800 per year for
12 15 years.
13 At the end of 15 years I will get $360,000.
14 So that's the cash, the marketplace's final measure of
15 reality. So I can go now to the marketplace and say I
16 will sell you a stream of cash of $28,800 per year for
17 15 years, plus $360,000 at the end of the fifteenth
18 year. What will you pay me for that.
19 And if I want an 8 percent interest rate, I
20 will pay $360,000 and mathematically this cash flow
21 gives me 8 percent.
22 So I wanted to find out measures of an
23 interest rate more akin to what I would expect

1 Jefferson to have drawn in the marketplace. So I
2 looked at and ended up with 14 percent. If I want a 14
3 percent return on my investment, I take -- again, it's
4 a present value calculation -- and we enter as a
5 payment $28,800, I tell the calculator I'm going to get
6 that for 15 years, and I tell the calculator I want 14
7 percent interest.
8 And the result of that is a value to just
9 that stream of $176,894. That stream is the annual
10 payments of $28,800. So if someone gives to me
11 $176,894 today, and I pay them $28,800 every year for
12 15 years, they will have received a 14 percent return
13 on their investment.
14 Now I'm going to look at the $360,000. I
15 tell the calculator I have a future payment of $360,000
16 and that it's 15 years away and that I want a 14
17 percent return. I find that that has value today of
18 $50,435. If someone gives me $50,435 today and it
19 earns at 14 percent, I can give them $360,000 at the
20 end of 15 years.
21 That totals $227,329. So if these bonds
22 would bear a rate of 14 percent, rate of return, not
23 the face rate that calculates the annual payment, they

1 would have a value in the marketplace of about
2 $227,000, compared roughly to the $221,000.
3 So that told me that at a 14 percent rate
4 there was some level of parity. I knew, for example,
5 that in 1975 Inova had a tax exempt bond issue that
6 carried a tax exempt rate of 8 percent. Inova was
7 either A-1 or A-plus rated by S and P and had a very
8 different capital structure and repayment structure.
9 I also looked at some other market rates and
10 found that 14 percent is in the range that I would have
11 expected debt, if it were available, debt to be
12 available to JMHI.
13 BY MR. BONO:
14 Q And from this analysis, what did you conclude
15 with to respect to any private inurement?
16 A In concluded in those terms -- the terms I
17 found, using some market measures, that there's some
18 market sense to the $221,000. It's not out of kilter
19 with market amounts at the time of the exchange.
20 MR. BONO: I have no further questions, Your
21 Honor.
22 THE COURT: Mr. Hirschkop?
23 DIRECT EXAMINATION

1 BY MR. HIRSCHKOP:

2 Q I ask if you would, please, to flip it down

3 to the top sheet.

4 A Sure.

5 Q Mr. Cobb, have you and I met or spoken any

6 time prior to this afternoon?

7 A No, we met for the first time at the last

8 break I think.

9 Q Now, on this sheet that I had you flip down,

10 you put the -- your computations for 1973, '75 and '82.

11 You made computations, for instance in '73 zero versus

12 the upper figures there. The upper figures are the

13 optimal figures, are they not? What Mr. Bono just went

14 through with you.

15 A I think in many ways they are.

16 Q Similarly you have two rates of growth there,

17 two of the rates of return, the 13.35 rate and the 9

18 percent rate; that's correct?

19 A Correct.

20 Q And as I understand it, the 9 percent rate is

21 the rate that Mr. Wilson and Ms. Moore both possibly

22 used; is that correct

23 A No. Mr. Wilson doesn't use a rate and Ms.

1 Moore used a series of rates that when you get to the
2 end and look at them, give a result that is lower than
3 the result you'd get at 9 percent. So an effective
4 rate of someplace lower than 9 percent.
5 Q Okay. Now, you do recall using the first
6 figures, the June '73 figures. You do recall in the
7 mid-'70s this country was suffering from a certain
8 recession?
9 A Yes.
10 Q We had the oil embargo during the Carter era?
11 A Yes.
12 Q We had the post-Vietnam War recession?
13 A And '90 and '91, yes.
14 Q And during that period of time responsible
15 trustees would not take money and invest it in a stock
16 portfolio, they'd put it in bonds, would they not?
17 A There were time periods since the early '70s
18 where a number of responsible trustees placed a
19 significant portion of the investments under their
20 control in bonds. They specifically stayed away from
21 the stock market, having great concerns about the
22 riskiness, especially in recessionary periods.
23 Q And the 13.35 percent, and you used Standard

1 and Poors to get to that percent -- as an integral part
2 of getting to that percent, that's based on a lot of
3 growth in the last seven years, isn't it?
4 A It's heavily driven on high rates in the last
5 seven or so -- I can look.
6 Q Well, I don't need the exact numbers, I just
7 generally need them.
8 A We've enjoyed over, say, the last five years
9 a very, very healthy stock market. That's been a
10 significant -- that's a significant influence in my
11 calculations that lead to the 13.35 percent.
12 Q And is it fair to assume, also, that in
13 selecting the 13.35 percent, you took a very high
14 optimal rate?
15 A I think I took a high rate and I think it's a
16 high optimal rate in the world of trustees.
17 Q But reasonable trustees over this span of
18 time, had they not invested in a stock portfolio, a 9
19 percent rate might be a much more realistic rate, the
20 same rate that was used by at least one of the experts,
21 the average --
22 MR. BETTIUS: I'd like a continuing objection
23 to the speculative nature of all of this.

1 THE COURT: Yes, sir.

2 THE WITNESS: The bond rate I used, which is

3 the Lehman intermediate Treasury bond index during this

4 period, generated, on average across the time period, a

5 rate of 9.3 percent. So if these monies were invested

6 in a market measure of prudent bonds, I would expect a

7 return someplace around 9 percent.

8 BY MR. HIRSCHKOP:

9 Q And the Court might well use that rate as the

10 reasonable rate in judging what the proper rate of

11 growth was, given the problems we had in the recession

12 during a big part of this time?

13 MR. BETTIUS: I think that's leading, Your

14 Honor.

15 THE COURT: It's sort of cross-examination,

16 isn't it?

17 MR. HIRSCHKOP: Well, whether it's cross or

18 not, at this time of day in a judge-only trial --

19 MR. BETTIUS: He represents Dr. Tauber -- I'm

20 sorry, Your Honor.

21 THE COURT: Go ahead, Mr. Hirschkop.

22 MR. HIRSCHKOP: I think it speaks for itself.

23 I have nothing further. Thank you, Your Honor.

1 THE COURT: Mr. O'Donnell, anything else?

2 MR. O'DONNELL: I have no questions.

3 (End of partial transcript.)

4 * * * * *

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

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

| | |
|---|---|
| COMMONWEALTH OF VIRGINIA, et al., Complainants, v. LASZLO N. TAUBER, et al., Respondents. | COPY<br>In Chancery No.: 96-1241<br>PARTIAL TRANSCRIPT<br>VOLUME II |

Alexandria, Virginia

Friday, February 4, 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:

APPEARANCES:

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1 P R O C E D I N G S

2 Whereupon,

3 LASZLO N. TAUBER, M.D.

4 was called as a witness and, after having been first

5 duly sworn by the Clerk of the Court, was examined and

6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BONO:

9 Q Dr. Tauber, before we begin, you usually

10 speak very softly, and because of that could I ask you

11 to make sure that in responding to my questions you

12 speak slowly, the best that you can, so that everybody

13 can clearly understand what your answers are. Thank

14 you.

15 MR. BETTIUS: Your Honor, I'm also a little

16 hard of hearing. If I have difficulty, does the Court

17 mind if I go to the jury box?

18 THE COURT: Just let me know.

19 MR. BONO: Thank you, Your Honor.

20 BY MR. BONO:

21 Q Dr. Tauber, what I would like to begin with

22 is to have you review for the Court the various

23 buildings and additions that were built by -- I'll use

1 the term partnerships, because as I understand there
2 initially was the King Street Joint Venture, then
3 Jefferson Memorial Hospital Associates and Jefferson
4 Memorial Hospital Joint Venture.
5 For purposes of these questions I'll use the
6 term partnerships and simply ask you could you review
7 for the Court the buildings and additions and physical
8 plants that were built by the partnerships?
9 A March 15, 1965 we finished the original
10 building and we opened Jefferson Memorial Hospital. In
11 1968 we built the west wing.
12 Q Dr. Tauber, let me stop you for a second.
13 After you identify each building, could you also tell
14 the Court what the cost was to build that particular
15 building or addition or structure so that we can have
16 that in sequence? Thank you.
17 A The original building which was opened on the
18 15th of March 1965 was at the expense of around
19 $1,055,000.
20 MR. BETTIUS: I'm sorry?
21 THE WITNESS: One million fifty-five thousand
22 dollars. That building naturally included not only the
23 hard costs and the soft costs, with soft costs in the

1 construction, you understand, the architecture,
2 engineering fee, finance, including the construction
3 deductible items, tax and the equipment that was
4 necessary to open the hospital.
5 We had originally $800,000 first mortgage on
6 the property at 6 percent, and later we secured another
7 $100,000 loan at 6 percent interest.
8 MR. BETTIUS: I'm sorry, Your Honor. I'm
9 going to move a little closer, if that's all right.
10 Dr. Tauber, I heard you discuss an $800,000
11 first trust and you were then going to discuss other
12 costs; is that right?
13 THE WITNESS: Yes.
14 MR. BETTIUS: Would you repeat what you said
15 after $800,000?
16 THE WITNESS: After $800,000 -- we secured
17 the first mortgage originally at 6 percent. Then we
18 increased this one by another $100,000, again at 6
19 percent interest. The total cost, which included hard
20 costs and the soft costs that included equipment, beds,
21 and so on in order to be able to open the door on the
22 15th of March 1965. That amount was approximately
23 $1,055,000.

1 BY MR. BONO:

2 Q Thank you, Doctor. Now, what was the next
3 addition or building that was built by the
4 partnerships?

5 A That was the addition, 24 beds, and that we
6 called the west wing. That was done in 1968, and that
7 west wing, 24 beds, cost approximately $110,000.

8 Q Now, was that west wing also referred to as
9 the nursing wing?

10 A Yes, the west wing, the nursing wing.

11 Q Thank you. Now, what was the next addition
12 or building that was built by the partnerships?

13 A The next one was the King Street medical
14 office building, which is a six-story building. We
15 call the first floor, the second floor and the third
16 floor, which was 13,550 square feet, which was used as
17 a new surgical wing with 54 potential beds -- that was
18 finished in 1979 at a cost of approximately $2,650,000
19 that again included hard costs and soft costs. That
20 was finished in 1979.

21 Then in 1982 --

22 Q Doctor, before you go to 1982, let me ask
23 you, was there also an addition done in -- earlier with

1 respect to a physical therapy room and the foyer area
2 of the hospital?
3 A Yes. I think it was in 1974, while Dr.
4 Friedman was the chairman, president of the
5 corporation.
6 MR. BETTIUS: Dr. Friedman?
7 THE WITNESS: Dr. Friedman. Then we had
8 physiotherapy and the so-called outside corridor.
9 MR. BETTIUS: I'm sorry, sir?
10 THE WITNESS: Outside corridor.
11 MR. BETTIUS: Outside storage?
12 THE WITNESS: Corridor.
13 MR. BONO: Corridor.
14 THE COURT: Doctor, that seat won't move, but
15 if you move the microphone up a little bit and talk to
16 the microphone, you don't have to worry about looking
17 over here at me.
18 THE WITNESS: Thank you.
19 MR. BETTIUS: Excuse me, Doctor. I'm going
20 to slip over here and get a little closer.
21 THE WITNESS: I'm sorry.
22 MR. BETTIUS: It's my problem, Doctor, not
23 yours.

1 THE WITNESS: So the outside corridor -- to
2 explain it, when anybody came to the hospital they had
3 to enter one door to the lobby, the other door to the
4 ER and the third door to the x-ray department. Then
5 Dr. Friedman suggested, it was a very wise move, we
6 enclose this area to enter the three entities, plus
7 extended along outside of the east wing. So it was a
8 very wise move.
9 Then we have physiotherapy, and that was the
10 time physiotherapy started to be an important part of
11 the hospital structure. And then certain improvements
12 of the lobby, the patients' waiting room. That was
13 what we had. And then we had around $92,000 expense to
14 update the intensive care unit.
15 BY MR. BONO:
16 Q Before you go to the intensive care unit,
17 Doctor, for the foyer area and the corridor and the
18 physical therapy unit that you were just describing
19 that was done in 1974, what was the cost of doing that
20 improvement?
21 A Around $96,000.
22 Q Now, you mentioned that at a subsequent time
23 did you also put in an intensive care unit?

1 A Yes.

2 Q All right. And when was that?

3 A It was -- I don't remember exactly, but

4 around 1978, 1979.

5 Q And what was the cost to add that facility to

6 the hospital?

7 A Around $92,000.

8 MR. BETTIUS: How much?

9 THE WITNESS: Ninety-two thousand dollars.

10 MR. BETTIUS: What is that facility, Doctor?

11 MR. BONO: That was the intensive care unit.

12 THE COURT: Intensive care.

13 BY MR. BONO:

14 Q Now, what other structures or buildings were

15 built by the partnerships?

16 A The next one is in 1982, and it was an office

17 building on North Beauregard Street.

18 Q Is that building -- have we been referring to

19 that as the Beauregard building?

20 A Yes.

21 Q The earlier building you talked about we've

22 been referring to as the medical office building?

23 A The King Street medical office building.

1 Q That building was the one you described in
2 1978 that was built?
3 A Right.
4 Q I'm sorry. Go on with the Beauregard
5 building.
6 A The Beauregard building, when we opened it,
7 Health Group of Virginia is interested to lease the
8 facility and operate the hospital. Then we made a
9 presentation that we had the King Street medical office
10 building, which has many offices there. They wanted to
11 have more doctors' participation. Therefore, we made
12 the presentation that we are building a
13 27,000-square- foot structure that we call the North
14 Beauregard Street medical building. And we had to get
15 doctors in and --
16 Q My question then is, Doctor, what was the
17 cost to the partnerships to build the Beauregard
18 building in 1982?
19 A Around $722,000.
20 Q Now, just to tie things together, was the
21 Beauregard building the building that Dr. Friedman
22 testified about yesterday with respect to his lease and
23 his option to buy a portion?

1 A Yes.

2 Q Now, in addition to the Beauregard building,

3 was there another addition made to the hospital in

4 1983?

5 A In 1983 we built what we called the fourth

6 floor, which was just above the existing nursing wing,

7 exactly 18,000 square feet. That was built to improve

8 the facilities and eventually add additional beds if

9 they succeed.

10 Q That was built in 1983?

11 A 1983.

12 Q What was the cost to build the fourth floor

13 in 1983?

14 A I think around $927,000.

15 MR. BETTIUS: Nine hundred twenty-seven

16 thousand dollars, doctor?

17 THE WITNESS: Nine hundred five thousand

18 dollars, 905.

19 BY MR. BONO:

20 Q Were there any other additions or buildings

21 built that we haven't covered?

22 A I don't think so.

23 Q Now, with respect to the JMHI lease, when

1 JMHI was running the hospital up to 1971, what
2 facilities that you've identified did that lease apply
3 to?
4 A In the beginning the original hospital, and
5 then in 1968 the addition of the west wing, which was
6 totally approximately 38,000 square feet.
7 Q And when you say 38,000 square feet, does
8 that include both the original hospital building in
9 1965 and the west wing?
10 A That's correct.
11 Q Did the JMHI lease pertain to any of the
12 other facilities or buildings that you just described?
13 A They did not exist then.
14 Q Now, when Health Group leased the facility
15 starting in 1982, to what facilities did that lease
16 apply?
17 A The original building and the west wing
18 and --
19 MR. BETTIUS: I didn't hear you. The
20 original hospital?
21 THE WITNESS: -- and the west wing, which was
22 built in 1968, and the third floor of the King Street
23 medical building.

1 BY MR. BONO:

2 Q And did it also apply to the foyer and the

3 physical therapy room and the intensive care unit that

4 you described?

5 A That's correct.

6 Q Did the -- strike that.

7 Let me now refer to the Inova lease that was

8 signed in 1985. To what facilities did the Inova lease

9 in 1985 pertain?

10 A Involved in the Inova lease, the area that

11 was leased to Health Group of Virginia --

12 MR. BETTIUS: Dr. Tauber, we need you to

13 repeat that a little slower, please.

14 MR. BONO: I think the testimony was that it

15 applied to the area that had been leased by Health

16 Group.

17 MR. BETTIUS: All of Health Group was in the

18 Inova lease.

19 MR. BONO: Then he was going to describe

20 something additional.

21 MR. BETTIUS: All right. Go ahead, Doctor.

22 THE WITNESS: Yes. Included -- added the

23 fourth floor, which was an 18,000-square-foot area, and

1 included some different areas of the medical office and
2 that was the Georgetown Laboratory on the second floor,
3 which consisted of approximately 3,500 square feet, the
4 auditorium, which contains around 1,600 square feet,
5 and then the child day care center, which is around
6 1,026.
7 MR. BETTIUS: I'm sorry. I didn't get the
8 last one, Doctor.
9 THE WITNESS: Child day care center.
10 MR. BETTIUS: Child day care center.
11 THE WITNESS: One thousand twenty-six square
12 feet, and 1,075 square feet which was for
13 physiotherapy. That was additional space to let you
14 know what the contract called for.
15 BY MR. BONO:
16 Q Now, forgive me, Doctor, but it's very
17 important --
18 A Excuse me. May I add one more thing there?
19 There was on the fourth floor an additional office
20 where they had approximately 1,500 net area.
21 MR. BETTIUS: How large, Doctor?
22 THE WITNESS: One thousand five hundred
23 square feet.

1 BY MR. BONO:

2 Q Doctor, forgive me, but it's a very, very

3 important point. I want to now just summarize --

4 MR. BETTIUS: I object to what's important.

5 MR. BONO: I withdraw. I'm sorry.

6 BY MR. BONO:

7 Q I would like to summarize now the square

8 footages that were covered by each of the leases that

9 we're talking about. Am I correct that the original

10 JMHI lease, I believe your testimony was, that that

11 covered a total of 38,000 square feet; is that correct?

12 A Approximately.

13 Q Now, I don't think I asked you this question.

14 What was the square footage covered by the Health Group

15 lease in 1982?

16 A The original 18,000, approximately -- 38,000

17 square feet and the additional 13,550 square feet, what

18 we call the third floor of the King Street medical

19 building, which is known as the north wing of the

20 hospital, and then an enclosed corridor, intensive care

21 unit and the stipulation that the Beauregard building

22 will be built, which is 27,000 square feet.

23 Q Now, as to the foyer, corridor, physical

1 therapy and intensive care units, approximately how
2 many square feet were those areas?
3 A The enclosed corridor, I cannot tell you how
4 much, because it was a facility which was accommodating
5 people for communication from one department to the
6 other department. I did not measure that.
7 Q What about the physical therapy unit?
8 A That was around 1,560 square feet.
9 Q One thousand five hundred?
10 A One thousand five hundred sixty.
11 Q Sixty?
12 A Yes.
13 Q And the intensive care unit, what was the
14 square footage of that?
15 A Approximately 8,000 square feet.
16 Q Eight thousand?
17 A Yes.
18 Q So if I added up the 38,000 square foot area
19 from the original JMHI lease, 13,550 square feet for
20 the third floor, 1,560 feet from the physical therapy
21 and 8,000 from the intensive care unit, that would be
22 the total square footage that Health Group leased?
23 A Just as you ask the question, I think they

1 leased 1,026 child day care center too.

2 Q One thousand -- I'm sorry. I didn't hear

3 that.

4 A 1-0-2-6.

5 Q So that would be approximately 62,000 square

6 feet?

7 A Something like that, yeah. Around 60,000

8 square feet.

9 Q Plus the foyer area, whatever that was?

10 A Yes.

11 Q Now, the Inova lease, as you've testified,

12 included all of that square footage, plus, I believe

13 you said, the fourth floor area, which I think you

14 testified was 18,000?

15 A Exactly 18,000 square feet.

16 Q Plus an office area?

17 A Plus the offices which I mentioned to you,

18 3,500 square feet on the second floor, which was known

19 as Georgetown University Lab, the auditorium, the

20 physiotherapy and the St. John Child Day Care Center,

21 and one office on the fourth floor, 1,500 square feet,

22 which Inova leased.

23 Q I'm sorry. I would like to just focus on the

1 additional area that Inova leased over and above Health
2 Group.
3 A Then I repeat it.
4 MR. BETTIUS: Mr. Bono, do you have a chart
5 of something you could put in and just give to
6 somebody?
7 MR. BONO: I can make one and I'd be happy to
8 just do that.
9 MR. BETTIUS: Why don't we just do that?
10 MR. BONO: No. I'd like to get the final
11 answer here, and then that would wrap it up.
12 THE COURT: Go ahead.
13 BY MR. BONO:
14 Q This is the additional area, correct?
15 A Yes.
16 Q Eighteen thousand square feet for the fourth
17 floor?
18 A Correct.
19 Q And what additional --
20 A And 3,500 square feet for the Georgetown Lab,
21 around 1,560 square for the physiotherapy. Around
22 1,600 square feet for the auditorium. And one office
23 on the fourth floor, 1,500 square feet.

1 Q That's approximately 26,000 additional square
2 feet, is that correct, Doctor?
3 A If you calculate that.
4 Q I just want to make sure I have the numbers
5 correct.
6 MR. BETTIUS: Objection. Dr. Tauber is not
7 testifying, Mr. Bono is. You're leading.
8 Your Honor, if he could just give us a chart,
9 I'll accept it.
10 THE COURT: Is it in dispute, Mr. Bettius?
11 Do you dispute these figures?
12 MR. BETTIUS: I don't know, Your Honor.
13 You'd have to look at the leases.
14 THE COURT: I can do the math.
15 MR. BONO: All right. Thank you, Your Honor.
16 BY MR. BONO:
17 Q Dr. Tauber, there has been some testimony in
18 the case about the Jefferson Memorial Hospital being
19 changed from a for-profit originally as it was founded
20 to a not-for-profit. I'd like you to explain to the
21 Court how that initial change occurred.
22 MR. BETTIUS: Your Honor, haven't we covered
23 this at length at the first trial? I know Your Honor

1 says that you may have, but the rulings --

2 THE COURT: I'll permit it, Mr. Bettius.

3 Briefly, Mr. Bono.

4 MR. BONO: Yes, Your Honor.

5 THE WITNESS: Originally it started as a

6 Maryland corporation which was for profit. And there

7 was an accusation that this new hospital corporation

8 will come in and take only the rich people and neglect

9 the poor ones. Therefore, we changed our charter to a

10 non-profit organization named Jefferson Memorial

11 Hospital, Inc. of Maryland.

12 Then we declared ourselves that we would

13 never accept any type of contribution from the City of

14 Alexandria, from the federal government, the state of

15 Virginia, and we will not apply for any bond loan like

16 an industrial bond. That was our pledge.

17 And basically it did not change our concept

18 that we wanted to build a hospital, profit or non-

19 profit. We accepted all the patients regardless

20 whether they had insurance or they did not, whether

21 they had ability to pay or not. That existed --

22 MR. BETTIUS: Your Honor, may I object? All

23 of this has been gone into at some length before. It's

1 going to open up a whole area of cross-examination
2 about what they recovered from patients.
3 THE COURT: You asked the question of how it
4 was changed over.
5 MR. BONO: Right.
6 BY MR. BONO:
7 Q Dr. Tauber, did Jefferson Memorial Hospital
8 ever accept any governmental funds or donations or
9 grants, regardless of whether from the federal
10 government or the state government?
11 A Never.
12 Q Did the state of Virginia ever grant tax-
13 exempt status to the hospital?
14 A Never.
15 Q And there has been testimony that says that
16 the tax-exempt status by the Internal Revenue Service
17 was revoked; is that correct?
18 A That's correct.
19 Q And as a result of that revocation, were
20 amended returns filed and any taxes due the federal
21 government then paid?
22 A Any donations for tax deduction were claimed
23 or reimbursed to the government back to the 31st of

1 October 1967. Every penny was paid.

2 Q Now, the policy you just described of

3 admitting patients that existed with Jefferson Memorial

4 Hospital, Inc., did that policy continue through 1982

5 with respect to Jefferson Memorial Hospital

6 Corporation?

7 MR. BETTIUS: Your Honor, we went through all

8 that. The rebuttal testimony was -- when they reopened

9 the first trial -- that they recovered all of their

10 patients' costs but three percent.

11 This is an accounting, Your Honor. The

12 records obviously show what occurred.

13 THE COURT: I'll let you cross-examine.

14 THE WITNESS: Excuse me. Could you repeat

15 the question?

16 BY MR. BONO:

17 Q My question was simply, did the policy you

18 just described about admitting patients regardless of

19 insurance or ability to pay apply also during the

20 entire period of time that Jefferson Memorial Hospital

21 Corporation ran the hospital?

22 A That's correct. Starting the 31st of March

23 1982, when Health Group of Virginia took over, until

1 such time, every single patient was admitted to the
2 hospital regardless of whether they had insurance or
3 not, whether they had money to pay or not. It was
4 absolutely all the time.
5 Q Now, during the period after 1985, the
6 hospital was operated by Inova; is that correct?
7 A That's correct.
8 Q And Inova is a not-for-profit hospital
9 organization; is that not correct?
10 MR. BETTIUS: Stipulated.
11 MR. BONO: Thank you.
12 THE WITNESS: Repeat the question.
13 BY MR. BONO:
14 Q He stipulated to my question. The answer to
15 that is yes.
16 A Excuse me. I don't say yes.
17 THE COURT: Go ahead and answer the question.
18 THE WITNESS: Let me answer the question.
19 Will you repeat it again?
20 BY MR. BONO:
21 Q My question was, is Inova, who operated the
22 hospital from 1985 to 1992, a not-for-profit
23 organization?

1 MR. BETTIUS: I object as a legal conclusion,
2 Your Honor, so we don't have a collateral inquiry as to
3 whether or not --
4 THE COURT: Objection's overruled.
5 THE WITNESS: On paper, yes. Any corporation
6 which has $53 million surplus, in my books, in my
7 definition, in my understanding, is not a non-profit
8 organization.
9 BY MR. BONO:
10 Q Now, let me direct your attention, Dr.
11 Tauber, to 1971. I would like to direct your attention
12 to the financial statement of Jefferson Memorial
13 Hospital Corporation for the year ended -- fiscal year
14 ended 1972, which I believe has been marked as Exhibit
15 1031 in this proceeding.
16 MR. BONO: For the Court's reference, this is
17 also Exhibit 10 to Mr. Cobb's accounting, Your Honor.
18 BY MR. BONO:
19 Q Dr. Tauber, I'm going to direct your
20 attention to notes 1 and 2 of the financial statement
21 that I presented to you.
22 MS. BEACH: Your Honor, does the Court have a
23 copy?

1 THE WITNESS: Yes, sir.

2 BY MR. BONO:

3 Q Now, I'm going to direct your attention, Dr.

4 Tauber, to note 2 of the financial statement, which

5 says acquisition of partnership, and the document

6 specifies, quote, on July 1, 1971 the hospital, in

7 exchange for 240,000 shares of its common stock,

8 acquired all of the assets and assumed all of the

9 liabilities of Jefferson Memorial Hospital Associates,

10 a partnership whose main source of income was from the

11 rental of the hospital plant to the hospital, unquote.

12 My question to you, Dr. Tauber, is did

13 Jefferson Memorial Hospital Corporation assume all of

14 the assets and liabilities of Jefferson Memorial --

15 MR. BETTIUS: Your Honor.

16 BY MR. BONO:

17 Q Hospital Associates.

18 THE COURT: Let him finish the question.

19 MR. BETTIUS: We're now retrying the first

20 case. The Court held clearly within the first case

21 that no merger ever occurred and no assumption of

22 liabilities could have occurred because they're

23 absolutely refuted in the '75 transaction which has

1 JMHI still in default.

2 If we're going to retry all of those issues,

3 I'm prepared to do it, but I think this evidence has

4 already come in and the Court's already made

5 dispositive findings.

6 THE COURT: Haven't we been through this, Mr.

7 Bono?

8 MR. BONO: Your Honor, this is Associates.

9 This has nothing to do --

10 MR. BETTIUS: I understand.

11 MR. BONO: Your Honor, I do not read the

12 Court's ruling as saying that these assets and

13 liabilities were not assumed by Corporation. Your

14 Honor ruled that there was no merger. We have never

15 disputed that there was no merger.

16 But the factual question is, were these

17 assets and liabilities acquired by Corporation as a

18 matter of fact prior to the dissolution of I and the

19 documents all support that and the subsequent documents

20 that Mr. Bettius is referring to likewise support that

21 fact.

22 Whether it occurred in 1971 or 1974 or 1975

23 is irrelevant for the purposes of this accounting. The

1 fact is, that these assets were acquired by
2 Corporation. I'm simply asking the witness did that
3 happen. That is a factual question which I believe
4 we're entitled to establish for purposes of this
5 accounting.
6 THE COURT: I'll overrule the objection. I'm
7 not going to go back and retry this. I understand
8 where you're headed with this, Mr. Bono.
9 MR. BONO: No, Your Honor --
10 MR. BETTIUS: Your Honor, I now have to go
11 back and now redo the Palmer contract and all the
12 assets and liabilities were supposedly assumed --
13 THE COURT: You can cross-examine him.
14 MR. BETTIUS: Yes, sir.
15 MR. HIRSCHKOP: Your Honor, may I point out
16 that in light of the opening statement of Mr. Bettius,
17 all of the details, taking certain things totally out
18 of context, the Court out to have this stuff --
19 THE COURT: I've ruled in your favor. Stop.
20 I overruled the objection.
21 Next question, Mr. Bono.
22 BY MR. BONO:
23 Q Dr. Tauber, do you remember my question? If

1 not, I'll simply --

2 MR. BETTIUS: I object to it as a conclusion.

3 THE COURT: Objection's overruled.

4 BY MR. BONO:

5 Q Do you recall the question?

6 A Would you be so kind as to ask again?

7 Q Yes. My question to you, Dr. Tauber, is

8 simply did Jefferson Memorial Hospital Corporation

9 acquire and assume all of the assets and liabilities of

10 Jefferson Memorial Hospital Associates?

11 A Yes.

12 Q Did Jefferson Memorial Hospital --

13 MR. BETTIUS: Leading.

14 THE COURT: Finish the question, Mr. Bono.

15 BY MR. BONO:

16 Q Did Jefferson Memorial Hospital Corporation

17 issue 240,000 shares of its stock to the partners of

18 Jefferson Memorial Hospital Associates?

19 A Yes.

20 THE COURT: That's not leading. He said yes.

21 BY MR. BONO:

22 Q Now, I would like to address your attention

23 to note 1 of the financial statement. And in the

1 second sentence of the financial statement it says, in
2 part, that Jefferson Memorial Hospital Corporation
3 received all of the assets and assumed all of the
4 liabilities of JMHI.
5 My question simply is, did Jefferson Memorial
6 Hospital Corporation assume all of the assets and
7 assume all of the liabilities of Jefferson Memorial
8 Hospital, Incorporated?
9 MR. BETTIUS: Continuing objection.
10 THE COURT: It's noted.
11 THE WITNESS: That's correct.
12 BY MR. BONO:
13 Q Now, as the transaction was contemplated, Dr.
14 Tauber, was Jefferson Memorial Hospital Corporation
15 supposed to issue 5,000 shares of its common stock to
16 Jefferson Memorial Hospital, Incorporated?
17 A Yes.
18 Q And that did not happen; is that right?
19 A According to the record, no.
20 Q All right. Now, how was the determination or
21 -- how did you arrive at the allocation or the decision
22 to issue 240,000 shares to Associates and 5,000 shares
23 was intended to be transferred to Jefferson Memorial

1 Hospital, Incorporated?

2 MR. BETTIUS: Objection, Your Honor. The

3 Court ruled that the 5,000 was never issued. What's

4 the relevance of how they calculated it.

5 In addition, he's just testified that the

6 pooling of assets, the effect of the merger, as the

7 Court previously ruled, has now happened.

8 THE COURT: Objection's overruled.

9 MR. BONO: Thank you, Your Honor.

10 THE WITNESS: The 5,000 shares which was

11 allocated to Jefferson Memorial Hospital, Inc., passed

12 by the board, is based and confirmed by a document

13 which was submitted six months ago when we found it.

14 It's the letter of Dr. Small, my letter to the board --

15 MR. BETTIUS: I'm going to object, the best

16 evidence being those letters.

17 THE COURT: It's not responsive to the

18 question. Just tell us how you did it. What was the

19 formula, is that the question?

20 THE WITNESS: Based on the offer we received

21 from Extended Care is how we allocated the 5,000

22 shares.

23 MR. BETTIUS: Mr. Bono, if that's the

1 Extended Care letter, would you tell me which exhibit
2 it is?
3 MR. BONO: It's Exhibit A in the white book.
4 MR. BETTIUS: In which one, sir?
5 MR. BONO: In the white book, the
6 Respondents' Exhibit List Volume 1 that we produced to
7 you, and the Court has it.
8 MR. BETTIUS: You produced it when?
9 MR. BONO: It was designated as a trial
10 exhibit and I personally mailed it to you six months
11 ago.
12 MR. BETTIUS: Show me the letter. I want to
13 see the submission, Your Honor. I've never received a
14 letter from Mr. Bono like that.
15 The exhibits are confined to formal
16 submissions. They have submitted exhibits to their
17 accounting. I'd like to see where that's an exhibit.
18 The Court's had specific rules about what's going to be
19 considered and what's not going to be submitted.
20 Mr. Bono, if it's part of the submission, I'd
21 like to know what exhibit it was submitted as.
22 MR. BONO: Your Honor, all I know is Ms.
23 Cochran duly designated this as a trial exhibit on our

1 trial exhibit list in compliance with the Court's time
2 for designating trial witnesses. This was produced in
3 the course of discovery to the Commonwealth six months
4 ago.
5 I don't understand the nature of the
6 objection.
7 MR. BETTIUS: Your Honor, it was not
8 produced. That designation of exhibits came long after
9 the Court's cutoff date for documents. It was filed, I
10 think, approximately a week before trial. I've never
11 seen this document. Mr. Bono produces a letter to me,
12 I want to see it. I have never seen this document
13 before today.
14 MR. BONO: Your Honor, I sent it to him.
15 MR. BETTIUS: It's not a designated exhibit.
16 THE COURT: What in the world am I supposed
17 to do with this? You all explain to me how you handled
18 this.
19 You say you never got it and he says he sent
20 it.
21 MR. BETTIUS: Your Honor, there's a simple
22 way. The Court has -- they gave us exhibits and
23 they're produced and they're numbered. This document's

1 not among the exhibits --

2 MR. BONO: Yes, it is.

3 MR. BETTIUS: -- pursuant to the Court's

4 order. It's on a list of exhibits filed a week before

5 trial.

6 Am I wrong, Mr. Bono?

7 MR. BONO: Mr. Cochran, do you want to --

8 THE COURT: I have Exhibit A from the list

9 before that. Respondents' Exhibit List, Volume 1.

10 MR. BETTIUS: That was filed a week ago, Your

11 Honor.

12 When did you file it, Mr. Cochran?

13 THE COURT: Just stop, Mr. Bettius.

14 MR. BETTIUS: I'm sorry, Your Honor.

15 MR. COCHRAN: These exhibits were filed, Your

16 Honor. These were not exhibits to the accounting. I

17 think what Mr. Bettius is saying that anything that Mr.

18 Cobb did not attach as an exhibit to his accounting is

19 beyond the pale. This is an exhibit that we listed and

20 we provided as a trial exhibit.

21 MR. BETTIUS: Your Honor, the Court

22 specifically said there would be no formal production

23 of documents after October and November. I want

1 Respondents to tell me when the first time this
2 document was put in any submission that I would have
3 seen. That really, I think, answers the question.
4 When is the first time it was formally submitted?
5 THE COURT: Do you recall, Mr. Bono, when you
6 sent it?
7 MR. BONO: I believe it was submitted in -- I
8 sent a letter to -- either to Mr. Bettius or Tina
9 Charvet. It was either late summer or early fall of
10 last year, with this document.
11 MR. BETTIUS: Your Honor, there is a specific
12 provision. I never received such a letter.
13 MR. BONO: As soon as we discovered this
14 document, I produced it. And it was -- there is no
15 surprise here. It's been testified about, as I
16 understand, in depositions. It was provided to Mr.
17 Bettius. It was on Mr. Cochran's trial exhibit list.
18 It was produced to Mr. Bettius again at that time.
19 I don't understand what the objection is.
20 MR. BETTIUS: It was never produced pursuant
21 to discovery. He says I got a letter. I'm going to
22 say I didn't. But it was never produced pursuant
23 (sic), Your Honor, and I've never seen the letter.

1 I've never seen it as I stand here.

2 It may be a harmless letter. I don't know.

3 But I'm going to tell you, Your Honor, Your Honor said

4 there would be formal responses to the discovery, there

5 were to be formal exhibits filed. This letter is not

6 among those exhibits. It's included in the trial

7 exhibits for the first time.

8 MR. BONO: Your Honor, I know for a fact that

9 prior to the time that Mr. Cochran was substituted for

10 me as counsel in September that I sent this letter

11 along with other documents.

12 THE COURT: Do you have, possibly, with you a

13 file with cover letters?

14 MR. BONO: I will be happy to try to track

15 that down.

16 THE COURT: We'll take a short recess to see

17 if you can find it.

18 MR. BONO: I don't have it with me, Your

19 Honor. It would be back in my office in Washington. I

20 don't have it here.

21 MR. BETTIUS: Your Honor, in a hearing on

22 March 24, told counsel how the case was going to be

23 conducted. I'm just saying I think February is the

1 date you set aside for the hearing and ordered
2 everybody to have all of the documents they intended to
3 produce at trial filed on the 1st of October, and
4 nobody supplements after that.
5 THE COURT: I'll take a short recess. You
6 can read the letter, Mr. Bettius and see if you have a
7 continuing objection to it.
8 (Whereupon, a short recess was taken.)
9 MR. BETTIUS: Your Honor, let me address the
10 Court on this issue.
11 THE COURT: I have to make sure we have
12 everyone back here.
13 MR. BETTIUS: Having read the letter --
14 MR. HIRSCHKOP: Pardon me, Your Honor. I
15 don't think Mr. Cochran's here.
16 MR. BETTIUS: I'm sorry.
17 THE COURT: Call Mr. Cochran.
18 MR. COCHRAN: Excuse me, Your Honor.
19 MR. BETTIUS: I'd like to first address
20 procedurally the letter and then substantively.
21 This letter was furnished to us for the first
22 time with a group of exhibits in December during a
23 deposition after which all experts' testimony --

1 depositions of experts had been taken. It was just
2 handed to us as a group of documents. I objected to it
3 as a whole as being outside the production.
4 The first time it was formally filed as an
5 exhibit -- it was just given in a deposition along with
6 a bunch of other things.
7 The first time it was filed -- I have to tell
8 the Court I had possession of the document, although I
9 never examined about it. We just put it aside with a
10 series of other documents. The first time it was
11 exhibited to me -- was purported to be an exhibit in
12 this case was in a list of exhibits which was filed
13 with the Court on the 16th -- 14th of January.
14 On the 19th we promptly objected to this and
15 several other exhibits as not being furnished as part
16 of formal submissions in discovery, pursuant to the
17 Court's order, in October.
18 They filed one accounting. They filed a
19 supplement to that first accounting and they
20 subsequently filed a second accounting and exhibits and
21 we had continuing requests for production of documents.
22 It was never produced. That's a procedural issue.
23 Your Honor, now that I've read the letter, it

1 creates an interesting dilemma. It is a hearsay
2 document, which is an unaccepted offer to purchase the
3 hospital as a unit. The offer isn't accepted. It
4 can't be a predicate for anything. It's being offered
5 as a hearsay statement.
6 Another they want to do is a reintroduction
7 of this Wheat letter that the Court -- there is a
8 continual attempt to put that hearsay document in.
9 What this is, Your Honor, is an offer to purchase the
10 hospital as a whole. They don't accept it. They
11 predicate a valuation on a hearsay unaccepted offer of
12 the hospital.
13 I object to it first as hearsay. If the
14 Court wants to read it, it is an offer for the totality
15 of hospital operations. It can't have any potential
16 relevance. It is hearsay and I object to it. If the
17 Court wants to read it, the Court will read it.
18 THE COURT: Mr. Bono?
19 MR. BONO: Your Honor, the -- this Extended
20 Care offer and reference was explicitly discussed and
21 talked about in Mr. Cobb's report, which was filed, as
22 I understand it, October 1.
23 THE COURT: Let me ask you this. Your

1 question -- let's get back to the basics here. Your
2 question of Dr. Tauber was that apparently the
3 allocation of 240,000 shares of stock to JMHA and 5,000
4 was based in some way on this offer?
5 MR. BONO: Yes, Your Honor.
6 THE COURT: All right. I'll permit the
7 doctor to testify without even going -- without the
8 letter as to what his understanding of the offer was
9 and how it affected the allocation.
10 MR. BONO: Thank you, Your Honor. That's
11 certainly sufficient.
12 THE COURT: I'll permit that.
13 MR. BONO: I'd like to reserve on the
14 admissibility of the document.
15 THE COURT: All right.
16 MR. BONO: Thank you, Your Honor.
17 MR. BETTIUS: Well, Your Honor, let's go
18 ahead and put it in. I want to cross-examine on it.
19 (Whereupon, Respondents' Exhibit
20 No. A was marked for identification
21 and received in evidence.)
22 MR. BONO: Thank you.
23 THE COURT: Go ahead.

1 MR. BONO: I'm sorry for the disruption.

2 THE COURT: That's all right.

3 BY MR. BONO:

4 Q Dr. Tauber, let me re-ask the question. How

5 did you determine that 240,000 shares should be issued

6 by JMHC to JMHA and 5,000 shares were to be issued by

7 JMHC to JMHI?

8 MR. BETTIUS: Before the doctor answers, I'd

9 like a continuing objection to relevance. If the

10 transaction never happened, I don't think it's

11 relevant.

12 THE COURT: Your objection's noted. Go

13 ahead, Doctor.

14 THE WITNESS: In August, the 12th of August

15 1970, I got my first heart attack and I was in Doctors

16 Hospital in Washington. When I recuperated, then I

17 wrote a letter to all members of the board of directors

18 and informed them why I was in the hospital. Dr. Small

19 acted as the chairman and the administrator of the

20 hospital traveled to Nashville, Tennessee and asked

21 Hospital Corporation of America if they would be

22 willing or interested to purchase the hospital.

23 And due to the weakness of the so-called

1 going concern, the lack of cooperation of the medical
2 staff, Hospital Corporation rejected it. Then we went
3 to another entity and that takes us forward to an offer
4 by Extended Care. Extended Care offered, for whole
5 project, $2,160,000. We said break it down for
6 Jefferson Hospital -- Jefferson Memorial Hospital,
7 Inc., which was the operating entity, would receive
8 $25,000 and the rest, $2,160,000 minus $25,000, was
9 allocated for the physical plant.
10 If you take $25,000 and divide it by
11 $2,160,000, this is equal to 1.57 percent. This offer
12 was rejected for the simple reason that Extended --
13 MR. BETTIUS: I'm going to object to why it
14 was rejected.
15 THE COURT: Objection sustained. That was
16 the formula that you used to allocate the shares?
17 MR. BONO: Yes.
18 BY MR. BONO:
19 Q Then what did you do --
20 A The problem was that the $25,000 --
21 THE COURT: Wait for the next question,
22 Doctor.
23 BY MR. BONO:

1 Q Just to clarify, the $25,000 that was
2 allocated to JMHI's assets and liabilities, that was
3 not cash, it was an offer of Extended Care stock; is
4 that correct?
5 MR. BETTIUS: Your Honor, I think the letter
6 speaks for itself. He's not getting into the terms of
7 a rejected offer.
8 MR. BONO: I was just trying to move this
9 along.
10 THE COURT: The whole question was what was
11 the basis for the allocation of the 240,000 and the
12 5,000. He's answered that, based upon the percentages
13 contained in the Extended Care offer.
14 MR. BETTIUS: I understand.
15 MR. BONO: That's correct, Your Honor.
16 Absolutely right.
17 THE WITNESS: Then we rounded up the 1.57
18 percent to 2 percent and that was 5,000 shares. That's
19 what I said before, all the time.
20 BY MR. BONO:
21 Q Now, Dr. Tauber, moving forward to 1972,
22 there's been testimony that additional shares of JMHC
23 were sold; is that correct?

1 A Would you repeat the question, please?

2 Q Yes. Moving forward to 1972, did JMHC issue

3 additional stock at that time?

4 A That's correct.

5 Q And there's been -- how much stock was issued

6 at that time?

7 A Sixty thousand.

8 Q And how much money was obtained by Jefferson

9 Memorial Hospital Corporation in selling that stock?

10 A It was based $4 per share, that is $240,000.

11 Q Why did Jefferson Memorial Hospital

12 Corporation issue that additional stock at that time?

13 A Because they had no money for running the

14 place. They did not have the regular required capital,

15 which was usually industry calculated. It should be at

16 least equal to two months' gross revenue, and it was

17 not available. There was no money to operate equipment

18 or acquire new ones.

19 Since it was triple net lease, there had to

20 be a certain amount of money put aside for structural

21 repairs and that was the existing previous bonds, which

22 were acquired when 5 percent has to be put in for 20

23 years. The maturity date requires a 5 percent sinking

1 fund established, and there was no money available.

2 The corporation did not have any credit. It

3 was rightly regarded as a junk bond and, therefore, the

4 sponsor, the only source of the money, would come in

5 only through the partnership.

6 Q And who purchased those shares of stock?

7 A The partners. The partners.

8 MR. BETTIUS: The partners?

9 THE WITNESS: The partners.

10 BY MR. BONO:

11 Q Now, Dr. Tauber, there's been a lot of

12 testimony in this case about the conversion or

13 redemption of some of the stock of Jefferson Memorial

14 Hospital Corporation into bonds, and I would like you,

15 if you could, to explain to the Court exactly what

16 those transactions were and what was involved with that

17 so that we could clarify that.

18 A The stocks which were issued, according to

19 the partnership, did not bring a single penny. Then,

20 in order to create something, we agreed to convert

21 60,000 shares to bonds at $6.

22 MR. BETTIUS: What, Doctor?

23 THE WITNESS: At $6 instead of $4. That was

1 not cash, it was a $360,000 bond, which is, if I
2 remember correctly, was for 20 years, semi-annual
3 payment at 8 percent. If you take the 60,000 shares
4 which were converted to $6, it's $360,000 bond, that
5 means it will bring you $28,480 income.
6 If you take the original 240,000, plus 60,000
7 shares, that gives you 300,000 shares outstanding. At
8 $4 you multiply 300,000 by 4, it is $1,200,000 money
9 involved.
10 Out of these funds 240,000 was extracted and
11 we take $28,480. However, the rest of the stock did
12 not make anything.
13 MR. BETTIUS: The rest of the stock what,
14 Doctor?
15 THE WITNESS: Does not produce any income.
16 Therefore, if you take the amount of money and divide
17 it by -- $28,480 divided by $1,200,000, it shows 2.4
18 percent return on the money for the partners.
19 BY MR. BONO:
20 Q Now, let me examine the redemptions so that
21 we can be clear on this. With respect to the 60,000
22 shares that were sold -- the additional shares that
23 were sold in 1972, am I -- do I understand that those

1 shares were redeemed and converted to a bond; is that
2 correct?
3 A Converted to bonds.
4 Q Now, could you explain how those bonds were
5 then applied? If you need to, let me -- I would
6 like --
7 A Sixty thousand shares were issued to the
8 partners. That would generated $240,000 to the
9 corporation. Everybody felt that the 240,000 original
10 shares does not have a single penny of dividends. In
11 order to get initiative to put in another $240,000 they
12 agreed on the 60,000 shares to be converted to $360,000
13 bond. The rest of the 240,000 was untouched and it did
14 not produce a single penny.
15 Q Now, let me focus, and perhaps the easiest
16 way to do this, I would like to show you, Dr. Tauber, a
17 memorandum from Mr. Linton to Dr. Friedman dated
18 January 2, 1976, which is an exhibit --
19 MR. BONO: Your Honor, this is Exhibit 806.
20 Excuse me, Your Honor.
21 THE COURT: Do you want to show that to the
22 doctor?
23 MR. BONO: Yes. Your Honor, I'm just trying

1 to get another one.

2 MR. BETTIUS: Your Honor, we have no

3 objection to this one.

4 BY MR. BONO:

5 Q Dr. Tauber, I'd like you to refer to the

6 paragraph, I think it's number 2, that talks about

7 redemption of 60,000 shares.

8 MR. HIRSCHKOP: Your Honor, while he's doing

9 that, I can only see the top of the doctor's head.

10 Might I join Mr. Bettius?

11 THE COURT: Sure.

12 MR. HIRSCHKOP: Thank you.

13 BY MR. BONO:

14 Q Dr. Tauber -- I'm sorry. I misspoke. It was

15 paragraph number 1 that I was asking you to refer to.

16 The document says the hospital redeemed 60,000 shares

17 of stock at $6 per share with 15-year, 8 percent

18 interest-bearing bonds valued at $360,000.

19 Does that refresh your recollection that the

20 bonds were 15 years as opposed to 20 years?

21 A I don't remember the document. If it's 15,

22 then I have to accept it.

23 MR. BETTIUS: We'll stipulate that's the

1 case.

2 THE COURT: All right.

3 BY MR. BONO:

4 Q Now, the second sentence is what I'd like to

5 ask you about, Dr. Tauber. It says the hospital

6 redeemed $230,500 of these bonds from partners of the

7 Joint Venture as payment for their obligation to the

8 hospital.

9 Could you explain that?

10 A Yes. I think it is 1974 and the original

11 swap, which meant -- I mean original swap when the

12 partnership gave up the physical plant, in lieu of that

13 they received 240,000 shares. They swapped the

14 physical plant for shares.

15 This swap was reversed in 1974. At that time

16 the partnership took back the physical plant, assumed

17 the mortgage and everything.

18 MR. BETTIUS: What happened in '74, Doctor?

19 THE WITNESS: They reversed the swap. The

20 original swap was 1972 and they reversed the swap.

21 BY MR. BONO:

22 Q Let me interrupt for a second so everyone can

23 follow. Are you referring -- this time when you're

1 talking about the swap, are you referring to the sale
2 and lease back of the hospital building by Corporation
3 to the Joint Venture that was in 1974?
4 A Yes. The original swap was in 1971, 1st of
5 July.
6 Q Now, when you say --
7 A They reversed the swap in 1974.
8 Q Now, when you say swap, because -- I want to
9 make sure we're all clear on this. When you say swap,
10 are you referring to the transfer of the building from
11 Jefferson Memorial Hospital Associates to Jefferson
12 Memorial Hospital Corporation in exchange for the
13 240,000 shares?
14 A That is the swap.
15 Q All right. And when you're talking about the
16 reverse of that transaction, are you referring to the
17 sale back to Jefferson Memorial Hospital Joint Venture
18 of the building from Corporation?
19 A The reverse of the swap. That was exactly
20 happened (sic) and when the reverse of the swap was
21 achieved, the partnership assumed a $240,000 obligation
22 of the corporation.
23 Q And what about the mortgage? What happened

1 with respect to the mortgage obligation?

2 A That was the partnership responsibility to

3 take care of the mortgage. The $240,000 you asked, it

4 was part of the consideration of the reversal of the

5 swap that they assume the $240,000 obligation of the

6 corporation.

7 Q And may I show you, Dr. Tauber, what's been

8 marked as Exhibit 301?

9 MR. BETTIUS: Your Honor, could I just see

10 it?

11 MR. BONO: The memorandum. You know the

12 document, Mr. Bettius.

13 MR. BETTIUS: The memorandum for sale and

14 lease, I have no objection.

15 MR. BONO: It was already admitted.

16 BY MR. BONO:

17 Q Dr. Tauber, I'll refer you to the first

18 paragraph of that document. Is that the transaction

19 you were just testifying to?

20 A Yes, it is.

21 THE COURT: The sheriff has just advised me

22 that there is a fire alarm somewhere in the building.

23 This is the curse of my life. Usually they track these

1 things down very quickly as to whether there's anything
2 to them.
3 The sheriff has just asked us to step outside
4 the building. We'll take a short recess.
5 (Whereupon, a brief recess was taken.)
6 BY MR. BONO:
7 Q Dr. Tauber, I had -- I'm sorry.
8 MR. BONO: I'm sorry, Your Honor. Dr.
9 Tauber had given you back the exhibits when we were
10 going to evacuate.
11 THE COURT: All right.
12 BY MR. BONO:
13 Q Dr. Tauber, I believe I left off asking you
14 to refer to the memorandum of sale and lease-back
15 agreement, which is Exhibit 301, I think. And I asked
16 you the transaction that you were referring to, is that
17 what is described in the first paragraph of that
18 document? Is that right?
19 A That's correct.
20 Q And that document says that -- that the sale
21 involves, from the partnership's point of view, does it
22 not, an assumption of the mortgage liability, plus
23 $240,000; is that right?

1 A It is correct, but $240,000 in the form of
2 cash or hospital bonds.
3 Q And would you explain to the Court what the
4 $240,000 obligation referred to in that agreement was?
5 A The hospital corporation had no money,
6 $240,000 obligation. Therefore, when the swap was
7 reversed, the partnership assumed this $240,000
8 obligation.
9 MR. BETTIUS: I didn't hear him, Mr. Bono.
10 I'm sorry.
11 MR. BONO: I think the witness said the
12 partnership assumed the $240,000 obligation.
13 BY MR. BONO:
14 Q Is that correct?
15 A Of the corporation.
16 Q Of the corporation. Now, let me refer you
17 back, Dr. Tauber, to the Linton memorandum, which is
18 Exhibit 806, and the second sentence which says the
19 hospital redeemed $230,500 of these bonds from partners
20 of the Joint Venture as payment for their obligation to
21 the hospital.
22 My question is, what was the obligation to
23 the hospital that Mr. -- that this memorandum is

1 referring to?

2 A On the 24th of December 1974 document stated

3 that the partnership assumed $240,000 cash for the

4 original obligation of the corporation, in the form of

5 cash or hospital bonds. At that point this document

6 that Mr. Linton wrote, the memorandum to Dr. Friedman,

7 disbursing that, he stated that the hospital redeem

8 (sic) $230,500 of those bonds. Not cash, but in the

9 form of bonds. Therefore, he relieved the partnership

10 from this part of the obligation.

11 MR. BETTIUS: If you want a stipulation, Mr.

12 Bono, I understand what happened. They converted the

13 bonds at $6 a share to the extent of -- all but $11,000

14 and then gave bonds for the $240,000. Is that right,

15 Dr. Tauber?

16 THE WITNESS: No.

17 MR. BONO: The testimony is what it is.

18 MR. BETTIUS: I'm just trying to help.

19 THE COURT: Go ahead, Mr. Bono.

20 MR. BONO: Thank you, Your Honor.

21 BY MR. BONO:

22 Q As a result of this transaction, Dr. Tauber,

23 is it correct that no cash came out of the hospital

1 corporation with respect to that $230,500 amount of
2 bonds at this time; is that correct?
3 A That's correct.
4 Q Now, so that -- then the next sentence says
5 the transaction left the hospital with $129,500 of this
6 1972 bond issue outstanding.
7 A That's correct.
8 Q Does that refer to, then, the next bonds then
9 that were actually issued and then became an obligation
10 of the corporation at that time?
11 A That's correct.
12 Q Now, on the second page -- just to complete
13 this, on the second page of Mr. Linton's memorandum,
14 which is Exhibit 806, he refers to a 20 percent
15 conversion of the original 240,000 shares of the
16 corporation; is that right?
17 MR. BETTIUS: Objection. Would you read the
18 language, sir?
19 THE COURT: Well, what's your objection.
20 MR. BETTIUS: I think the document speaks for
21 itself.
22 MR. BONO: I'm simply asking for the witness
23 to explain it.

1 THE COURT: Go ahead, Doctor, explain.

2 THE WITNESS: The 20 percent stock redemption

3 for bonds resulted in the issue of $231,350 in bonds,

4 with a yearly interest expense to the hospital of

5 $21,708.

6 MR. BETTIUS: Not responsive to the question.

7 MR. BONO: I'll clarify.

8 MR. BETTIUS: I wish you wouldn't clarify. I

9 wish you'd ask the witness a question. He objected to

10 my --

11 THE COURT: Mr. Bettius. Go ahead, Mr. Bono,

12 just ask the question.

13 BY MR. BONO:

14 Q Does the 20 percent that Mr. -- what does the

15 20 percent that Mr. Linton is referring to -- refer to?

16 What stock?

17 A Twenty percent of the stocks which was still

18 in existence that will be redeemed or converted to

19 bonds.

20 Q At the time -- if we put aside the 60,000,

21 that's the 1972 issue, was there approximately 240,000

22 shares of Corp outstanding and in existence at that

23 time?

1 A That's correct.

2 Q Now, Dr. Tauber, I would ask you to focus now

3 on the 1973 time period. I believe it has been -- that

4 the dissolution of JMHI occurred on April 18, 1973; is

5 that correct?

6 A April 18, 1973 that officially the state of

7 Maryland revoked the existence of JMHI.

8 Q Would you explain to the Court how that

9 dissolution came about?

10 A We believed that Jefferson Memorial Hospital,

11 Inc. ceased to exist on the 1st of July 1971. At that

12 time I asked our tax lawyer to give advice, and why do

13 you spend $10, just don't pay the registration fee and

14 then they revoked it. Naturally, today I wish I had

15 paid the $10 in 1975.

16 Due to the non-payment of the registration,

17 on the 18th of April 1973, officially we were notified

18 by the state of Maryland that we are not in existence.

19 Jefferson Memorial Hospital, Inc. was not in existence

20 anymore.

21 Q But the fact is, did you at that time, back

22 in 1972 and 1973, did you follow the advice that was

23 given to you?

1 A All the time.

2 Q Now, I'd like to move forward to the

3 1974-1975 time period. As I understand, yesterday --

4 Dr. Friedman, at that time, was chairman of the

5 corporation; is that correct?

6 A That's correct.

7 Q And were you aware of the fact that Dr.

8 Friedman had hired Mr. Richards on behalf of the

9 corporation to ensure that the hospital structure, past

10 present and future, was legally correct?

11 MR. BETTIUS: Your Honor, I'm going to make

12 an objection based on the Court's previous rejection of

13 advice of counsel.

14 THE COURT: All right. Go ahead and answer

15 the question.

16 THE WITNESS: Dr. Friedman asked Mr. Thorpe

17 Richards, who was the lawyer of the corporation and

18 partnership -- he asked him to do everything legally

19 and explain it and record it. I thought it was a very

20 good move on the part of Dr. Friedman. We did not do

21 it before. We wish we would have done it. That

22 happened at the request of Dr. Friedman.

23 BY MR. BONO:

1 Q Now, Dr. Tauber, I want to ask you, after
2 April 18, 1973, when Inc. was dissolved by Maryland,
3 did Jefferson Memorial Hospital, Incorporated conduct
4 any business as an ongoing corporation?
5 A As far as I know, no.
6 Q Did it enter into any contracts for -- to run
7 the hospital?
8 A As far as I know, no.
9 Q Now, I would like to show you Exhibits 135,
10 136 and 137. If you would look at those, Dr. Tauber,
11 these were documents admitted at the first trial.
12 A Yes, sir.
13 Q My question is, did Mr. Richards prepare
14 those documents?
15 A Yes.
16 Q And just to summarize, did those documents
17 pertain to the assumption of assets and liabilities of
18 JMHI by JMHC?
19 A Yes.
20 Q And in addition to those transactions that
21 are referred to in that document --
22 MR. BETTIUS: I'm sorry, Mr. Bono. Which
23 document?

1 MR. BONO: Those documents, Exhibits 135,
2 136, and 137.
3 BY MR. BONO:
4 Q Did Jefferson Memorial Hospital, Incorporated
5 also transfer by deed the land that it owned?
6 A Yes, sir.
7 MR. BETTIUS: Your Honor, the Court has ruled
8 that none of those transfers were effective because
9 JMHI had lost its corporate existence.
10 MR. BONO: Your Honor, I don't think that's a
11 valid objection. If Your Honor is going to overrule
12 it, I will not respond.
13 THE COURT: Overruled.
14 MR. BONO: Thank you, Your Honor.
15 MR. BETTIUS: May I have a continuing
16 objection?
17 THE COURT: Yes, sir.
18 BY MR. BONO:
19 Q Now, the deed, Dr. Tauber, that Mr. Richards
20 prepared transferring JMHI's land, was that the land
21 that had been donated to JMHI back in the mid-'60s?
22 A That's correct.
23 Q Now, in addition to the land that was deeded,

1 did JMHI also enter into a lease cancellation
2 agreement?
3 A That's correct.
4 Q Let me show you Exhibit 311.
5 MR. BETTIUS: Your Honor, we're further going
6 to object to any purported actions taken by JMHI to
7 cancel the lease.
8 THE COURT: I understand.
9 MR. BONO: Your Honor --
10 THE COURT: Go ahead.
11 MR. BONO: Thank you, Your Honor.
12 BY MR. BONO:
13 Q Dr. Tauber, is that the lease cancellation
14 that was entered into by JMHI on July 1, 1975?
15 A That's correct.
16 Q Now, as of that time period, July 1975, were
17 there any other activities undertaken by JMHI?
18 A Not that I know of.
19 Q Now, Dr. Tauber, I'd like to show you now
20 what's been marked as Exhibit 138.
21 MR. BETTIUS: Your Honor, I'd like to, at
22 this point, interpose another objection. The
23 accountant who did their auditing -- we're here on an

1 accounting, not for a trial of the first case,
2 indicates that he looked at the '66 lease as the
3 appropriate document all the way through.
4 Now we have Dr. Tauber canceling the lease.
5 They're at total variance with the filed accounting.
6 This whole series of transactions is at variance with
7 the filed accounting.
8 THE COURT: Your objection's noted.
9 MR. BONO: Your Honor --
10 THE COURT: Go ahead.
11 BY MR. BONO:
12 Q Dr. Tauber, have you finished reviewing that
13 document?
14 A What portion?
15 Q I'll direct your attention to certain parts.
16 First of all, Dr. Tauber, is this board minutes of
17 Jefferson Memorial Hospital Corporation, January 29,
18 1975?
19 A That's correct.
20 Q Now, the board here passed a resolution as
21 indicated in this document to accept all of the --
22 certain remaining assets and liabilities of JMHI; is
23 that correct?

1 A That's correct.

2 Q And did Mr. Richards handle this transaction?

3 A Yes, he did.

4 Q Now, if you look at the second paragraph of

5 this board minutes, did Mr. Richards advise the board

6 that what was required was the resolution referred to

7 in these board minutes?

8 A That's correct.

9 Q Now, on the second page of this document it

10 says Mr. Richards presented to the board copies of the

11 fair market appraisal of the real estate and the

12 valuation appraisal of the equipment.

13 Do you see that sentence?

14 A Yes, I do.

15 Q My question is, simply, did Mr. Richards

16 present to the board a fair market appraisal of the

17 real estate?

18 A His opinion was it indicated fair market

19 value of $88,000.

20 Q Dr. Tauber, please listen to my question. My

21 question was, simply, down at the bottom of the second

22 page there's a statement in that first paragraph that's

23 out at the margin that says Mr. Richards presented to

1 the board copies of the fair market appraisal of the
2 real estate.
3 Do you see that sentence?
4 A Where on the second page?
5 Q It's the second page, the paragraph -- second
6 paragraph from the bottom.
7 A Yes, I have it. Yes.
8 Q Now, my question is, simply, Dr. Tauber, did
9 Mr. Richards present to the board a copy of a fair
10 market appraisal of the real estate?
11 A I don't recall he presented it, but that's
12 what he said. I don't recall that it was an official
13 appraisal. That's what he presented and it was
14 accepted by the board.
15 MR. BETTIUS: We'll stipulate the admission
16 of the document, Mr. Bono.
17 MR. BONO: Thank you.
18 BY MR. BONO:
19 Q Now, at that point, Dr. Tauber, in January --
20 strike that.
21 As of July 1, 1975, were there any other
22 activities undertaken by Jefferson Memorial Hospital,
23 Inc., other than the activities that we've just gone

1 through?

2 A As far as I know, no.

3 Q Now, I'd like to move forward, Dr. Tauber, to

4 1982. At that time did Health Group of Virginia lease

5 the hospital building and begin to operate the

6 hospital?

7 A From the 1st of April 1982, yes.

8 Q And what were -- how did that lease come

9 about?

10 A Health Group of Virginia approached us. They

11 were looking for a site in the Northern Virginia market

12 and they asked whether we would consider it or not to

13 lease the property.

14 Q And as a result of negotiations was a lease

15 then entered into by Health Group?

16 A That's correct.

17 Q Dr. Tauber, let me show you if I could

18 Exhibit --

19 MR. BONO: I'm sorry, Your Honor.

20 This is Exhibit 326.

21 (Whereupon, Trial Exhibit

22 No. 326 was marked

23 for identification.)

1 MR. BETTIUS: If that's the HGV lease,
2 there's no objection to it.
3 THE COURT: Is that the lease, Mr. Bono?
4 MR. BONO: Yes, Your Honor.
5 THE COURT: All right. It's in.
6 (Whereupon, Trial Exhibit
7 No. 326 was received in evidence.)
8 BY MR. BONO:
9 Q Now, Dr. Tauber, does this document specify
10 the lease arrangement with Health Group of Virginia?
11 A Yes, sir.
12 Q Now, I'll specifically refer you to paragraph
13 4.
14 MR. BETTIUS: Paragraph what, Mr. Bono?
15 MR. BONO: Four.
16 THE WITNESS: Yes, sir.
17 BY MR. BONO:
18 Q Paragraph 4 says that the rent amount will be
19 for the first five years $760,000 per year; is that
20 right?
21 A That's correct.
22 Q Then if you go down to paragraph 5(j) --
23 A Yes.

1 Q -- it refers to additional rent of $240,000
2 as a maximum; is that correct?
3 A Excuse me, sir. Would you read me that
4 again? Mine is not the same. As in paragraph 5?
5 Q In 5.
6 A G?
7 Q J. If you go down to J.
8 A Oh, J.
9 Q At the end.
10 A That's correct.
11 Q Can you explain to the Court what this
12 additional monthly rent of $20,000 per month is?
13 A That originated in 1978 or '79 when we built
14 the medical building, the six-story building, which the
15 third floor was the north wing -- to be the north wing
16 of the Jefferson Memorial Hospital. And at that time
17 we needed a blanket mortgage. That means that the
18 mortgage secured as the first mortgage on the hospital
19 building as well as the medical building.
20 We received, I think, $1,400,000 and then we
21 paid off the existing first mortgage and the doctors
22 who owned already took it on. They paid for the
23 offices here.

1 MR. BETTIUS: They paid what, Doctor?

2 THE WITNESS: They paid for their offices.

3 And in consideration, they allowed to subordinate the

4 fully paid offices to the first mortgage, blanket

5 mortgage on the whole property that they received

6 originally not from the hospital, but Health Group

7 continued the practice that every penny after 50 cents

8 a square foot toward their expenses; that is, their

9 taxes, insurance and so on.

10 That was the amount of money, at least

11 $20,000 extra money, did not go to the partnership, not

12 a single penny. It went only to the office owners.

13 The office owners, the first part, they had

14 with the partners allocated a perpetual lease on their

15 offices like a cooperative arrangement. Later on, many

16 years later, we did the condominium regime. We have

17 all condominiums on the third floor, which was the

18 surgical wing of the hospital.

19 That was the time, in consideration and

20 really a great sacrifice, as I felt and everybody felt,

21 that they let the office be subordinated on the blanket

22 mortgage. But that was the only way and the best way

23 to get the mortgage and the favorable interest we

1 THE WITNESS: We took the burden to build
2 this additional building, which is -- totalling 27,000
3 square feet facing North Beauregard Street. At the
4 very beginning we did not know how the doctors will
5 come in. We succeeded that one-third of the building
6 was leased to Dr. Desai and Dr. Reed. The other two-
7 thirds was vacant.
8 In order to get Dr. Friedman and his group,
9 which is around six or seven doctors, a very busy
10 practitioner, to come back, we made the sacrifice, as
11 Dr. Friedman testified yesterday, that he paid exactly
12 the figure $5.62 a square foot to cover the overhead,
13 and that was established on a flat rate for 10 years
14 without any escalation.
15 So we took the burden to do it and during the
16 time we paid all the structural repair, because they
17 were not the owner. They did not pay a single penny.
18 And then after exactly eight and a half
19 years, originally it was ten years, they could take
20 over the ownership for $1 and at that time, naturally
21 all of the structural expenses and everything, like
22 condominium owners or cooperative owners, they had to
23 be responsible for it.

1 This one certainly did not increase the
2 partnership income, because the only beneficiary was
3 Health Group of Virginia. When we made the sacrifice
4 to give this office for nothing to six or seven doctors
5 -- all the admission, the 90 percent, were the
6 condition on this one. Then after we get only the
7 Health Group of Virginia.
8 But my feeling -- excuse me -- our feeling
9 was that the stronger the tenant, the safer is our
10 investment as a lessor. Therefore, we cooperated and
11 they came. It was exactly that way, because it would
12 not make any sense to increase the income of Health
13 Group and making the sacrifice. That was one part of
14 the deal that I negotiated.
15 BY MR. BONO:
16 Q Now, my simple question is, did Dr. Friedman
17 then purchase two-thirds of the building interest for
18 $1?
19 A I don't know whether he paid the $1, but that
20 was on paper, yes.
21 Q Now, did he and his group comply with the 90
22 percent requirement each year to send 90 percent of
23 their patients to Jefferson Hospital?

1 A Every December, I think the 1st of December,
2 he had to come to me and show that 90 percent
3 admissions -- the total admissions. I know that they
4 have a lot of patients, not only in their name, but
5 different specialists' names, because they referred
6 their patients there. So I was satisfied.
7 I informed every member of the partnership
8 that I found it at 90 percent, criteria met. Eight and
9 a half years later, you asked for the explanation,
10 everybody was worried that I'd die, so this is a
11 constant question. What happens when Tauber dies.
12 So they were very nervous about it. They
13 were afraid that if I am not here then they will not
14 get the office for $1. Therefore, we made the decision
15 after eight and a half years and they could buy for $1.
16 Then I testified to the board of directors and asked if
17 they had any objection. I feel that the 90 percent
18 admission was met. That is the reason why he got that
19 one and a half years early.
20 Q Now, Dr. Tauber, I'd like you to refer to
21 paragraph 10 of the Health Group lease. Do you have
22 that, Dr. Tauber?
23 A Excuse me, sir. Just a second.

1 Q Now, does paragraph 10 describe what items
2 Health Group of Virginia was purchasing?
3 A That's correct.
4 Q Other than the items specified there of 80
5 percent patient accounts receivable, 100 percent book
6 value of equipment, 100 percent of the cost of
7 inventory of usable supplies, 100 percent of the
8 prepaid expenses less 100 percent of the trade accounts
9 payable and less 100 percent of all accrued expenses
10 assumed and put aside the 15 percent -- were any other
11 items or payments made by Health Group?
12 A Not that I know of.
13 Q Other than the lease payments; is that
14 correct?
15 A That's correct.
16 Q Now, number 7 says plus 15 percent of the sum
17 of items 1 through 6; is that right?
18 A That's correct.
19 Q Was that contained in some closing documents
20 and letters that were finalized?
21 A I really cannot answer, because I just -- at
22 this point I was never participating.
23 Q I appreciate that, Doctor. Other than the 15

1 percent, whatever that's calculated to be, was anything
2 else paid by Health Group as the purchase price at that
3 time?
4 A No.
5 (Whereupon, Trial
6 Exhibit No. 338 was marked
7 for identification.)
8 BY MR. BONO:
9 Q Now, Dr. Tauber, I'd like to now address
10 1985. I'd like to show you Exhibit 338.
11 MR. BETTIUS: Is that the Inova lease, Mr.
12 Bono?
13 MR. BONO: Yes.
14 MR. BETTIUS: I have no objection.
15 THE COURT: All right. It's admitted.
16 (Whereupon, Trial Exhibit
17 No. 338 was received in evidence.)
18 MR. BETTIUS: Your Honor, for clarification,
19 this thing is called a lot of things, the FHA lease,
20 the FHS lease, the Inova lease. I think it was, at the
21 time, FHS, is that right, Mr. Bono?
22 MR. BONO: I believe that, but I have always
23 referred to it as the Inova lease. Is that okay?

1 MR. BETTIUS: That's fine.

2 MR. BONO: All right.

3 MR. BETTIUS: In fact, Your Honor, for

4 clarity -- excuse me -- JMHC changed its name. You

5 need to know, because the names change. It's JCA. I

6 think that's stipulated by everybody. At the time of

7 the 1982 lease, we have JCA, so the parties to this

8 lease are FHS, Fairfax Hospital Society, I guess it was

9 at the time, and JCA.

10 Is that correct, Dr. Tauber?

11 THE WITNESS: If you say so.

12 MR. BETTIUS: That's correct, isn't it, Mr.

13 Bono, JCA?

14 MR. BONO: Jefferson Memorial Hospital

15 Corporation changed it's name to Jefferson Corporation

16 of Alexandria. That's correct.

17 THE COURT: All right.

18 BY MR. BONO:

19 Q Dr. Tauber, did you enter into negotiations

20 in 1985 with respect to leasing the building?

21 A Yes, I did.

22 Q And can you just briefly describe what was

23 negotiated?

1 A Jefferson -- excuse me -- Inova approached me
2 through our administrator, Mr. Richard Levy, that they
3 would be very much interested to get inside the
4 Beltway, and they would be very much interested to
5 acquire the lease at Jefferson Memorial Hospital and to
6 run it as an Inova facility.
7 Negotiations started and personally I was
8 happy with Georgetown University for the simple reason
9 that a teaching hospital and university would enter and
10 would definitely benefit the reputation of Jefferson
11 Memorial Hospital.
12 And the second was I knew the Georgetown was
13 very anxious to get into Northern Virginia --
14 MR. BETTIUS: I'm sorry, Dr. Tauber. Who was
15 anxious to get in, Georgetown?
16 THE WITNESS: Georgetown.
17 MR. BETTIUS: Georgetown.
18 THE WITNESS: They were very anxious to get
19 in and we had a board meeting and the board meeting
20 decided that they would be dealing with Georgetown or
21 Inova. I had to represent what their offer was.
22 Georgetown University, as usual, wanted to
23 come in with no money contribution and Inova knew at

1 the time --

2 MR. BETTIUS: Your Honor, I can't hear the

3 doctor.

4 THE COURT: Your voice tends to trail off,

5 Doctor.

6 MR. BETTIUS: Can I ask, Doctor, who wanted

7 to come in for no money, Georgetown?

8 THE WITNESS: So, therefore, Inova even

9 suggested that they build a partnership with

10 Georgetown, that Inova is willing to pay all the

11 expenses up to seven years and then later Georgetown

12 will make a contribution and therefore they will be

13 equal partners.

14 Georgetown decided they were not going to

15 give a single penny. So we had no choice and we

16 entered the partnership -- the agreement with Inova.

17 BY MR. BONO:

18 Q Now, the agreement with Inova was leasing the

19 building from either Jefferson Memorial Hospital

20 Corporation to JCA; is that right?

21 A Call it Partnership.

22 Q The Partnership.

23 A It was from the Partnership.

1 Q At the time Inova came in, as I understand
2 it, Health Group of Virginia had been operating the
3 hospital and was the operator; is that right?
4 A Correct.
5 Q At the time Inova began to operate the
6 hospital, who owned the license? Did HGV own the
7 operating license?
8 A I know at that point the physical plant,
9 everything, was owned by the Partnership. But we had
10 an entity which ran the hospital, which was Jefferson
11 Memorial Hospital Corporation. But if the question is
12 who was the owner or the user, I cannot tell you.
13 MR. BETTIUS: Your Honor, excuse me. The
14 license was never transferable.
15 THE COURT: He's giving his understanding,
16 Mr. Bettius.
17 MR. BONO: I don't understand your objection,
18 Mr. Bettius.
19 MR. BETTIUS: My objection is to any
20 testimony about the status of the license in the
21 absences of a transfer is inconsistent with both
22 records --
23 MR. BONO: Mr. Bettius, under Virginia law --

1 THE COURT: Stop. You don't argue with one
2 another.
3 MR. BETTIUS: I'm sorry.
4 BY MR. BONO:
5 Q Dr. Tauber, I'd like to refer you back to the
6 Health Group lease, if I might. Do you have that in
7 front of you?
8 A No, but I remember.
9 Q Okay. On paragraph 3 of the Health Group of
10 Virginia lease, doesn't it contain a provision that
11 specified that Health Group of Virginia had to obtain
12 the license in its name to operate the hospital during
13 the period of time it was the operator?
14 A That's correct.
15 Q And at the time Inova took over the
16 operations from 1985 to 1992, was Inova the owner of
17 the operating license of the hospital --
18 MR. BETTIUS: Objection. That's a legal
19 conclusion, Your Honor.
20 BY MR. BONO:
21 Q -- if you know?
22 THE COURT: He can answer if he knows.
23 THE WITNESS: I know only one thing, and

1 maybe it should be given to Mr. Bettius, because he
2 told me the first time that the license --
3 MR. BETTIUS: Your Honor, I'm going to object
4 to this --
5 THE COURT: Please just answer the question.
6 THE WITNESS: That's what happened.
7 BY MR. BONO:
8 Q So Inova was the owner of the license --
9 MR. BETTIUS: Your Honor, to the extent
10 that's a legal conclusion --
11 THE WITNESS: I don't know --
12 THE COURT: Doctor. Your objection's noted,
13 Mr. Bettius. He can testify as to what he understands.
14 BY MR. BONO:
15 Q Dr. Tauber, isn't it correct that under the
16 Inova settlement agreement Jefferson Memorial Hospital
17 Joint Venture was obligated to give Inova a letter
18 acknowledging that Inova was the owner of the operating
19 license from 1985 to 1992; isn't that correct?
20 MR. BETTIUS: Your Honor, if there's a
21 letter, let's bring it on. It's between the parties.
22 It doesn't affect the legal status of the license.
23 THE COURT: He can answer the question.

1 THE WITNESS: I don't remember the legality.
2 I cannot express any opinion. I know that they
3 operated. What steps we had to take for Inova to gain
4 the license to operate, I cannot answer.
5 BY MR. BONO:
6 Q Dr. Tauber, let me show you the Inova
7 settlement agreement --
8 THE COURT: Does that speak for itself? If
9 it's in there, it's in there.
10 MR. BONO: Then can I just publish to the
11 Court right now the fact that it specifies in paragraph
12 4, quote, JMHJV shall execute a written acknowledgement
13 not later than July 15, 1994, addressed to the
14 appropriate state authority acknowledging Inova as the
15 owner of the existing Jefferson Hospital license and
16 operator of the Jefferson Hospital facility since July
17 1985.
18 MR. BETTIUS: Your Honor, the record will
19 show that Inova didn't complete this transaction to
20 form the corporation called JMHI. To take possession
21 of the license and regulatory purposes, the owner was
22 JMHI. I think all of this is legal conclusion and the
23 Court's going to have to sort it out based on

1 documents.

2 We're going to produce documents to show that

3 Inova didn't complete the transaction to form the

4 corporation called JMHI.

5 THE COURT: What's the exhibit number you

6 just read from, Mr. Bono?

7 MR. BONO: This is the Inova settlement

8 agreement. It's been previously marked as Exhibit 514

9 in this case, and it's also been marked as Exhibit R in

10 the white book as to new exhibits.

11 (Whereupon, Respondents'

12 Exhibit No. R was marked

13 for identification.)

14 THE COURT: No objection to that being

15 admitted, is there?

16 MR. BETTIUS: Not at all, Your Honor.

17 THE COURT: All right. It's admitted. It

18 speaks for itself.

19 (Whereupon, Respondents' Exhibit

20 No. R was received in evidence.)

21 MR. BONO: Thank you.

22 BY MR. BONO:

23 Q Now, Dr. Tauber, at the time Inova negotiated

1 its lease with the Partnership, did it separately
2 engage in negotiations with Health Group of Virginia
3 relating to the purchase of the operations of the
4 hospital?
5 A That's correct.
6 Q In those negotiations did Jefferson Memorial
7 Hospital Joint Venture or Jefferson Memorial Hospital
8 Corporation have any part in those negotiations?
9 A Not at all.
10 (Whereupon, Respondents'
11 Exhibit No. P was marked
12 for identification.)
13 BY MR. BONO:
14 Q Now, Dr. Tauber, I want to direct your
15 attention to 1992, and I'd like to show you what has
16 bene previously marked as Trial Exhibit 513 and has now
17 been marked as Exhibit P, which is the October 14, 1992
18 letter agreement.
19 MR. BETTIUS: Your Honor, I'm going to object
20 to this document. I think it's an important objection
21 and I'd like to make it for the record.
22 This document became the subject of
23 litigation and a declaratory judgment. The parties

1 subsequently resolved that dispute by settlement
2 agreement. They expressly voided this agreement.
3 More than a year had passed between the
4 execution of this agreement and facts materially
5 changed. In addition, under this document that was to
6 be a transfer of the hospital, of the Jefferson
7 Hospital, which never occurred.
8 We're now -- if this document's being offered
9 as proof of some transaction, the transaction was
10 subject of litigation, never occurred and the agreement
11 that settled this transaction is fully integrated --
12 fully integrated -- and specifically voids this
13 document.
14 I'd like to know what the offer of relevance
15 is under those circumstances.
16 THE COURT: What's the purpose of it?
17 MR. BONO: Your Honor, the relevance is
18 exactly what Mr. Bettius is saying. This document is
19 the operative document that led to the litigation and
20 that led to the Inova settlement. The state is trying
21 to claim the monies in the Inova settlement as relating
22 to the hospital operations.
23 The Inova settlement was a settlement of this

1 contract as a result of the litigation over the title
2 to the properties that were supposed to be exchanged in
3 this document. This is the document that was settled
4 by the Inova settlement and it is highly relevant.
5 MR. BETTIUS: The litigation was settled by
6 the Inova document. If Your Honor will note, the 1985
7 lease provided a provision that the license was to be
8 returned at the end of the term or Jefferson could come
9 in and reopen the hospital and operate it.
10 The purpose of the settlement agreement had
11 nothing to do with this document. It had to do with
12 obviating Inova's rights to continue the operation
13 under the lease. This document has been rendered
14 specifically void and it can have no potential
15 relevance to the settlement.
16 The settlement document is an integrated
17 document and its terms are contained within the four
18 corners of that document. It has nothing to do with
19 this document. It has everything to do with the
20 settlement of litigation and the rights under the
21 lease.
22 THE COURT: Objection's overruled.
23 MR. HIRSCHKOP: What was the number of the

1 exhibit?

2 MR. BONO: P as in Paul.

3 BY MR. BONO:

4 Q Dr. Tauber, did you enter into this agreement

5 with Inova on or about October 14, 1992?

6 A That's correct. I did.

7 Q Now, I would like to refer you to the last

8 sentence of the first paragraph of this document, which

9 is referred to as a binding letter agreement on

10 Jefferson Hospital.

11 A Which page is it?

12 Q This is the first page, the last sentence in

13 the first paragraph.

14 A That sentence says, as you are aware, a

15 number of issues have arisen which preclude currently

16 closing the discussed transaction which would

17 essentially constitute an exchange of Cambridge Court

18 for Jefferson Hospital.

19 My question is, does this -- was this

20 agreement -- did this involve a proposed exchange of

21 the Jefferson Hospital building and the other

22 properties described in this letter agreement with the

23 Cambridge Court building that was owned at that time by

1 Inova?

2 MR. BETTIUS: Your Honor, we're going to have

3 a continuing objection.

4 THE COURT: Yes, sir.

5 THE WITNESS: Yes, it did.

6 BY MR. BONO:

7 Q Now, I'd like to ask you about -- if you'll

8 look at the second page of the letter agreement, the

9 middle of the page it has a reference to, quote, JMHJV

10 property; is that correct?

11 A That's correct.

12 Q And then it specifies in lettered paragraphs

13 A, B, C, D, E, F; is that right?

14 A That's correct.

15 Q Were those the transactions that were the

16 subject of this agreement?

17 A That's correct.

18 Q And the transactions included the swap of the

19 buildings; is that right?

20 A Yes.

21 Q And it also included the leases referred to

22 in this document?

23 A Yes.

1 Q And looking at the top of the third page,
2 there was also a lease that involved parking spaces; is
3 that right?
4 A That's correct.
5 Q And in paragraph D there also was going to be
6 a lease of separate suites in the medical office
7 building; is that correct?
8 A Yes.
9 Q And there also was going to be a lease that
10 involved the third floor of the medical office
11 building; is that right?
12 A That's correct.
13 Q Now, as to the Cambridge Court building, Dr.
14 Tauber, was part of this agreement that Jefferson
15 Memorial Hospital Joint Venture would lease back that
16 building to Inova?
17 A That's correct.
18 Q And if you refer to Attachment A, which is
19 the first page after the signatures, does Attachment A
20 specify the lease arrangement that was contemplated by
21 this agreement for the Cambridge Court building?
22 A That's correct.
23 Q Now, going down about one-third of the way,

1 did the -- did the rent on that building as of October
2 1, 2005, was the base rent going to be increased to $3
3 million a year?
4 A That's correct.
5 Q Now, I want to refer you down to the bottom
6 of Attachment A. Was there an option to buy back the
7 building provided for in this contract?
8 A Yes, there was.
9 Q All right. Would you explain what that
10 option to buy back was?
11 A Jefferson Memorial Hospital Joint Venture was
12 leasing back the Cambridge Court building to Inova, and
13 the papers stipulated that November 2005 Inova has the
14 option to purchase the building for $20 million, which
15 was the price. It was not an obligation. It continued
16 to 2012, but the rent would have to increase to $3
17 million a year.
18 We added this on here, the $20 million and 50
19 percent of the fair market value, because any future
20 sale the Internal Revenue Service requires that this
21 stipulation, some relation to the market price, should
22 be inserted. Otherwise, they would tax it as a sale.
23 Q Now, after this agreement -- may I refer you

1 to page 2 of the agreement, paragraph C.

2 A Excuse me, sir, which is the --

3 Q No, no. Go back to that volume, Dr. Tauber,

4 page 2.

5 A What paragraph?

6 Q C, down at the bottom.

7 A C, yes.

8 Q Are the leases that are referred to in

9 paragraph C the land leases?

10 A Yes, correct.

11 Q And what is the rent specified for the lease

12 of the land in this agreement?

13 A One dollar a year.

14 Q And the length of the lease?

15 A Ninety-nine years.

16 Q Now, was litigation -- did litigation ensue

17 as a result of this letter agreement?

18 A Will you ask again?

19 Q I'm sorry. I'll rephrase the question.

20 A No, no. I did not hear you.

21 Q My question is, was there litigation between

22 Inova and Jefferson Memorial Hospital Joint Venture as

23 a result of this letter agreement?

1 A That's correct.

2 Q Who filed that lawsuit?

3 A Inova.

4 Q And what was the -- what were the issues in

5 that lawsuit that was filed by Inova?

6 A They claimed that they don't have to come up

7 with anything, they don't have to do anything, they

8 just walked away from their obligations.

9 Q Did Inova contest the provision as to the

10 delivery of marketable, insurable title that Jefferson

11 Joint Venture had with respect to the hospital

12 building?

13 A That has nothing to do with the operation.

14 That was only the exchange of property --

15 Q I understand.

16 A -- and the physical plant of the hospital and

17 Cambridge Court. They claimed that we have no previous

18 title to the hospital and, therefore, it is not a

19 marketable title and they cannot do an exchange.

20 Q Now, in addition to that lawsuit, was there a

21 separate lawsuit that was filed at that time by

22 Jefferson Memorial Hospital Joint Venture against

23 Inova?

1 A Yes, it was.

2 Q And was that an anti-trust lawsuit that was

3 filed?

4 A Yes, it was.

5 Q Now, I'd like to now refer you, Dr. Tauber,

6 to the Inova settlement agreement, which is Exhibit R,

7 Your Honor.

8 Dr. Tauber, on the first page of the

9 settlement agreement is there a direct reference in the

10 first whereas clause to the declaratory judgment action

11 that was filed by Inova against Jefferson Memorial

12 Hospital Joint Venture?

13 THE COURT: I can read it, Mr. Bono.

14 MR. BONO: Okay. Thank you.

15 BY MR. BONO:

16 Q Now, Dr. Tauber --

17 A Yes.

18 Q -- I refer you now to paragraph number 1,

19 which specifies monthly payments by Inova to Jefferson

20 Memorial Hospital Joint Venture.

21 A Correct.

22 Q My question is, was that a resolution of the

23 October letter agreement?

1 MR. BETTIUS: I'm going to object, Your
2 Honor. This agreement speaks for itself as to what it
3 resolves and what it doesn't resolve. That's why you
4 enter into a settlement agreement and you integrate it.
5 Any characterization of this document by its
6 terms is totally inappropriate.
7 MR. BONO: Your Honor, it is important to
8 understand that these payments relate to --
9 MR. BETTIUS: Your Honor, I don't think he's
10 responding --
11 MR. BONO: Yes, I am.
12 THE COURT: Go ahead.
13 MR. BONO: -- relate to the rent that was
14 specified in the Cambridge Court lease-back, rather
15 than the Inova lease. The Commonwealth wants to jump
16 over a very significant event in tracing these assets.
17 This settlement agreement is not a settlement of the
18 lease, per se. It is a settlement of the letter
19 agreement pursuant to that litigation.
20 The settlement was a settlement of the lease
21 payments on Cambridge Court. That is a very important
22 fact to understand.
23 I would ask that the Court allow us to

1 clarify that. If the Commonwealth wants to challenge
2 that fact on cross-examination or in any other way, I
3 have no problem with that.
4 But I respectfully submit that I should be
5 entitled to submit this understanding and this fact
6 with respect to the settlement agreement, because
7 they're going to claim it's the Inova rent and it
8 isn't.
9 MR. BETTIUS: Your Honor, what we claim is
10 exactly what this agreement says. It says it's in
11 settlement for the lawsuit. It says it's a fully
12 integrated document. At this point there's nothing to
13 rent.
14 So counsel wants to have considerations that
15 were in a former agreement, which is specifically
16 decreed void here, to be called rent when there's no
17 longer anything to rent, and wants to characterize what
18 this agreement says.
19 It's fully integrated, and that's exactly why
20 you enter into a settlement agreement. The Court can
21 read it. There is nothing to rent. The land's
22 returned, so you can't relate to rent under a former
23 agreement involving the sale and exchange. There is no

1 sale and exchange.

2 Your Honor, any impeachment of this agreement

3 is totally violative of what people do to enter into

4 settlement agreements, and that's to have peace and

5 have their matters resolved within the terms of the

6 agreement.

7 I think the agreement speaks for itself.

8 THE COURT: I think the agreement speaks for

9 itself, Mr. Bono, but I'll let Dr. Tauber testify to

10 what he thought. I don't know how binding that is or

11 even how persuasive it is.

12 MR. BONO: Your Honor, I'm not seeking to

13 impeach this agreement in any way.

14 THE COURT: I understand.

15 MR. BONO: The agreement says that the

16 binding letter agreement is terminated and it says that

17 the Inova lease is terminated. This was a document

18 which settled the binding letter agreement.

19 MR. BETTIUS: In --

20 MR. BONO: Let me finish.

21 There was a contract in existence by which

22 Inova obligated itself to sell the Cambridge Court

23 building to Jefferson Memorial Hospital Joint Venture

1 in exchange for which --

2 THE COURT: I just said I think the agreement

3 speaks for itself. The doctor can testify as to what

4 he thought was being said, Mr. Bono.

5 MR. BETTIUS: Your Honor --

6 THE COURT: I don't know how binding that is.

7 MR. BETTIUS: Well, in that regard at the

8 time this October agreement was signed, Inova was

9 operating the facility with a company --

10 THE COURT: You always want to make

11 objections based on other evidence, Mr. Bettius, and I

12 haven't heard anything about that.

13 MR. BETTIUS: That's my point exactly, Your

14 Honor. If he's going to explain outside, by evidence

15 aliunde, what the parties meant to do and what they

16 meant to realize by terms of this settlement agreement,

17 then we might as well throw settlement agreements out

18 the window.

19 THE COURT: I reiterate my ruling again, in

20 case anybody didn't understand it. I think the

21 agreement speaks for itself, but I'll let Dr. Tauber

22 testify as to what his belief was.

23 MR. BONO: Thank you, Your Honor.

1 BY MR. BONO:

2 Q Dr. Tauber, the monthly payment specified in

3 paragraph 1 of the settlement agreement, were those

4 payments the resolution of the lease monies that were

5 supposed to be obtained on Cambridge Court under the

6 binding letter agreement?

7 A My understanding was it was a settlement of

8 the exchange which was viewed as a lease payment on the

9 Cambridge Court building.

10 Q Now, Dr. Tauber, I'd like to refer you now to

11 paragraph 3 of the settlement agreement.

12 A Which page is that?

13 Q Paragraph 3. It's page 4.

14 A Yes.

15 Q Paragraph 3 specifies a $10 million payment

16 on October 1, 2005.

17 A That's correct.

18 Q What was that payment in resolution of?

19 MR. BETTIUS: May I have a continuing

20 objection?

21 THE COURT: Yes, sir.

22 BY MR. BONO:

23 Q You may answer.

1 A The $10 million payment was a settlement to
2 replace the $20 million purchase price which Jefferson
3 Memorial Hospital Joint Venture was supposed to get in
4 2005.
5 Q That was the option to buy back that we
6 reviewed about ten minutes ago on Attachment A?
7 A Yes.
8 Q Now, was this settlement agreement also in
9 settlement of the federal anti-trust lawsuit that had
10 to be filed?
11 A I understood that.
12 MR. BONO: I just have a couple of wrap-up
13 areas, Your Honor, and then I'll be concluded.
14 BY MR. BONO:
15 Q Dr. Tauber, with respect to the Tauber
16 Foundation, what items were donated to the Tauber
17 Foundation?
18 MR. BETTIUS: By way of foundation, Your
19 Honor, I'd like to know when.
20 MR. BONO: Yes.
21 BY MR. BONO:
22 Q What was donated to the Tauber Foundation and
23 when were those donations made?

1 A The Tauber Foundation received a donation
2 from me personally in 1964, December, or the beginning
3 of '65, and that was 30 percent of the land donated to
4 the Tauber Foundation. The Partnership donated 65
5 percent of the land to Jefferson Memorial Hospital,
6 Inc.
7 Q Dr. Tauber, to make things clear, I want you
8 to address at this point the Tauber Foundation. I will
9 come back to the land. So 30 percent --
10 A The Tauber Foundation, 30 percent was donated
11 by me personally to the Tauber Foundation in the
12 beginning of '65 or the end of '64.
13 Q Now, was there also a donation of shares of
14 stock of Jefferson Memorial Hospital Corporation?
15 A That's correct. It was in 1974 when I
16 donated, I think, 9.22 percent, something like that,
17 stocks which I personally owned to the foundation.
18 Q Now, at the present time what ownership
19 interest does the foundation have in Jefferson Memorial
20 Hospital Joint Venture?
21 A Twenty-five percent of the land and 9.22
22 percent of physical plant.
23 Q When you say 9.22 percent, is that a 9.22

1 percent interest --

2 A Of the Jefferson Memorial Hospital Joint

3 Venture.

4 Q Now, is the Tauber Foundation a 501(c)(3)

5 not-for-profit?

6 A Yes.

7 Q Now, Dr. Tauber, I would like you to

8 address -- since Mr. Bettius has made it an issue at

9 this time -- the land transaction with respect to Dr.

10 Gondor.

11 MR. BETTIUS: Your Honor, I'm going to

12 interpose an objection, and I'd like to be very

13 specific about this.

14 The Court has already ruled that prior to the

15 1970 subdivision that those unrecorded deeds were of no

16 effect, because you said the effect of the '70

17 subdivision was to attempt to reduce the charity's own

18 divided interest. That's a finding.

19 But in addition to that, Your Honor, we're

20 impeaching the deeds of the parties themselves. If you

21 look at the 1970 subdivision, Gondor was a recipient of

22 a substantial part of that property, and participated

23 in that transaction which was based on the on-record

1 conveyances.

2 There is a doctrine called estoppel by deed

3 that prevents Dr. Gondor, Dr. Tauber or anyone else

4 from impeaching their own deeds in a chain of title

5 that's of record. As a creditor we have a right to

6 rely on that.

7 THE COURT: What's the purpose of this, Mr.

8 Bono?

9 MR. BONO: The purpose, Your Honor, is if the

10 Commonwealth is making a claim to the land in this

11 equity proceeding, I believe we are entitled to show

12 that the equitable ownership of the land prior to the

13 subdivision was paid for and there was a contract of

14 sale entered into for that land with Dr. Gondor.

15 THE COURT: I've already ruled on this. I've

16 been through this.

17 MR. O'DONNELL: I represent Dr. Gondor. I

18 read the record fairly carefully. I read your letter

19 opinion and the decree. There's nothing in there

20 that -- with respect to title interest in the property.

21 Mr. Bettius -- if you will give me a moment,

22 Your Honor, that's a very critical issue based on Mr.

23 Bettius' opening argument that the undisputed testimony

1 in the liability phase of this trial resulted in the
2 non-profit having a 65 percent interest as of 1970.
3 The testimony that needs to be presented, and
4 it was probably presented initially in the liability
5 phase, but it needs to be renewed here, goes to the
6 1965 letter agreement between JMHI and Dr. Gondor,
7 under which he paid $150,000 to acquire a 50 percent
8 interest in the land.
9 Now, there's testimony relative to the letter
10 agreement, the actual payment of the consideration by
11 Dr. Gondor, the subsequent deed in 1970 or failure to
12 deliver a deed prior to 1970 that goes to the issue of
13 the actual title interest.
14 Mr. Bettius doesn't want you to hear that,
15 because he doesn't want the Court to focus on the fact
16 that in 1965 the non-profit agreed to sell to Dr.
17 Gondor a 50 percent interest in the land, and Dr.
18 Gondor paid for that.
19 In a worst-case scenario it is a contract for
20 deed. In a best-case scenario it converts Dr. Gondor
21 into an equitable title holder of the underlying real
22 estate. I have to say that I talked with Mr. Bono
23 about the presentation of this evidence. I think it's

1 critical.

2 Although the accountings do not deal with the

3 underlying real property issues, and Mr. Bettius' own

4 brief in support of his accounting says we're going to

5 deal with the real property issues on another day, I'm

6 not sure that if the Court were to determine that those

7 issues were at stake, there doesn't need to be another

8 quiet title action.

9 But for the purposes of his argument that he

10 made in opening here, you've got to take testimony on

11 the underlying interest of the real estate, especially

12 with respect to his representation that the non-profit

13 had a 65 percent ownership interest that he wants to

14 return to the Commonwealth now.

15 The evidence doesn't bear that out, and I

16 think there ought to be some leeway given to be able to

17 present that evidence to the Court.

18 MR. BETTIUS: Your Honor, the Court heard all

19 of this evidence in exhaustive detail. Not only did

20 Your Honor find it, if you look at the Supreme Court

21 ruling in this case, they specifically focus on this

22 issue, and they said that the 1970 subdivision was an

23 attempt to defeat the charity's undivided -- 65 percent

1 undivided interest.

2 You couldn't have a clearer finding. This is

3 a collateral attack not only upon your ruling, Your

4 Honor, but on the prior ruling.

5 The evidence with this -- if you'll give me a

6 moment now, Mr. O'Donnell -- was clear that there was

7 never a deed. In Virginia law -- under Virginia law

8 you cannot convey title to real estate without a deed.

9 This was an agreement, Your Honor. Under that

10 agreement Dr. Gondor has been paid every cent and a lot

11 more for that conveyance of interest.

12 Because if Your Honor will look, he received

13 8 percent return on his money year after year after

14 year. Your Honor specifically ruled that the '70

15 subdivision was an attempt to impeach the undivided 65

16 percent interest, and the Supreme Court said exactly

17 the same.

18 Now they want to say that Your Honor's ruling

19 in this respect and the Supreme Court's affirmance of

20 it has no meaning. We've done a lot of retrying of the

21 first case this morning, Your Honor, but not on

22 concluded issues.

23 THE COURT: I thought this was foreclosed,

1 Mr. O'Donnell.

2 MR. O'DONNELL: Your Honor, I'm looking at

3 page 16A to the appendix to the Petition for Writ to

4 the Supreme Court, which is a portion of your ruling.

5 The paragraph there addresses the fact that there are

6 numerous transactions shown.

7 I'm reading verbatim, some of record, some

8 not dealing with the real estate, the equipment, the

9 leases and the use of tax benefits.

10 You go on to say the transaction showed an

11 entire course of self-dealing by the directors of the

12 charity. They were able to acquire interest in the

13 real estate, the equipment and lease and were able to

14 use tax benefits belonging to the former charity to

15 enhance the gain of the for-profit corporation.

16 Your Honor, there is nothing in here

17 dealing -- I'm sorry. You have a statement down right

18 below that. One example, subdivision of the real

19 estate in 1970, in which JMI had a 65 percent undivided

20 interest, that resulted in the loss of this interest.

21 In its place, JMI obtained a 20 percent interest

22 consisting of the allocated parcel.

23 MR. BETTIUS: Your Honor, that's the ruling

1 we had and now they want to impeach it.

2 MR. O'DONNELL: Your Honor, there's no

3 finding with respect to the quiet title on this

4 property. This wasn't a quiet title action when the

5 Commonwealth brought it. I don't know how the Court

6 can adjudicate title interest in this underlying

7 property without all the parties, without all the

8 parties who have title interest or are asserting

9 interest properly before the Court.

10 I think it's something that ultimately gets

11 referred to a commissioner to adjudicate. In order to

12 address this for the purpose of the accounting with Mr.

13 Bettius arguing that that 65 percent somehow has to be

14 returned and accounted for, then we need to hear

15 testimony about what actually happened.

16 He doesn't want you to hear Dr. Gondor paid

17 $150,000, because the hospital needed operating

18 capital. They had to have it to get up and going. Dr.

19 Gondor agreed to buy 50 percent of the land and give

20 the $150,000.

21 There are two exhibits, Your Honor, in the

22 liability phase that are already admitted, Exhibits 272

23 and 274. Those are the letter agreements between JMHI

1 and Dr. Gondor. Now, I assume they're admitted. I
2 assume that all of the exhibits that I looked at below
3 are already admitted and they're in evidence in this
4 case.
5 This is not new, but I think the Court needs
6 to flesh out the issue of the Gondor transaction so
7 that you can understand what the real equitable and
8 legal interests are between 1965 and 1970. It's
9 critical to my client, Dr. Gondor, but it's also
10 critical to an overall accounting in this issue,
11 because we have various disputes now about what the
12 Inova settlement consisted of, whether it was a
13 settlement of underlying real estate interests or
14 leasehold interests.
15 You need to know who owns this underlying
16 real estate in order to adjudicate the interests before
17 the Court today.
18 MR. BETTIUS: Your Honor, Mr. O'Donnell is
19 new to this case. All of the parties were before the
20 Court, including Dr. Gondor, and he should know that if
21 he's going to make that representation.
22 In addition, all this evidence about a
23 mortgage, and it came -- and the testimony was he was

1 repaid at eight percent, he's gotten all of his money
2 back. In terms of title issues, all of the properties
3 were properly before the Court.
4 The Court resolved issues prior -- up to and
5 including 1975. Mr. Bono elected to rest on his quiet
6 title action, which the Court said we weren't entitled
7 to. All of the parties were before the Court. This is
8 a direct impeachment of the Court' ruling.
9 But more importantly, the Supreme Court said
10 it was exactly the same thing, an attempt to dilute the
11 party's undivided interest in 65 percent of the real
12 estate.
13 Now, how can you read that finding any other
14 way than having concluded this matter. We've
15 relitigated issues all morning that were already
16 litigated, but on this one there's a specific finding.
17 MR. BONO: Your Honor, may I respond briefly?
18 What Mr. Bettius is arguing is precisely why
19 this Court, I would respectfully submit, needs to hear
20 this testimony. He is making a claim that these
21 doctors who are in front of this Court seeking equity
22 somehow snookered by this subdivision 45 percent land
23 interest out of the charity.

1 And although the transaction wasn't all
2 recorded, the prior deeds before, the record is clear
3 that Dr. Gondor had at least -- at the very least a
4 contract to buy that land and he paid the money and he
5 assumed the mortgage payments. That's not in dispute.
6 So when they -- even if there's no deed, Mr.
7 Bettius, at the time when Mr. Richards was hired to do
8 the subdivision, even if you don't say Dr. Gondor had
9 legal title, he certainly had a contract to buy, had
10 paid the purchase price, paid twice the amount of the
11 land purchase price that had been paid originally, and
12 when they did this subdivision, these doctors, pursuant
13 to Mr. Richards' advice and the engineer that was
14 hired, did the subdivision with that in mind and then
15 did a deed which gave Dr. Gondor 50 percent of the land
16 interest.
17 There's no stealing of any interest that
18 wasn't recorded properly. I would respectfully submit
19 to this Court in terms of doing the subdivision you
20 certainly could take into account the contract to buy,
21 even if the deed wasn't done prior. But certainly for
22 an accounting, if the state's now coming in in this
23 equitable proceeding and trying to seek back Dr.

1 Gondor's land and to accuse these doctors of bilking
2 this entity so that they could make their claims for
3 these millions of dollars, we should have the
4 opportunity to explain this transaction so Your Honor
5 could take into account all of the facts and
6 circumstances.
7 This is one small fact that Mr. Bettius
8 doesn't want the Court to hear and I think it's
9 relevant.
10 THE COURT: I'm going to hear the evidence
11 out of an abundance of caution, Mr. Bettius. You can
12 argue that it's a res judicata issue anyway. I'll hear
13 the evidence. We'll put it in the record.
14 MR. BETTIUS: I would also like the record to
15 show in that regard that he joined in a deed that
16 recognized the on-record conveyances.
17 THE COURT: All right. You can cross-examine
18 him about it.
19 MR. BONO: Thank you, Your Honor. I'll be as
20 brief as I can.
21 THE COURT: It is out of an abundance of
22 caution.
23 MR. BETTIUS: I understand, Your Honor.

1 BY MR. BONO:

2 Q Dr. Tauber, prior to the 1970 subdivision,
3 what agreement had been entered into with Dr. Gondor
4 with respect to the land?

5 MR. BETTIUS: Would the Court understand if I
6 don't cross-examine on this issue?

7 THE COURT: I understand. I said you can if
8 you want to.

9 THE WITNESS: Prior to that the Partnership
10 owned the land, and then in December 1964 or the
11 beginning of '65 we decided the Partnership will donate
12 land to Jefferson Memorial Hospital, Inc. and 65
13 percent was donated to Inc. and I donated my share, 30
14 percent, to the Tauber Foundation and Dr. Burtoff had 5
15 percent and decided he doesn't donate to anybody and he
16 keeps it.

17 The next step was that we needed cash toward
18 the capital and then Dr. Gondor made a tremendous
19 sacrifice that he was willing to pay double the price
20 what we paid for the land. That means he paid $147,000
21 and Dr. Gondor, practically overnight, was willing to
22 pay $150,000 for owning 50 percent of the land. Nobody
23 was willing to do it, only Dr. Gondor, and I was very

1 thankful to him to help us.

2 That was the situation that 15 percent left

3 for Jefferson, Inc. in the land. Originally Dr.

4 Burtoff was supposed to donate another 5 percent, but

5 he changed his mind. Then I decided that the Tauber

6 Foundation will donate 5 percent out of their 30

7 percent of the land to Jefferson Memorial Hospital,

8 Inc.

9 This was arranged and then the time came when

10 Mr. Thorpe Richards advised us that he wanted to

11 subdivide the land, exact 50 percent undivided

12 interest, 90 percent undivided interest. He hired a

13 very reputable engineering firm and they came up with

14 an issue, there was not an easy way to handle it. Each

15 subdivided portion has to have street frontage. That

16 is why they decided it -- they take out the assessment

17 and they were guided by Alexandria City, and taking

18 into consideration that they definitely have to have

19 each parcel with street frontage and the division was

20 according to the guidance and information that

21 assessments gave on the taxation of this land.

22 The only thing that I can tell, again Dr.

23 Gondor -- very few people in the world would be willing

1 to pay double the price overnight for property. He did
2 not pay $150,000 in cash, but he paid $88,000 cash and
3 he assumed 50 percent of the mortgage that was
4 $150,000.
5 BY MR. BONO:
6 Q Now, did Dr. Gondor, in 1965, actually pay
7 the $88,000 in cash?
8 A Yes, he paid it.
9 Q When he assumed 50 percent of the mortgage,
10 did he, in fact, make those mortgage payments?
11 A Naturally.
12 Q And so when you did the subdivision in 1970,
13 did you use ownership interest of 20 percent for JMHI,
14 50 percent for Dr. Gondor, 25 percent for the Tauber
15 Foundation and 5 percent for Dr. Burtoff?
16 A That's correct.
17 MR. BONO: Thank you, Your Honor. I have no
18 further questions at this time. I think Mr. Cochran
19 may have a couple.
20 MR. COCHRAN: Your Honor, if I might propose,
21 I've got three questions and perhaps this is an
22 appropriate time for a luncheon break.
23 DIRECT EXAMINATION

1 BY MR. COCHRAN:

2 Q Dr. Tauber, since the hospital closed on

3 December 31, 1982 (sic), have you been able to rent the

4 facility?

5 A To rent it? Just now we've rented for an

6 assisted living one part of the hospital, yes.

7 Q Was all of the construction of the buildings

8 at the Jefferson Memorial Hospital done by Westwood, a

9 corporation that you owned?

10 A Yes.

11 Q And did Westwood charge any profit on the

12 work that it did?

13 A Not a single penny.

14 MR. COCHRAN: I have nothing further, Your

15 Honor.

16 THE COURT: Anyone else?

17 MR. O'DONNELL: Your Honor, if I could secure

18 identification of the exhibits, if I may?

19 (Whereupon, Respondents'

20 Exhibit No. S was marked

21 for identification.)

22 DIRECT EXAMINATION

23 BY MR. O'DONNELL:

1 Q Dr. Tauber, in the white book could you look
2 at Exhibit S, please?
3 A I don't have the white book.
4 Q I'm sorry.
5 MR. BETTIUS: I'm sorry. Which Exhibit?
6 MR. O'DONNELL: Exhibit S.
7 THE WITNESS: S, like Sam?
8 BY MR. O'DONNELL:
9 Q Yes, Doctor. Take a moment and just look at
10 those two documents briefly.
11 MR. BETTIUS: Your Honor, I have no objection
12 to Mr. O'Donnell making a proffer of those exhibits for
13 the record. They're all in evidence anyway.
14 THE COURT: S is in.
15 MR. O'DONNELL: That's fine, Your Honor, so
16 long as the Court will accept the proffer it represents
17 the contract between Dr. Gondor and JMHI with respect
18 to his acquisition of his 50 percent interest in the
19 land.
20 I would point out, Your Honor, what I would
21 have asked Dr. Tauber is the letters are identical,
22 however they're dated December 21, '64 and January 2,
23 '65. The reason, as I understand it, for that is that

1 on December 29, '64 the deed from the Joint Venture to
2 JMHI was executed conveying the 65 percent, so JMHI had
3 to, subsequent to the execution of that deed, enter
4 into the contract, hence the reason for the January 2
5 letter in '65.
6 THE COURT: Does that comport with your
7 understanding, Mr. Bettius?
8 MR. BETTIUS: Yes, Your Honor. They were
9 actually doing the deal before they got the property.
10 THE COURT: All right.
11 MR. O'DONNELL: Thank you, Your Honor.
12 THE COURT: Anything else?
13 MR. O'DONNELL: That's all.
14 THE COURT: We'll take a short recess, Mr.
15 Bettius, before we start cross-examination.
16 MR. BETTIUS: Thank you, Your Honor.
17 THE COURT: Take about ten minutes.
18 (End of partial transcript.)
19 * * * * *

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

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

| | |
|---|---|
| COMMONWEALTH OF VIRGINIA, et al., Complainants, v. LASZLO N. TAUBER, et al., Respondents. | ORIGINAL<br>In Chancery No.: 96-1241<br>PARTIAL TRANSCRIPT<br>VOLUME IV |

Alexandria, Virginia

Friday, February 4, 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:

APPEARANCES:

On Behalf of the Complainants:

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DEBRA FITZGERALD-O'CONNELL, ESQ.
INA C. CHARVET, ESQ.
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1 P R O C E E D I N G S

2 Whereupon,

3 ARTHUR H. COBB

4 was re-called as a witness and, after having been

5 previously duly sworn by the Clerk of the Court, was

6 examined and testified as follows:

7 CROSS-EXAMINATION

8 BY MR. BETTIUS:

9 Q Good morning, Mr. Cobb.

10 A Good morning.

11 Q How are you, sir?

12 A Fine. Thanks.

13 Q Good. Mr. Cobb, would you turn to page 17 of

14 your report?

15 A All right.

16 Q Would it be fair to state the two principles

17 of fiduciary accounting that you set forth are that the

18 fiduciary -- the reports should not be an advocate?

19 A I believe that's true.

20 Q And that he should report transactions as

21 they actually occurred?

22 A As best they're able, yes.

23 Q All right. Now, sir, I was somewhat

1 surprised at your presentation yesterday, because in
2 your report you reported on income to the year 2005.
3 A That's true.
4 Q Yesterday you stopped at 1982. Would you put
5 up the results of your accounting if you went all the
6 way out to the year 2005?
7 A I will.
8 MR. COCHRAN: Your Honor, if the Court
9 please, this is beyond the scope of direct, which
10 stopped at 1982. If he wants to get into this when we
11 do rebuttal, it's appropriate, but it's not now.
12 MR. BETTIUS: Your Honor, I totally disagree.
13 This is the report that's filed as their accounting and
14 I have a right to exercise examination about the
15 accounting that's filed, not the accounting that's
16 presented in court or limitations on the accounting
17 presented in court.
18 This is what he filed as the accounting.
19 THE COURT: I'll overrule the objection.
20 BY MR. BETTIUS:
21 Q Mr. Cobb, will you give those results?
22 A Would it be helpful if I put them on the
23 chart?

1 Q Very much so, sir.

2 A And I'll put them on in green so they're

3 differentiated from the black ones.

4 Q Thank you.

5 A Your Honor, in somewhat similar fashion, but

6 respecting that operations had discontinued, I went

7 forward with a scenario of continuing participation by

8 JMHI in a leasing arrangement, even though there were

9 no sublet provisions. So I carried that forward --

10 Q There were sublet provisions, weren't there,

11 Mr. Cobb, but with consent?

12 A With consent.

13 Q All right, sir.

14 A So I went to September 30th of the year

15 2005 --

16 MS. BEACH: Your Honor, you might want to

17 start a new exhibit since that was marked and I believe

18 typed up last night. I would ask that you start a new

19 page.

20 MR. BETTIUS: I don't care. It's

21 demonstrative. I'd like to have it all on one sheet.

22 THE COURT: Put it on one sheet. We can

23 separate it out, Ms. Beach.

1 THE WITNESS: And I brought that forward, and
2 the proceeds amount and grid changes a little bit, at 9
3 percent and 13.5 percent. At 9 percent the proceeds,
4 $13,494,087 and that's different than the report and
5 the adjustments that were made after conferring with
6 Mr. Wilson --
7 MR. BETTIUS: Certainly, sir.
8 THE WITNESS: -- and ironing out issues.
9 That amount comes forward to -- it comes both forward
10 and backward -- to $8,250,672. I'll explain how it can
11 be lower in a minute. At 13.5 percent the proceeds are
12 $30,073,000 and present value of that is $14,954,571.
13 Each of those amounts have been subject to
14 taxes.
15 BY MR. BETTIUS:
16 Q Now, Mr. Cobb, as I understand it, you're
17 making the assumption that when a check's written to
18 the Commonwealth to distribute these funds in
19 accordance -- do you understand the nature of the
20 proceeding we're in and what's going to happen to this
21 money when we get it?
22 A I have an understanding. I don't know that
23 it's --

1 Q Tell me what you think's going to happen.

2 A I think the Judge will make a finding as to

3 his various determinations, issue by issue, and will

4 identify an amount that he believes or considers from

5 the information available to be reflective of the value

6 of JMHI and then to make determinations of that value,

7 depending on the time period and a current time frame.

8 I imagine there would be some sort of direction that

9 that money be conveyed -- it can't be conveyed to JMHI,

10 it doesn't exist -- be conveyed to a charity or a

11 charitable purpose or perhaps to the Commonwealth.

12 Q And it has to be a purpose that's similar to

13 that of the original charity; is that correct?

14 A I would -- understand if it tied back in to

15 the charity's original purpose. That's in my first

16 report where I went to the -- I don't remember the

17 exact document, but in my report, at any rate, on

18 several lines it walks through the purpose that JMHI

19 had.

20 Q And that was to benefit the citizens of

21 Alexandria, Arlington that used the hospital. That was

22 the class of beneficiaries, the public; is that

23 correct?

1 A Let me find it.

2 MR. BONO: Objection, Your Honor. The

3 charter of JMHI speaks for itself.

4 THE COURT: All right.

5 BY MR. BETTIUS:

6 Q Now, if this money is going to be directed by

7 the Court or the Court accepts the plan of

8 distribution, why are you tax-affecting these proceeds?

9 They're going to charity.

10 A What I'm looking at is to say if JMHI had

11 continued, that the 1971 transaction had not taken

12 place, what would JMHI have looked like. JMHI

13 continuing operations as long as it, in effect, did

14 through JMHC and with other support, was a taxable

15 entity, and JMHI paid taxes.

16 So in my consideration I'm going back in time

17 and putting together a portrayal of JMHI, had it

18 continued its corporate existence, its operating

19 existence after 1971.

20 Q But these checks are going to be written

21 today, because we have been, in effect, an involuntary

22 investor in your profit-making enterprise, haven't we?

23 Isn't that exactly what we've been? If you want to

1 look at the essence of what you've done, the value of
2 our assets has been invested without our consent in the
3 continuation of your for-profit enterprise; isn't that
4 correct?
5 MR. COCHRAN: Your Honor, he's very much, I
6 think, calling for a legal conclusion and the decision
7 that this Court will have to make, not Mr. Cobb.
8 THE COURT: If it has to do with the tax
9 ramifications I suppose he can answer that if he knows.
10 BY MR. BETTIUS:
11 Q Well, let me ask you this. Suppose the Court
12 decides you write us a check today, and that's what
13 you'd be doing for these amounts; is that correct?
14 A You could summarize it as that.
15 Q I want you to put up the amount the check
16 would be for without this tax effect.
17 A I don't have that from the updated numbers,
18 but I can give you approximations if you'd like.
19 Q Are you telling me you can't give me an
20 accounting? Approximations?
21 A You had asked in my deposition if I would
22 calculate the amounts without the tax effect --
23 Q Yes, sir.

1 A -- and I did. But then, when we made the
2 adjustments, when the parties decided to minimize the
3 issues between '72 and '82, that changes the numbers
4 rolling all the way forward, and I haven't had time to
5 reflect the changes rolling all the way forward, but
6 the differences aren't great. So I can show you the
7 general --
8 Q They're at least 25 percent, aren't they?
9 A I can give you the approximations. I haven't
10 thought about it.
11 Q Well, give me some approximations and perhaps
12 we can --
13 A All right. Let me gather my thoughts for a
14 minute. I used the 1982 numbers. The 1982 numbers
15 would indicate without taxes that the $13 million
16 number would go up by, say, about 40 percent -- by
17 about 40 percent.
18 The 2005 numbers would go up by about 50
19 percent. Those are just rough.
20 Q Sir, what about the -- didn't you use other
21 dates? Did you use a '92 date?
22 A Yes, I did.
23 Q What would that number be?

1 A I'll put it on. These are the 1992 amounts,
2 December 31, 1992. Under the 13.5 percent scenario,
3 the proceeds would be -- let me reverse it. Under the
4 9 percent and then the 13.5 percent.
5 Under the 9 percent the proceeds would be
6 $5,291,000, and the present value would be $7,742,000
7 -- I'm sorry -- $7,748,000. Under the 13.5 percent
8 scenario the proceeds would be $7,819,000, and the
9 present value would be $14,501,000.
10 Q And we'd have to then -- we'd have to remove
11 the tax effects, wouldn't we?
12 A I don't think you'd have to. You could.
13 Q You could?
14 A Sure.
15 Q And that would add what, 50 percent?
16 A Let me look. A little under 50 percent,
17 approximately.
18 Q Now, when this money is disbursed to us, it
19 will be expensed to the profit -- to the taxpaying
20 organization, won't it? They'll take it as an expense;
21 is that correct?
22 A No.
23 Q They won't?

1 A It's a distribution.

2 Q That's right. The distribution will be an

3 expense, won't it?

4 A Well, not in a revenue and expense sort of

5 world, no.

6 Q But it will be expensed by them. They won't

7 pay taxes on it, they will expense it, won't they?

8 A It's a deduction. They wouldn't pay taxes on

9 it.

10 Q All right. Your assumption is that because

11 you were a taxpayer and we're the state and we're going

12 to give it to charity, we're going to be taxed. Is

13 that your assumption?

14 A Absolutely not.

15 Q Well then, how does it get taxed if you're

16 expensing it and giving it to us? It's been taxed all

17 along, hasn't it? Every year as this income's been

18 earned, it's already been taxed, hasn't it?

19 A First, I'm not looking -- I don't know what

20 the specific monies have done. What I've put together

21 is if JMHI had continued in operations to 1973, and

22 then alternatively to 1982. At the end of 1982, JMHI,

23 JMHC, JMHA, JMHJV no longer operated Jefferson

1 Hospital, but rather there was a leasing arrangement
2 with HGV.
3 If JMHI had been able to somehow bargain
4 through the provisions of the lease and participated in
5 the continuing lease rental amounts not only from HGV
6 but from Inova and then later continue to participate
7 in the payments from Inova under the letter agreement
8 and the settlement agreement, if JMHI had been able to
9 do that, JMHI would have continued as a tax -- and JMHI
10 would have continued as a taxpaying entity.
11 Taxes would have gone out year to year to
12 year to year, except as I've invested money other than
13 investing it in the hospital, I've assumed that the
14 investment in bonds, in stocks and the depreciation,
15 including dividends, would not be taxed until the final
16 year or time period and, therefore, would be subject to
17 capital gains.
18 Therefore, that after-tax amount, which is
19 what I reflected here, is an amount that would be --
20 would have been available to have been paid out to
21 another charity or, if JMHI was still there, to stay in
22 that charity, or to be paid out to the Commonwealth or
23 wherever the monies would go.

1 Q Well, the truth of the issue is, what you're
2 now doing is accounting for what should have been done
3 a long time ago, isn't that correct, liquidate? Is
4 that correct?
5 A Not necessarily should have been, but could
6 have been.
7 Q The law required when they went out of
8 business they had to liquidate, didn't they?
9 A That's how I read it.
10 Q And they didn't obey the law and now you're
11 accounting for the use of the charity's assets in an
12 entrepreneurial enterprise; isn't that what you're
13 doing in this accounting?
14 A I don't really follow your question.
15 MR. BETTIUS: I think the Court -- I'll leave
16 that issue to the Court.
17 BY MR. BETTIUS:
18 Q You said you haven't changed any major
19 conclusions since your first presentation?
20 A Yes.
21 Q Didn't you testify in the first case that the
22 charity's liabilities exceeded its assets in '73?
23 A Yes.

1 Q Do you want to change that position today?

2 A No.

3 Q Didn't you just say yesterday that there's

4 over $200,000 of positive assets on the books?

5 A On the books, that's true. I think that if

6 those assets were to have been liquidated, though, that

7 the net realized amount would have been consumed by the

8 liabilities.

9 Q Let's get to the heart of your analysis. The

10 Court didn't tell you to account for the net assets,

11 did it?

12 A That's true.

13 Q The Court told you to account for the

14 totality of assets, didn't it?

15 MR. BONO: Objection, Your Honor. I don't

16 believe the Court has told Mr. Cobb to do anything.

17 MR. BETTIUS: The Court told the Respondents

18 to --

19 THE COURT: Rephrase it. The Court order, is

20 that what you're talking about?

21 MR. BETTIUS: Yes, sir.

22 BY MR. BETTIUS:

23 Q It said to account for the assets, didn't it?

1 A As I understood it, it was to account for the
2 assets.
3 Q What do accretions mean? What's the word
4 accretions mean?
5 A It means that there's an increase over time
6 in value.
7 Q All right. Now, that doesn't mean to presume
8 that there's a liquidation and they're going to be
9 sold, does it? Let's look at these assets and see how
10 they grew; is that correct?
11 A Accretion means that?
12 Q Accretion, yes. It's additions, isn't it?
13 A Accretions is typically additions.
14 Q All right. Now, the Respondents did not use
15 the net assets, did they? They used the totality of
16 the assets?
17 A That's true.
18 Q Now, if there had been a liquidation and
19 these assets were all sold off and they weren't sold
20 off except at this liquidation value, the Respondents,
21 if they wanted to continue, would have had to go out
22 and buy all new assets, forget nets. I'm talking about
23 what the Respondents got.

1 If these were liquidated, they've got to go
2 out and buy all new assets, don't they, and create all
3 new assets?
4 A That's true.
5 Q So they got the benefit of the totality of
6 the assets, didn't they?
7 A They got the benefit of all of the assets and
8 a continuing basis of assets.
9 Q Right. Now, let's look at your analysis in
10 terms of what really happened.
11 A All right.
12 Q There was no liquidation, was there?
13 A I don't believe that there was a liquidation
14 in terms of the operations of Jefferson --
15 Q As I go right --
16 A -- in 1973.
17 Q As I go right to the heart of your analysis,
18 what really happened, as I understand it, you state
19 very candidly, Mr. Cobb, that the assets that were in
20 the charity were used moving forward; is that correct?
21 A They were.
22 Q And they rolled and they increased or they
23 decreased and they were just used on and on, weren't

1 they?

2 A At some time the original assets were used

3 up, but the replacement assets --

4 Q The accretions?

5 A I wouldn't call them accretions.

6 Q What are they?

7 A The asset base that was there was used, to my

8 knowledge, continuously until the end of 1992.

9 Q They're still in use by the Respondents

10 today, aren't they? We haven't gotten them.

11 A The hospital operations aren't being used.

12 There are not hospital operations.

13 Q Well, I'd like to, so that we can apportion

14 the economic realities to what actually happened, can

15 you trace -- you can't trace anything but one

16 additional capital contribution of these Respondents to

17 that rolling, ongoing concern, can you? There's only

18 one capital contribution in your report; is that

19 correct?

20 A There's only one formal capital contribution,

21 yes.

22 Q Now, don't tell me about formal capital

23 contributions. You only report one capital

1 contribution, don't you?

2 A I only report one formal capital

3 contribution.

4 Q All right. What's the difference between

5 formal and informal?

6 A The physician group contributed time, with

7 little to no compensation, in support of the hospital.

8 Q Well, they also had their private practices

9 there. Have you ever served on a board of directors?

10 A I have.

11 Q You spend a lot of time you don't get

12 compensated for, don't you?

13 A I do.

14 Q I'm going to tell you, you've worked around

15 hospitals and communities and those directors spend a

16 lot of time, don't they, and they give it willingly,

17 don't they?

18 A The better directors do, yes.

19 Q Yes. And let me ask you this. We have to

20 deal with the parties' reasonable expectations. Didn't

21 the parties clearly state at the beginning that all

22 they ever expected to get out of this thing is the

23 rent? They didn't want to profit from operations of

1 the hospital?

2 A That's my understanding.

3 Q So they don't consider that capital, they

4 consider that a privilege, don't they, to go out and

5 really work in a community and build a hospital?

6 A You'd have to ask them.

7 Q All right. In any event, if we look going

8 forward, then, we have one continuous ongoing concern

9 with one formal capital contribution; is that correct?

10 A Yes.

11 Q And it's repaid within two years?

12 A I think that's right.

13 Q And it's very interesting, and I think this

14 is a crucial point, it's repaid and the Respondents

15 receive back 50 percent more than they put in; is that

16 correct?

17 A I don't think that's necessarily correct.

18 Q Did they get $6 for $4?

19 A That's not how I look at it.

20 Q Did they get $6 for $4?

21 A I don't think so.

22 MS. BEACH: Asked and answered, Your Honor.

23 THE COURT: He said that's not how he viewed

1 it.

2 BY MR. BETTIUS:

3 Q Were $6 bonds issued for $4 stock issues?

4 A Six dollar face bonds were issued for four

5 dollar face stocks.

6 Q And you say that's not private inurement?

7 A I didn't say that.

8 Q I thought yesterday you told Mr. Bono that if

9 they had gone out and borrowed this money, they made a

10 great deal, so that's not private inurement. Do you

11 want to change that testimony?

12 A I don't want to change my testimony.

13 Q Well then, let me ask you this. Did you read

14 the decision of the IRS as to what private inurement

15 is?

16 A There have been a number of IRS decisions on

17 private inurement.

18 Q Well, one is right on this very point, isn't

19 it, Mr. Cobb?

20 It says when you exchange 6 percent -- when

21 you've got 6 percent money and you lend it at 8, that's

22 private inurement. That's exactly what the IRS said;

23 isn't it?

1 A Just that straightforward example, yes.

2 Q Now, inurement doesn't mean whether you think

3 it's a good transaction or a bad transaction, inurement

4 in the sense of charitable hospitals is you aren't

5 supposed to use their assets at all; isn't that

6 correct? You're not supposed to use the revenue at

7 all?

8 A Not for your own personal benefit.

9 Q Okay. Not for your own use. Inure means to

10 use, doesn't it?

11 A I think it does.

12 Q And good things can be inured and bad things

13 can be inured; isn't that right?

14 A That's certainly true.

15 Q All right. So it means don't use it?

16 A Pardon me?

17 Q It's don't use it; isn't that correct? Don't

18 use the revenue of the corporation of the charitable

19 corporation?

20 A No, it means -- as I understand inurement,

21 Mr. Bettius, it means that the individuals are not

22 supposed to derive personal benefit from the 501(c)(3).

23 Q You don't take it to mean don't take any of

1 the revenue, whether you consider that to be a good
2 loan or a bad one? The IRS says if you took any of
3 that money -- if you borrowed it at 6 and you got 8
4 back, whether that was a great transaction or a bad
5 transaction for the charity, that's private inurement;
6 is that right?
7 A Not necessarily.
8 Q Well, I want you to look at the situation
9 that existed for private inurement. The hospital was
10 just starting; is that correct?
11 A That's my understanding. It started up in
12 1965-'66.
13 Q It was in a lot better shape in '72 than it
14 was as a going concern when it just started up, wasn't
15 it?
16 A Sure.
17 Q So if it had no assets and it was a brand new
18 corporation, probably the Respondents going out -- if
19 you want to look at it from a benefit point of view,
20 borrowing the money at 6 percent, they could borrow
21 money anywhere, couldn't they, the Respondents -- I
22 mean, the charitable corporation? It didn't have
23 anything, did it?

1 A The charitable corporation did not indicate
2 creditworthiness in that time period.
3 Q But the Internal Revenue looked at that
4 transaction and said you took revenue, and under those
5 circumstances in 1971 or '72 when they revoked, they
6 said that transaction's private inurement; isn't that
7 right?
8 A I haven't looked at that in a long, long
9 time. I think that their indications were that there
10 was private inurement. I don't tie that to the taking
11 of the hospital's revenue.
12 Q Let's examine, Mr. Cobb, your statement that
13 there was no enterprise after 1982. Who was the lessor
14 in the '82 lease
15 A As I understand the lessor, it was JMHC.
16 Q And the only enterprise that was conducted by
17 anybody with respect to the hospital was the lease,
18 wasn't it? Respondents didn't have an enterprise
19 either?
20 A I don't follow your question.
21 Q What enterprise did Respondents have? They
22 were doing the same thing the charity was, collecting
23 rent, isn't that correct, from '82 forward?

1 A JMHC was collecting rent from '82 forward.

2 Q And who was the lessee under the '85 lease?

3 A I think it was Fairfax Hospital Association.

4 Q Who was the lessor?

5 A The lessor, I think, was JMHC.

6 Q So JMHC continued the enterprise; isn't that

7 correct?

8 A JMHC continued as an owner of real property

9 that it leased, but it did not operate -- it did not

10 conduct hospital operations.

11 Q Whatever enterprise was there, Mr. Cobb,

12 conducted by the Respondents or conducted by the JV was

13 exactly the same; wasn't it? There wasn't any

14 difference in what they were doing and any difference

15 in what the charitable assets were doing?

16 A Sure there was.

17 Q What was the difference?

18 A The difference was there was not a Jefferson

19 enterprise that was operating the hospital.

20 Q There wasn't a Respondents -- I'm sorry.

21 Finish.

22 A JMHI's function had been to operate the

23 hospital.

1 Q There wasn't a Respondent entity operating
2 the hospital either, was there?
3 A In what time period?
4 Q After '82.
5 A There was not a Respondent entity operating
6 the hospital after '82.
7 Q And who owned the assets that were
8 transferred -- the operating assets that were
9 transferred?
10 A When?
11 Q In '82.
12 A In '82 the operating assets are recorded as
13 being owned by JMHC.
14 Q Which is the continuous operation with one
15 capital contribution of JMHI; isn't it?
16 A After 1971.
17 Q Right. Now, you say, as I understand it,
18 that if we look at 1982, the charity had no bargaining
19 position; is that right?
20 A It had very little bargaining position.
21 Q Let's suppose I show up and I'm a young
22 lawyer, it's 1982 and I want to represent the
23 charitable interest.

1 A All right.

2 Q And I say to Dr. Tauber, Dr. Tauber, call HGV

3 up and tell them cancel the deal. You're not using my

4 license and I'm not selling the intangible assets, and

5 oh, by the way, here's a partition suit, get off my

6 two-thirds interest in the land; who's got the

7 bargaining position?

8 A Well, that's something that needs to be

9 sorted out amongst the players.

10 Q Needs to be sorted out? What happened is

11 that nobody bargained for the charity; isn't that

12 correct?

13 A I'm not aware of anybody bargaining on behalf

14 of JMHI at that juncture.

15 Q And isn't it true that's why anytime a

16 trustee deals with himself in connection with a trust

17 asset it is void at the election of the beneficiary

18 without any proof of injury? Are you aware of a rule

19 such as that?

20 A No.

21 Q Well, if that's the rule, there's a problem

22 with your analysis of no bargaining position --

23 MR. HIRSCHKOP: Your Honor, I'm going to

1 object. That is not the legal rule. That's not the
2 rule. Community-based hospitals do have directors that
3 have leasehold directors (sic). It's not the rule.
4 MR. BETTIUS: Roland versus Cable.
5 THE COURT: How about the ruling in this
6 case?
7 MR. BETTIUS: That's exactly right. I think
8 it --
9 THE COURT: I thought that's what I had
10 ruled. I could be wrong.
11 MR. HIRSCHKOP: Your Honor, it is not what
12 you ruled in this case. I read that very carefully.
13 MR. BETTIUS: I'll withdraw the question,
14 Your Honor. Let's move on.
15 THE COURT: All right.
16 BY MR. BETTIUS:
17 Q In 1973, if, indeed, there was no license
18 because the charity went out of business, what happened
19 to the Respondents? What happened to their interest?
20 A As I would understand it, Mr. Bettius, there
21 would be no hospital operations. There would be
22 standing the facilities that existed in 1973 at 4600
23 King Street. After a passage of time, as I recall six

1 months, a license would lapse without operations.
2 There can't be operations without a license, so there
3 would be land and buildings sitting there.
4 There would need to be some undertaking to
5 find an alternative use or to find a new method of
6 operation.
7 Q And there wouldn't have been any lease in
8 1982 and there wouldn't have been any lease in 1994
9 (sic); isn't that correct?
10 A Not necessarily.
11 Q You just said that they could do something;
12 is that correct?
13 A I don't know. That would be speculation.
14 You need to make a consideration of whether a party
15 would come in, whether a party would be able to obtain
16 a license.
17 Q Now -- excuse me. I'm sorry. I didn't mean
18 to interrupt.
19 A So there are alternatives.
20 Q We don't know that any of that could have
21 happened; is that correct?
22 A Not as a point of fact.
23 Q Now, is it not true that you have treated

1 every lease amendment after 1973 as an amendment to the
2 '66 lease? Is that fair?
3 A Not necessarily.
4 Q Well, let's look at the 1975 lease. That's
5 inconsistent with the '66 lease; isn't it?
6 A There are inconsistencies.
7 Q Well, one is the term's shortened from a
8 potential 99 years to 20 years; isn't that correct?
9 A That's my recollection.
10 Q Another one of the differences is that the
11 Respondents can cancel it on six months' notice; isn't
12 that correct?
13 A I haven't looked at it in a while, but I
14 think that's right.
15 Q And another consideration is they get a 12
16 percent kicker on any improvements; isn't that correct?
17 A I think I heard that in the last two days.
18 Q Have you read the document?
19 A Not in a while.
20 Q When you opined in your accounting, Mr. Cobb,
21 you hadn't even read it, had you? No one had ever
22 given you the amendment to the 1982 lease?
23 A That's true.

1 Q So the opinions that you state relative to
2 the 1982 lease had to be what somebody told you; is
3 that correct?
4 A I didn't state opinions specific to the 1982
5 lease.
6 Q Well, you hadn't seen the '82 amendment, but
7 you recited the considerations for it, didn't you?
8 A I did.
9 Q And you had no basis to recite those
10 considerations based on a reading of the document?
11 A I didn't read the document.
12 Q Have you gone back and read the document?
13 A I have.
14 Q Do you want to amend what you said about it?
15 A No.
16 Q Does it say anywhere in that document that
17 JMHJV is going to build any additional improvements?
18 A I don't believe that it says that in the
19 lease.
20 Q Well then, you have to amend that particular
21 thing, wouldn't you?
22 A Certainly not.
23 Q You wouldn't?

1 A No.

2 Q Did you hear the evidence that the

3 discussions about building and improvement occurred six

4 months later and that they were going to be conducted

5 as a financier?

6 A I heard various questions and answers. I

7 also had the financial statement, the same financial

8 statement Mr. Wilson used, that included in one of the

9 footnotes a discussion of the requirements consistent

10 with around -- the 1982 lease for construction and

11 physician support. I can find that if you'd like.

12 Q I understand. But that report's purportedly

13 what the lease says, doesn't it?

14 A No.

15 Q Where does this information of a legal

16 commitment between the parties come from if it doesn't

17 come from the lease itself?

18 A There came be many agreements between parties

19 that aren't in the lease.

20 Q Has anyone produced one for you?

21 A A legal agreement?

22 Q An agreement to build additional facilities?

23 A I've not seen such a formal legal agreement.

1 Q If you had read the record -- I want to ask
2 you this question. Did you gather from the Court's
3 opinion that we were dealing here with closely related
4 parties?
5 A Certainly.
6 Q Did you get a clear impression from the
7 opinion that one of the parties had breached fiduciary
8 relationships to the other party in closely related
9 transactions?
10 A Certainly.
11 Q Did you feel under those circumstances it was
12 necessary to view the transactions between the parties
13 with some scrutiny?
14 A Yes.
15 Q Did you read all the surrounding documents,
16 board minutes and documents that pertained to all of
17 these amendments at the time they were made?
18 A No.
19 Q And isn't that why you had to adjust your
20 numbers?
21 A No.
22 Q It's not?
23 A No.

1 Q Didn't you carry on your balance sheet
2 $280,000 for equipment leased?
3 A Yes.
4 Q If you had read the documents surrounding
5 that you would have understood that that lease never
6 existed; isn't that correct?
7 A It did exist, but it didn't exist as
8 something that was economically correct.
9 Q But there was plenty of correspondence that
10 indicated why that wasn't true; isn't that right?
11 A I don't know. There may have been.
12 Q Wasn't there a plethora of correspondence and
13 documents and board minutes that described the
14 conversion, the conversion of stock to bonds in the
15 sale and lease-back?
16 A I don't know how many a plethora is. There
17 certainly are documents.
18 Q You didn't see any of those, did you?
19 A That's true.
20 Q So you didn't report correctly what occurred
21 with respect to the sale and lease-back in 1975, did
22 you?
23 A I initially did not.

1 Q And you didn't until two days ago, is that
2 correct, when you were shown the documents?
3 A No, that's true -- that's not true.
4 Q Well, did you ever amend your report prior to
5 putting -- aren't these numbers that are up here a
6 direct result of you finding that you hadn't seen or
7 hadn't examined or hadn't been furnished -- and I'm not
8 saying this is your fault, Mr. Cobb -- you hadn't been
9 furnished documents that allowed you to make these
10 decisions, had you?
11 A That's a compound question. To the last
12 question, yes, that's true. I hadn't been furnished
13 with documents that fully described that transaction.
14 Q Your accounting is only as good as what the
15 Respondents gave you; isn't it?
16 A I think to some extent that's true.
17 Q And I want you to know, Mr. Cobb, I'm not
18 directing anything at your personally. I'm directing
19 it at the information you had. No one gave you a copy
20 of the '82 lease amendment, did they?
21 A That's true.
22 Q No one gave you the necessary documents to
23 accurately understand operations of the hospital

1 between 1973 and '75, did they?

2 A I don't think that's true.

3 Q Well, do you find any indication at all that

4 any of the actions taken between 1973 -- and you know

5 they exhausted the net operating losses at about that

6 time; is that correct?

7 A That's true.

8 Q Did you find any discussion in the period of

9 time when the net operating losses were exhausted until

10 the sale and lease-back that indicated that the

11 Respondents were acting out of anything but a desire

12 for return on what they considered an investment?

13 A Yes.

14 Q What documents were those?

15 A I don't know. You said anything. There are

16 indications, including in the documents, of continued

17 support by the physicians. For example, the physicians

18 acting in the role of administrators, such as Dr.

19 Friedman --

20 Q He acted as president, didn't he?

21 MS. BEACH: Your Honor, I'm going to

22 object --

23 MR. BETTIUS: Excuse me. I apologize.

1 THE WITNESS: From 1972 to 1982, and there
2 are two or three years that are missing, there was only
3 one year in which the physicians were compensated in
4 that regard, and total compensation, as I recall, was
5 about $12,000. So there was continuing support of the
6 physicians, as I considered the material two years ago.
7 More recently, what I saw was a physician group that
8 established a hospital with care and concern for the
9 community and to establish and support their individual
10 practices.
11 BY MR. BETTIUS:
12 Q Did you read the --
13 MS. BEACH: Your Honor, I'm going to object
14 again. Mr. Cobb was still speaking.
15 BY MR. BETTIUS:
16 Q Were you finished, Mr. Cobb?
17 A I wasn't.
18 THE COURT: Go ahead, Mr. Cobb. You weren't
19 finished?
20 THE WITNESS: I wasn't.
21 MR. BETTIUS: Keep going. I'm sorry.
22 THE COURT: Go ahead.
23 THE WITNESS: They established a hospital to

1 care for citizens and to support their own practices,
2 and in order to establish that, undertook to have real
3 estate ownership as well. The real estate ownership
4 side of it, as I've looked at it, was operated for
5 economic benefit of the individuals.
6 I don't find that the hospital operations
7 side of it was operated for the economic benefit of the
8 individuals. It was, rather, operated for the benefit
9 of the hospital and its patients.
10 BY MR. BETTIUS:
11 Q Did you read this Court's opinion and the
12 Supreme Court's opinion?
13 A I did.
14 Q The record is replete with discussions among
15 the Respondents where they look to their own private
16 benefit, and I'm paraphrasing, to the extent they
17 obliterated the charitable mission.
18 Did you read that part of it?
19 A I did.
20 Q Now, as I understand it, if we're going to
21 report what actually happened, the assets of the
22 charity continued as a going concern, is that correct,
23 with this one capital contribution?

1 A Until 1982.

2 Q And in 1982 the hospital was sold -- not

3 sold, leased, put under an operating agreement as a

4 going concern?

5 A Yes, it was.

6 Q Do you have any indication, based on your

7 understanding of the conversation, that this

8 transaction would have occurred at all, but for the

9 transfer as a going concern?

10 A I suspect that it would not have.

11 Q Absolutely.

12 A I suspect that HGV wouldn't have entered into

13 the transaction if they were not able to continue the

14 operations of the hospital.

15 Q So if anyone were exercising, again, a

16 bargaining position of the charity, they're going to be

17 in there, this belongs to me, it's not going to happen.

18 In addition to that, that's not the only conclusion

19 that we can come to, is it?

20 A Can I interrupt you? I lost track of your

21 question.

22 Q I'm sorry. Let me see if I can put you back

23 on another line. Is it your opinion that the hospital

1 was now unable to compete? It was, in effect, obsolete
2 or its obsolescence was growing, and as an ongoing
3 concern really had no value or little value; is that
4 correct?
5 A Yes.
6 Q Well then, apart from the license and ongoing
7 operations, you've got to look for other reasons for
8 someone to pay $1 million a year for an obsolete plant,
9 don't you?
10 A Yes.
11 Q And if we look at that lease, we know exactly
12 what they were paying for the mortgage and real estate
13 obligations, don't we -- $240,000?
14 A I don't remember the specific amount.
15 Q Why isn't all the rest of that, if it's above
16 the value of an obsolete facility, totally trial and
17 error?
18 A First, HGV apparently didn't see it as an
19 obsolete hospital.
20 Q The next -- excuse me. I'm sorry. I'm
21 sorry.
22 A Or if they saw it as an obsolete hospital,
23 they saw it as an opportunity to become established in

1 Northern Virginia and perhaps move facilities at a
2 later date.
3 Q You're valuation expert. You've been
4 qualified; is that correct?
5 A Yes.
6 Q Is this not a transaction involving the
7 subject?
8 A It is.
9 Q It can't be disregarded, can it?
10 A I don't think you can disregard it.
11 Q You don't think so?
12 A Yeah. It's an important thing to consider.
13 Q Tell me what your definition as valuation
14 expert of fair market value is.
15 A Fair market value is an amount between a
16 willing buyer and a willing seller, each with
17 reasonable knowledge of the relevant facts and neither
18 acting under compulsion.
19 Q So we don't really care what HGV's motive
20 was. The fair market value was of the accumulated
21 assets; isn't that right?
22 A HGV was looking at the accumulated assets,
23 including the assets of JMHA, and building additions

1 thereafter, and looking at the assets of JMHI, which
2 were the operations.
3 Q At best we can come to only one conclusion,
4 can't we, that it was a commingled opportunity that was
5 being sold; is that correct?
6 A I wouldn't use the word commingled. What I
7 understand HGV was buying was hospital operations, and
8 through the lease was acquiring the full access to the
9 facilities. They were looking at buying an operating
10 facility.
11 Q If the Court takes a view of commingling that
12 it can be more than just cash, it can be business
13 opportunities or business assets, then this is patent
14 commingling; isn't it?
15 A Yes. I think HGV was buying all that was
16 there.
17 Q In terms of commingling, if a trustee
18 commingles, in this accounting, what assumption did you
19 make about the obligation to trace?
20 A What I did was I traced it.
21 Q What assumption did you make -- maybe that's
22 the answer to the question. I'm sorry. I don't mean
23 to be rude.

1 A That's all right.

2 Q I want to know if you -- not what you did,

3 what's your understanding of whose obligation, if we

4 bundle things together, it is to sort them out? Is it

5 the beneficiaries' obligation or the trustees'

6 obligation?

7 A I understand that if there's a termination,

8 that there has been commingling, bundling, whatever the

9 word, it's the responsibility, at least in the first

10 instance, of the trustees to sort it out as opposed to

11 the beneficiaries.

12 Q Now, you're under oath and you're giving an

13 accounting; is that true?

14 A Yes.

15 Q Tell the Court how you're going to make that

16 separation with respect to the lease. You can't, can

17 you, Mr. Cobb?

18 A Well, I think you can. I went back to 1971.

19 I identified the assets of JMHI, what's been referred

20 to as the charity, and I constructed out of the

21 financial information available hospital operations

22 through 1982.

23 At 1982 there was a lease to HGV. So I first

1 paid attention to the '66 lease which precluded
2 subletting without agreement. The lease also had on
3 the same page, I kind of think it's page 8, it might be
4 page 6, a provision that requires that there be
5 continuation of operations of the hospital center.
6 By 1982 the operations of the hospital center
7 were increasingly difficult. So upon the HGV lease I
8 made considerations of what the old JMHI may have
9 looked like in terms of negotiating a continuing
10 participation in the HGV lease.
11 I also made considerations, as I think you
12 have indicated in your opening the first day, that JMHI
13 didn't have claims to the building. There were some
14 claims to at least some of the land. By the time HGV
15 came about, the building had been expanded, actually
16 several times.
17 So I made considerations of the portion of
18 the buildings that had existed at the time of the 1966
19 lease. So I looked at continuing participation coming
20 through the sublet limitation, continuing participation
21 coming through the operating difficulties and
22 continuing participation considering that the '66 lease
23 and the '68 lease covered different and less physical

1 property than did the HGV lease.

2 So I looked at bringing out a portion that

3 would be attributable only to the JMHI hospital

4 operations.

5 Q Now, Mr. Cobb, we have perfect focus. There

6 was no old JMHI?

7 A After 1973 there was no --

8 Q JMHC -- excuse me.

9 MR. BONO: Your Honor.

10 THE COURT: I'll take care of it.

11 BY MR. BETTIUS:

12 Q JMHC, in fact -- JMHI just continued to

13 function as a going enterprise, not using net assets,

14 with the exception of one capital contribution; isn't

15 that correct?

16 A No. JMHI discontinued, in effect, July 1 of

17 1971 and then from a legalistic point of view at least,

18 didn't exist after April 18, 1973.

19 MS. BEACH: Your Honor, I can't even hear his

20 answers.

21 THE COURT: His voice tends to trail off a

22 little bit at the end, Mr. Bettius, and maybe you're

23 not hearing that.

1 THE WITNESS: I'm sorry.

2 THE COURT: Sit a little closer to the

3 microphone.

4 THE WITNESS: Can I get some water?

5 MR. BETTIUS: Absolutely. Let me get it for

6 you.

7 BY MR. BETTIUS:

8 Q Isn't your first premise of accounting that

9 we're going to account for what actually happened?

10 A The first -- we try to account for what

11 actually did happen while there were operations.

12 Q Isn't what happened in actuality that JMHC

13 said we are JMHI?

14 They went to tax authorities, they used the

15 net operating losses, they used the license, they used

16 the assets with one capital contribution, and in effect

17 they just continued doing business as usual, didn't

18 they?

19 A That's a compound question, but JMHC

20 continued the operations of the hospital as usual. By

21 that I mean I'm not aware that there was, and from

22 discussions there wasn't, any change to the hospital

23 signage, identification, medical staff, nursing staff,

1 technical staff, administrative staff; that the
2 day-to-day operations of Jefferson Memorial Hospital,
3 ignoring whatever corporate form, were continuous
4 without apparent seams from JMHI to JMHC.
5 Q And you've stated, if we look at actuality,
6 that this HGV lease wouldn't have occurred if JMHI
7 stepped back and said, having now been operating all
8 these years, to JMHC, you're not using my lease, you're
9 not using my land and you're not using my franchise?
10 A I didn't follow your question.
11 Q Isn't it true that you said this continuous
12 enterprise -- and the continuous enterprise is the only
13 way to account for accretions, isn't it? How else can
14 you account for accretions unless you look at a
15 continuous act?
16 A If your goal is to account for what we're
17 calling accretions, you need to look at a continuous
18 enterprise.
19 Q Have you read the order?
20 A I've read the order.
21 Q Does it make you account or does it direct
22 you to account for accretions?
23 A It doesn't use the word accretions.

1 Q Sir, let me give you the order.

2 A As I --

3 Q Let me give you a copy of the order.

4 A I think I have one. This Court's order, not

5 the Supreme Court's order?

6 Q No, sir. I'm going to ask you to look at the

7 paragraph at the bottom of page 1. The Respondents

8 shall permit, prepare and submit under oath, a full and

9 complete accounting of all assets and liabilities that

10 are subject to this decree within 60 days hereof.

11 A I don't have that. Can you show me a copy?

12 Q Let me give it to you. I want to know if the

13 accounting shall disclose all rents, issues, profits,

14 accretions and benefits, tangible and intangible. Is

15 that what the Court's order says?

16 A It does.

17 Q You were never shown a copy of this order,

18 were you?

19 A This is the first time I've ever seen this.

20 Q Now, Mr. Cobb, you've indicated that in

21 addition, other facilities were leased, is that

22 correct, in HGV? A larger set of facilities were

23 lease; is that correct?

1 A Yes. There had been hospital additions.

2 Q Can you trace any definable capital

3 contribution by Respondents to their own medical office

4 building?

5 A I suspect that I could. I have not set out

6 to do that.

7 Q You can't find -- you can't report one, can

8 you, as you stand here today doing an accounting?

9 A It's kind of meaningless. I haven't set out

10 to do that. It's not fair to ask me if I can or can't.

11 I haven't set out to do that.

12 Q You do know -- and I want to go through some

13 of these examples with you. You do know that $1.4

14 million was taken out as a mortgage and charged to the

15 operating entity; is that correct?

16 A Yes.

17 Q Which is a continuation now if we take

18 accretions; is that correct?

19 A I don't think that's correct, because JMHC

20 included assets that were not assets of JMHI.

21 Q Which ones?

22 A The building and preponderance of the land.

23 Q Well, they had a lease for the land, didn't

1 they?

2 A They did have two separate land leases.

3 Q Now, I want to check this. Who told you they

4 had a preponderance of the land?

5 A It's my understanding that JMHI had a 20

6 percent interest in the land.

7 Q Who told you that? Was it Mr. Bono who told

8 you that?

9 A I'd have to go back a long time. It may have

10 been Mr. Bono. I know that I've heard that from Dr.

11 Tauber. I believe I've heard that from Dr. Peters.

12 Q So that's another fundamental assumption in

13 our accounting; isn't it?

14 A It is an assumption in my accounting.

15 Q Now, let me pose a hypothetical to you about

16 bargaining position. Suppose Mr. Richards, who was

17 counsel for the Respondents, and Ms. Vela in this case,

18 testified that when Dr. Tauber made conveyances which

19 reserved to him the right to the improvements, that

20 that meant that they remained at the sufferance of the

21 person, the grantee, and that it merely gave him the

22 right to come in and remove them.

23 If the improvements remained at the

1 sufferance of JMHI, and they could -- and the
2 Respondents' only right was to removal, if that's the
3 effect of a conveyance, for instance, you saw -- let's
4 strike that.
5 If that is the state of the testimony, who's
6 got the bargaining power?
7 MS. BEACH: Your Honor, let me object. I'm
8 sorry. I'm having trouble following the question. If
9 this is a hypothetical --
10 THE COURT: Do you understand the question,
11 Mr. Cobb?
12 THE WITNESS: I didn't.
13 THE COURT: I didn't either, Mr. Bettius.
14 MR. BETTIUS: All right.
15 BY MR. BETTIUS:
16 Q The grant by Dr. Tauber in the deeds was that
17 he conveyed in -- the hospital's built when he makes
18 these conveyances, isn't that correct, sir, '65, '66?
19 A '65. It opened in '66.
20 Q He makes a conveyance that says that I'm
21 conveying it and I reserve a right to the improvements.
22 A He made conveyances of land?
23 Q These are conveyances of land to JMHI.

1 A So he's giving the land to JMHI?

2 Q And all he reserves is the right to

3 improvements.

4 A And curbs, gutters and buildings?

5 Q The buildings. Let's assume the buildings

6 are improvements. Let's assume that everyone who has

7 testified in this case says that when you make such a

8 conveyance it reserves in the grantor, that's the

9 person who is conveying, only the right to come in and

10 remove -- demolish and remove what's there.

11 A So Tauber would have the right to come in and

12 remove the hospital?

13 Q Only the right to remove.

14 A All right.

15 Q And let's suppose that the conclusion of both

16 legal experts is that those improvements remain on the

17 fee-simple land at the sufferance -- at the sufferance

18 of the grantee; that is, JMHI. Is that correct? Let's

19 assume that that's what the testimony is.

20 A I'm not really sure what I'm assuming, but

21 okay.

22 Q What sufferance means is that if I want to

23 use my land for something else, I come in and I say you

1 either get them off or forfeit.

2 A All right. So I let you build on my land and

3 you're there at my grace, and at a whim I can tell you

4 to pick up your hospital and go home?

5 Q Exactly.

6 A All right.

7 Q If that's what the status of the law is on

8 that kind of conveyance, the only possible right that

9 you can have to remain on JMHI's ground is a 99-year

10 lease; is that correct?

11 MS. BEACH: Your Honor, I'm going to object.

12 I believe that calls for a legal conclusion, although

13 admittedly I still don't fully understand the question.

14 THE COURT: It sounds awfully like a legal

15 conclusion, Mr. Bettius.

16 MR. BETTIUS: I'm asking him to assume a

17 hypothetical, Your Honor. You're going to have to come

18 up with the legal conclusion. The case law in Virginia

19 is such -- I'm just going to tell you, and that's what

20 experts say --

21 THE COURT: See if you can relate this to the

22 issue here.

23 MR. BETTIUS: Okay.

1 BY MR. BETTIUS:

2 Q If JMHI has a right to tell Dr. Tauber and

3 the Respondents come take your improvements off my

4 land, I don't want them here anymore --

5 A JMHI has that right?

6 Q Yes, because let's suppose --

7 THE COURT: Just assume that.

8 BY MR. BETTIUS:

9 Q Assume JMHI has that right as a 65-percent

10 owner. Get off my land. Okay?

11 A All right.

12 Q The whole economics of this transaction

13 change, don't they?

14 A Not necessarily.

15 Q Well, if we're bargaining and I can tell you

16 get off my land, you have a problem, don't you?

17 Let's say I own 65 percent of the land and

18 when we're in here negotiating I hand you a suit for

19 partition, and I said I'm going to go to court and I'm

20 going to partition these rights and I'm going to have

21 my land removed from your land. Who's got the power if

22 we're going to liquidate?

23 MR. HIRSCHKOP: I'm going to object, Your

1 Honor, hypothetical --

2 MR. BETTIUS: It's not a hypothetical.

3 THE COURT: I'm sorry, Mr. Hirschkop.

4 MR. HIRSCHKOP: It has to have an accurate

5 basis. He's ignoring the liability of this long-term

6 lease. JMHI has enormous liabilities that have to go

7 with the bargaining.

8 MR. BETTIUS: Yes. That's my point exactly.

9 Thank you, Mr. Hirschkop.

10 BY MR. BETTIUS:

11 Q That's my point, the only right they've got

12 there is that lease; isn't that correct?

13 A You know, I'm kind of lost. I'm lost in the

14 pronouns.

15 THE COURT: Yes.

16 THE WITNESS: I don't know who they is.

17 BY MR. BETTIUS:

18 Q If I've got a 99-year lease.

19 A Who are you?

20 Q I'm I. I'm representing I's interests in

21 negotiations in '82.

22 A That's a hypothetical, I assume.

23 Q I own 65 percent of the land and we're

1 bargaining and you tell me you want $900,000 of the $1
2 million, that's what happens; isn't that correct?
3 A Who am I?
4 Q You're C -- I mean, you're the Respondents.
5 You say you want $900,000 of this $1 million split; is
6 that correct? And I say let me tell you what I'm going
7 to do. I'm going to walk across the street and
8 litigate. I'm going to get my land back. You're not
9 going to have my franchise. We'll forget tearing the
10 hospital down. I'm going to partition the land.
11 If someone had bargained aggressively for
12 JMHC and the only right they had to remain on that land
13 -- I mean, JMHI. If somebody had bargained
14 aggressively for JMHI and said that's the way it is,
15 and if you don't go along with it you're very lucky to
16 get your 66 rent. Consider yourself lucky, otherwise
17 that's what I'm going to do.
18 MR. BONO: Objection, Your Honor, to this
19 question.
20 THE COURT: I've got to sustain the objection
21 to this one, Mr. Bettius.
22 MR. BETTIUS: The witness, in his report,
23 Your Honor --

1 THE COURT: I understand where you're going
2 with it, but you're not getting there right.
3 MR. BETTIUS: Okay.
4 THE COURT: Quite frankly, I'm not sure it's
5 not argumentative.
6 MR. BETTIUS: I think a lot of it's legal
7 conclusion, that's true.
8 MR. COCHRAN: Maybe it should be reserved for
9 argument, Your Honor.
10 MR. BETTIUS: Well, I think it's the actual
11 status of facts. The witness has testified that the
12 bargaining power --
13 THE COURT: I understand that.
14 BY MR. BETTIUS:
15 Q You don't really know who the bargaining
16 power is unless you know who owns the assets and the
17 underlying land; isn't that correct?
18 A To some extent.
19 Q All right. So your conclusion is based on
20 the fact that they can continue to use the charity's
21 land, whatever it is?
22 A Who is they?
23 Q The Respondents in their leases with --

1 JMHJV's leases --

2 A I've considered that JMHC, which I understood

3 to have been controlled or influenced by the

4 Respondents, the individuals, that JMHC had ownership

5 rights to the building and the majority of the land and

6 that those ownership rights had flowed to JMHC from

7 JMHA. They had not flowed JMHC to JMHI. JMHI was a

8 tenant in those properties by virtue of the '66 and

9 related leases.

10 Q So your assumptions are dramatically upset

11 if, in fact, they're a 65 percent owner, is that

12 correct, of the land?

13 A Not necessarily.

14 Q It doesn't make any difference? Now, do you

15 know why the $100,000 was left in JMHC?

16 A I do not.

17 Q Are you aware that there were board minutes

18 that say it was left in there merely for the purpose of

19 paying bond obligations?

20 A I heard that yesterday.

21 Q Now, when you were doing your examination of

22 closely held entities, did you find the board minutes

23 where the administrator and the accountant protested

1 the shifting of expenses and the shifting of building
2 costs from the venture to the operating entity?
3 A No.
4 Q Those are material, aren't they?
5 A Not necessarily, but they may be.
6 Q Well, aren't they a reallocation of revenue
7 from the continuous operation of the charity's assets
8 with your one capital contribution that's been repaid?
9 A Not necessarily. As I was listening, it
10 occurred to me that they were or may be more related to
11 reimbursement issues.
12 Q Reimbursement issues? Reimbursement of what?
13 A Hospital costs.
14 Q What hospital costs? I thought you reported
15 on the income statement all of the expenses. I mean,
16 you've created an income statement, haven't you?
17 A I'm looking at the hospital operations. I'm
18 not trying to create legal arguments. If I look at the
19 hospital operations and how hospitals were managed in
20 that time period, hospitals had a significant part of
21 their revenue hopefully paid by third parties.
22 Those third parties prudently did not want to
23 pay a lot of money. So a third party, Blue Cross/Blue

1 Shield, Medicare, would come in and look at the costs.
2 There's a whole family of costs that are called, then,
3 allowable costs. And they were the costs that were
4 subject to reimbursement.
5 And as I heard the fragments yesterday and
6 the day before, there were implications to me that the
7 administrator, who is looking at the operational
8 issues, the reimbursement issues, was aware of the cost
9 implications and the reimbursable cost implications out
10 of the various transactions.
11 Q Isn't it true that these minutes show a
12 direct shifting of operating costs of the physicians'
13 office building -- have you read the records?
14 A I read some of the records. I've not seen
15 those minutes, Mr. Bettius.
16 Q If those records show that the administrator
17 said you're putting costs for your medical office
18 building on operations and you're placing expenses on
19 operations, that is a drain on the revenue that's
20 earned from the pool of assets, the accretions; is it
21 not? Isn't that right?
22 A Not necessarily.
23 Q Where is it coming from then?

1 A It, in fact, can be an addition.

2 Q How can the deduction of money from the

3 hospital to pay for physician expenses and their

4 private practices be an addition?

5 A To the extent that the hospital can

6 appropriately include on a cost report additional

7 costs, that may cause additional reimbursement. If

8 those additionally reimbursed monies are left in the

9 hospital, it can add to them.

10 If those monies are, indeed, conveyed into a

11 medical office building, then it clearly is to the

12 detriment of the hospital.

13 Q If I tell you that the series of transactions

14 that occurred were that they went to the state and the

15 state said we've got great questions about your

16 costs --

17 A All right.

18 Q -- and they said don't worry about that,

19 here's a lease for $11,760 a year and it's never going

20 to cost any more, how can you justify these further

21 diversions, whether they're reported before or after?

22 A First, in context, if I'm going to the state

23 and I'm telling the state that in my cost base, upon

1 which the state, through a Medicaid program, for
2 example, is going to reimburse me, the most that I will
3 include in my reimbursable costs is $11,700, that may
4 be one part of the event. The total costs, the real
5 costs may be more.
6 So the simple event of going to the state or
7 going to Blue Cross/Blue Shield or an intermediary
8 limiting the costs in a formal writing, does not
9 necessarily mean that's the economic cost, nor does it
10 indicate that that's not economically prudent.
11 Q So this lease is just put up there to say --
12 let me ask you this. When you look at a COPN
13 application and you look at what the state does, aren't
14 they also concerned about the continuing health and
15 viability of the hospital?
16 A Yes, they are.
17 Q In terms of its total costs?
18 A Yes.
19 Q And aren't you telling me that if they went
20 to the state and said, look, we're on the verge of
21 bankruptcy here, we're basically insolvent and our
22 continued viability is in doubt, and what we'd like to
23 do in this transaction, so you'll never see it, is to

1 further go in debt so physicians can build an office
2 building next door, a white elephant? Isn't that what
3 you're basically saying?
4 We're not going to show you these costs, but
5 don't they directly impact the viability of a hospital
6 that you say is in trouble?
7 A Not necessarily, no.
8 Q So the hospital is struggling for revenue and
9 they're deferring it and it doesn't affect the
10 hospital? Mr. Cobb, does that really make sense to
11 you?
12 A I don't follow your logic on that.
13 Q Well, you're telling me that the hospital
14 needs every dollar of revenue it can get; is that
15 correct?
16 A It needs every dollar of earnings that it can
17 get.
18 Q It needs every cent it can get. We're going
19 to the state -- rather than what the minutes say, we're
20 thriving, we're making -- we've got the highest
21 revenue, we're the best managed hospital in the area --
22 and in fact we go to them and say our true financial
23 status is we're really in a lot of trouble, we really

1 may not be able to sustain operations much longer. Oh,
2 by the way, we're not going to use them as reimbursable
3 costs, we're going to drain more revenue off for the
4 physicians' benefit.
5 Do you think that was an honest presentation
6 that could be made for a COPN?
7 A I don't know if that presentation was made.
8 I don't think that that would be the frankest of
9 presentations at all.
10 Q Thank you, sir. I want to look at your '75
11 sale and lease-back. Incidentally, does it make a lot
12 of sense to you that somebody would be out buying
13 aggressive tax shelters if they need revenue? We can
14 do a yes or no on this one, Mr. Cobb.
15 A I really can't. In your questions you've
16 been using revenue. Revenue can be quite artificial.
17 What I want is cash flow and profit. And I can run my
18 revenue up by selling these cups, and if I'm selling
19 them at less than my cost, my revenue can go up greatly
20 and I'm shipwrecked on the shore.
21 So the use of revenue and revenue going up
22 does not necessarily mean that an enterprise is
23 successful.

1 Q Why did you back out this transaction?

2 A What transaction?

3 Q This aggressive purchase of a tax shelter.

4 You backed it right out of your accounting without

5 argument?

6 A Absolutely.

7 Q It doesn't really make any sense at all for

8 you to go out and do such a thing, does it?

9 THE COURT: You mean for him to back it out

10 or for them to get the tax shelter?

11 MR. BETTIUS: I'm sorry, Your Honor. I'm

12 dyslexic and sometimes that's reflected. I'm sorry if

13 I'm vague.

14 THE WITNESS: There's two pieces to that and

15 we kind of touched on them in my deposition. If I'm

16 looking at a real estate ownership vehicle such as

17 JMHA, and I'm looking for sheltered-type of investments

18 in the middle 1970s, that kind of investment may or may

19 not have been appropriate into that. I would not have

20 put that into JMHA myself.

21 BY MR. BETTIUS:

22 Q Why not?

23 A I wouldn't have even put it in JMHA. If I

1 were a trustee of JMHI and someone said to JMHI maybe
2 we're just going to put it on the books here for
3 convenience, I'm going to buy a limited partnership
4 that's a tax shelter for coal fields. I don't believe
5 that that's appropriate.
6 A hospital, charitable or not, during this
7 time period, in this kind of position, I would not
8 expect it to have been buying, selling through these
9 accounts tax sheltered coal fields.
10 Q But the hospital's having difficulty. Can
11 you see that it might be inappropriate to take $391,000
12 of the Respondents' original mortgage, which is
13 supposedly their participation and have the charity pay
14 it? Do you have a problem with that if they're in
15 financial difficulty?
16 A Just in a narrow --
17 Q It's not narrow. That's what happened,
18 didn't it?
19 A If the hospital's not getting commensurate
20 benefit, that's inappropriate.
21 Q What possible basis can there be in financial
22 difficulty to go pay off their equity contribution to
23 the whole transaction?

1 A There are many times that hospitals,
2 including not-for-profit hospitals, in effect, make
3 payments on behalf of their physicians, including in
4 the 1970s and 1980s, to insure the continued
5 participation of the physicians in the hospital.
6 That kind of event, though not uncommon,
7 should be done only with the greatest of caution,
8 should be done rarely and should be done after a
9 reasonably complete analysis of the costs and the
10 benefits of that transaction.
11 Q Isn't the building of this office building
12 right next to the hospital kind of like trying to get
13 on the Titanic after it's hit the iceberg? Why would
14 doctors really want to locate their office building
15 right next to a hospital they thought was dying?
16 A There are a couple of factors. You can
17 portray it as getting next to the Titanic or you can
18 also portray it as -- and this is what many hospitals
19 were doing, the thought process in this time period,
20 especially as health care changed dramatically, there
21 was a contraction of the number of beds, COPNs; you and
22 I are managing this hospital and we, in fact, are not
23 keeping up.

1 The two hospitals in the United States, the
2 first two hospitals to have failed, one was in
3 Papillon, Nebraska, the other was in northern Florida,
4 failed for the simple reason that the doctors never
5 came. Hospitals don't have patients. Doctors have
6 patients.
7 So I, as a hospital administrator, I want to
8 encourage -- I know hospitals that have given away very
9 valuable parcels of land to for-profit groups to build
10 medical office buildings next door to their hospital.
11 Q Totally illegal, isn't it?
12 A No.
13 Q It's not private inurement?
14 MS. BEACH: Your Honor, I'm going to object.
15 THE COURT: Objection sustained. Let him
16 finish answering.
17 THE WITNESS: Because I, as a hospital, I
18 want physicians located nearby me. I want the
19 physicians' office building physically attached, if
20 possible, because I want to make sure that I have the
21 physicians in place who are going to bring the patients
22 in to my hospital. I will look to attract physicians,
23 physicians with prospering practices, physicians with

1 patients who are in need of a variety of services and
2 patients who are able to private pay or to pay under
3 reasonable reimbursement programs.
4 So anything, especially in this time period,
5 anything I can do to encourage the construction of a
6 physicians' office building nearby, and the nearer by,
7 or attached, the better. It really is a positive, a
8 step towards assuring that the Titanic is not going to
9 sink.
10 BY MR. BETTIUS:
11 Q Well, let me ask you this. How can you
12 square the 1980 lease amendment for the MOB with the
13 1977 lease at $11,760?
14 A I haven't done that analysis.
15 Q Well, these are inter-party transactions.
16 The $11,760 is the price for the MOB. You're aware of
17 that?
18 A Generally.
19 Q Do you recall what the consideration was for
20 the 1980 amendment?
21 A Not as I sit here.
22 Q It was increased costs in the MOB; isn't that
23 correct?

1 A I don't recall as I sit here.

2 Q Well, did you not examine these inter-party

3 transactions before you afforded validity to them?

4 A There are a number of the transactions that I

5 didn't analyze, because what I looked at was an

6 establishment of JMHI as though it continued until

7 dissolution by the state of Maryland, as though it

8 continued to 1975, 1982, 1992 and 2005. So I was

9 looking at the -- at the accounting for the

10 continuation, including accretions, of the assets,

11 liabilities of JMHI.

12 So there are a number of the transactions

13 that existed that were not on point to my analysis.

14 Q Let me see if we can draw some simple

15 analogies. Let's suppose, and you've heard me do this

16 before, Mr. Cobb, in 1965 I'm a trustee for 10,000

17 shares of IBM stock or some other stock that's

18 virtually valueless.

19 A Yes.

20 Q In fact, it may have negative value, and that

21 can happen to a stock, can't it?

22 A It, in effect -- well --

23 Q If you liquidate Amazon.com, what's it worth?

1 A That's a big hole in the ground. The stock
2 market will stop at zero, but the real value can be a
3 negative number.
4 Q So let's suppose I've got this stock and it's
5 worth less than zero.
6 A All right.
7 Q And I'm holding it for you because I'm old
8 enough to do that until you're 21.
9 A So we're going way back in time. All right.
10 Q We're way back in time.
11 A All right.
12 Q And let's suppose I don't do that.
13 A You don't hold the stock or don't hold the
14 property?
15 Q I don't liquidate, I don't give it to you, I
16 don't account for it.
17 A You just keep it in a drawer?
18 Q I just keep it in a drawer. Lo and behold,
19 it turns out to be Amazon.com and you come to me today
20 and you say, you know, Marc, that stock, it's worth $18
21 million. What do I pay you? What amount do I give
22 you?
23 A In my opinion, I want the $18 million.

1 Q You do?

2 A Right.

3 Q And the way you interpret the Court's decree

4 is that you would -- if you interpreted the Court's

5 decree as having been issued in that case, you would

6 give me only the value at the date the Court said you

7 have no more authority to act and you're supposed to

8 wind up; is that correct?

9 A No. What I said, and I went through it

10 yesterday, as I've read what I understood to be the

11 Court's order versus what you just gave me, and the

12 Supreme Court's order, that any actions taken after

13 April 18, 1973, not done to liquidate or wind up, were

14 invalid.

15 So I've looked at April 18, 1973 and I came

16 to you and I said, Marc, those shares of stock that you

17 have in the drawer, you have to sell them today, and

18 they don't sell for much. And then I've said

19 alternatively, 1975, sell them today. 1982, sell them

20 today, and so it goes.

21 Q So what you did was rather than -- you took

22 that -- I think you've made my point. You took that

23 direction as that your accounting says I'm going to

1 sell them, and your first accounting, '73, is not as a
2 result of anything other than you interpreted the Court
3 to say you've got to find some rational basis not to go
4 forward.
5 The only rational basis you could find not to
6 go forward was a hypothetical liquidation. Isn't that
7 your whole case?
8 A I lost you.
9 Q You took the Court's decree to mean that you
10 were to create some method of liquidation --
11 A Winding up and liquidation.
12 Q -- and ignore what really happened after
13 that, so you're going to account as of that date; is
14 that correct? So in the IBM scenario, the first number
15 you're going to give me for this negative value stock
16 is zero; is that correct?
17 If you were doing that accounting instead of
18 this one, you're going to give me zero; is that right?
19 MS. BEACH: Your Honor, I'm going to object.
20 It's argumentative. The witness has testified what he
21 did.
22 MR. BETTIUS: I don't think it's
23 argumentative.

1 THE COURT: There were about three questions
2 in there, Mr. Bettius. That's the problem, you tend to
3 ask more that one.
4 BY MR. BETTIUS:
5 Q Let's take that same scenario and you're
6 going to account and the Court said you have no
7 authority to do anything, not to buy, sell, do anything
8 with this stock but liquidate it as of 1973.
9 A All right.
10 Q You would take the Court's order, then, not
11 to take today's value. You would render an accounting
12 based on zero or near zero; isn't that correct?
13 A What I've done is I've said let's liquidate
14 and wind up and the date I used was June 30, '73,
15 because that's the financial information. And on the
16 book value basis --
17 Q Just use my example. We're accounting for
18 this IBM or this negative value stock.
19 A IBM, I would say sell the IBM on that day.
20 If you sell it and there are net proceeds, take those
21 net proceeds and invest them, not in hospital
22 operations, because that's where all the investments
23 went through '82, no mythical or hypothetical

1 investment of them, they were invested by great
2 necessity in hospital operations.
3 I've invested them instead, alternatively, at
4 13.35 percent and at 9 percent. If the IBM stock sells
5 for zero, I invest zero, and they're zero.
6 Q I think I now understand your approach. Now,
7 the assets of JMHI, the total assets, were worth far
8 more to the Respondents in continuation of the business
9 than they were in liquidation; isn't that correct?
10 A I think so.
11 Q Absolutely; isn't that correct?
12 A Yes.
13 Q So you haven't accounted for them in
14 continuing operations. You've accounted for them in a
15 series of hypothetical liquidations; is that correct?
16 A Because the question was compound, it's both
17 correct and not, can I explain?
18 Q Sure. Absolutely, because it's my fault for
19 not asking a proper question.
20 A No. That's all right. If we stop at a
21 certain point in time and we go to the balance sheet
22 and the balance sheet tells us $224,000 and then we go
23 through and we start to look at the assets more in a

1 fair market value, as Mr. Bono had me do, and we find
2 that the assets wouldn't sell for as much, a
3 liquidation of that type, generally speaking, gives you
4 the lowest value you can get for assets.
5 It's hard to sell for less, breaking up the
6 assets and selling them. That's why I put the $224,000
7 up. Alternatively, I can look at how those assets are
8 used up in the business. And the inventory, for
9 example, which was about $25,000, wasn't sold. The
10 inventory, rather, was used for 1974's operations and
11 if some of it was left over, for 1975.
12 Q Going concern?
13 A Used by a going concern. So -- and the
14 accounts receivable, the accounts receivable weren't
15 left to be collected at 85 percent by somebody
16 scrambling, they were collected in the course of the
17 continuity of operations of the hospital.
18 So that this now family of companies, JMHC,
19 over time, in an accounting sense at any rate, would be
20 expected not to have achieved zero because they didn't
21 fire sale, rather -- to achieve the $224,000.
22 So that's the problem when people talk about
23 liquidation, how do you liquidate it? Do I sell it

1 today or do I liquidate it by using it in the business
2 which is, in effect, what HGV would have done, and then
3 the next -- on a balance sheet, by the very nature of a
4 balance sheet the balance sheet -- this one did have
5 it. A balance sheet doesn't have good will and the
6 value of the name of the company and the value of
7 having the patient records and the employment.
8 There is not that -- that core operating
9 element in that amount. So the right answer, depending
10 on how you want to look at value, floats someplace
11 around the $224,517.
12 Q That's not the real value, is it, Mr. Cobb,
13 in terms of what you testified to earlier? The real
14 value is the value of the total assets in a going
15 concern, because if you've to -- if you liquidate
16 you've got to go out and buy all of these things or
17 acquire them all over again. So it's not the value
18 just that limited amount, it's the value of the
19 totality?
20 A That's what that is, because that has the
21 total assets, all the assets, minus the liabilities.
22 Q That's net value, isn't it?
23 THE COURT: Again, let him finish.

1 MR. BETTIUS: I'm sorry.

2 THE WITNESS: But you can't have net value

3 unless you have the total. If I have 5 minus 3 is 2, I

4 can't just have 2, I have to have the 5 and the 3. But

5 this -- in terms of your question of replacement cost,

6 if they had sold these assets and gotten all the value,

7 paid the liabilities and had $224,000 left, and then

8 they went out to repurchase those assets --

9 BY MR. BETTIUS:

10 Q They wouldn't have $224,000, the charity

11 would have $224,000 and C would have to go out and not

12 get the liquidation value. They'd have to go buy all

13 of these assets again?

14 A That's right.

15 MR. COCHRAN: Your Honor, may I have leave of

16 Court to kick my colleague here every time he

17 interrupts the witness. He's not letting him finish

18 the answers.

19 MR. BETTIUS: I'm sorry.

20 THE COURT: Was there something I missed on

21 that last one, Mr. Cobb?

22 THE WITNESS: I didn't finish.

23 THE COURT: Go ahead and finish that one and

1 then we'll come back.

2 THE WITNESS: If you go out to replace the

3 assets, generally speaking you're going to pay more.

4 You're not going to buy a used x-ray machine as we went

5 through yesterday, because used x-ray machines don't

6 generate much value and there's not much of a market

7 for them. People want one new.

8 There was a terrible problem in the '70s and

9 '80s that doctors always wanted the newest and best

10 equipment. If a hospital at First Street had a CAT

11 scanner that cost $500,000, by the time it was done,

12 the doctors half a block away at hospital two also

13 wanted a CAT scanner, even though each CAT scanner was

14 used 33.3 percent of the time.

15 One of the haunts that drove up hospital

16 costs, among many things in the '70s and '80s, was the

17 insatiable appetite for arrogant, egotistical doctors,

18 which is almost all of them, for I want the newest,

19 best equipment. I don't think there are any doctors

20 here.

21 THE COURT: I noticed Dr. Tauber is not here

22 yet.

23 MS. BEACH: Now you know why, Your Honor.

1 MR. HIRSCHKOP: I'll stipulate it applies to
2 a lot of lawyers.
3 THE WITNESS: So when it -- if JMHC had gone
4 back in the marketplace, I think at least as regards
5 the equipment, they certainly would have bought more
6 expensive equipment. With rampaging hospital
7 inflation, the supplies would have cost more. The
8 prepaids probably wouldn't have, and the receivables --
9 it's kind of hard to think about how they come about.
10 All in all, if they had gone out to replace, I think
11 they would have spent more money.
12 Now, the next argument to that is okay, I
13 went out and bought a new machine and it should be
14 worth more and it should cost more because you have an
15 old one. So there's funny tradeoffs, but in dollars
16 and cents, it should cost more.
17 BY MR. BETTIUS:
18 Q And the real essence of it is,
19 philosophically you want to account for our net value
20 and I'm saying that the Judge says you're to account
21 for these assets and their accretions ongoing, and you
22 said that you didn't do that?
23 MR. BONO: Objection, Your Honor. Your order

1 was very specific. It said to account for the assets
2 and liabilities of JMHI, not only the assets.
3 THE COURT: We've been through this, Mr.
4 Bettius.
5 MR. BETTIUS: Okay.
6 THE COURT: We went through this earlier.
7 BY MR. BETTIUS:
8 Q Now, did you listen to Mr. DenUyl's
9 testimony?
10 A I did.
11 Q Did you approve of his methodology? Do think
12 it was correctly applied in this case?
13 A His methodology of valuing the hospital?
14 Q Yes.
15 A That's not how I would have done it, but it's
16 certainly in the family of acceptable methods.
17 Q Did you agree with his conclusions?
18 A I haven't considered them in that regard.
19 Q Let me ask you this. We didn't -- we being
20 the state, the public -- didn't invest in Standard and
21 Poors, did we? We weren't given that option, were we?
22 A I don't know what options the state had for
23 its various investment portfolios.

1 Q You kept the investments and invested them in
2 JMHC, didn't you? Isn't that literally what you did?
3 A I didn't. I'm having a pronoun problem.
4 Q The doctors did. When I say you, I'm talking
5 about you in the accounting sense. The doctors
6 invested in their own hospital, didn't they, the net
7 assets if you want to use net assets?
8 A I think they invested in the operations, the
9 patient services that were rendered.
10 Q So nobody was investing in Standard and
11 Poors. Is it a cardinal rule of valuation, Mr. Cobb,
12 that risk equals return?
13 A It's hopeful that where there is a risk there
14 is a return.
15 Q And the higher the risk the greater the
16 return?
17 A Generally speaking.
18 Q So this money wasn't really returned to JMHI
19 or to trustees or to the state, it was invested in the
20 hospital; is that correct?
21 A The annual earnings, such as they were, were
22 reinvested into the hospital.
23 Q Now, did you hear Mr. DenUyl indicate that an

1 expected rate of return on that risky an investment
2 would be about 26 percent compounded annually?
3 A I don't remember the particulars, but it was
4 in that range.
5 Q If you take your numbers, and I want to get
6 to how valid these kinds of conclusions are, and you
7 extend them out, you owe us more then $100 million,
8 don't you?
9 A You've got apples and oranges. That's not a
10 meaningful analysis.
11 Q It's not? It's where the money was actually
12 invested, isn't it?
13 A Mr. Bettius, it's apples and oranges. That's
14 not a meaningful analysis.
15 Q Well, I want to get to is why it's not a
16 meaningful analysis. If there was any money that was
17 coming to the state, it was invested right back in that
18 hospital, wasn't it? Didn't you just say that?
19 A The annual earnings, such as they were, were
20 invested in the hospital operations.
21 Q Mr. Cobb, you're the trustee for a charitable
22 organization and I come to you and I say have I got an
23 opportunity for you, Mr. Cobb. I've got a hospital

1 that doesn't own any of its assets, that's on the brink
2 of insolvency and I want you to invest money in it. I
3 want you to invest your money in it. What rate of
4 return do you want on that invested money?
5 A Well, I'm not going to invest in a charity.
6 I don't invest in --
7 Q No, no, no. I'm not investing in a charity.
8 You told me I'm not a charity anymore. I'm not
9 investing in JMHC.
10 A In JMHC, if I'm an equity investor in --
11 Q No, no. I'm a debt investor.
12 A A debt investor?
13 Q Yes, sir.
14 A I'd probably want in the mid- to high teens.
15 Q You want what?
16 A Mid- to high teens.
17 Q Mid- to high teens? I thought you said 26
18 percent?
19 A No. That's why I asked equity. If I'm an
20 equity investor in this, I want between 25 and 30
21 percent.
22 Q Okay. Now, let's ask what we were -- did we
23 have a debt instrument for our investment?

1 A Who is we?

2 Q The state, the public.

3 A No. The state didn't invest in this.

4 Q You invested the state's money, didn't you,

5 or the people's money?

6 A No.

7 Q The directors did, didn't they?

8 A That's not how I see it, Mr. Bettius. I

9 understand what you're trying to argue. If I'm running

10 a not-for-profit, my purpose is not to benefit somebody

11 in Richmond, Virginia and their legal structure and

12 investment structure. My purpose is to provide health

13 care services to the patients who happen to be citizens

14 of Virginia.

15 I'm attempting to do that. There's been

16 discussions over the past couple of decades of a

17 not-for-profit and a non-profit. I would be a -- I

18 will run my business without the motive to make money,

19 as a hospital charity. That doesn't mean that I don't

20 want to make money.

21 Fairfax is sitting there with tens of

22 millions of dollars on its balance sheet, all but

23 obscene millions of dollars. It's not really obscene,

1 that's the industry. Their goal wasn't to make money.
2 But I have to make money and I have to make money if
3 I'm going to survive. I have to grow and change in the
4 marketplace. I have to buy the new equipment.
5 So I'm not trying to make money on behalf of
6 the state. I'm not trying to make money on behalf of
7 anyone. I can run, and there is a large health care
8 group that I did some work with, that deliberately
9 budgeted to zero every single year.
10 Q Mr. Cobb, I'd like you to answer my question.
11 We're not a not-for-profit after '73 --
12 MS. BEACH: Your Honor, let him complete his
13 answer.
14 THE COURT: He's trying, Mr. Bettius.
15 MR. BETTIUS: I'll withdraw that question.
16 BY MR. BETTIUS:
17 Q We're not a not-for-profit after '73, are we?
18 A Who is we?
19 Q JMHC.
20 A JMHC was not a not-for-profit.
21 Q So don't tell me about not-for-profit
22 considerations. This money was invested in a
23 for-profit entity, wasn't it?

1 A But this -- my analysis and my understanding
2 is that this venture stems from JMHI and JMHI's
3 operations and activities.
4 Q Don't you have to be consistent with me? You
5 tell me we're always a taxpaying entity and we want to
6 be treated as a taxpaying entity. Now, after '73 this
7 money wasn't invested in the New York Stock Exchange,
8 it wasn't invested in Mr. Hirschkop's bonds, it was put
9 right back into a high-risk, for-profit venture with no
10 debt security; isn't that right?
11 MR. COCHRAN: Your Honor, we've been over
12 this three different ways already.
13 MR. BETTIUS: No, we haven't been over this
14 point.
15 THE COURT: No we haven't, Mr. Cochran.
16 THE WITNESS: That's correct. This money was
17 -- in effect, the earnings, such as they were, were
18 invested into the hospital operations, JMHC.
19 BY MR. BETTIUS:
20 Q If the Court takes the view that if we're
21 going to use your analysis we have to attribute a
22 correct risk return, 26 percent is what you say is the
23 risk return of an equity investment in a corporation

1 such as this, if you can get anybody to invest; isn't
2 that correct?
3 A Again, it's apples and oranges. If I went to
4 the marketplace and I was looking for equity investors
5 in JMHC in the '73-'75 time frame, I would expect that
6 those equity investors would be -- because of the
7 situation, the risk, et cetera, would be -- in the
8 marketplace would be looking for rates of return on
9 equity dollars of 25 to 30 percent.
10 Q All right.
11 A And that was included in the valuation
12 analyses that I had done in the last trial. And that
13 is a key determinant of why, on a fair market value
14 basis there is not substantial value to JMHI.
15 Q I want to turn it around now. If you -- if
16 the Court takes the view that if we're to use some
17 investment analysis on a hypothetical liquidation and
18 these assets were, in fact, used, and you use your 25
19 percent return based on the investment that was
20 actually made, you'd owe us well over $100 million?
21 A Mathematically that may be true.
22 Q Mathematically that may be true?
23 A But it's not logical at all.

1 Q I agree, sir. I totally agree.

2 MR. BONO: Your Honor, I would ask that Mr.

3 Bettius let the witness complete his --

4 THE COURT: We don't need the comments, Mr.

5 Bettius.

6 MR. BETTIUS: I'm sorry, Your Honor.

7 BY MR. BETTIUS:

8 Q When you were accounting in the year -- first

9 of all, I'm going to now go from 1982 to 1985 with

10 Inova. Who is the lessor?

11 A Without looking, I think it was JMHC.

12 Q And the license that we're dealing with is

13 the one that's specifically in the lease July 3, 1985,

14 the license? That's the one that's referenced; is that

15 correct?

16 A I don't know without looking.

17 Q All right. If that's the license that we're

18 dealing with, that transaction doesn't happen either

19 without the license, does it?

20 A That's not something I paid special focus to

21 recently, but it's my understanding that Fairfax

22 entered that transaction with the intent of continuing

23 the operations of JMHC and needed a license to do that.

1 Q That's right. Now, isn't that another market
2 transaction with the subject?
3 A It is a market transaction regarding the
4 subject.
5 Q And we have to look not only at the $5.8
6 million that's paid to HGV, you have to look at -- and,
7 incidently, you didn't appropriately account for the
8 rental under the Fairfax lease, did you?
9 A I think I did.
10 Q Didn't you say it was 1.6?
11 A I'd have to look, Mr. Bettius.
12 Q I want to know if you took into account
13 escalators that take the lease to over $2 million?
14 A The Fairfax lease?
15 Q Yes, sir.
16 THE COURT: Let me ask you here, Mr. Bettius,
17 how much longer you expect?
18 MR. BETTIUS: Almost done, Your Honor.
19 THE WITNESS: What I've looked at, Mr.
20 Bettius, was the Fairfax lease increasing from 1986 to
21 1992 and then I made considerations around what I
22 understand to be called the letter agreement and then
23 ultimately the settlement.

1 BY MR. BETTIUS:

2 Q No, no. How much of the rent -- did you ever

3 account, under the Inova lease, for payments of over $2

4 million a year?

5 A No.

6 Q All right, sir. Now, why do you -- are you

7 aware -- did anyone ever show you the 1994 settlement

8 agreement?

9 A Yes.

10 Q It absolutely terminates the 1992 agreement,

11 doesn't it? It says it's void?

12 A I think it does.

13 Q Now, is there anything to rent in 1994?

14 A I don't follow your question. There are land

15 and buildings sitting there.

16 Q Does Inova pay rent during the '94 agreement?

17 A Not that I'm aware of.

18 Q It was certainly paying rent under the '92

19 agreement, wasn't it?

20 A Yes.

21 Q Under the '92 agreement Inova was to get a

22 piece of land and building; is that correct?

23 A I think that's correct. The Cambridge Square

1 or similar named building.

2 Q And it had a tenant at that time to go into

3 the building, didn't it?

4 A I think it did.

5 Q Integrated Health?

6 A I don't remember the name.

7 Q Now, by virtue of the passage of time when we

8 get to 1994, there is no longer, by virtue of this

9 agreement, anything to rent; is that correct?

10 A There is something to rent.

11 Q Not by Fairfax under that agreement. Fairfax

12 doesn't rent anything, does it?

13 A That's my understanding.

14 Q And Fairfax doesn't get whatever the -- that

15 land doesn't exchange to Fairfax, does it?

16 A I don't recall.

17 Q You don't recall?

18 A That's true.

19 Q Well, how can you attribute the 1994

20 agreement to rent?

21 A It's my -- first, I'm not sure I made that

22 attribution.

23 Q I don't think you did either. Didn't you

1 tell me in your deposition that it couldn't be rented?

2 THE COURT: Mr. Bettius, you've got to let

3 him finish answering the question.

4 MR. BETTIUS: I apologize.

5 THE WITNESS: When you get into a legal

6 settlement there are many things that get considered,

7 including what's foregone. From the information

8 available to me, Fairfax was in a position where they

9 had signed a long-term agreement. They undertook

10 analysis of that agreement, the future costs they would

11 sustain. There's reference to a $22-million buyout.

12 There's reference to $81 million of continuing losses

13 if they had maintained operations of Jefferson.

14 They reported losses year to year to year, I

15 think, after the first two years of operations. They

16 reported tax base losses as high as, I think, $6

17 million to $8 million in one year.

18 So when Fairfax was confronted with the

19 circumstance of honoring a lease and paying continued

20 lease payments, there also was the encumbrance that

21 there was a requirement of Fairfax to maintain

22 operations such as to preserve an operating license.

23 So Fairfax, in looking at settlement, is looking at a

1 stream of lease payments of substantial amounts of
2 money into the future.
3 And as I understood from discussions and from
4 the documents, that a significant consideration in the
5 structuring of the letter agreement was future rent
6 payments and that the resolutions that were there
7 related largely, if not totally, to real estate.
8 Q Isn't this an integrated -- do you know what
9 an integrated document is? It says the terms --
10 A I think I know.
11 Q The terms of the agreement are fully within
12 the document itself; isn't that correct?
13 A Yes.
14 Q Do you see anything in there about rent?
15 MR. BONO: Your Honor, what agreement now are
16 we talking about?
17 MR. BETTIUS: '94, the settlement agreement.
18 THE WITNESS: That's what I took your
19 question to be. If you could show it to me, I haven't
20 looked at it in the last couple of weeks.
21 BY MR. BETTIUS:
22 Q And it says that the previous agreement for
23 rent in exchange for property is now terminated; is

1 that correct? I'll let you look at it.

2 A Is there a part you can point me to? I can

3 look at the whole thing, but if you know where we're

4 going --

5 Q I want you to look at it, because I have

6 something after that.

7 A Okay.

8 MS. BEACH: Your Honor, excuse me. Is the

9 question on the floor whether or not that's an

10 integrated document?

11 MR. BETTIUS: No.

12 MS. BEACH: Is that the question?

13 MR. BETTIUS: No.

14 THE COURT: The question is whether it says

15 specifically anything about rent. I think it speaks

16 for itself, Mr. Bettius.

17 MR. BETTIUS: All right.

18 BY MR. BETTIUS:

19 Q In fact, Mr. Cobb, in your accounting you

20 said you couldn't account for that last $10 million

21 because it can't be rented; isn't that correct?

22 A No. I didn't say that at all. I said I

23 don't know what the $10 million is. I don't, even as I

1 sit here today, have a --

2 Q Well, in the past --

3 THE COURT: Let --

4 MR. BETTIUS: I'm sorry.

5 THE WITNESS: I can't sit here and tell you

6 specifically what the $10 million was for. I

7 understand that it's related to --

8 BY MR. BETTIUS:

9 Q Don't tell me what you understand.

10 A Well, what else can I tell you than what I

11 understand.

12 Q You told me you couldn't account for it; is

13 that correct? Is that what your report says, you can't

14 account for it?

15 MR. COCHRAN: He needs to let the witness

16 answer the question.

17 THE COURT: He can answer this question.

18 Does your report say you cannot account for the $10

19 million?

20 THE WITNESS: I don't think it says cannot.

21 THE COURT: Then I'll let him explain it, Mr.

22 Bettius.

23 THE COURT: Go ahead, Mr. Cobb.

1 THE WITNESS: The information available to me
2 at the time of my report, Mr. Bettius, didn't allow me
3 to. It does not say I could not with additional
4 information. I didn't, especially then and to some
5 extent now, have a good, clear understanding of the $10
6 million payment.
7 BY MR. BETTIUS:
8 Q All right. So if that $10 million has to do
9 with the license, you've got to go back and add it to
10 all of these numbers, don't you?
11 A If it did, although the information severely
12 contradicts that.
13 Q It severely contradicts it? Show me within
14 that document where it contradicts it.
15 A Well, this isn't the only thing that I
16 considered.
17 Q Isn't that the only thing that can be
18 considered?
19 A I don't think so.
20 THE COURT: You've got to let him finish
21 answering, Mr. Bettius.
22 THE WITNESS: If I get to 1992 and this --
23 this license allows me to operate a hospital and

1 generate significant losses for consecutive years, a
2 loss, and I think it's a little over $8 million on the
3 last Fairfax tax return, and has Fairfax looking at
4 losses accumulating to as much as $81 million or an
5 estimate of $81 million over the remaining period, and
6 assuming and considering that Fairfax is a very large,
7 very substantial, very sophisticated health care
8 provider operating a significant number of hospitals in
9 this area and other health care operations, they have a
10 license.
11 And if I look at the indications and the
12 value of that license, the indications are that that
13 license allows me to lose tens of millions of dollars.
14 I don't know how to understand that that license is
15 valuable in terms of continuing operations. The
16 license, at that point, has severely degenerated.
17 BY MR. BETTIUS:
18 Q Its value is to get out of the license and to
19 get out of the obligation and the lease that requires
20 you to return it with a license; isn't that what the
21 value is?
22 A The value isn't in the license. The value,
23 as you said, in part, the value is in getting out of

1 that lease.

2 Q Yes, sir. Now, let me ask you a question,

3 because we've got to go back and look at what private

4 inurement is in terms of that agreement.

5 Did the Respondents, based on their

6 testimony, ever say they wanted anything out of this

7 transaction but rent? Isn't that what Dr. Tauber's

8 testimony was? Isn't that what they told the treasury?

9 A Out of the JMHI portion of it, yes.

10 Q All right.

11 A Not out of the JMHA portion and the real

12 property portions.

13 Q Well, I want to look at that real property

14 issue. We've seen $4 million -- $391,000 paid back out

15 of the $1.4 million mortgage; is that correct?

16 A That's what I heard over the last couple of

17 days.

18 Q Now, under your scenario, as I understand it,

19 or your accounting, the 240,000 shares never are a part

20 of the consideration of operations; is that true?

21 A I don't follow your question.

22 Q Aren't the $240,000 for the transfer of

23 land -- the 240,000 shares for the transfer of land?

1 A Okay.

2 Q Isn't that right? I mean, the transfer of

3 the buildings in 1971?

4 A The building and the land.

5 Q And you've taken all of that out of your

6 accounting, haven't you? You said that didn't happen;

7 is that correct?

8 A I took the whole and extracted from the whole

9 JMHI. I didn't take the whole and extract from the

10 whole JMHA.

11 Q So that means this 240 is out? You don't

12 show it, ever, on any of your created balance sheets,

13 did you?

14 A It's not in.

15 Q It's not in, never should have been in; is

16 that correct?

17 A I think that's correct as I understood the

18 material.

19 Q I want to understand. You've now liquidated

20 the debts -- strike that.

21 MR. BETTIUS: Your Honor, I know where I'm

22 going if you'd just give me a minute to catch up.

23 BY MR. BETTIUS:

1 Q You've now paid off all of the 60,000 shares
2 that you created as debt; is that correct? So the
3 60,000 have all been paid off by 1975; is that correct?
4 A The 60,000 shares of stock that I don't
5 believe could have been stock in JMHI and I treated it
6 as debt were paid off.
7 Q So the $909,000 that's taken from the
8 operating assets in the HGV purchase, $909,000 is taken
9 from the HGV payment for the intangible assets that
10 belonged to the operating entity?
11 A There is a $909,000 that relates to the HGV
12 acquisition.
13 Q What did they do with it? They buy stock.
14 They get $909,000 and they buy stock, don't they?
15 A It's my recollection that a substantial part
16 of that was used to redeem stock.
17 Q Nine hundred and nine thousand?
18 A That sounds right, but I don't recall as I
19 sit here.
20 Q Excuse me. So, in effect, the Respondents
21 have now gotten $400,000 of their original contribution
22 repaid and now they're getting $909,000 directly
23 attributable to stock that had to do only with the

1 land, based on your own analysis?

2 A I don't agree.

3 Q You don't agree with that. Well, if the

4 240,000 shares are never on the books of any entity you

5 create, or any balance sheet you create, how can you

6 take it as anything else but a payment for land?

7 A Take what as a payment for land?

8 Q The payment against 240,000 shares, a portion

9 of which are redeemed. That's a payment for that land,

10 isn't it? If that consideration is never on your

11 balance sheet and -- there's 240,000 shares never on

12 your balance sheet, how can you attribute it to

13 anything but a land transaction?

14 A I don't agree with that.

15 Q You don't agree?

16 A No.

17 Q Why not?

18 A I didn't agree with your question.

19 Q Pardon?

20 A I didn't agree with your question as I

21 understood it.

22 Q Well, did the 240,000 shares ever appear on

23 the books of the operating company, in your analysis?

1 A No.

2 Q And the Respondents are being compensated all

3 along in these transactions in leases and other

4 documents because they have the land; isn't hat

5 correct?

6 A And the buildings.

7 Q And the buildings, a portion of the land and

8 buildings. And when they're paid that money for the

9 part that's never on your balance sheet, how can you

10 attribute it anywhere else, Mr. Cobb? How do you take

11 it anywhere else than to that land from which it came?

12 A The payments that went against the land and

13 the buildings go against the land and the buildings.

14 Q Okay. Thank you, sir. Now, if you take that

15 $909,000, which went to the Respondents that should

16 have gone back into the revenue stream, if I'm right,

17 of the corporation, you've got to add it to this and

18 start doing all your numbers over, don't you?

19 A I don't think so.

20 Q No?

21 A No.

22 Q Well, tell me why would I be buying stock

23 that was never in my corporation and paying the

1 Respondents for it?

2 A Mr. Bettius, I don't know who I is. Is I you

3 personally in a hypothetical or is I JMHI?

4 A I'm talking about JMHC as successor to. Did

5 you ever look at the lease -- strike that. I'm going

6 to lay a foundation for this.

7 Did you look at the lease termination of --

8 purportedly that took place in 1975 to terminate the

9 JMHI lease?

10 A The 1966 lease, yes. I think it's a one-page

11 document.

12 Q Doesn't it recite that C is a successor to I?

13 A I'd have to look, but probably.

14 Q Okay. So if we're going forward and we've

15 got these accretions of assets, what possible interest

16 do we have in 240,000 shares of stock?

17 MR. BETTIUS: If you understand, Your Honor,

18 I'll stop right here.

19 THE COURT: No. The problem is who is we?

20 MS. BEACH: Who is we?

21 MR. BETTIUS: We is the operating

22 corporation, C, as a successor to I on a continuing

23 basis.

1 THE WITNESS: Just start the question over
2 again.
3 BY MR. BETTIUS:
4 Q Did C, in your hypothetical balance sheet,
5 ever have 240,000 shares of stock on its balance sheet,
6 ever?
7 A Yes.
8 Q After 1971?
9 A Yes.
10 Q You're showing the -- would you get your
11 balance sheets and show me where you ever create
12 240,000 worth of stock on a balance sheet of JMHC?
13 A I didn't create balance sheets for JMHC.
14 Q Would C's balance sheet properly -- you
15 created a hypothetical entity that continued
16 operations?
17 A I recreated, in effect, JMHI.
18 Q If C continued and didn't own the land,
19 what's this 240,000 shares of stock being redeemed? C
20 didn't own the land, did it?
21 A JMHA owned the majority of the land and the
22 buildings. JMHA, in the now non-existent merger, put
23 those into C.

1 Q When the land was paid off, it was paid off
2 with $240,000 worth of bonds; is that correct?
3 A I don't know.
4 Q And an assumption of the mortgage. So
5 they've already been paid back for the land. C has now
6 been paid for the land. Why does it still have 240,000
7 shares of stock on its books?
8 A C has outstanding stock on its books.
9 Q What's it for?
10 A To indicate that it has shareholders.
11 Q Now, it indicates that they did it for the
12 land, doesn't it, Mr. Cobb?
13 A No.
14 Q Let me give you the tax return from 1971.
15 Doesn't it say that JMHI liquidated all of its
16 interests in land and buildings for 240,000 shares of
17 stock?
18 THE COURT: Let's show it to him.
19 MR. BETTIUS: Pardon?
20 THE COURT: Let's show it to him.
21 MR. BETTIUS: Okay.
22 BY MR. BETTIUS:
23 Q How does the Corp report this transaction,

1 sir?

2 A This copy isn't as clear as some I've read in

3 the past, but there's a paragraph on one of the

4 attachments to the 1971 JMHC tax return that reads on

5 July 30, 1971, Jefferson Memorial Hospital, Inc., a

6 Maryland corporation, underwent an asset and

7 reorganization through a mere change of the place of

8 organization and a change in the name to Jefferson

9 Memorial Hospital Corporation, a Delaware corporation,

10 being the surviving corporation.

11 Q All right, sir. Now, in its 1971 tax return

12 what does Jefferson Memorial Hospital Corporation say

13 about the transaction?

14 A What you just gave me is a Commonwealth of

15 Virginia tax return, as opposed to the federal.

16 Q I'm sorry. Would you look at this tax return

17 of JMHA and tell us what JMHA purportedly did with the

18 assets?

19 A So you don't want me to look at the Virginia?

20 Q No, sir. I'm sorry.

21 A All right.

22 MR. BETTIUS: Two more transactions, Your

23 Honor.

1 THE WITNESS: What was your question?

2 BY MR. BETTIUS:

3 Q Doesn't that report -- and Dr. Tauber, in

4 fairness, has explained that C should be there instead

5 of I. How does that tell you what was issued for the

6 240,000 shares of stock? What does it say the

7 consideration was?

8 A This is the U.S. partnership return of

9 income, June 30, 1971, for JMHI. It includes on the

10 form, page 4, partnership was liquidated as of June 30,

11 1971. All assets and liabilities were transferred to

12 Jeff. Memorial Hospital, Inc., which I assume you're

13 saying should be C, in exchange for stock representing

14 in excess of 80 percent of the ownership of the corp by

15 the partners of this venture.

16 Q So, in effect, the 240,000 shares are for the

17 land, isn't that correct, Mr. Cobb -- I mean, for the

18 building and improvements?

19 A No.

20 Q Thank you, sir. I want to take you, sir, to

21 the consideration that was cited for the '82 lease. Do

22 you remember what that was, the lease amendment between

23 JMHC --

1 A There's an amount of $5,825,000. That amount
2 was after --
3 Q I'm sorry. We're on the wrong transaction.
4 The '82 transaction indicates --
5 A The HGV transaction --
6 Q You said you hadn't seen the document at the
7 time you reported the transaction, but you've had a
8 chance to read it subsequently. What was the cited
9 consideration?
10 THE COURT: While you're showing him, tell
11 counsel.
12 MR. BETTIUS: Yes. I'm sorry, Your Honor.
13 I'm showing him the amendment to lease that's
14 dated -- I think it's -- I don't have my glasses --
15 February 10, 1982, and it's Exhibit 325.
16 THE WITNESS: Now we're looking for the
17 consideration?
18 MR. BETTIUS: The consideration that's cited
19 in this, Mr. Cobb.
20 THE WITNESS: All right. It has a reference
21 to the $1,400,000 amount. I know as I sit here that
22 that's consideration, but it's certainly referred to on
23 more than one -- in more than one paragraph.

1 BY MR. BETTIUS:

2 Q Doesn't it say they're waiving their right to

3 cancel -- they're waiving their right to the six-month

4 cancellation?

5 A I didn't notice that in here, but I recall

6 that is one of the features.

7 Q Well, you have indicated throughout your

8 accounting that the appropriate relationship between

9 the parties is the '66 lease, isn't it?

10 A Not that it's appropriate --

11 Q That's what you used?

12 A It's the 1966 lease that was in place as of

13 June 30, 1971, with the '66 -- '68 addition.

14 Q I quote from page 53, lease payments were

15 calculated on JMHI leases; is that correct?

16 A Yes.

17 Q Do you find any provision in any of the JMHI

18 leases that permits cancellation on six months' notice?

19 A No.

20 Q That's only in the '75, isn't it?

21 A It at least first showed up in the '75 lease.

22 Q Now, if the Court rules that the purported

23 cancellation of the JMHI lease in '75 is undertaken

1 without corporate authority, and if that lease still
2 governs the relationship of the parties, you've related
3 your attribution of $900,000 a year rent to an
4 amendment to the '75 lease and the lease dealing with
5 point one of consideration that's not found in the '66
6 lease, is it?
7 A It's not found in the '66 lease.
8 Q So that consideration, if it's recited as
9 being in the '66 lease, isn't -- and it's inconsistent
10 with the '66 lease, isn't it?
11 A Not as I would use the words. It could flow
12 from the '66 lease. There clearly is not any specific
13 $900,000 amount or related types of items in the '66
14 lease.
15 Q There's no six-month cancellation provision
16 in the '66 lease, is there?
17 A There is not.
18 Q So that can't be consideration if there's no
19 such provision in the '66 lease, is that correct,
20 before?
21 A I don't know how to answer the question.
22 Q Well, I'll let the Court draw it.
23 The other one is they're going to assume the

1 $1.4 million mortgage; is that right?

2 A JMHC assumed the $1.4 million.

3 Q How long are they going to assume it? Is

4 there a condition on that assumption? JV is going to

5 assume the mortgage. JV is going to assume the $1.4

6 million mortgage?

7 A I'd have to read this, Mr. Bettius. I don't

8 know.

9 Q I don't mean -- it says right there, doesn't

10 it, only so long as the money comes in from HGV?

11 A Maybe I'm too tired. Could you point me to

12 that?

13 Q What does it say in case of termination of

14 the agreement?

15 A I'll read it. In case of termination of the

16 agreement between lessee and the sublessee, both

17 parties agree that they will reinstate the original

18 lease and amendments, except that one which was -- I

19 don't know what the word means -- except that one which

20 was signed on December 31, 1978 indicating that the

21 Jefferson Memorial Hospital Corporation has the sole

22 obligation of the repayment of the first mortgage in

23 the amount of $1,400,000, less principle payments by

1 the date of such termination.

2 It is understood that the lessor retains its

3 rights to terminate this lease between lessor and

4 lessee at any time after written notice given upon 30

5 days.

6 Q Do you understand that to mean if you don't

7 get a $900,000 stream of income from HGV you've got a

8 right to reverse that assumption of the mortgage?

9 A As I sit here at 11:05, I don't have an

10 understanding one way or the other.

11 Q Well, if the Court construes it that way, it

12 really isn't much consideration to assume a $240,000 a

13 year payment if you received $900,000 a year, is it?

14 That's not much consideration?

15 I'll give you $240,000 a year if somebody

16 else will give me $900,000?

17 A I think I would do that.

18 Q You would do that deal?

19 A I would at least consider that strongly.

20 Q Now, do you recall what the consideration was

21 for the cancellation of the '85 lease?

22 A I don't.

23 Q Would it be fair to say that it was for

1 assumption by JMHJV of the obligations under the lease
2 to Inova?
3 A I don't recall. Two paragraphs on the first
4 page read Laszlo N. Tauber, trustee, and Jefferson
5 Memorial Hospital Joint Venture, hereby accept
6 assignment and agree to discharge all of the
7 obligations of the lessor under the agreement and to
8 hold Jefferson Corporation of Alexandria harmless of
9 and from all claims of any kind or nature whatsoever
10 arising out of the agreement.
11 As further consideration for the assignment,
12 Laszlo N. Tauber, trustee for Jefferson Memorial
13 Hospital Joint Venture, does by this document cancel
14 the lease dated July 1, 1975 as amended on March 30,
15 1980 and February 10, 1982 by and between Laszlo N.
16 Tauber, M.D., trustee for the Jefferson Memorial
17 Hospital Joint Venture as lessor, and Jefferson
18 Memorial Hospital Corporation as lessee and does hereby
19 release Jefferson Corporation of Alexandria of and from
20 any further liability under the lease as amended.
21 MR. BETTIUS: For purposes of the record
22 that's Exhibit 337.
23 BY MR. BETTIUS:

1 Q What liabilities remain with respect to the
2 obligations of JMHC? There weren't any more
3 obligations, were there? The mortgage was paid,
4 correct?
5 A My understanding, the mortgage had been said.
6 Q And they were going to receive -- it's a
7 triple net lease?
8 A It's a triple net lease.
9 Q They were going to receive up to $2 million a
10 year?
11 A That's true, with inflation provisions.
12 Q What obligations does C have that you can
13 think of?
14 A I don't know what obligations C may have had
15 at that juncture.
16 MR. BETTIUS: Thank you, Your Honor.
17 THE COURT: Would there be any redirect?
18 MR. COCHRAN: There will be, Your Honor.
19 THE COURT: How long do you anticipate?
20 MR. COCHRAN: About 20 minutes.
21 THE COURT: Take a short recess.
22 (Whereupon, a brief recess was taken.)
23 MR. COCHRAN: Your Honor, if the Court

1 please, a couple of housekeeping matters. I have had
2 Mr. Cobb prepare a typewritten page of EE without all
3 of the changes that have been gone through. I would
4 like to substitute this, unless somebody would prefer
5 to have this very heavily marked up version.
6 THE COURT: Counsel? Mr. Bettius, have you
7 seen that?
8 MR. BETTIUS: I don't have any objection to
9 that, Your Honor. There have been a lot of numbers
10 added to this and I think the Court's probably been
11 keeping track of them.
12 MR. COCHRAN: I have a second exhibit which,
13 Your Honor, we've label U1. It is a calculation. Mr.
14 Cobb yesterday submitted the calculations through 1999
15 at 13.35 percent. This is the same calculation at 9
16 percent. As I understand it, Mr. Bettius has no
17 objection to the exhibit.
18 (Whereupon, Respondents'
19 Exhibit No. U1 was marked
20 for identification.)
21 MR. BETTIUS: I think Your Honor has received
22 the testimony, and as I understand -- I haven't had a
23 chance to examine it. Mr. Cochran tells me that it's

1 just a representation of the numbers that he testified
2 to in his testimony. Is that right?
3 MR. COCHRAN: That's correct.
4 THE COURT: All right. It will be admitted.
5 (Whereupon, Respondents' Exhibit
6 No. U1 was received in evidence.)
7 REDIRECT EXAMINATION
8 BY MR. COCHRAN:
9 Q Mr. Cobb, Mr. Bettius was asking you about
10 what had you allowed for and considered accretions. In
11 what way, if any, did you allow for accretions in your
12 accounting?
13 A In differing ways. For the June 30, 1973
14 amount, those amounts were increased in the future at
15 the 13.35 percent and alternatively at 9 percent. So
16 there's substantial increase in the values. For the
17 '74 and '82 and thereafter, there is, in effect, the
18 accretion that occurred through JMHI hospital
19 operations.
20 As I brought the analysis forward, if you
21 recall, I went from the operating statement that was
22 developed with the differences with Mr. Wilson, and
23 then went balance sheet to balance sheet to balance

1 sheet. So I tracked the increases that occurred in the
2 various accounts through 1982 when operations by a
3 Jefferson entity stopped, and then thereafter have
4 looked at participation in subsequent leases and have
5 included earnings at either 13.35 or 9 percent.
6 Q Do your calculations as of June 30, 1973 and
7 June 30, 1975 contain any allowance for the liability
8 on the 1966 lease?
9 A No.
10 MR. BETTIUS: That assumes a fact not in
11 evidence, that there is any liability.
12 THE COURT: Would you repeat that question,
13 please, Mr. Cochran?
14 BY MR. COCHRAN:
15 Q Did your calculations as of June 30, 1973 or
16 June 30, 1975 include any allowance for any liability
17 remaining on the 1966 lease
18 THE COURT: I'll overrule the objection.
19 THE WITNESS: No. Each analysis assumes
20 that, whatever future payments may be there and there
21 may be liability for, become zero.
22 BY MR. COCHRAN:
23 Q And in a liquidation scenario would the

1 corporation have had to discharge its liability under
2 the 1966 lease?
3 A As I understand it, it would. It would have
4 to deal with whatever liability remained at the time of
5 a dissolution or a wind down.
6 Q Mr. Bettius was asking you to carry your
7 analysis through December of 1992. Why did you pick
8 that as an alternative date in the first place?
9 A Through 1992? At December of 1992 all
10 hospital operations stopped. At that time Inova had
11 made considerations of declining utilization, measured
12 by both -- admissions, patient days, continuing losses
13 and the hospital operations were stopped.
14 Jefferson Memorial Hospital, although it was
15 then called Jefferson Hospital, was closed as a general
16 hospital.
17 Q And how did you calculate the rent for the
18 1983 through 1992 time period?
19 A I identified the rent amounts under the HGV
20 lease and then under the Fairfax lease. I have a page
21 that summarizes this that's page 57. The same page
22 shows up at page 73 in my report.
23 I identified the amounts coming in from HGV

1 and/or Fairfax. I identified -- I'll use the first
2 year, 1983, as an example. Those totaled $1 million,
3 and that there was a lease payment being made to -- it
4 was either JV or Corp, without looking, and the lease
5 payment came about under terms with those parties.
6 So that left $100,000. The $1 million coming
7 in from HGV or Fairfax, less the $900,000 going to the
8 property owner, Corp or JV, assigning that to the real
9 property, the majority of the land and the buildings
10 were not owned by Inc. or Inc. carrying forward.
11 So there was $100,000 there. I made
12 considerations that despite the inability to sublet
13 without consent and the difficulties in maintaining
14 operations by a Jefferson entity, that there would be
15 some ability through negotiations to have JMHI continue
16 some participation in the economic benefits stemming
17 out of the property plant.
18 So I looked at the various lease terms, the
19 various assets that were owned. I identified, and this
20 was gone through a little bit, briefly, over the last
21 two days, the physical premises covered by the '66, '68
22 leases, the HGV lease and the Fairfax lease, and
23 identified that the properties that were generating the

1 A That specific amount, if we take the net
2 income amounts, totals up to $411,409. If we bring
3 that forward to a present value basis, and the present
4 value basis would be net of capital gains taxes -- I'm
5 sorry -- it would be net of taxes, would be about
6 $1,487,000.
7 Q And as of what date?
8 A December 31, 1999.
9 Q Did you review both the October '92 letter
10 agreement between the hospital and Inova and the 1994
11 settlement agreement?
12 A I read each of those.
13 Q And did you also review the 1985 lease?
14 A I read the 1985 lease.
15 Q What was provided in that lease as far as
16 payment for the fourth floor of the hospital, if you
17 recall?
18 A That lease provided that there was payment
19 for the fourth floor of $375,000, and that's a fourth
20 floor that came into existence in the '85-'86 time
21 period.
22 Q And did you allocate any of that $375,000 to
23 I?

1 A I effectively did. I think in the proration
2 I didn't.
3 Q And why did you not allocate any of that to
4 I?
5 A That fourth floor did not exist in the 1966,
6 '68, '71, '73 time period, and was not a topic of the
7 1966 lease.
8 Q Does your accounting include any deductions
9 for fees and costs incurred by the Joint Venture in the
10 Inova litigation?
11 A No.
12 Q Do you have an opinion as to whether it would
13 be appropriate to take those expenses and deduct them
14 if the Court should accept Mr. Wilson's analysis?
15 A I do.
16 Q And what is the opinion?
17 A If somehow the charity were to participate in
18 all of the monies coming across and add a gross amount,
19 those monies were achieved, at least in part, and
20 preserved at least in part, through the process of
21 litigation, to me it is a cost of achieving those
22 amounts.
23 Q Mr. Bettius was asking you about the Inova

1 purchase of HGV, and I think you had indicated that
2 that was a market transaction?
3 A I take it as a market transaction, yes.
4 Q What did Inova actually pay to acquire HGV?
5 A The monies that changed hands were -- or the
6 indication is approximately $5,825,000. However, that
7 amount was paid after HGV, in effect, took back or took
8 out of the equation $2.1 million of debt. So if I were
9 going to buy IBM, to use, I guess, a ridiculous
10 example, for $1 million, I own a share of stock in IBM
11 and IBM may have $300 of assets and $200 of
12 liabilities, so I'll pay $100.
13 What happened was that HGV had -- whatever
14 assets it had, whatever liabilities, and in order to
15 determine the $5.8 million, it paid of $2,100,000. So
16 the indication is that the value Fairfax paid for HGV,
17 if HGV were whole, both assets and liabilities, would
18 be reduced from the $5.8 million, taking the
19 $5,825,000, and taking off the $2.1 million of debt,
20 because they're buying it as regards that important
21 part of HGV's capitalization debt-free. So the $5.8
22 million is a debt-free value.
23 Q And to what extent, if any, does that number

1 represent a purchase of the right to operate the
2 hospital?
3 A I think it includes consideration relating to
4 the rights to operate the hospital.
5 Q Does it include any other considerations?
6 A It does.
7 Q What would those be?
8 A Akin to the HGV lease. As I understand it,
9 Fairfax was buying the in-place operations of the
10 hospital, which included the accounts receivable, the
11 supplies, the inventory, the staffing, medical staff,
12 nursing staff, technical staff and the like. It was a
13 purchase of the existing assets and a number of the
14 liabilities, excluding, as I said, the corporate debt
15 through CitiCorp that was allocated by HGV's parent.
16 Q How does this benchmark price or how is it
17 affected by Inova's actual experience between 1985 and
18 1992 running the hospital?
19 MR. BETTIUS: Your Honor, how can a price be
20 benchmarked by what happens later? I object to the
21 question.
22 MR. COCHRAN: My question is how is it
23 affected by their experience thereafter.

1 THE COURT: How is that affected, his
2 analysis of the price or the price itself?
3 MR. COCHRAN: The price itself.
4 THE COURT: You mean was it a good deal or a
5 bad deal, Mr. Cochran? I'm not sure what you mean by
6 that.
7 MR. COCHRAN: Your Honor, he's indicated that
8 the net of $3.1 million is indicative of the value of
9 the right to operate the hospital. My question is, I
10 did the math for Mr. Bettius --
11 THE COURT: Well, it would be 3.7, not 3.1.
12 BY MR. COCHRAN:
13 Q How is that value affected by the actual
14 experience of Inova?
15 MR. BETTIUS: Objection.
16 THE COURT: Can you answer that question, Mr.
17 Cobb?
18 THE WITNESS: I understood Mr. Bettius'
19 objection, but I didn't understand the question.
20 BY MR. COCHRAN:
21 Q What was Fairfax's experience in seven years
22 that it operated the hospital?
23 A Through the years, by the Fairfax information

1 that's been available, Fairfax incurred substantial
2 losses. I think the first two years they had some
3 relatively small gains and then losses.
4 During that time period Fairfax made
5 investments of over $14 million. Including the costs
6 that they allocated for the administrative support and
7 services they provided, they invested over $18 million.
8 And through that time period they sustained losses.
9 And as I recall, the last years' Fairfax tax
10 return indicated losses of about $8 million. During
11 that time period there were declines in admissions,
12 declines in patient days. So under Fairfax's
13 operation, the operation of Jefferson Memorial
14 Hospital, later Jefferson Hospital, consumed large
15 amount of cash, did not generate profits and saw
16 patient activities decline.
17 Q As of December 31, 1992, to what extent, if
18 any, did that real life experience affect any value one
19 could attribute to the license to operate the hospital?
20 A I think it would have deteriorated in value
21 significantly.
22 Q What happens, Mr. Cobb, when a business winds
23 up its affairs?

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1 A It would marshall all of its assets. It
2 would then make good, honor its liabilities.
3 Q And to what extent, if any, did this occur on
4 March 31, 1982?
5 A March 31, 1982 there were -- with the HGV
6 transactions --
7 MR. BETTIUS: I'm going to object to it as a
8 legal conclusion. This case is here under 13 -- I
9 think it's 990. It's being liquidated now. It's being
10 wound up now. It was never, and that's why this Court
11 assumed jurisdiction, Your Honor.
12 THE COURT: Objection's overruled.
13 MR. COCHRAN: Thank you, Your Honor.
14 THE WITNESS: Could you restate the question,
15 please?
16 BY MR. COCHRAN:
17 Q To what extent, if any, as of March 31, 1982
18 did JMHC wind up its business?
19 A JMHC, regarding the hospital operations?
20 THE COURT: I'm sorry. You said '82?
21 MR. COCHRAN: '82. Yes, sir.
22 THE COURT: I'm sorry, Mr. Cobb. Go ahead.
23 THE WITNESS: That's all right. It took its

1 assets and sold them to HGV under the document that we
2 looked at yesterday, and realized amounts for its
3 accounts receivable, its inventory and the like.
4 It also, in effect, in honoring liabilities,
5 was able to convey those liabilities, the hospital
6 operating liabilities, to HGV.
7 It also was able to take in the --
8 MR. BETTIUS: Your Honor, I'm going to
9 object. This is way beyond the scope of my
10 cross-examination. He's opening up new areas of
11 whether they did liquidate or they didn't. I never
12 asked him anything about that. What they did, Your
13 Honor, is effect, go out on a lease. They didn't wind
14 up, they just became a lessor.
15 This is a whole new area. If we're going to
16 go here, I want to examine on it.
17 THE COURT: Objection's overruled.
18 MR. COCHRAN: Thank you, Your Honor.
19 THE WITNESS: And they also realized,
20 regarding their assets, the amount that shows up on the
21 second page that I think is about $280,000, $290,000.
22 So there was, in effect, a marshalling of the operating
23 assets, a dealing with the liabilities in terms of

1 conveying liabilities to HGV.

2 BY MR. COCHRAN:

3 Q If JMHC had not invested every penny of its

4 net income ine operations of the hospital through 1982,

5 could it have survived?

6 MR. BETTIUS: I'm going to object to it as a

7 conclusion. They didn't invest in the operations.

8 They built MOBs. The evidence is -- it's contrary to

9 the evidence, unless he's going to assume that that is

10 a fact. He's asking the witness a conclusion and

11 asking if he agrees with it. I think it's contrary to

12 their own evidence, Your Honor.

13 THE COURT: Can you answer that one without

14 speculating? That would be my concern.

15 THE WITNESS: I was going to ask to have the

16 question read back.

17 THE COURT: All right. Say it again, Mr.

18 Cobb.

19 BY MR. COCHRAN:

20 Q If JMHC had not invested every penny of its

21 net earnings in the operations of the hospital through

22 1982, could it have survived?

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

1 Bettius.

2 THE WITNESS: I don't believe so.

3 MR. BETTIUS: Same objection, Your Honor.

4 THE COURT: All right.

5 THE WITNESS: The earnings that were

6 indicated had to be put back into the hospital or

7 activities to support and sustain the hospital or its

8 growth,or the hospital would not have made it as far as

9 it did.

10 MR. COCHRAN: Thank you. I have no further

11 questions.

12 THE COURT: Mr. Bono?

13 REDIRECT EXAMINATION

14 BY MR. BONO:

15 Q Mr. Cobb, we've gone through a number of

16 scenarios and numberswith this testimony. As I look at

17 your report, am I correct that in your report you have

18 provided one accounting which you view as the

19 accounting?

20 A That's true.

21 Q Do you still adhere to the position that

22 there's one accounting, in your opinion --

23 MR. BETTIUS: May we know which one?

1 MR. BONO: I will identify it.

2 THE WITNESS: Yes. By my analysis, by my

3 reading, by my understanding, I determined an

4 accounting.

5 BY MR. BONO:

6 Q And to clarify what -- which is the

7 accounting that, in your opinion, should be utilized?

8 A June 30, 1973.

9 Q And referring to the easel, is that the first

10 item on there?

11 A It is.

12 Q And is that your opinion in this case, that

13 that is the accounting that should be utilized?

14 A It is. It's obviously subject to a number of

15 determinations that are not mine to make, they're the

16 Judge's.

17 Q Now, is it then your opinion that the

18 alternative scenarios and numbers that we have been

19 discussing and that are set forth in your report should

20 not be utilized in doing the accounting in this matter?

21 MR. BETTIUS: If he wants to withdraw them,

22 Your Honor, we're pleased to permit that.

23 THE WITNESS: I looked at the --

1 THE COURT: I must have missed something.
2 Would you restate that question?
3 MR. BONO: I'll restate the question.
4 BY MR. BONO:
5 Q I understand that you provided these
6 alternative scenarios to provide information to the
7 Court; is that correct?
8 A That's correct.
9 Q But other than providing information to the
10 Court, am I correct that you believe the first
11 accounting, entitled the accounting in your report, is
12 the one, in your opinion, that correctly applies to the
13 rulings in this case?
14 A As I understand the rulings and the
15 information, yes.
16 Q Now, is it your opinion, then, that the lease
17 payments from HGV and Inova should not be included?
18 A As I understand the materials, yes. If there
19 is a determination by the Judge that JMHI would
20 participate in operations and real estate after 1973
21 and would participate in real estate that had its
22 genesis at least with JMHA, then I think the
23 information becomes important.

1 Q I'm sorry. I didn't hear that.

2 A Then the information becomes important.

3 Q But in your opinion, that should not be

4 included?

5 A My reading of the documents and the

6 information, and my understanding by my opinion, the

7 accounting called for is what I reflected at June 30,

8 1973.

9 MR. BETTIUS: We'll stipulate that they went

10 out of business.

11 MR. BONO: That's not responsive or material

12 to the --

13 THE COURT: We don't need a stipulation. Go

14 ahead, Mr. Bono.

15 BY MR. BONO:

16 Q Now, Mr. Cobb, in your analysis and going

17 forward in the conduct of this case, much or many of

18 the actions or transactions going forward occurred

19 after 1978; isn't that correct?

20 A Yes.

21 Q And, in fact, Mr. Wilson's accounting and the

22 Commonwealth's accounting, in large measure deals with

23 actions taken by the Respondents after 1978; is that

1 correct?

2 A It does.

3 Q And isn't it true that the law in Virginia

4 changes in 1978 --

5 MR. BETTIUS: Your Honor, we're back to this

6 safe harbor for corporate decisions. The Court's

7 already ruled these are trustees.

8 THE COURT: I've got to hear the question,

9 Mr. Bettius.

10 MR. BETTIUS: I'm sorry.

11 THE COURT: Finish the question, Mr. Bono.

12 BY MR. BONO:

13 Q Isn't it true that the law in Virginia

14 changed in 1978 to provide that action -- insider

15 transactions taken by directors or trustees with

16 respect to a non-stock corporation are to be judged on

17 whether they are fair or not and that the Commonwealth

18 cannot void any of those transactions unless they're

19 found to be unfair?

20 MR. BETTIUS: Legal conclusion and it is a

21 collateral attack on the previous ruling of the Court.

22 THE COURT: I can read the statute, Mr. Bono.

23 MR. BONO: Thank you, Your Honor.

1 BY MR. BONO:

2 Q You were asked questions by Mr. Bettius about

3 whether there were certain assets in this case that

4 were supposedly commingled. Do you recall that?

5 A I do.

6 Q And is it correct that where assets are

7 commingled between a charity and a private entity that

8 a pro rata or proportionate allocation needs to be made

9 to determine where to apply future accretions and

10 revenues?

11 MR. BETTIUS: That's a legal conclusion, Your

12 Honor, that this Court's going to make and it's the

13 ultimate issue where the expert will be opining --

14 THE COURT: Are you talking about from an

15 accounting standpoint, Mr. Bono?

16 MR. BONO: Yes.

17 THE COURT: I'll let him answer from an

18 accounting standpoint.

19 MR. BETTIUS: The witness previously

20 testified that the burden to trace is on the trustees.

21 MR. BONO: I didn't ask that.

22 THE COURT: He didn't ask anything about the

23 burden.

1 Go ahead, Mr. Cobb. Do you understand the
2 question?
3 THE WITNESS: It would be better if you
4 repeat it.
5 THE COURT: Repeat it, Mr. Bono.
6 BY MR. BONO:
7 Q Do you understand from an accounting point of
8 view there were assets -- assuming assets are
9 commingled between a charity and private entity, that
10 when attributing the future accretions, profits and
11 income on the commingled whole, that there must be a
12 pro rata portion allocation between the initial
13 contributions?
14 A A pro rata or a specific tracing. There
15 would be a severing to identify what had happened over
16 time, to estimate what had happened over time to the
17 parts, to the extent they were distinguishable.
18 Q Now, in your analysis, your alternative
19 information dealing with --
20 MR. BETTIUS: Your Honor, it's way beyond the
21 scope. Mr. Bono is off on --
22 THE COURT: I've still got to hear the
23 question, Mr. Bettius.

1 MR. BETTIUS: I'm talking about this whole
2 line of inquiry.
3 THE COURT: Well, I think it's going --
4 pretty much rehashing what he said yesterday and this
5 morning, but go ahead, Mr. Bono.
6 MR. BONO: Thank you, Your Honor. Just
7 briefly.
8 THE COURT: All right.
9 BY MR. BONO:
10 Q With respect to the 1982 analysis, I believe
11 you testified this morning in response to Mr. Bettius
12 that that was -- those were JMHC's books and assets; is
13 that right?
14 A No. The analysis -- I go back to the first
15 overhead of the income statements. The income
16 statements are JMHC's. From JMHC's income statements
17 we extracted -- Mr. Wilson extracted, with some
18 differences, the revenues, the expenses, the earnings
19 that would pertain to JMHI.
20 We then went to JMHC's balance sheets,
21 because I believed that it was important to reflect
22 assets and liabilities year to year.
23 MR. BETTIUS: Your Honor, I'm going to object

1 to this whole line of inquiry and I going to do it
2 based on judicial estoppel. These people have taken
3 positions in pais. They've taken positions legally
4 that they're the same. The law in Virginia is clear,
5 you can't abrogate and reprobate your positions in
6 pais, your positions in law and your positions in
7 pleadings.
8 I mean, they're really contradicting entirely
9 what this company did, the way it acted, that it was
10 merged, that there was a pooling of assets. That's the
11 way -- they've pretended they've been the same all
12 along. Now in this trial, suddenly at the eleventh
13 hour they want to start separating these issues out.
14 And there's an absolute commingling and I
15 object.
16 THE COURT: Well, as I said to you yesterday,
17 Mr. Bettius, this is their theory of the accounting and
18 they're entitled to present the evidence in support of
19 it and I'll hear it and I'll make the determination as
20 to whether or not they're correct.
21 THE WITNESS: So with those earnings amounts
22 that are now, in effect, JMHI earnings amounts, we went
23 to the balance sheets. The only balance sheets are the

1 JMHC balance sheets. I believed it was important not
2 to just show earnings, but to show assets and
3 liabilities time to time, year to year.
4 So we identified from the JMHC balance sheets
5 amounts related to operations and then integrated the
6 two together. So the information is derived from JMHC,
7 but the portrayal is, in effect, what JMHI -- the JMHI
8 portion of JMHC was.
9 MR. BONO: No further questions, Your Honor.
10 THE COURT: All right. Mr. Hirschkop?
11 REDIRECT EXAMINATION
12 BY MR. HIRSCHKOP:
13 Q During the cross-examination by my esteemed
14 colleague, Mr. Bettius suggested perhaps you hadn't
15 reviewed some documents. Would it be fair to conclude
16 you reviewed thousands of pages of documents in this
17 case?
18 A It certainly would, read or analyzed
19 thousands of pages.
20 Q Has any document be denied to you that you've
21 requested to see?
22 MR. BETTIUS: Your Honor, that's the classic
23 negative pregnant. For those of you who haven't

1 studied common law, have you stopped beating your wife.
2 The question subsumes the answer. Have you read it or
3 have you been given an opportunity. The inference is
4 that he's read everything.
5 THE COURT: The question was whether he'd
6 been denied -- he'd asked for anything and denied it,
7 Mr. Bettius. I'll permit him to answer it.
8 THE WITNESS: I'm sure there are things that
9 I asked for that I never got. I can't tell you what
10 they are.
11 THE COURT: Do you still want to object, Mr.
12 Bettius?
13 MR. BETTIUS: No.
14 THE WITNESS: They weren't things that, in
15 the analysis or in the final analysis, mattered. I'm
16 sure that I asked for this or that that didn't exist or
17 that nobody could find.
18 BY MR. HIRSCHKOP:
19 Q During the course of this proceeding, have
20 you, in fact, talked to Mr. Bettius on a number of
21 occasions about financial matters in this case? In the
22 hallway out here you met with him and his expert for an
23 hour or more the other night; is that correct?

1 A I wasn't really talking to Mr. Bettius. Mr.
2 Bettius and I talked. I kind of enjoy Mr. Bettius.
3 MR. HIRSCHKOP: We all do.
4 THE WITNESS: We talked socially.
5 MR. BETTIUS: It's mutual.
6 THE WITNESS: In the discussions there were
7 financial matters, but in terms of -- they were really
8 more with Mr. Wilson and his associate, Amy, whose last
9 name I don't remember, going through some of the
10 particulars. There were negotiations to agree on data,
11 and Mr. Bettius put in his two cents, as did Mr.
12 Cochran and whoever.
13 But I really haven't been pulled aside and
14 discussed the hows and the whys and particulars with
15 Mr. Bettius.
16 BY MR. HIRSCHKOP:
17 Q Is it fair to say there were approximately
18 300 boxes of documents and pleadings and depositions?
19 You haven't read every page of those?
20 A I've heard numbers of boxes even higher than
21 that.
22 Q But you have, to satisfy yourself, read
23 everything you feel that is necessary to make an

1 accurate and full accounting; is that fair?

2 A I certainly did.

3 MR. BETTIUS: Your Honor, how can he know if

4 he doesn't know what he hasn't read? I object to it.

5 THE COURT: Objection's overruled.

6 BY MR. HIRSCHKOP:

7 Q You sat through all the testimony for the

8 last three or four days?

9 A I left for a little while during Dr.

10 Tauber's.

11 Q Sir, you were asked about the 65 percent

12 ownership and you said it was 20 percent ownership by

13 JMHI in the land; is that correct?

14 A I had understood that JMHI owned 20 percent

15 of the land, at least as of 1971.

16 Q Did you see in the records that JMHI had

17 agreed to a sale of 50 percent interest to Dr. Gondor?

18 A I think at one time or another I've seen some

19 of the material, but I don't remember it clearly.

20 Q Did you hear Dr. Tauber's testimony that the

21 land was originally purchased in '64 for $147,000?

22 MR. BETTIUS: Your Honor, note my continuing

23 objection to this line of inquiry as collateral --

1 THE COURT: It's something we've been
2 through, Mr. Hirschkop, haven't we? Go ahead, I'll
3 overrule that objection. Go ahead.
4 BY MR. HIRSCHKOP:
5 Q A year later they needed operating funds to
6 start the hospital, and so Dr. Gondor purchased just 50
7 percent of the land --
8 MR. BETTIUS: Your Honor, there was nothing
9 on this on cross-examination.
10 THE COURT: You got into the land
11 transaction, Mr. Bettius.
12 THE WITNESS: I heard Dr. --
13 THE COURT: I've heard this, Mr. Hirschkop.
14 MR. HIRSCHKOP: Yes, I intend to move on from
15 here, but I need to lay a predicate.
16 THE WITNESS: I heard Dr. Tauber testify
17 about that and I discussed that previously with Dr.
18 Tauber.
19 BY MR. HIRSCHKOP:
20 Q Without the $88,000 cash that Dr. Gondor put
21 up and was accepted by the hospital, they couldn't have
22 opened their doors. Did you hear that testimony?
23 A I did.

1 Q And we wouldn't be here today talking about
2 one dime going to the state, but for the money Dr.
3 Gondor put up for the land?
4 A I don't suspect that that's true. I suspect
5 that having purchased the land and gone that far in
6 construction, one way or another somebody would have
7 found money elsewhere, selling their soul or whatever.
8 If it got that far, sooner or later somebody would have
9 opened something.
10 Q But you'd have to purchase a soul or
11 something? You had to get the money to open this
12 place?
13 A That's right.
14 Q The money, unquestionably, they did have, was
15 Dr. Gondor's?
16 A Yes.
17 Q Now, did you ever see anything in the
18 documents where Dr. Gondor's money was returned?
19 A No. Or at any rate, not that I recall.
20 Q A lot was asked of you on cross-examination
21 by Mr. Bettius about personal inurement. Did you see
22 in the records where, after 1973, these doctors didn't,
23 in fact, believe that JMHI did not exist (sic) anymore

1 and they were operating a for-profit entity?

2 MR. BETTIUS: Your Honor, that's asked and

3 answered. It's been gone over. It's just cumulative

4 at this point.

5 THE COURT: Go ahead and answer it, Mr. Cobb.

6 THE WITNESS: That's my understanding and my

7 impression from the discussions and from the documents.

8 BY MR. HIRSCHKOP:

9 Q And are you aware that Mr. Bettius'

10 ex-client, maybe present client, is Inova Fairfax

11 Hospital?

12 MR. BETTIUS: That's not necessary.

13 MR. HIRSCHKOP: I'll withdraw that part of

14 it.

15 THE COURT: All right.

16 BY MR. HIRSCHKOP:

17 Q Are you aware that Mr. Nofzinger (ph) earns

18 millions of dollars running Fairfax Hospital and Inova?

19 MR. BETTIUS: What's the relevance, Your

20 Honor?

21 THE COURT: Objection sustained.

22 BY MR. HIRSCHKOP:

23 Q Are you aware that board members of Inova get

1 all sorts of personal benefits from being on that
2 board?
3 MR. BETTIUS: Continuing objection, Your
4 Honor.
5 THE COURT: Objection sustained.
6 BY MR. HIRSCHKOP:
7 Q You testified, I think on direct, that small
8 community-based hospitals routinely had arrangements
9 back in this period of time where corporations were
10 formed to lease --
11 MR. BETTIUS: Outside the scope.
12 MR. HIRSCHKOP: Oh, no.
13 THE COURT: Objection's overruled.
14 BY MR. HIRSCHKOP:
15 Q -- to lease equipment, land, buildings back
16 to these small, community-based hospitals, do you
17 recall?
18 A This was not uncommon.
19 Q And was it also common that many of these
20 same doctors, who constituted the corporations that
21 leased it, sat on the boards of these hospitals?
22 A It was very common where that structure
23 existed.

1 Q And do you have any knowledge that that was
2 ever determined to be personal inurement?
3 MR. BETTIUS: Your Honor, that assumes that
4 these hospitals were charities. That foundation hasn't
5 been laid.
6 THE COURT: Are you talking about in other
7 cases he's been involved in or other hospitals that
8 he's been involved in?
9 MR. HIRSCHKOP: No, sir. He testified on
10 direct that he has knowledge that it was common in the
11 industry.
12 THE COURT: I understand that. Your question
13 was did he know of any of these where there were
14 private benefits to these people.
15 MR. BETTIUS: It's not relevant unless these
16 are charitable hospitals.
17 MR. HIRSCHKOP: I'll withdraw the question.
18 BY MR. HIRSCHKOP:
19 Q In some of these small, community-based
20 hospitals that you're talking about, where doctors sit
21 on the boards and doctors own corporations leasing
22 property to the hospital, are these hospitals 501(c)(3)
23 status?

1 A I wouldn't say very often.

2 Q Do they include hospitals with 501(c)(3)

3 status?

4 A I believe so, but I can't remember one

5 specifically.

6 Q Now, you were asked about the bargaining

7 power. You were asked a lot by Mr. Bettius about that.

8 Let's go back to 1971 and look at the bargaining power.

9 JMHI -- you were asked about the assets of JMHI. Let's

10 talk about the liabilities.

11 This 1966 lease, had JMHI checked out at that

12 point would it be fair to assume they would have owed

13 -- they would owe enormous sums of money for the rental

14 payments under the 1966 lease?

15 MR. BETTIUS: Hypothetical, speculative.

16 They never did that.

17 THE COURT: Objection's overruled.

18 THE WITNESS: Yes, there would be continuing

19 responsibilities under the lease.

20 BY MR. HIRSCHKOP:

21 Q And, in fact, would that outweigh the

22 potential value of the land, roughly -- whatever it was

23 in hundreds of thousands of dollars, whether it was 65

1 percent or 100 percent?

2 MR. BETTIUS: Objection, unless Mr. Cobb's

3 going to qualify as a real estate expert, and I want to

4 see his certification for that.

5 THE COURT: Do you have any basis to answer

6 that question, sir, whether the obligation on the '66

7 lease would have been greater than the value of the

8 land that was owned by JMHI? Do you have any basis to

9 answer that?

10 THE WITNESS: Your Honor, the documents

11 indicate that the lease payments under the 1966 lease

12 were about $80,000 a year. The 1968 lease was an

13 additional $11,000. So those would have continued.

14 The land had been purchased, as I understand

15 it, in the early 1960s. I don't remember the exact

16 year, I think '63. The amount recorded for that

17 purchase was $147,000. Under the Gondor purchase,

18 which was in --

19 MR. HIRSCHKOP: '65, I believe.

20 THE WITNESS: -- '65, that indicates the

21 value of the land approximately doubled. The original

22 cost being $147,000 and Gondor buying half for

23 $150,000, indicates that it doubled. So there'd be a

1 land value under that scenario someplace approaching
2 $300,000, against lease payments of $80,000 plus per
3 year. So there is a discontinuity between the two
4 indicated in the documents.
5 I have not done an appraisal of the land at
6 4600 King Street, per se. Not only not back in the
7 '60s, but at any time.
8 THE COURT: All right.
9 BY MR. HIRSCHKOP:
10 Q Given the amount due under the lease that
11 would have been due and payable had they defaulted on
12 the lease, that land would have to be worth many
13 millions of dollars to offset that liability, would it
14 not?
15 THE COURT: How can we answer that one, Mr.
16 Hirschkop? How do we know what their liability would
17 have been if they breached the '66 lease because of
18 obligations on landlords to relet and all the other
19 things that go into trying to compute that kind of
20 liability?
21 Do you think it's just an absolute liability
22 at the per annum rate times the number of years left on
23 the lease? Because I don't think that's it.

1 MR. HIRSCHKOP: I think the chance of -- Your
2 Honor can easily draw the distinction, that there is
3 such a great liability in the lease. The lease does
4 have a provision that if they sublet, there is a
5 setoff. That's standard for a lease and this lease has
6 such a provision.
7 But nonetheless, what has been missing in the
8 question --
9 THE COURT: Let me stop you a minute.
10 Can you answer the question whether that
11 liability would have been in the millions of dollars
12 for breaching the '66 lease?
13 THE WITNESS: Not as I sit here today.
14 THE COURT: All right.
15 BY MR. HIRSCHKOP:
16 Q But unquestionably there would have been --
17 unless there was a complete subletting, an enormous
18 liability?
19 MR. BETTIUS: Your Honor, it's speculative.
20 MR. HIRSCHKOP: It's not speculative.
21 THE COURT: It's granted. Of course it would
22 have been some liability. I don't know if I'd
23 characterize it as enormous, Mr. Hirschkop. That's

1 your testimony.

2 MR. HIRSCHKOP: Well, we do have Dr. Tauber's

3 testimony.

4 THE COURT: I understand.

5 MR. HIRSCHKOP: It was a single use. This

6 thing was a white elephant without the hospital.

7 BY MR. HIRSCHKOP:

8 Q At the time they sought to -- I'm sorry --

9 the Corporation sought to take over this operation, was

10 that a reasonable transaction, the 5,000 shares, had it

11 occurred, for the JMHI interests, given the fact that

12 JMHI did have the liability of the lease and the

13 assets, according to you at that point, zeroed out?

14 A As I said yesterday, I think that it was a

15 reasonable transaction.

16 Q And that constituted approximately two

17 percent, I understand, of the total assets that JMHA

18 took over?

19 MR. BETTIUS: I never asked if it was a

20 reasonable transaction. They're retrying their whole

21 case again.

22 THE COURT: We went through this. He said

23 that yesterday. He said that yesterday. I knew he

1 said that.

2 BY MR. HIRSCHKOP:

3 Q Now, lastly, Mr. Bettius asked you about the

4 stock lying in a drawer. Remember that analogy he

5 drew?

6 A Yes.

7 Q And, sir, in this case, contrary to stock

8 lying in a drawer, you mentioned there was an increase

9 in square footage, a lot was done. Would that also

10 include the building of the intensive care unit, the

11 building of the office building on Beauregard and the

12 fourth floor? All of those things are above and beyond

13 and JMHI interests, aren't they?

14 A There were substantial projects undertaken

15 related to hospital delivery and related to the medical

16 office building after 1971.

17 Q And given JMHI's financial condition, did it

18 have the ability to undertake these projects by itself?

19 A No.

20 MR. HIRSCHKOP: Nothing further. Thank you.

21 THE COURT: Mr. O'Donnell?

22 MR. O'DONNELL: No, sir.

23 MR. BETTIUS: Very briefly.

1 THE COURT: Briefly, Mr. Bettius.

2 RECROSS-EXAMINATION

3 BY MR. BETTIUS:

4 Q You indicated that the '73 accounting was

5 correct; is that correct -- the right accounting?

6 A From my reading, that's the accounting that I

7 developed, because it's the one to me, Mr. Bettius,

8 that follows from the documents and the judicial

9 findings.

10 Q We're all subject to prejudices from data,

11 and I would expect as a valuation expert, you are.

12 That has to prejudice your whole portrayal, does it

13 not, and feeling about what the assets and liabilities

14 are going forward?

15 A You used the word prejudiced, but I think

16 that is an influence, because in my mind I've got

17 someplace in the back of my mind that there is a

18 winding up and a liquidation that I assign there. But

19 as I come forward, I looked at the points in the

20 history by operations, by agreements, that indicate

21 winding up -- windings up and liquidations.

22 Q Well, with respect to that issue did you ever

23 do an accounting of total revenues received?

1 A Not per se, no.

2 Q Did you ever do an accounting of total

3 expenses?

4 A By received --

5 THE COURT: Mr. Bettius, this sounds awfully

6 familiar. Didn't we cover this?

7 MR. BETTIUS: Your Honor, he said this is the

8 right accounting, and I want to ask him any -- I never

9 heard anybody say that we -- I said that in opening

10 statement. I've never heard anybody say that an

11 accounting's been done that's total revenue, total

12 expenses and total --

13 THE COURT: I thought you went through this

14 in your cross-examination with Mr. Cobb. Maybe I

15 missed something.

16 MR. HIRSCHKOP: He asked about revenue.

17 THE COURT: Go ahead, Mr. Bettius. Just be

18 brief.

19 BY MR. BETTIUS:

20 Q You've never done an analysis of total

21 expenses, have you, total expenses?

22 A Total expenses of all Jefferson enterprises

23 from 1965 to 2005, I've not made considerations of all

1 of those expenses.

2 Q Did you ever do an analysis of capital

3 withdrawals by Respondents?

4 A Not for all of the Jefferson enterprises, no.

5 Q And they're all related parties; is that

6 correct?

7 A I would characterize them as related parties.

8 Q Now, when you account for only $100,000 from

9 '82 on, and you charge -- you account for '82 on and

10 you say that the charity's entitled only to a

11 contribution of $100,000 from that $900,000 income

12 stream; is that right?

13 A To a portion of that annually, not in total.

14 Q And then you testified that, in effect, it

15 was a winding up, is that correct, of the activities --

16 A What's it and when?

17 Q JMHC.

18 A All right.

19 Q There was a winding up? There were no

20 hospital operations?

21 A I've not looked at a winding up of JMHC.

22 Q Or I?

23 A I've looked at winding up of hospital

1 operations that I would assign the name JMHI to.

2 Q If you read the document, the '82 document,

3 it provides that in the event that HGV ceases to lease,

4 they're going to re-form the hospital and it will again

5 assume all of the liabilities in the lease, doesn't it?

6 MR. COCHRAN: Your Honor, he asked this same

7 question on cross-examination.

8 THE COURT: I don't recall hearing anything

9 about '83 being a winding up, Mr. Cochran, quite

10 frankly. Again, it's possible I missed it.

11 MR. COCHRAN: He's asking about a document.

12 He asked the same --

13 THE COURT: I'll permit him to inquire.

14 BY MR. BETTIUS:

15 Q It really requires --

16 A What's it?

17 Q The lease requires -- the lease amendment

18 requires that the operating entity be ready to come

19 right back in and assume all the previous obligations,

20 doesn't it, in the event the HGV stream isn't there?

21 A Or that an operating entity would have the

22 rights to do that.

23 Q No. It says the lessor, that JMHC has that

1 liability, to come back, reassume liability for the
2 mortgage and they'll re-form it and continue
3 operations. You weren't aware that that's in that
4 document?
5 A I think that's generally true.
6 Q Thank you, sir. Now, there wasn't a sale of
7 anything under the '85 Inova lease, was there? Did you
8 indicate that there was a sale under the Inova lease?
9 A Not that related to a Jefferson enterprise.
10 There was a relationship struck between Fairfax and
11 HGV, whereby Fairfax acquired the stock of HGV, I
12 think, from Health Group of Tennessee.
13 Q Well, let's talk about a winding up under the
14 Inova lease. Have you got a copy of it there, sir?
15 A Probably. I have the hospital lease
16 agreement between Jefferson Corporation of Alexandria
17 and Fairfax Hospital Association.
18 Q Didn't that lease also require that in the
19 event of an Inova default that the lessor, JMHC, would
20 come back and immediately resume operations of the
21 hospital?
22 A It may have. I haven't read that in a while.
23 Q Look at page 13, sir.

1 A All right.

2 Q The bottom of the page.

3 A All right. I understand what you're saying.

4 I don't read it as they had an obligation. I

5 understand it so that they came back so that lessor may

6 immediately continue operations of premises without

7 interruption.

8 Q Doesn't that really, in a nutshell, tell you

9 what the '94 settlement was about? If Inova wanted to

10 quit, the lessor could come right back and operate the

11 hospital at Inova's expense; isn't that what that

12 paragraph means?

13 MR. BONO: Objection, Your Honor.

14 THE COURT: Rephrase that question, Mr.

15 Bettius.

16 MR. BONO: This is well beyond the realm of

17 redirect.

18 MR. BETTIUS: We have winding ups all of a

19 sudden.

20 THE COURT: He talked about winding up.

21 BY MR. BETTIUS:

22 Q Doesn't this lease provide, on page --

23 THE COURT: It says what it says, Mr.

1 Bettius.

2 MR. BETTIUS: Right.

3 BY MR. BETTIUS:

4 Q Isn't the gist of that, and isn't that what

5 the gist of the whole Inova transaction is, that the

6 lessor has the right to come back and operate the

7 hospital at Inova's expense to protect what, the

8 license? Isn't that true?

9 A Those aren't the words I would use. What I

10 understand is that Inova has an obligation to put back

11 the facility, the operations, such that there is an

12 ability to continue operations and included -- and

13 directly included in that ability is that there is an

14 existing license.

15 Q Let me ask you this. Isn't it true that

16 you've been testifying, and everyone else has testified

17 in this case, that says this hospital is a white

18 elephant without this license?

19 A I believe it is.

20 Q If Inova wants to quit, they've protected

21 themselves totally by saying we can come back and

22 protect our license by operating the hospital at

23 Inova's expense. Isn't that the economic substance of

1 this transaction?

2 A Not as I understand it.

3 Q Well, why do you think there -- well, what's

4 the purpose, then, as you understand it, in terms of

5 economic positions of the parties of the lessor to

6 provide -- JMHC to provide that it can come back and

7 operate the hospital to protect the license?

8 MR. HIRSCHKOP: Your Honor, I don't know he

9 could speculate --

10 MR. BETTIUS: I think the document speaks for

11 itself, Your Honor.

12 THE COURT: All right.

13 BY MR. BETTIUS:

14 Q When you start allocating within the '82

15 lease the MOB building, and you say we're entitled to

16 only a percentage of it, what happened to our 20-year

17 lease of $11,760? Has it disappeared, Mr. Cobb?

18 A If we go back, Mr. Bettius, and we look at --

19 Q Would you answer that question?

20 THE COURT: I'm going to let him answer it,

21 Mr. Bettius.

22 THE WITNESS: If you go back and you look at

23 what I've traced, I've traced through the hospital

1 operations, and the hospital operations come to an
2 ending point. At that ending point what I'm looking at
3 is some sort of negotiation coming through the
4 encumbrances of subletting so that there would be a
5 negotiated continuing participation.
6 I'm not looking at that in terms of a given
7 specific document or a piece of paper that makes one
8 side or the other look strong or stronger, whether it's
9 economic reality or not. I'm looking at a measure of
10 the ability to negotiate a continuance and monies
11 coming in related to the property and equipment to an
12 operating company whose operations have not been
13 successful.
14 BY MR. BETTIUS:
15 Q In all of these transactions, in these
16 bargainings, in all of the leases since 1975, have they
17 dealt at least, as you testified, with the ongoing
18 operation of the charity's assets? They used the
19 charity's assets with one capital contribution as an
20 ongoing asset; is that correct?
21 A In terms of operations of Jefferson Hospital
22 by HGV and then by Fairfax-Inova --
23 Q I'm talking about JMHC in '82.

1 A And I'll include JMHC. Each had to use --
2 has operated the hospital operations that stem from
3 JMHI.
4 Q In all of these transactions do the
5 Respondents sign on both sides of the transaction? Did
6 they sign on behalf of the JV and did they sign on
7 behalf of the operating entity?
8 MR. BONO: Your Honor, we're now rehashing --
9 THE COURT: That's way beyond the scope.
10 BY MR. BETTIUS:
11 Q One last question, one last area, then I'm
12 going to let you go, Mr. Cobb. You indicated that the
13 Respondents thought themselves, after '73, to be a
14 taxpaying -- operating as -- they were for-profit; is
15 that correct?
16 A Yes.
17 Q They always operated as if they were
18 for-profit in the structure and in the operation at all
19 times, didn't they?
20 A I don't believe so.
21 Q Then why did they lose their 501(c)(3)
22 exemption?
23 THE COURT: We've been through this, Mr.

1 Bettius.

2 BY MR. BETTIUS:

3 Q Now, let's assume that we're operating, and

4 this is where I'm going with this, Mr. Cobb, let's

5 assume that you're an accountant and you've got two

6 closely held entities. You've got a JV that owns and

7 an operator that's the hospital.

8 A All right.

9 Q And we're going to look at operations and

10 we're for-profit and we have no charitable

11 considerations. Don't these records reflect that, in

12 related parties' transactions, they did what any

13 businessman would do, they minimized by taking off

14 expenses the amount of money that was left in there to

15 pay taxes on?

16 MS. BEACH: Your Honor, I have to object.

17 This exceeds the scope of redirect.

18 THE COURT: Objection sustained.

19 MR. BETTIUS: Your Honor, I think it relates

20 to the issue of whether they thought they were a

21 for-profit taxpayer.

22 THE COURT: We've been through that.

23 MR. BETTIUS: All right, sir. Nothing

1 further, Your Honor.

2 THE COURT: All right. Thank you, Mr. Cobb.

3 You may return to your seat or you're free to go.

4 MR. HIRSCHKOP: I have one question that he

5 raised that I --

6 THE COURT: No. No, no, no. We're done, Mr.

7 Hirschkop. You can proffer for the record, when -- Mr.

8 Hirschkop, your question and the evidence expected.

9 MR. HIRSCHKOP: Thank you.

10 (End of the testimony of Arthur H. Cobb.)

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1 Bettius.
2 BY MR. BETTIUS:
Q Now, let's assume that we're operating, and
4 this is where I'm going with this, Mr. Cobb, let's
5 assume that you're an accountant and you've got two
6 closely held entities. You've got a JV that owns and
7 an operator that's the hospital.
8 A All right.
9 Q And we're going to look at operations and
10 we're for-profit and we have no charitable
11 considerations. Don't these records reflect that, in
12 related parties' transactions, they did what any
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20 to the issue of whether they thought they were a
21 for-profit taxpayer.
22 THE COURT: We've been through that.
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1 further, Your Honor.
2 THE COURT: All right. Thank you, Mr. Cobb.
3 You may return to your seat or you're free to go.
4 MR. HIRSCHKOP: I have one question that he
5 raised that I --
6 THE COURT: No. No, no, no. We're done, Mr.
7 Hirschkop. You can proffer for the record, when -- Mr.
8 Hirschkop, your question and the evidence expected.
9 MR. HIRSCHKOP: Thank you.
10 (End of the testimony of Arthur H. Cobb.)

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1 Whereupon,
2 ROBERT E. WILSON
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 DIRECT EXAMINATION
7 BY MR. BETTIUS:
8 Q Just briefly, Mr. Wilson, will you state your
9 position at Arthur Andersen?
10 A Yes. I'm a partner at Arthur Andersen.
11 Q How long have you been a partner at Arthur
12 Andersen?
13 A For approximately 14 years.
14 Q What experience do you have with respet to
15 health care organizations?
16 A I spent a good number of years, probably 20
17 years or more, working in and around hospital
18 organizations as accountant, auditor, business
19 consultant.
20 Q Would it be fair to say that a lot of your
21 career has not been spent on the witness stand?
22 A I would say the vast majority of it,
23 thankfully, has not been on the witness stand.

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1 MR. BETTIUS: That's kind of an unusual
2 environment to him, Your Honor.
3 BY MR. BETTIUS:
4 Q Mr. Wilson, with reference to
5 not-for-profits, what has been your experience with
6 not-for-profits as an accountant?
7 A My experience with hospitals has been almost
8 exclusively with not-for-profit organizations and has
9 been extensive.
10 Q There's been some testimony in this
11 proceeding about the ownership of not-for-profit
12 hospitals and non-profit hospitals. Can you tell me
13 whether or not in your entire experience or career
14 you've ever heard of not-for-profits' assets being
15 owned by doctors that sat on its board?
16 A From my personal experience, I have not
17 encountered that at all. My experience has been highly
18 unusual that a not-for-profit organization is largely
19 controlled by physicians.
20 Q Have you ever seen or heard of an instance
21 involving a not-for-profit where the entirety of its
22 memberships are the Respondent doctors that own its
23 assets?

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1 A No.
2 Q Can you tell me, Mr. Wilson, how you would
3 characterize the capital structure and operations of
4 Jefferson Memorial Hospital from 1965 and 1971, and
5 alternatively in 1973?
6 A Yes. There's been testimony to the effect
7 that it is not unusual for hospitals, not-for-profit
8 hospitals that are established as charities, not owning
9 what I would call their operating infrastructure, that
10 is, the buildings, the medical equipment, the things
11 that make the hospital run.
12 My experience has been that it's highly
13 unusual; in fact, I can't think of one particular
14 instance, there may be one and I just don't know of it,
15 where, in fact, the not-for-profit hospital has been
16 set up from the very beginning in what I would
17 characterize as a highly vulnerable state by not
18 enjoying the rights of true ownership over its
19 infrastructure assets.
20 Q Now, in terms of the structure of the
21 hospital and the starting point for your accounting,
22 have you made any assumptions at all?
23 A I have made no assumptions. What I took to

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1 be my responsibility is to provide an accounting. An
2 accounting by my definition, and I think by generally
3 accepted definition, is to account under some set of
4 principles for what actually occurred, and that's what
5 I've attempted to do.
6 Q In terms of what you've done and what Mr.
7 Cobb's done, can you tell us what the differences are?
8 A Yes. Maybe I could refer to a chart, if I
9 might?
10 Q Certainly. Do you have paper representations
11 of what's on these documents, Mr. Wilson, so the Court
12 will have a copy?
13 MR. BETTIUS: We don't need to put these in
14 the record, Your Honor.
15 THE WITNESS: I'm sorry, Your Honor.
16 THE COURT: That's all right.
17 THE WITNESS: I'd like to start, if I might,
18 with the overhead projector, just to describe briefly
19 the approach that we took.
20 Our objective was to try to understand --
21 I'll stand over here -- try to understand what was
22 called for with respect to fiduciary accounting for the
23 charity, as stipulated in this Court's order.

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1 My understanding of what that called for was
2 to account for all of the revenues, all of the
3 expenses, the assets and liabilities, accretions,
4 benefits of the charity for its entire life history.
5 BY MR. BETTIUS:
6 Q Are these the expenses reported by the
7 Respondents?
8 A Yes, they are. So our beginning point was to
9 literally accumulate all of the income statements, as
10 best as we could accumulate them -- there were some
11 years where information wasn't available to us -- and
12 to literally add up all of the revenues and expenses,
13 other revenues and expenses, as reported by the
14 operating entity.
15 Q Was it possible to interpolate the expenses
16 for the reports that weren't furnished, Mr. Wilson?
17 A Difficult to do. In fact, we literally
18 excluded those years where we didn't have information
19 available to us. We didn't want to assume anything.
20 So this is a synopsis of our starting point,
21 which is net income as reported by JMHI through 1971,
22 and JMHC -- excuse me -- through 1971 and JMHC for the
23 duration, down through today.

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1 Now, I will conclude with the slide.
2 Q All right, sir. What did you find the net
3 income as reported to be, Mr. Wilson?
4 A The net income reported was $1.5 million off
5 of total revenues of $92.5 million, although as I will
6 describe in a moment, the actual reported income,
7 frankly, suppressed revenues for the operating charity
8 through much of its life.
9 Q Go on, Mr. Wilson. At this point do you
10 report a difference in methodology from that employed
11 by Mr. Cobb?
12 A If I might, I'd like to describe our
13 methodology, Your Honor, and compare that with what I
14 believe and understand to be Mr. Cobb's methodology as
15 I heard in the testimony and read his report, and I
16 have that depicted on some charts here. I think we can
17 turn the lights up for this.
18 Q As you go over there, have you had an
19 opportunity to examine in detail the accounting or the
20 documents furnished by Respondents in this case?
21 A Yes, I have.
22 Q Do you find it to be an accounting, fiduciary
23 accounting, presented in accordance with generally

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1 accepted accounting principles?
2 A I don't believe that what's been presented by the Respondents constitutes a fiduciary accounting of
4 literally what went on, the transactions that occurred
5 over the life of the charity as specified by the
6 underlying agreements and the Court's order. I will
7 describe why I believe that to be the case.
8 THE COURT: I can see it. Counsel can move
9 about if they need to see it.
10 MS. BEACH: Thank you, Your Honor.
11 MR. BETTIUS: Your Honor, we'll produce
12 copies of this demonstrative exhibit.
13 THE COURT: All right.
14 THE WITNESS: I would characterize our
15 approach, again, in some ways very simple, quite
16 simplistic. Because, again, we understood the
17 responsibility of a fiduciary accounting to take
18 literally what was happening in terms of revenues,
19 expenses, benefits, accretions throughout the course of
20 history of the charity and then make modifications to
21 properly reflect the allocation of revenues and
22 expenses as we understood them to be dictated by the
23 Court's order.

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1 So in that sense, as you'll see in a moment,
2 it's quite straightforward. And I think it's important
3 to note, I would say also, from my standpoint, that
4 even though there's been some discussion in the last
5 day or so of the testimony about negotiating
6 differences between my accounting and Mr. Cobb's
7 accounting, the fact of the matter is, there are vast,
8 vast, ocean-wide philosophical differences regarding
9 the outcome of an appropriate fiduciary accounting.
10 BY MR. BETTIUS:
11 Q Because you followed the actual records, was
12 it necessary to adjust your numbers in the last few
13 days?
14 A No.
15 Q Tell the Court what happened in respect to
16 the accounting and the documents.
17 A We started with the historical financial
18 statements as reflected and summarized on the earlier
19 slide, as did Respondents. We took the historical
20 financial statements for each and every year from 1965
21 through 1995, and the reason we ceased that in 1995 is
22 because we believe at that point the operations ceased.
23 The Respondents' accounting similarly took

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1 financial statements, income statements if you will,
2 and used a similar approach. We both start at the same
3 starting point.
4 We then took as our understanding of
5 calculations that would be required to the charity's
6 recorded financial results, net income if you will,
7 taking into account what I believe to be the
8 appropriate allocation of revenue, giving the charity
9 due credit for what I believe to be its underlying
10 value as dictated by the arrangement between the --
11 excuse me -- between the charity and between the
12 Respondents or the Joint Venture in this case.
13 Mr. Cobb, in his analysis, took a similar
14 approach to a certain point in time. In fact, that
15 point in time was 1982. Our differences are relatively
16 minimal.
17 Q But the methodology is totally different?
18 A The methodology is totally different from
19 that point forward. The characterization and testimony
20 that we were together, in fact, was the case as it
21 relates to reconciling the two reported income
22 statements through the year -- to the year 1982.
23 At that point, again, we simply continued

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1 reflecting the income statements of the charity,
2 adjusted for due credit, for asset accretions belonging
3 to the charity, continuing that process through 1995,
4 and we get into some of the details underlying that.
5 At that point in time the Respondents took a
6 slightly different approach, more than slightly
7 different approach, and that brings us to really the
8 second step in the process.
9 By taking the approach that we followed from
10 1965 to 1995, the actual historical results of
11 operations of the charity for that period of time --
12 Q Let me ask you a question. Was this hospital
13 ever operated as anything other than a going concern?
14 A No, it was not. It continued as a going
15 concern right up until the time that it entered into an
16 agreement with Inova in 1995 -- '94.
17 Q Were there any liquidations or windings up,
18 theoretical or real?
19 A There were no liquidations whatsoever.
20 That's where we fundamentally depart.
21 Q I didn't mean to interrupt.
22 A That's quite all right. We're intending to
23 try and account for all of the revenues, expenses,

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1 benefits, accretions deriving from the assets of the
2 charity, which I believe the underlying assets of the
3 charity include some land, but fundamentally the
4 license to operate the charity, the license itself.
5 The charity, from every document I've looked
6 at, never gave up its ownership of that license.
7 Hence, our adjusted income statements then take into
8 account all of the revenues that issue from the
9 ownership of that license over the entire duration.
10 At that point my accounting and my report
11 concludes, and Ms. Moore in her report has applied some
12 assumptions with respect to valuing those income
13 streams out into the future.
14 Q Has there ever been any valuation done of any
15 of the hospital's assets?
16 A None.
17 Q As I understand your testimony, once you've
18 gotten income, it's been valued forward and then valued
19 backward from 2005; is that a fair summary?
20 MR. COCHRAN: If the court, please, Mr.
21 Bettius is asking some very leading questions.
22 THE COURT: The last one certainly was.
23 MR. BETTIUS: All right.

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1 BY MR. BETTIUS:
2 Q Tell me what Ms. Moore did with respect to
3 using any techniques. Did she use any valuation
4 techniques other than discounting of the income stream?
5 You tell me what she did.
6 A To my knowledge, based upon my reading of Ms.
7 Moore's report, she fundamentally took the income
8 streams of the charity as accounted for under fiduciary
9 accounting
10 MS. BEACH: Your Honor, I'd like to object.
11 This is pure hearsay. Ms. Moore has not testified.
12 Are we going to hear what she's going to say through
13 this witness and then we're going to hear what she's
14 going to have to say through herself?
15 THE COURT: Objection's overruled.
16 Go ahead, Mr. Wilson.
17 THE WITNESS: So based on my reading of Ms.
18 Moore's report, she took the adjusted income statements
19 for the charity and then gave them some time value of
20 money for the revenue stream, both going forward and
21 backward, depending on when that revenue was created,
22 to 1999.
23 This is a significant departure. At this

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1 point we concluded our accounting. That's what our
2 accounting suggests, that's what our accounting
3 describes, which I'll summarize in just a moment.
4 Mr. Cobb, in his testimony and in his report,
5 at that point attempts to use the income statements
6 through 1982, which we agreed we are quite close on,
7 but then continues those income statements with vastly
8 different assumptions regarding what the proper
9 fiduciary allocation of revenues and expenses as
10 between the charity and Respondents is, and then, for
11 whatever reason, chooses four intersections, if you
12 will, over the life history of the charity, and
13 attempts to create a value judgment or estimation of
14 value based upon the creation of balance sheets which
15 have one foot in reality and one foot in hypothesis.
16 And then, as you heard yesterday, take both
17 balance sheets and whatever the net book value is,
18 presumably in a form of fire sale kind of valuation
19 determination, and present value or future values, that
20 value point estimate, out to some future date.
21 Q Was there any need, based on the adequacy of
22 records that you had, to create hypothetical
23 valuations?

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1 A I don't think there was a need, nor do I
2 think that was the direction of what was called for.
3 What was called for was a fiduciary accounting of real
4 economic activities that the charity had an interest
5 in.
6 Q Your accounting terminates when, as of what
7 year?
8 A Our accounting terminates in 2005.
9 Q All right. So both accountings purport to
10 end up at the same place; is that correct?
11 A Yes.
12 Q What does the method used by Mr. Cobb do with
13 respect to the investment of the charity's assets and
14 accounting for accretions from those assets?
15 A Based on my reading of Mr. Cobb's report, I
16 don't see any evidence that there's any recognition
17 given to the accretion of any of the charity's assets
18 at any point in time.
19 Q How did he attempt to explain that he had
20 taken account of it this morning?
21 A Well, what I heard in the testimony this
22 morning was by taking -- by taking a hypothetical rate
23 of return or rate of investment return on that point,

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1 estimate of value and pushing that forward into the
2 future constitutes accretion.
Again, I believe that that represents an
4 assumption, perhaps hypothetical, rather than being in
5 reality true accretions of the charity.
6 Q If you could value the variation assumptions,
7 what could you do to the values that are derived?
8 A Well, you can do whatever with them you want.
9 Q Using your method, can you affect the results
10 at all?
11 A No, because we've taken our best judgment of
12 the actual economic transactions and put a foothold
13 firmly in the reality of actual transactions based upon
14 actual agreements.
15 Q Does Mr. Cobb's analysis account for the use
16 of NOLs, net operating losses, of the charity?
17 A No, it does not.
18 Q Does it actually account for expenses that
19 should be considered in the third -- in the related
20 parties' transactions between the parties?
21 A I believe, based on what I studied in the
22 report and heard in testimony, that there was no real
23 attempt to try to dissect the underlying economics of

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1 the transactions between the Respondents and parties
2 and understand them and treat them in a way that
3 appropriately reflects the value that should be
4 tendered or retained in the charity.
5 In fact, much of the value, frankly, is
6 stripped out of the charity.
7 Q What did you do in response to the Court's
8 order that there was no merger in 1971?
9 A We took the Court's order at face value and
10 assumed that the underlying lease arrangement that
11 existed between the charity, JMHI, and the partnership,
12 Joint Venture, was the operative arrangement. In fact,
13 by my understanding that arrangement, it did set the
14 parameters for the economic expectations of the parties
15 back in 1966, and ought to be the driving agreement, if
16 you will, that runs throughout the fiduciary
17 accounting.
18 Q Based on your experience with charitable
19 entities and their accounting methods, if there's any
20 receipt of revenue from the charity's operations,
21 what's that called?
22 A Any receipt from the charity's operation?
23 Q Of revenue by any of its directors.

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1 A Well, one would need to evaluate whether or
2 not it constitutes some form of private inurement or
3 private benefit.
4 Q Do you have, based on a reasonable accounting
5 certainty, an opinion as to the -- whether or not
6 private inurement has been achieved by the Respondents
7 in this transaction?
8 A That is a legal determination, but let me
9 describe it my standpoint, my understanding, from the
10 standpoint of a consultant and auditor and accountant
11 who's been around this business for a good number of
12 years.
13 Clearly by the IRS's own determination there
14 were instances, two or three instances back in the late
15 '60s where there was, in fact, private inurement. If
16 the intent of the parties, the founders of the charity
17 was, in fact, to create a charity that would have
18 adequate and firm footing to maintain its liability, I
19 believe that the Respondents started off on the wrong
20 foot back in 1965.
21 THE COURT: Let me interrupt you. Do you
22 need the charts for this?
23 THE WITNESS: Not at the moment.

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1 THE COURT: Just leave them. You can leave
2 them there.
3 THE WITNESS: I'll come back to that.
4 Would you like me to continue, Your Honor.
5 THE COURT: Continue.
6 THE WITNESS: The 1965 lease, as I read it,
7 which again constituted, I believe, the first economic
8 arrangement, at least for the buildings and certain of
9 the equipment, set the tone, but even based upon my
10 reading of some underlying documentation through board
11 minutes and so forth, that all -- in and of itself had
12 a 10 percent profit margin built into it.
13 Furthermore, that '65 lease called for cost
14 of living adjustments every 10 years, and I don't
15 suspect that there was any increase in the Respondents'
16 underlying obligations for that building or the
17 financing of that building. Those were fixed in 1965
18 when they financed and built the building. Those
19 costs, at that point, would never change.
20 So if the intent is to create the ability for
21 the charity to have an operating infrastructure at no
22 more than what it might otherwise be if the charity
23 owned and operated those assets themselves, clearly the

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1 '65 lease doesn't even give credit for that.
2 And there are other instances, I think, where
3 that represented a pattern that existed.
4 BY MR. BETTIUS:
5 Q Mr. Wilson, in terms of the valuation of the
6 -- in terms of the continuation of operations of the
7 hospital, and I think you previously testified they
8 were uninterrupted in terms of the progression of the
9 hospital operations all the way through --
10 A Correct.
11 Q -- did you track any potential capital
12 contributions by Respondents' to the charity or to the
13 operations of the entity, whatever it was?
14 A Whatever it was. There's only evidence in
15 searching through the records of one potential capital
16 contribution to the charity itself. One of the things
17 that we attempted to do to sort of examine or
18 cross-check our thinking regarding the reasonableness
19 of the fiduciary accounting that we created, it's in
20 our report, was to try to look at and reconstruct
21 whether or not there were any, in effect, withdrawals
22 -- contributions and/or withdrawals from the charity or
23 flowing into the Joint Venture.

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1 If you wouldn't mind, I could display a slide
2 that --
3 Q Absolutely.
4 A -- depicts really what constituted the first
5 step in our process. So with the fiduciary accounting
6 exercise complete, we did want to take it one step
7 further and determine, as best we could, and it was a
8 very imprecise exercise at best, but determine the
9 amount of capital contributions that may have flowed
10 into the charity and whether or not that was more than
11 or less than withdrawals that came out of the charity
12 someplace else into another Respondent vehicle.
13 MR. BONO: I'm going to object to the
14 constant references to the charity in his testimony. I
15 believe that the stock purchases were with JMHC, which
16 is a private, for-profit corporation. I would ask that
17 the testimony be specific as to which entity is being
18 referred to.
19 THE COURT: I'll overrule the objection. He
20 ought to be specific when he gets to that about which
21 entity he's talking about.
22 BY MR. BETTIUS:
23 Q With the exception of this one capital

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1 contribution, is there any difference whatsoever
2 between the charitable entity and the supposed
3 for-profit entity in its operation?
4 A No, there's not.
5 Q Can you find any difference whatsoever?
6 A No.
7 Q In your opinion, based on looking at their
8 operations pre-1971, did they ever in reality operate
9 as a charity?
10 A I don't see evidence to demonstrate that they
11 operated as a charity, in a real sense, ever.
12 Q With the exception of switching some assets
13 around in 1971, did you ever see any difference at all
14 in the way they ran the hospital pre-'71 or post-'71?
15 A No, I saw no evidence of that. I mean, there
16 was a change in corporate structure, but, in effect, it
17 was JMHI, the charitable organization that had been
18 established in a new wrapper, if you will, called JMHC
19 Q Well, in fact, in terms of the operations of
20 the charity, Mr. Bono's correct there was no
21 authorization to issue stock in the charity, was there?
22 MR. COCHRAN: Your Honor, counsel really is
23 leading the witness.

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1 BY MR. BETTIUS:
2 Q What authorization was there to issue stock
3 in the charity?
4 A Would you repeat the question? What --
5 Q What authorization, if any, was there to
6 issue stock in the charity?
7 A I saw no evidence of any to issue stock in
8 the charity.
9 Q What effect did the purported merger have on
10 their belief that they were going to be issuing stock?
11 MR. COCHRAN: Your Honor, how can he answer
12 what effect it had on their belief?
13 MR. BETTIUS: The point I'm trying to make is
14 there shouldn't have been any stock.
15 BY MR. BETTIUS:
16 Q Should there have been any stock there in the
17 first place?
18 A You don't issue stock in a not-for-profit
19 corporation.
20 Q So to account for this capital contribution,
21 what did you do? Did it affect --
22 A We ignored it.
23 Q Okay. Did you repay it? Did you repay the

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1 infusion of money?
2 A The 60,000 shares?
Q Yes.
4 A Well, that ended up being reconstituted and
5 redeemed in a later transaction.
6 Q So did you account for that redemption?
7 A Yes, we did.
8 Q And what return did the Respondents get over
9 what they had originally invested on that transaction?
10 A Well, as I recall, in 1975 there were, again,
11 the 60,000 shares that were issued by JMHC in 1972
12 were, first of all, redeemed, converted if you will.
13 They were issued originally at $4 a share. They were
14 redeemed for bonds in 1975 or the end of 1974 perhaps,
15 at a stated redemption value of $6 a share, in effect a
16 50 percent increase of underlying value.
17 Q Did you ever find any transaction or evidence
18 of any transaction that would indicate that the
19 charity's operational assets were ever acquired?
20 A No.
21 Q If Dr. Tauber testified that the license
22 always remained with JMHI, would you agree with that?
23 A Yes, I would. There was no transaction that

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1 I saw that effected a transfer of the ownership of that
2 license, ever.
3 Q Once we take this transaction out, that
4 60,000 shares of stock, is there a complete identity of
5 operations, or is there a difference at any time?
6 A They are one in the same, for all intents and
7 purposes.
8 Q All right, sir. Now, go on to the second
9 part of your chart. I think you've described -- you've
10 gotten out of the historical financial shares. You've
11 accounted for the 60,000 shares of stock. What do you
12 do next in terms of reviewing the underlying
13 transactions?
14 A Well, again, as I mentioned earlier, we
15 attempted to take a look at, from sort of a validation
16 standpoint, what was put into the corporation, what was
17 taken out of the corporation and where that went.
18 Q What did you find happened in that regard?
19 A Again, this is a very difficult exercise, and
20 I wouldn't claim for it to be entirely precise or
entirely correct or complete in all respects, because
22 we had some limitations on the documents that we had
23 available to us.

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1 Q When there was a limitation, in whose favor
2 did you go?
3 A Well, we always tried to be conservative in
4 favor of the Respondents.
5 Q All right. In terms of the capital
6 contributions, did you find transactions or were there
7 transactions that you couldn't document that you gave
8 credit for capital-wise?
9 A Correct.
10 Q Did you give them credit for every capital
11 transaction you saw?
12 A We tried to err on the side of fairness, not
13 to penalize things we were less clear about or less
14 uncertain -- less certain about.
15 Q Tell us how you proceeded.
16 A Well, fundamentally, again, we tried to look
17 at what -- when the purported merger took place in 1971
18 and there was a collapsing of the JMHA at that point
19 into what ultimately became JMHC, we tried to
20 understand how that flowed into the ultimate -- the
21 capitalization of JMHC at that point in time, and
22 trying to also take a look at what were other
23 transactions that would have impacted the capital of

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1 JMHA all the way through -- excuse me -- JMHC through
2 1985.
3 The net conclusion of what we were able to
4 determine, again, not 100 percent precise, gives us
5 some indication of what was going on, is that there
6 were net withdrawals, as you can see here, somewhere
7 around $1 million by our best estimate, in the hospital
8 operating company at that point in time.
9 Then we also took a look at it separately,
10 because we knew that the fiduciary accounting that we
11 were driving constituted an allocation of legitimate
12 income to the charitable organization, again, whether
13 it's constituted as JMHI or JMHC. We frankly saw no
14 difference. We were looking at the entity that owned
15 and had possession of the license to operate.
16 But what we saw by looking at tax returns for
17 JMH – the Joint Venture under different constructs
18 over this period of time, saw, through an analysis of
19 certain schedules on those tax returns, that at a
20 minimum there were withdrawals of over $16 million.
21 So there were revenues from the charity, JMHI
22 or JMHC, through rental incomes and other forms of
23 income, the HGV lease, the Inova lease, the Inova

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1 settlement agreement, flowing into the Joint Venture
2 and at least $16 million flowing back out to Joint
3 Venture partners.
4 Q Through 1998 can you express, to a reasonable
5 accounting certainty, the amount that Respondents
6 received over and above rental entitlement or other
7 capital contributions in the operations of the charity?
8 What's that amount?
9 A Would you repeat the question?
10 MR. BETTIUS: Could you read it back, please?
11 THE COURT: You wanted a number that was
12 above the rental and the capital contribution?
13 MR. BETTIUS: Go ahead, Madam Reporter, I'll
14 ask it.
15 (The reporter read back the record.)
16 BY MR. BETTIUS:
17 Q I want you to give me a figure that tells us,
18 to a reasonable accounting certainty, after the
19 Respondents have received all of their rent, after they
20 have received all of their capital contributions and
21 entitlement, how much in excess of those entitlement
22 did they actually take?
23 A That gets to the hard part of fiduciary

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1 accounting and the results of that.
2 Q Would you review those for the Court?
3 A Yes. Again, it's a fairly simple exercise,
4 although there are a lot of numbers on this slide. So
5 I'll try to compress it down and boil it down to the
6 significance of it and then if there are specific
7 clarifications that need to be made, those can be.
8 The net income as reported by the charitable
9 organization -- again, that is a combination of JMHI
10 and JMHC as the underlying operator of the hospital
11 over the course of time -- was $1.5 million.
12 As I mentioned earlier, we believe that the
13 '66 lease represents the economic arrangement that
14 ought to prevail as between rental incomes, between the
15 charity, the operating company and Respondents. In
16 fact, we and the Respondents agree on that issue and
17 it's stated explicitly in both of our reports.
18 Now, it's also appropriate to give credits to
19 additions to the hospital that were operated by the
20 operating company, such as the third floor, the MOB and
21 the fourth floor of the hospital when that was built.
22 So essentially what we've done is to take net
23 income as recorded, take out and replace actual rent --

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1 excuse me -- actual rent costs as reported, $2.7
2 million, replace that with several actual lease
3 agreements, the 1966 lease, both for the building as
4 well as to land lease agreements, and the 1968 lease
5 that was unwritten, or I believe it was unwritten, we
6 certainly never saw a document, but the financial
7 statements described what the rental would be under
8 that lease, and then the third floor and related
9 physical therapy space lease. So, in effect, giving
10 the Respondents credit under existing lease agreements
11 for the space that was literally used by the hospital.
12 There were some other items, if you recall,
13 in this period from 1971 to 1975, JMHC now constructed
14 -- was acting as the owner-operator, not just the
15 lessor. So there's some mortgage interest and
16 depreciation that's reported in those financial
17 statements that we used that needed to be, in effect,
18 backed out of the equation. So since those are
19 expenses, we add them back into our previous
20 calculation.
21 Q When you add them back in, that's to the
22 Respondents' favor?
23 A That's in the Respondents' favor. Revenue

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1 from the Inova lease, the 1985 lease, revenue from the
2 HGV lease, the lease that ran from 1982 to 1985,
3 revenue from the Inova settlement and then several
4 items that I think by everyone's acknowledgement have
5 nothing to do with the operations of the charity
6 itself, goodwill is just a -- kind of a fictitious
7 goodwill, a number on the balance sheet that is carried
8 over.
9 Q I think Mr. Cobb allowed that. He took the
10 same number.
11 A Yes, he took the same numbers and reflected
12 those out. That essentially then drives what we
13 believe to be an appropriate accounting of the true and
14 actual revenues and expenses, accretions of asset value
15 over this period of time that should accrue to the
16 charity.
17 Q Is there anything more complicated than
18 sitting down and using the actual records of the
19 Respondents and accounting for them?
20 A There were no assumptions that we used other
21 than using the actual accounting records, applying
22 principles of fiduciary accounting and applying the
23 instructions of the Court.

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1 Q I'd like to go through some specific items.
2 What evidence, if any, did you find that Respondents had shifted operating costs for their medical office
4 building to the hospital? Is there evidence of that?
5 A Yes, there was.
6 Q And how is it done?
7 A If I might go back, there was a lease that
8 was entered into in -- I may have my year wrong --
9 1979, I believe, for, in effect -- related to the MOB,
10 and that stated rent per the lease agreement was --
11 Q Let me get you a copy of that.
12 A Okay.
13 Q Is that the lease to which you were making
14 reference, Mr. Wilson? Take your time.
15 A Yes, it is.
16 Q And would you give me the date of that lease?
17 A The lease is dated, actually, July 31, 1977.
18 Q The fact of the matter is that the occupancy
19 of the medical building was when, 1979?
20 A Yes.
21 Q All right. Now, in terms of that lease, does
22 it fix the rental for the third floor MOB?
23 A Yes, it does. It fixes it at an annual

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1 rental of $11,760.
2 Q What, if anything, do corporate records
3 reflect with respect to the hospital's administration
4 when there was an attempt to reallocate costs
5 inconsistent with that lease?
6 A Well, by 1980, by my review of corporate
7 records, minutes and other correspondence, the cost of
8 the medical office building had vastly exceeded the
9 $98,000 or so that was referenced in earlier documents.
10 And as I recall, it was stipulated and ascribed to
11 regulatory authorities that oversaw the approval of
12 that MOB, such to the point that by 1980 there was an
13 amendment to the lease that increased the rent to
14 $240,000 a year.
15 Q Did they still require -- what did they
16 require the charity to do with the preexisting $11,760
17 lease?
18 A That remained.
19 Q So they're now making double payments on the
20 space?
21 A It appears.
22 Q Was there any requirement in terms of any
23 leases that the charity assume obligations for

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1 mortgages?
2 A There was an amendment -- well, the financing
3 of the MOB was approximately $1.4 million.
4 Q Who assumed responsibility for that?
5 A The charity, JMHC, the operating company
6 assumed responsibility for that obligation.
7 Q Is that consistent with -- inconsistent with
8 representations made to regulatory authorities?
9 A Yes, it was.
10 Q Now, with respect to the proceeds from that
11 $1.4 million loan, what did they do with the proceeds,
12 do you recall?
13 A The $1 million -- approximately $390,000 or
14 so was used to repay the existing mortgage and
15 presumably the $1 million balance was new money used to
16 finance the construction, or a portion thereof.
17 Q When the hospital took responsibility for
18 that mortgage and paid off the prior mortgage, was that
19 consistent with the terms of the proposed sale and
20 lease-back that occurred back in 1975, do you know?
21 A The sale and lease-back that occurred in 1971
22 -- excuse me -- 1975, didn't take into account the --
23 do you mind if I look at the agreement once more?

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1 Q No, not at all. Under the sale and lease-
2 back agreement, who took responsibility for the
3 mortgage? That's my question. I'll give you a copy of
4 the agreement.
5 A Right. The Joint Venture took responsibility
6 for the mortgage under the '75 sale and lease-back
7 arrangement. I'd be happy to look at the document if
8 you'd like.
9 Q No, that's all right. What was the
10 Respondents' original liability for that mortgage when
11 it was at $800,000? Did they have it then?
12 A No. No, that was the --
13 Q The Respondents or the JV, were they --
14 A The partnership had responsibility.
15 Q Is the shifting of that mortgage back to the
16 hospital in 1980 consistent with anything that they had
17 done before?
18 A To me it reflects this --
19 MR. COCHRAN: Your Honor, what it reflects to
20 him means nothing. The question is was it consistent
21 or inconsistent with what they'd done before.
22 BY MR. BETTIUS:
23 Q Was it consistent with the '75 sale and

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1 lease-back, the express terms of it?
2 A No.
3 Q Now, the rental increase in 1980 -- in terms
4 of the operation and maintenance expenses of the
5 medical office building, was there any shifting of
6 expenses in connection with the taxes, insurance and
7 that sort of thing?
8 A Well, there was a memorandum that I was able
9 to note that talked about it. I think it was written
10 by, perhaps, the administrator of the hospital, as I
11 recall, trying to determine -- specifying what the
12 allocation was for the maintenance costs of the MOB and
13 reflecting that the maintenance costs that would be
14 allocated to the physicians who were partial tenants at
15 50 cents a square foot, and some complaint about the
16 fact that that was under-allocating expenses to the
17 physicians to the detriment of the hospital company in
18 relation to what their proportionate occupancy was.
19 Q What's the purported consideration in that
20 lease? What's the reason for it? Let me put it that
21 way.
22 A Well, the stated reason for the amendment is
23 the fact that costs of expansion and the financing of

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1 those expansions were -- in fact, it's called here
2 inordinately increased.
3 Q Well, at the COPN hearings back in 1977,
4 wasn't that precisely the -- what was the concern
5 expressed?
6 A That was -- the concern back then was that
7 there would be an overly expensive burden on the
8 hospital. There was discussion about controlling the
9 cost of the construction to approximately $100,000 a
10 year and that the cost to the hospital would not exceed
11 $11,760 a year.
12 Q The hospital has been portrayed during these
13 years as struggling with rapidly increasing revenues,
14 but also rapidly increasing expenses. Can you tell me
15 how you view that characterization? Not from the basis
16 of opinion, and I want you to express an opinion if you
17 have one, but just on the operating statements and the
18 correct allocation of revenue and expenses?
19 A I don't agree with that assessment at all,
20 and I think I stated that in the earlier trial. Here
21 we have a hospital that was in its infancy, and as one
22 would expect with any company, and certainly a hospital
23 from my experience, you're going to experience some net

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1 losses in the earlier years.
2 The fact of the matter is, in the first --
3 between 1965 and '71, there were three years where they
4 had a loss, 1965, '66 and '68, which was a time of
5 expansion. By 1970 and '71, the hospital was making
6 money on the bottom line, notwithstanding the fact
7 that, in my opinion, this hospital was not given firm
8 footing as a charity, as an asset of the community from
9 day one.
10 In effect, it was an undercapitalized
11 stepchild and made to absorb the burden of being a
12 tenant in its fundamental infrastructure at a cost,
13 presumably, that was in excess of what it would have
14 been had they been the owners and operators such as --
15 Q Stop one second. Who made money on
16 furnishing capital to the hospital by the issuance of
17 bonds? How did the hospital get its capital?
18 A It got its capital through the issuance of
19 bonds. Whoever the bondholders were.
20 Q Who were the bondholders?
21 A The Respondents.
22 Q Who owned its operating assets?
23 A The Respondents, the partners in the Joint

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1 Venture.
2 Q Was there a profit built into that?
3 A There was evidence that there was a 10
4 percent profit built into it, with escalations every 10
5 years.
6 Q Is that kind of an operation consistent with
7 charity or for-profit corporations?
8 A Well, in my experience, as I mentioned
9 earlier, I have never seen -- although I would grant
10 that there probably are a minuscule number of examples
11 where a not-for-profit corporation is set up in such a
12 fashion that somebody else, particularly a for-profit
13 organization owned the -- most of the underlying
14 assets.
15 The only -- most obvious reason why that
16 would be the case is that there are some tax advantages
17 to somebody else -- certainly there's no tax advantage
18 to the not-for-profit organization.
19 Q Would you call its undercapitalization minor,
20 moderate or severe?
21 A Well, I think it was severe in the sense that
22 it had virtually no capital to start out with, no
23 equity capital. And then when you look at the events

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1 and transactions that occurred in its early to
2 mid-life, even the 1975 sale and lease-back
3 transaction, part of that was swapping what little
4 equity there was for debt.
5 Now, if a hospital is in such financial
6 distress as we've heard about in the last day or so,
7 why would the interested parties in that hospital do
8 something like that to better the interest of the
9 charity? I don't understand it.
10 Q If you were a creditor and you were told that
11 this hospital was insolvent and saw it starting to
12 trade off its building for stock -- for bonds that had
13 been issued for stock, would you have some problems
14 that?
15 A I'd be concerned about that. Sure.
16 Q Why would an organization that's in debt
17 convert equity to fixed debt at a 50 percent increase
18 over the contributed value of its stock? Does that
19 make any sense at all?
20 A Well, from the vantage point of the charity
21 or --
22 MR. BONO: Objection, Your Honor. Again, I
23 hate to interrupt. The witness interrogation keeps

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1 referring to the charity. This is --
2 MR. BETTIUS: The operating corporation.
3 THE WITNESS: I'll change my terminology.
4 MR. BONO: I would ask that we be precise,
5 because if we're talking about --
6 THE COURT: Well, I understand what he means
7 by it. But if there's another more specific term, Mr.
8 Bettius, I'll take it.
9 MR. BETTIUS: The operating entity.
10 THE COURT: All right.
11 BY MR. BETTIUS:
12 Q Under what possible rationale, if you're in
13 extreme distress, do you take the building asset off
14 your books and convert it, based on bonds that you just
15 issued for stock, at a 50 percent premium?
16 A Well, if I'm the operator of the charity or
17 if I'm a --
18 Q You can't say charity.
19 A I'm sorry. If I'm the --
20 THE COURT: There's no need --
21 THE WITNESS: If I'm the operator of a
22 not-for-profit or for-profit operating company and if
23 I'm also put in a position of being a fiduciary

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1 director of that board, I don't see any reason why it
2 would be to the advantage -- I guess I have a hard time
3 not using the term charity, because I believe that's
4 what it was.
5 BY MR. BETTIUS:
6 Q Can you -- you've already said you can't
7 identify any assets that weren't the charity's in the
8 operations; is that correct?
9 A That's correct. There was never a transfer.
10 Q Now, let's talk about -- did you allow any
11 other compensation with regard to the MOB other than
12 the $11,760 and some other minor leases that occurred
13 at or about that time? Did you allow any of the other
14 leases that they purportedly entered into?
15 A No.
16 Q Did you disregard the '80 lease as being
17 inappropriate?
18 A Yes, we did.
19 Q Did you make them go back and account for the
20 moved expenses or did you let that stand?
21 A We let it stand, because, again, there was an
22 element of judgment involved here. I mean, it was
23 clear from the -- from the documentation that we saw

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1 that there was concern expressed about the
2 reasonableness and fairness of that allocation, but we
3 had no basis in fact, so we didn't adjust it.
4 Q All right, sir. Now, in terms of the -- did
5 you find evidence of any shift anywhere with respect to
6 over $223,000 worth of construction costs?
7 A There were board minutes, and I can't tell
8 you what date, but there were board minutes where there
9 was a discussion about the need to cover additional
10 costs, approximately $230,000, as I recall, and the
11 intent to cover those costs by the hospital, JMHC, on
12 an after-tax basis.
13 Q The minutes at 835, are those the minutes,
14 Exhibit 835?
15 A Let me take a moment and look at them.
16 Q Now, you've indicated the Respondents' and
17 your presentations are similar up to 1982?
18 A Correct.
19 Q Now, there's been some discussion of
20 tax-affecting proceeds that are shifted back; in other
21 words, that you considered diversions, and when they
22 came back to be accounted for as distributions to the
23 state or the state on behalf of charities, did you

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1 tax-affect those coming back?
2 A What we did was to give, in our accounting,
3 credit for any actual taxes paid by either JMHI upon
4 refiling amended tax returns once it lost its tax
5 status and actual taxes paid. I think that we were,
6 frankly, being generous in that regard, because those
7 taxes would not have been paid out of resources that
8 were accumulated by JMHI the charity, had it not been
9 for the actions of the Respondents in this case.
10 We did not tax-affect any of the revenue
11 flows accruing the charity, again, the holder of the
12 operating license, throughout any of the rest of our
13 accounting, again, because we saw no evidence of taxes
14 being paid by the operating companies.
15 Q You can only account for the records they
16 give you; is that true?
17 A Yes, that's true.
18 Q Did you find or did they produce any evidence
19 that showed that these sums which you have not
20 tax-affected were tax-affected in their hands?
21 A I saw no evidence to show us that, no.
22 Q Now, you say there's a marked difference that
23 begins or a divergence that begins in your accounting

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1 presentation from 1982 on?
2 A Yes, that's correct.
3 Q Would you explain that?
4 A Yes. May I come to a chart?
5 Q Yes. Absolutely. Now, I'm going to ask you
6 as a precursor to this question, the adjustments that
7 the Respondents made, could you tell me, to a
8 reasonable accounting certainty, whether they're
9 consistent with what a profit-making organization would
10 want to do to reduce corporate income taxes?
11 A The adjustments that are made by the
12 Respondents, I believe, do reflect, in fact, an
13 underlying philosophy, an underlying framework, if you
14 will, or principle, that this operating company, for
15 all intents and purposes, was a for-profit corporation
16 from 1973 forward.
17 Q I want you to go through a hypothetical with
18 me for just a moment. We have the -- let's leave aside
19 any considerations of charity. All right? We're about
20 to enter into a different method of receiving income
21 from our assets in 1982.
22 We know that we're about to enter into an
23 agreement that's going to start producing a whole lot

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1 of passive income, say $1 million a year. If you we
2 representing private folks in terms of having two
3 closing related companies, one being the corporatio
4 that had been operating who is now going to start to
5 a lessor, and the other party who is going to now
6 receive the income in a joint venture, would you sta
7 perhaps considering some amendments to the lease
8 arrangements to shift income out of the corporation'
9 MR. COCHRAN: Your Honor, if the Court
10 please, the questions are much too leading. If he
11 wants to ask a hypothetical, ask his opinion at the
12 end --
13 THE COURT: Well, I thought the initial part
14 of it was almost a hypothetical stating the facts.
15 BY MR. BETTIUS:
16 Q Let's assume we're about to get $1 million in
17 rental and only --
18 A We being?
19 Q We being the operating entity. And we also
20 own a joint venture. And we see that we're going t
21 have a lot of income that's going to come to the
22 corporation through the lease; is that correct?
23 A Yes.

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1 Q What would you begin to do to minimize your
2 tax consequences?
3 A You'd try to shift as much income as you can
4 to the entity paying the lesser taxes or no taxes.
5 Q And how would you do that? What would you do
6 to the lease?
7 A One way to do it would be to modify the
8 underlying lease between the two entities.
9 Q Now, when you look at the minutes do we kno
10 why the $100,000 was left in the corporation?
11 A Yes, because there was a description of the
12 fact that the $1 million that accrued to the operating
13 company under the HGV lease annually was reduced
14 $900,000. That $100,000 a year left was to have be
15 funds to repay the existing bond obligation.
16 Q In fact, by virtue of that transaction did
17 they leave anything in there that would be taxable?
18 A No.
19 Q Can you find any basis in terms of -- what
20 basis, if any, do you find in terms of any existing
21 lease agreements to change that lease arrangement fr
22 the lease that was payable under the '66 lease and its
23 amendments to $900,000? Is there any basis --

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1 A I don't think there was any basis for
2 modifying the '66 lease. Now, they modified it under
3 the context of the '75 lease.
4 Q Yes.
5 A But the '66 lease, again, is, under my
6 supposition, the operating fundamental economic
7 arrangement between the parties.
8 Q Would you take the stand? The document that
9 amends the lease purportedly amends what lease?
10 A It purports to amend the 1975 lease, if I'm
11 reading this correctly.
12 Q Now, if Mr. Cobb's going to be consistent, is
13 he going to -- what is he going to do with respect to
14 the amendments purportedly that amend the 1975 lease?
15 A Well, he would need to disregard that, I
16 believe.
17 Q All right. Now, I'm going to ask you --
18 MR. BETTIUS: That's Exhibit 325, Your Honor.
19 BY MR. BETTIUS:
20 Q I'm going to ask you, Mr. Wilson, what's
21 recited as consideration for that amendment?
22 A The consideration is that the lessor waived
23 -- they waived the right to cancel the lease on six

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1 months' notice.
2 Q Was there any such provision in the '66 lease
3 Mr. Cobb purports to be honoring?
4 A There was not. That was a provision in the
5 '75 lease.
6 Q Now, is there also a purported assumption of
7 mortgage?
8 A Yes, there is.
9 Q Now, with respect to corporate minutes, do
10 you know what resources, if any, the Respondents had to
11 pay that mortgage when they reportedly assumed it?
12 A What resources the Respondents had?
13 Q Yes. Not the Respondents. Let me rephrase
14 the question, because I think it's confused you. Was
15 there another payment that was made in connection with
16 the '82 lease?
17 A Yes, there was.
18 Q For the tangible assets?
19 A Yes, there was.
20 Q Is there any basis in fact for any claim by
21 Respondents as joint venturers to claim any part of the
22 $2.1 million that was paid for operating assets?
23 A Again, the -- JMHC, at this point in time, is

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1 the hospital operating company. The hospital operating
2 company was the holder of the license and the operator
3 of the hospital. I don't see any reason at all why the
4 $2.1 million that was paid by HGV to the lessor in this
5 case, which was JMHC, would accrue to the Joint
6 Venture. I didn't see that.
7 Q Now, before you had stated -- and I want to
8 make sure -- before you had stated but for the capital
9 contribution, we're dealing with continuous accretions
10 and buildup and continued operations with the charity's
11 assets. Is that still true at this time?
12 A Yes, it is.
13 Q And the license is still in the charity, as
14 far as you're concerned?
15 A As far as I'm concerned, it is and was.
16 Q Is there any other claim that you can
17 identify or find to claim any portion of this in excess
18 of $2 million?
19 A The -- none whatsoever. Again, that's the
20 only one that could have been a possibility by the '71
21 merger transaction, but that never occurred.
22 Q Do you think the charity had any bargaining
23 power in terms of the way this transaction was

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1 conducted?
2 A The way it was conducted they obviously were
3 stripped of their bargaining power and stripped of the
4 resources to go along with it. I think the fact of the
5 matter is that the Respondents here were on both sides
6 of this transaction. They were signing on behalf of
7 the charity and signing on behalf of the Joint Venture.
8 In effect, that's why the charity's
9 interests, it doesn't appear to me, were being
10 protected or upheld or preserved in any way.
11 Q Is it true -- is that true or is it not true
12 of every amendment after 1975?
13 A It is the case, every amendment.
14 Q In all of those transactions are we dealing
15 with an identified body of assets?
16 A Yes, we are.
17 Q And they belong to?
18 A They belong to the operating company under
19 whatever name we chose at that time.
20 Q If I understand you correctly, the
21 Respondents were acting on both sides of the
22 transactions that directly involved what?
23 A The assets of the operating company, what I

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1 would describe as the charity.
2 Q All right. Now, in terms of real bargaining
3 position, Mr. Wilson, if you were representing a
4 hospital in 1982, and this opportunity -- and whose
5 opportunity is it? Is it a corporate opportunity?
6 A Clearly it's an opportunity, no question
7 about that.
8 Q And are you aware of what the -- that that
9 was within the Complaint the Supreme Court said we were
10 entitled to recover -- the Respondents (sic) were
11 entitled to recover? Any doubt in your mind whose
12 corporate opportunity this was?
13 A No, it was not. It was -- I mean, there's no
14 doubt in my mind that it was a corporate opportunity
15 that belonged to the charitable trust.
16 Q If you were appointed to represent the
17 charity's interest in that transaction, do you think
18 you'd have no bargaining power if you could exercise
19 independent judgment?
20 A I think I would have all kinds of bargaining
21 power. After all, I own the license, don't I? Don't
22 I, at least under the 1966 lease, have a 99-year lease
23 on the facilities. I own at least some portion of the

Page 2

1 to operate and there was a -- and so everything that
2 ensued after that, because of that ownership interest
3 really belongs to the charity.
4 In fact, quite the opposite is what has
5 occurred over time, and consequently, even coming back
6 to some of the accounting exercises that we've heard
7 about in the last day or two relative to net book valu
8 and lack of net book value and zero value, you know
9 that was all contrived to suppress the net equity, if
10 you will, of the charity.
11 I mean, it didn't have to be that way.
12 That's the way it was done. It was done by design.
13 can't answer for that, but what we've attempted to d
14 is to untangle that and give the charity proper due.
15 Q Did the Respondents ever deal with the net
16 assets of the charity?
17 In the hypothetical liquidation scenarios,
18 it's all driven by the net assets of the charity or
19 corporation. As the transactions went down, what d
20 net assets have to do with this corporation that's
21 operated, day to day, week to week, month to month
22 year to year? Did net assets have any consideration
23 all in terms of what they actually used?

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1 underlying land.
2 It would seem to me that I hold all the cards
3 and could negotiate, if that's the terms to be used
4 here. I'm not sure that's even an appropriate term as
5 between the Respondents and the charity.
6 After all, we're supposed to be looking out
7 for the interests of the charity here. If I had to
8 negotiate, I think I could negotiate very hard.
9 Q Mr. Wilson, from 1971 on, can you find any
10 evidence or any basis that exists, and if you will tell
11 us what it is, to entangle this body of interests that
12 has been put together in this purported merger?
13 A Well, it's certainly a morass. You know,
14 from 1971 on there was just rampant commingling of
15 interests. It's very difficult, looking at the
16 documents, the legal documents, who is signing for
17 them, what their interests were, whose interests were
18 being protected here and who stood to gain or lose.
19 So I come back to the fundamental premise,
20 and that is that this organization -- this operating
21 company as JMHI, as it was constituted from virtually
22 the first day that it opened its doors as a charity and
23 so chartered, owned the operations, owned the license

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1 A You have to -- you know, you have to look at
2 the transactions that occurred and they create assets,
3 they create liabilities. You have to look at the sum
4 and substance, the totality of the assets that were
5 embodied in this charity from the beginning, this
6 corporation, this operating entity and then look at th
7 buildup of those assets or the diminution of those
8 assets over time.
9 Q Are there clear markers by way of
10 transactions that actually occurred that you think had
11 any relevance on whether the valuation that the
12 hospital is worthless or not are valid? Did you find
13 any clear markers?
14 A I'm sorry. You'll have to --
15 Q Did you find any clear markers in terms of
16 transactions that actually occurred that rebut this
17 inference that it was worth nothing?
18 A Well, yes. The short answer is yes. The
19 longer answer or explanation is that I'm not a
20 valuation expert, but as an accountant, layman, it
21 would seem to me that if you need to --
22 MR. COCHRAN: Your Honor, it would seem to me
23 that he's offering valuation testimony and I object

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1 because he's conceding he's not a valuation expert.
2 MR. BETTIUS: I think an accountant can sit
3 down and say look, I'm presented with this scenario,
4 and I'm about to go there, and does it make sense to me
5 as an accountant as I look down at the assets and I
6 look up at the real world.
7 THE COURT: I'll permit the testimony.
8 BY MR. BETTIUS:
9 Q What do you see, Mr. Wilson?
10 A Well, a valuation done at a point in time is
11 based upon assumptions. It has to be, because you're
12 trying to predict the future. If we all had 20/20
13 hindsight and the benefit of 10, 20, 30 years of future
14 history, we could certainly take that into account in
15 doing a valuation back in 1973, '75, '82.
16 The fact of the matter is we may not need to
17 do a valuation at those points in time because we've
18 got future events that tell us much about the past.
19 I think there's at least two markers that
20 tell us a lot about 1973 and 1975 and one is that in
21 1982, when you have a third party who comes in and
22 enters into an arrangement to pay $1.9 million plus a
23 15 percent premium to take over the receivables, cash,

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1 payables, in effect the operating balance sheet of the
2 company, and on top of that enters into a lease
3 arrangement where they're willing to pay $1 million a
4 year for at least 10 years to do what? To borrow the
5 operating license for a defined 10-year period of time.
6 Not forever, not buying the operating license, but
7 borrowing it for 10 years under an operating agreement,
8 that's worth something.
9 That tells us that this operating company was
10 worth something in 1982. It probably tells us
11 something about what it might have been worth at a
12 later point in time.
13 Again, in 1985 you have Inova -- now I'm not
14 -- I can't begin to speculate on what Inova's
15 motivations were.
16 Q Do you care?
17 A But the fact of the matter is they came in
18 and paid $5.8 million to take over HGV's interest as
19 the operator of the hospital, ripped up the existing
20 lease, entered into a new lease for a longer period of
21 time, 20 years now, and were willing to pay more,
22 $1.375 million, to do what? To borrow for a period of
23 20 years the right to operate this hospital, at the end

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1 of which period of time the operating license would
2 revert back to the corporation.
3 Those are two good markers.
4 Q Was it a possibility that it would revert
5 back or did Inova guarantee it would revert back?
6 A I don't recall. I'd have to look at the
7 agreement.
8 Q Now I'm going to show you what the
9 Respondents -- were there any occasions of how the
10 Respondents felt they were doing in the 1981 time
11 period? Did they have minutes to reflect whether they
12 thought they were having a good year, a bad year?
13 MR. HIRSCHKOP: Perhaps the record should
14 reflect what he was handed.
15 MR. BETTIUS: I'm going to go get that, Mr.
16 Hirschkop. I knew that I had let you down. It's
17 Exhibit 832.
18 THE WITNESS: These are the minutes of the
19 annual stockholders meeting of JMHC in October, October
20 7th of 1981.
21 As an attachment to those minutes is the
22 president's report where, if I could even quote the
23 president, quote, to report that our hospital continued

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1 to reflect excellent growth during the past year. As a
2 matter of fact, Jefferson Memorial Hospital had in
3 fiscal year 1981 the highest percentage of occupancy of
4 any of the Northern Virginia hospitals.
5 Q In addition to that, Mr. Wilson, do they
6 reflect what's happening with respect to ancillary
7 services?
8 A The president's report indicates to me a
9 whole number of statistics; x-ray procedures are up 8
10 percent, nuclear medicine procedures up 15 percent,
11 therapy up 23 percent, and so forth and so on.
12 Q How important, based on your experience as a
13 hospital accountant, are ancillary services to the
14 revenue of a hospital?
15 A Well, it's significant. They're not
16 insignificant. They're as important as room and board
17 charges and other revenue.
18 Q Now, I want you to go back and look at the
19 1982 amendment to the '75 lease. Have you got it
20 there, a little two-page document?
21 A Yes. I'm looking for a date on this. Yes,
22 February 10, 1982.
23 Q Is the purported assumption of mortgage by

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1 the JV absolute or is it conditional?
2 A It appears to me that it's conditional, and
3 it's conditional upon the full execution of the HGV
4 lease, and at any point in time that that lease is
5 terminated, the assumption of the mortgage is also
6 terminated.
7 Q Do you find there's any evidence, based on
8 that document, that the operating entity was closing
9 down forever or did it still have a number of
10 contingent liabilities?
11 A Based upon the reading of this document?
12 Q Yes.
13 A I see no evidence that it's planning on
14 shutting down if they're planning on mortgaging and
15 expanding.
16 Q Well, if, in fact, there was a termination of
17 the HGV rental which was stating that there's going to
18 be $900,000 a year --
19 A Yes.
20 Q -- if there's -- well, I think it speaks for
21 itself. I'm not going there.
22 You indicated that an additional $2 million
23 was received by the operating company; is that correct?

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1 A That's correct.
2 Q Can you tell me if any of the money was
3 diverted to the Respondents' benefit, and if so, how
4 much? Let me ask you, did they leave anything?
5 A I'm not sure. There is a reference to the
6 fact that -- that some of the proceeds were used to
7 redeem stock from some of the shareholders and that the
8 balance, it appears, was invested in CDs.
9 Q Are you aware of what was done with the money
10 that was invested in those CDs with respect to the
11 mortgage and the fourth floor?
12 A Ultimately it was used to pay off the full
13 mortgage obligation.
14 Q Now, in your opinion whose mortgage
15 obligation was that, did it rightfully belong to or who
16 does it track to, in terms of your understanding of the
17 document? Whose obligation was that as it tracks
18 through the documents?
19 A The obligation under the mortgage belonged to
20 the Respondents, the Joint Venture partners.
21 Q Now, the stock that was redeemed, what was
22 that originally issued for, the 240,000 shares?
23 A Yes. That was issued for $4 a share. I

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1 think it was $4 a share.
2 Q I'm talking about the original 240,000
3 shares.
4 A The original 240,000?
5 Q Yes.
6 A I don't recall.
7 Q All right. Let me show you -- is there any
8 documentation that indicates in the Respondents'
9 records how the fourth floor was paid for -- eventua
10 paid for? Not in this document but in other docume
11 do you find out how the fourth floor was paid for?
12 A I don't recall.
13 Q Let me show you a document.
14 A Thank you.
15 THE COURT: Tell counsel what you're showing
16 him, Mr. Bettius.
17 MR. BETTIUS: Yes.
18 MR. COCHRAN: Thank you, Your Honor.
19 MR. BETTIUS: It's Exhibit 943. Wrong # (571)
20 MR. HIRSCHKOP: I'm sorry to interrupt, Your
21 Honor, but I think that if the record ever goes
22 anywhere and if someone's going to read it, they'll
23 want to know what was Exhibit 943, some appellate judge

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1 of someone, without going to look at a million book
2 It would be, I think, better, if we said 943 is
3 something.
4 THE COURT: Tell us what it is, Mr. Bettius.
5 MR. BETTIUS: I'm now going to show the
6 witness a letter of December 8 from the president of
7 the hospital regarding the reorganization of the Joint
8 Venture.
9 BY MR. BETTIUS:
10 Q Does the president tell us where the fourth
11 floor funds came from?
12 A Well, if I could quote from this letter --
13 THE COURT: Where in the letter are you
14 talking about, the page number?
15 THE WITNESS: Well, let's see --
16 BY MR. BETTIUS:
17 Q What page is that, sir?
18 A No page reference, but it appears to be the
19 sixth page, however.
20 THE COURT: About the sixth page of that.
21 MR. HIRSCHKOP: Is there a Bates stamp
22 number, Mr. Wilson?
23 THE WITNESS: Unfortunately, that particula

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1 page doesn't have one, but it would be 10364, because
2 it is that number in sequence, but there isn't a Bates
3 stamp number on it.
4 THE COURT: Do you have it, Mr. Cochran?
5 MR. COCHRAN: It's not part of our exhibit.
6 MR. BETTIUS: I'm sorry. It's 971. I
7 apologize. I apologize, Mr. Hirschkop.
8 MR. HIRSCHKOP: Thank you.
9 THE WITNESS: Now I do see Bates stamp
10 numbers. It's in the body of the document.
11 BY MR. BETTIUS:
12 Q What does it indicate?
13 A It is Bates stamp number 10364. It was
14 buried in some of the other content.
15 Q In his testimony this morhing Mr. Cobb
16 indicated that if doctors don't admit, hospitals fail.
17 If they don't support it, hospitals fail. Do you agree
18 with that?
19 A I agree with that very much so.
20 Q Is there a great deal of documentation in
21 this record from Dr. Tauber himself as to why
22 operations declined at Jefferson after 1985?
23 MS. BEACH: I object, Your Honor. We've been

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1 through this. If it's based on this letter, it's not a
2 Dr. Tauber letter.
3 MR. BETTIUS: I'm not talking about --
4 THE COURT: I think he sort of changed focus
5 there, Ms. Beach.
6 MS. BEACH: I said if it's based --
7 THE COURT: I'll overrule the objection.
8 THE WITNESS: I can't recall which documents,
9 but I have reviewed documents, either correspondence or
10 board minute discussions, that reference comments by
11 Dr. Tauber to the effect that the hospital -- the
12 physicians were no longer or not supporting at the
13 level they had once supported the hospital. That was
14 one of the factors indicating a decline.
15 BY MR. BETTIUS:
16 Q I'm going to show you what is Exhibit 805,
17 July 24, 1989, a letter from Dr. Tauber to the Joint
18 Venture participants. Does it indicate whether the
19 Respondents had substantial money invested in the
20 hospital?
21 A This letter, Dr. Tauber presumably being the
22 author of it, makes a reference that since practically
23 none of the investors have any money in this venture, I

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1 would like to allocate $1.1 million to be paid in
2 October 2005 to our faithful, devoted employees.
3 Q All right, sir. Now, in connection with the
4 hospital's operation do you find anything in its
5 profile that, in terms of recovery of patient revenues,
6 indicates that it's operating below the norm or above
7 the norm in terms of its ability to recover its
8 accounts receivable?
9 A There's nothing to suggest that. There's
10 some variations in accounts receivable. We saw one
11 particular year in an exhibit yesterday where it did
12 increase substantially over the prior year. We also
13 saw it come back down in the following year.
14 Q Is there any indication that they're not
15 operating just like any other hospital?
16 A I didn't see any indication of that. Again,
17 looking at the actual results, nobody would suggest
18 that this hospital operated at wildly high profit
19 margins by a long shot, but it was operating stably.
20 If we were to again figure out a way to sort
21 out the burdens that were placed upon this hospital by
22 virtue of leases and other kinds of burdens, including
23 assumption of the mortgage at a point in time, I think

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1 we might see an entirely different picture.
2 Q You think you would or can you state to a
3 reasonable accounting certainty?
4 A I would need to scratch the numbers out, but
5 you would certainly find that to be the case.
6 Q All right. Now, with respect to 1985, you
7 indicated that another lease was signed with Inova; is
8 that correct?
9 A In 1985?
10 Q Yes.
11 A Yes, it was.
12 Q Who was the lessor?
13 A The lessor under that lease was the operating
14 company initially, JMH – I think at that point it was
15 actually Jefferson Corporation of America (sic), JCA.
16 But simultaneous with that was an assignment of that
17 lease to the Joint Venture.
18 Q Now, who had the bargaining power? Had
19 anything happened with respect to the bargaining power?
20 Had there been any shift in the bargaining power?
21 A I would go back to my comment a few moments
22 ago. Nothing changed from the standpoint of who owned
23 the underlying right to operate the underlying -- and a

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1 portion of the underlying land. Again, I would say
2 that he who holds the ball can control the game.
3 Q And, in fact, in the Inova lease -- I'm
4 talking about Exhibit 338 --
5 MR. COCHRAN: You didn't finish your
6 identification of that exhibit.
7 MR. BETTIUS: I'm sorry. It's the 1985 lease
8 between Inova --
9 MR. COCHRAN: The number.
10 MR. BETTIUS: I'm sorry. It's 338. I'm
11 sorry, Mr. Cochran.
12 BY MR. BETTIUS:
13 Q Now, I'm going to direct your attention to
14 page 13. At any time Inova ceased to operate that
15 hospital, what were the rights of JMHC?
16 A Under this agreement JMHC would always have
17 the right to receive back there premises, all
18 underlying permits and licenses. So I take that to
19 mean, as I read this, that they weren't giving away or
20 selling either the premises or the rights to the
21 licenses. Those would always revert back to JMHC under
22 this lease.
23 Q There was more to it than that, Mr. Wilson,

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1 point of view who has the entitlement to the payment
2 under that 1994 agreement? I want the basis for that
3 opinion.
4 A I thought you were heading for the charts.
5 Q Ultimately that's where we're going.
6 A Okay. In our accounting we gave appropriate
7 due to the charitable trust, to the 1994 agreement.
8 True enough, the hospital ceased to operate by that
9 point in time. Again, I don't necessarily understand
10 all of the complexities of what transpired between 19
11 and '94. I only know that there was an agreement
12 between Inova and the Joint Venture and JCA at that
13 time.
14 But fundamentally, again, my belief, my
15 understanding is that the value of -- the value that
16 was created in that underlying agreement with Inova
17 really had to do with the license and the ability to
18 control what was done with that license. There's a
19 reference to that in the settlement agreement.
20 I take that to mean that Inova, in large
21 part, was paying for the ability to have that lease --
22 have that license and to have control over how it was
23 used.

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1 wasn't there? They could come back and operate if they
2 wanted to?
3 A Correct. That's what it says.
4 Q At whose expense?
5 MR. COCHRAN: Your Honor, I'd just object to
6 --
7 MR. BETTIUS: I'll withdraw it.
8 THE COURT: They were just leading.
9 MR. COCHRAN: The first one was leading. I
10 didn't get up in time to make an objection.
11 BY MR. BETTIUS:
12 Q Now, Mr. Wilson, what effect, in your
13 calculations do you give to the 1992 binding letter
14 agreement, if any?
15 A We didn't consider that at all. I didn't
16 understand that to be an agreement that was valid. It
17 was void, therefore we continued the '85 lease through
18 1994. I believe the lease payments were made under
19 that lease, at which point we looked at the additional
20 agreement that Inova entered into.
21 Q Ultimately it's for the Court to decide by
22 reading the agreements, but from your examination of
23 the documents, is there any doubt from an accounting

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1 MR. BETTIUS: Will the Court indulge me for a
2 moment?
3 THE COURT: All right.
4 BY MR. BETTIUS:
5 Q Did you, at my request, do a calculation of
6 the amount of money that the Respondents would be
7 entitled to recover if, in fact, you kept the '66 lease
8 current through 2005?
9 I'm sorry. I've given you the wrong
10 document.
11 THE COURT: Let me ask you, Mr. Bettius, how
12 much longer you expect to be?
13 MR. BETTIUS: Almost finished.
14 THE COURT: I'm not trying to hurry you, I
15 just want to know.
16 MR. BETTIUS: I understand.
17 MR. HIRSCHKOP: Your Honor, almost finished
18 is generally about an hour for Marc. Is it time for an
19 afternoon break?
20 THE COURT: Well, let's see how much more he
21 goes, Mr. Hirschkop.
22 MR. BETTIUS: Your Honor, could I have a
23 five-minute recess.

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1 THE COURT: Apparently it's a good time to
2 take a recess, Mr. Hirschkop.
3 (End of partial transcript.)
4 * * * * *

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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
MISTY KLAPPER & ASSOCIATES (703) 780-