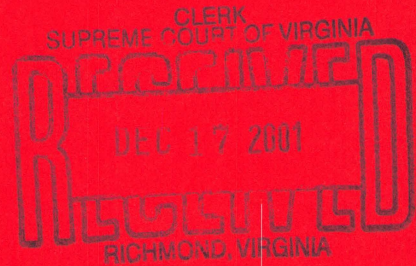


263 Va520

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

RECORD NO. 011150



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

Appellants-Respondents,

v.

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

Appellees-Complainants.

JOINT APPENDIX

VOLUME VI

TABLE OF CONTENTS

PAGE

Volume I

Original Bill of Complaint as Finally Amended.....	0001
July 13, 2000 Letter Opinion Order	0022
October 25, 2000 Order	0025
November 30, 2000 Letter Opinion Order.....	0029
December 27, 2000 Letter Opinion Order	0031
January 23, 2001 Letter Opinion Order	0033
February 5, 2001 Order.....	0035
February 21, 2001 Letter Opinion Order	0038
April 25, 2001 Letter Opinion Order	0047
Testimony of Michael Dooley (January, 1997 Trial Testimony)	0052
Testimony of Dr. Laszlo N. Tauber (January, 1997 Trial Testimony)	0096
Testimony of Arthur Cobb (January, 1997 Trial Testimony).....	0493

Volume II

Testimony of R. Bruce Den Uyl (January, 1997 Trial Testimony)	0648
Testimony of John Thorpe Richards (January, 1997 Trial Testimony).....	0795
Testimony of Robert E. Wilson (January, 1997 Trial Testimony)	0906

Volume III

Testimony of Celeste Burns Vella (January, 1997 Trial Testimony)	1064
Trial Testimony of Irwin Friedman (February 1, 2000)(Direct Examination by Mr. Bono, Cross-examination by Mr. Bettius, Redirect Examination by Mr. Cochran).....	1172

PAGE

Trial Testimony of R. Bruce Den Uyl (February 1, 2000)(Direct Examination by Mr. Bono, Cross-Examination by Mr. Bettius, Redirect Examination by Mr. Cochran, Redirect Examination by Mr. Bono, Recross-examination by Mr. Bettius).....	1202

Volume IV

Trial Testimony of Laszlo N. Tauber, M.D. (February 2, 2000) (Cross-examination by Mr. Bettius)	1417

Trial Testimony of Laszlo N. Tauber, M.D. (February 3, 2000) (Re-direct Examination by Mr. Bono, Re-direct Examination by Mr. Hirschkop, Cross-examination by Mr. Bettius)	1529

Trial Testimony of Arthur Cobb (February 3, 2000)(Direct Examination by Mr. Cochran, Direct Examination by Mr. Bono, Direct Examination by Mr. Hirschkop)	1622

Volume V

Trial Testimony of Laszlo N. Tauber, M.D. (February 4, 2000) (Direct Examination by Mr. Bono, Direct Examination by Mr. Cochran, Direct Examination by Mr. O'Donnell)	1728

Trial Testimony of Arthur Cobb (February 4, 2000)(Cross-examination by Mr. Bettius, Redirect Examination by Mr. Cochran, Redirect Examination by Mr. Bono, Redirect Examination by Mr. Hirschkop, Recross-examination by Mr. Bettius)	1844

Robert E. Wilson (February 4, 2000)(Direct Examination by Mr. Bettius)	2010

Volume VI

Trial Testimony of Robert E. Wilson (February 7, 2000)(Direct Examination by Mr. Bettius, Cross Examination by Mr. Cochran, Cross Examination by Mr. Bono, Redirect Examination by Mr. Bettius, Recross Examination by Mr. Cochran)	2029

Trial Testimony of Sharon K. Moore (February 7, 2000)(Direct Examination by Mr. Bettius, Cross Examination by Mr. Cochran, Cross Examination by Mr. Bono, Cross Examination by Mr. Hirschkop, Cross Examination by Mr. O'Donnell, Redirect Examination by Mr. Bettius).....	2208

	<u>PAGE</u>
Trial Testimony of Arthur Cobb (February 8, 2000)(Redirect Examination by Mr. Cochran, Redirect Examination by Mr. Bono, Recross-examination by Mr. Bettius, Redirect Examination by Mr. Cochran).....	2331
Hearing regarding Complainants' Motion to Compel Discovery Responses (March 24, 1999).....	2410
Bond Hearing (June 28, 1999)	2434
Hearing regarding the Motion to Compel Appointment of Administrator, CTA (July 28, 1999).....	2456

Volume VII

Hearing regarding Respondents' Oral Motion for Leave to File a Supplemental Accounting (August 30, 1999).....	2488
Hearing regarding Scheduling Order (October 13, 1999)	2510
Pretrial Hearing (January 12, 2000).....	2528
Hearing of July 7, 2000, on Posting of Bond.....	2582
Hearing of November 13, 2000, on Title to Property and Attorney's Fees, including the Hearing Testimony of Kirk Foster (Direct Examination by Mr. Bettius, Cross-examination by Mr. Bono, Cross-examination by Mr. O'Donnell, Redirect Examination by Mr. Bettius), Grayson Hanes (Direct Examination by Mr. Bettius, Cross-examination by Mr. Bono, Cross-examination by Mr. Hirschkop, Redirect Examination by Mr. Bettius), and Thomas A. Reed (Direct Examination by Mr. Bettius, Cross-examination by Mr. Bono, Cross-examination by Mr. O'Donnell, Cross-examination by Mr. Hirschkop)	2588
Hearing of February 2, 2001, on Final Decree	2723
Hearing of March 23, 2001, on Posting of Bond	2754
Hearing of April 20, 2001, on Posting of Bond	2784

Volume VIII

Exhibit 9.....	2787
Exhibit 11.....	2792

	<u>PAGE</u>
Exhibit 21.....	2793
Exhibit 40.....	2796
Exhibit 85.....	2797
Exhibit 86.....	2799
Exhibit 89.....	2800
Exhibit 91.....	2804
Exhibit 92.....	2810
Exhibit 93.....	2812
Exhibit 105.....	2817
Exhibit 110.....	2823
Exhibit 113.....	2826
Exhibit 116.....	2832
Exhibit 119.....	2836
Exhibit 120.....	2847
Exhibit 124.....	2856
Exhibit 126.....	2860
Exhibit 130.....	2868
Exhibit 131.....	2873
Exhibit 133.....	2883
Exhibit 135.....	2896
Exhibit 136.....	2898
Exhibit 137.....	2902
Exhibit 138.....	2904
Exhibit 139.....	2908

	<u>PAGE</u>
Exhibit 143.....	2911
Exhibit 144.....	2918
Exhibit 146.....	2922
Exhibit 149.....	2935
Exhibit 156.....	2941
Exhibit 161.....	2958
Exhibit 165.....	2967
Exhibit 166.....	2985
Exhibit 171.....	3002
Exhibit 178.....	3004
Exhibit 179	3010
Exhibit 182.....	3017
Exhibit 184.....	3042
Exhibit 185.....	3050
Exhibit 186.....	3053
Exhibit 188.....	3062
Exhibit 189	3074
Exhibit 190.....	3083
Exhibit 191.....	3096
Exhibit 192.....	3111
Exhibit 193.....	3127
Exhibit 194.....	3146

PAGE

Volume IX

Exhibit 195.....	3161
Exhibit 196.....	3174
Exhibit 200.....	3177
Exhibit 201.....	3191
Exhibit 202.....	3205
Exhibit 203.....	3220
Exhibit 204.....	3234
Exhibit 205.....	3262
Exhibit 206.....	3277
Exhibit 211.....	3313
Exhibit 213.....	3320
Exhibit 214.....	3324
Exhibit 217.....	3329
Exhibit 219.....	3335
Exhibit 220.....	3341
Exhibit 226.....	3348
Exhibit 227.....	3357
Exhibit 228.....	3361
Exhibit 230.....	3369
Exhibit 235.....	3377
Exhibit 236.....	3402
Exhibit 237.....	3409
Exhibit 238.....	3426

	<u>PAGE</u>
Exhibit 241	3428
Exhibit 243	3431
Exhibit 246	3433
Exhibit 249	3442
Exhibit 252	3456

Volume X

Exhibit 262	3467
Exhibit 263	3469A
Exhibit 266	3470
Exhibit 267	3475
Exhibit 268	3477
Exhibit 269	3487
Exhibit 271	3491
Exhibit 272	3502
Exhibit 273	3503
Exhibit 274	3506
Exhibit 275	3507
Exhibit 276	3509
Exhibit 277	3511
Exhibit 278	3512
Exhibit 279	3516
Exhibit 280	3520
Exhibit 281	3524
Exhibit 287	3528

	<u>PAGE</u>
Exhibit 289.....	3532
Exhibit 290.....	3582
Exhibit 291.....	3586
Exhibit 292.....	3591
Exhibit 293.....	3626
Exhibit 294.....	3642
Exhibit 296.....	3644
Exhibit 298.....	3650
Exhibit 299.....	3653
Exhibit 300.....	3659
Exhibit 301.....	3662
Exhibit 302.....	3365
Exhibit 303.....	3668
Exhibit 304.....	3671
Exhibit 305.....	3673
Exhibit 306.....	3675
Exhibit 307.....	3678
Exhibit 308.....	3682
Exhibit 309.....	3684
Exhibit 310.....	3701
Exhibit 311.....	3719
Exhibit 313.....	3722
Exhibit 324.....	3736

PAGE

Volume XI

Exhibit 325.....	3753
Exhibit 326.....	3755
Exhibit 328.....	3897
Exhibit 337.....	3901
Exhibit 338.....	3903
Exhibit 339.....	3936
Exhibit 340.....	3984
Exhibit 350.....	4018
Exhibit 350A.....	4020
Exhibit 354.....	4023
Exhibit 356.....	4024
Exhibit 358.....	4030
Exhibit 362.....	4031
Exhibit 364.....	4033
Exhibit 367.....	4035
Exhibit 368.....	4038
Exhibit 369.....	4049
Exhibit 372.....	4053
Exhibit 374.....	4057
Exhibit 375.....	4059
Exhibit 378.....	4062
Exhibit 379.....	4063

Volume XII

Exhibit 380.....	4065
Exhibit 385.....	4082
Exhibit 386.....	4084
Exhibit 387.....	4086
Exhibit 387A.....	4087
Exhibit 388.....	4090
Exhibit 389.....	4091
Exhibit 394.....	4096
Exhibit 402.....	4097
Exhibit 403.....	4098
Exhibit 403A.....	4100
Exhibit 406.....	4101
Exhibit 409.....	4142
Exhibit 410.....	4143
Exhibit 420.....	4144
Exhibit 422.....	4145
Exhibit 424.....	4148
Exhibit 425.....	4150
Exhibit 426A.....	4153
Exhibit 426B.....	4154
Exhibit 428.....	4155
Exhibit 447.....	4163
Exhibit 451.....	4168

	<u>PAGE</u>
Exhibit 453.....	4169
Exhibit 455	4170
Exhibit 456.....	4171
Exhibit 457.....	4175
Exhibit 461.....	4181
Exhibit 513.....	4188
Exhibit 514.....	4204
Exhibit 538.....	4217
Exhibit 603.....	4222
Exhibit 610.....	4224
Exhibit 613.....	4225
Exhibit 709(A)	4226
Exhibit 709(B)	4227
Exhibit 709(C)	4228
Exhibit 709(D)	4229
Exhibit 709(E).....	4230
Exhibit 709(F).....	4231
Exhibit 710.....	4232
Exhibit 711.....	4274
Exhibit 782.....	4282
Exhibit 789.....	4296

Volume XIII

Exhibit 802.....	4305
Exhibit 803.....	4311

	<u>PAGE</u>
Exhibit 804.....	4313
Exhibit 805.....	4316
Exhibit 806.....	4319
Exhibit 816.....	4320
Exhibit 822.....	4339
Exhibit 823.....	4498
Exhibit 824.....	4507
Exhibit 825.....	4509
Exhibit 826.....	4517
Exhibit 827.....	4520
Exhibit 828.....	4529
Exhibit 832.....	4532
Exhibit 835.....	4542
Exhibit 856.....	4550
Exhibit 858.....	4553
Exhibit 860.....	4562
Exhibit 861.....	4570
Exhibit 862.....	4576
Exhibit 863.....	4580
Exhibit 864.....	4588

Volume XIV

Exhibit 865.....	4609
Exhibit 866.....	4617
Exhibit 867.....	4632

	<u>PAGE</u>
Exhibit 868.....	4635
Exhibit 873.....	4649
Exhibit 883.....	4660
Exhibit 886.....	4661
Exhibit 887.....	4663
Exhibit 890.....	4668
Exhibit 893.....	4670
Exhibit 894.....	4671
Exhibit 896.....	4679
Exhibit 898.....	4680
Exhibit 899.....	4681
Exhibit 900.....	4684
Exhibit 901.....	4686
Exhibit 902.....	4691
Exhibit 904.....	4693
Exhibit 906.....	4703
Exhibit 907.....	4711
Exhibit 908.....	4713
Exhibit 909.....	4716
Exhibit 910.....	4717
Exhibit 911.....	4719
Exhibit 915.....	4722
Exhibit 927.....	4726
Exhibit 942.....	4727

	<u>PAGE</u>
Exhibit 943.....	4728
Exhibit 944.....	4745
Exhibit 945.....	4752
Exhibit 946.....	4753
Exhibit 947.....	4755
Exhibit 949.....	4757
Exhibit 950.....	4759
Exhibit 952.....	4761
Exhibit 953.....	4763
Exhibit 954A.....	4767
Exhibit 955.....	4769
Exhibit 955A.....	4775
Exhibit 956.....	4777
Exhibit 962.....	4780
Exhibit 971.....	4783
Exhibit 974.....	4797
Exhibit 978.....	4800
Exhibit 994.....	4803
Exhibit 1001.....	4805
Exhibit 1002.....	4821

Volume XV

Exhibit 1003.....	4836
Exhibit 1005.....	4851
Exhibit 1027.....	4862

	<u>PAGE</u>
Exhibit 1028.....	5018

Volume XVI

Exhibit 1029.....	5106
Exhibit 1030.....	5249
Exhibit 1031.....	5357
Exhibit 1033.....	5370
Exhibit 1034.....	5380
Exhibit 1035.....	5390
Exhibit 1036.....	5400
Exhibit 1046.....	5411
Exhibit 1057.....	5418

Volume XVII

Exhibit 1064.....	5425
Exhibit 1079.....	5429
Exhibit 000.....	5492
Exhibit A.....	5494
Exhibit B	5497
Exhibit F.....	5500
Exhibit G	5501
Exhibit H.....	5504
Exhibit I	5588
Exhibit J	5590
Exhibit N.....	5593
Exhibit P.....	5600

	<u>PAGE</u>
Exhibit R	5616
Exhibit S.....	5629
Exhibit T	5631
Exhibit T2	5641
Exhibit T3	5642
Exhibit T4	5643
Exhibit T5	5644
Exhibit T6	5645
Exhibit T7	5646
ExhibitT8	5647
Exhibit T9	5648

Volume XVIII

Exhibit U.....	5649
Exhibit W	5755
Exhibit Z	5771
Exhibit AA	5794
Exhibit BB	5808
Exhibit CC	5841
Exhibit DD	5904
Exhibit EE.....	5956
Exhibit AAA	5957
Exhibit AAAA	5960
Exhibit AAAAA	5963
RESPONDENTS' ACCOUNTING	5967

	<u>PAGE</u>
RESPONDENTS' SUPPLEMENTAL ACCOUNTING	5992
COMPLAINANTS' ACCOUNTING	5996
ASSIGNMENTS OF ERROR	6123
ASSIGNMENTS OF CROSS-ERROR	6126

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
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V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

COPY

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COMMONWEALTH OF VIRGINIA, :
ET AL. :
 :
Plaintiffs, :
 :
VS. :
 :
LASZLO N. TAUBER, ET AL. :
 :
Defendants. :
----- x

Chancery No. 96-1241
Volume V

Courtroom No. 4
Alexandria City Courthouse
Alexandria, Virginia

Monday,
February 7, 2000

The above-entitled matter came on to be
heard before the HONORABLE ALFRED D. SWERSKY, Judge,
in and for the Circuit Court of Alexandria,
Alexandria, Virginia beginning approximately at 9:45
a.m., before Jean Townsend, Stenotype Reporter and
Notary Public in and for the Commonwealth of Virginia,
when were present on behalf of the respective parties:

A P P E A R A N C E S O F C O U N S E L :

FOR THE COMPLAINANTS:

LAWSON & FRANK

BY: MARC BETTIUS, ESQUIRE

BY: DEBRA FITZGERALD-O'CONNELL, ESQUIRE

BY: INA CHARVET, ESQUIRE

6045 Wilson Boulevard

Suite 100

Arlington, Virginia 22205

OFFICE OF THE ATTORNEY GENERAL

BY: RICHARD SCHWEIKER, JR., ESQUIRE

ASSISTANT ATTORNEY GENERAL

900 East Main Street

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5 Alexandria, Virginia 22314

6 THE JEFFERSON LAW FIRM
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9 Seventh Floor
10 McLean, Virginia 22101

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12 BY: GASPARE J. BONO, ESQUIRE
13 701 Pennsylvania Avenue N.W.
14 Suite 600
15 Washington, D.C. 20004

16 HIRSCHKOP & ASSOCIATES
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18 108 West Columbus Street
19 Alexandria, Virginia 22314

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22 4103 Chain Bridge Road
23 Suite 100
Fairfax, Virginia 22030

- - -

J.APP. 2031

I N D E X

PLAINTIFF'S EVIDENCE:PAGE:WITNESS: ROBERT E. WILSON:

Direct Examination by Mr. Bettius	6
Cross Examination by Mr. Cochran	40
Cross Examination by Mr. Bono	123
Redirect Examination by Mr. Bettius	193
Recross Examination by Mr. Cochran	206

WITNESS: SHARON K. MOORE

Direct Examination by Mr. Bettius	208
Cross Examination by Mr. Cochran	248
Cross Examination by Mr. Bono	272
Cross Examination by Mr. Hirschkop	279
Cross Examination by Mr. O'Donnell	286
Redirect Examination by Mr. Bettius	298

- - -

E X H I B I T S

PLAINTIFF'S EXHIBITS

PAGE

Plaintiff's Exhibit AAA 7

- - -

P R O C E E D I N G S

MR. MATTHEW: Your Honor, just a small administrative matter. May it please the Court, Charles Matthew for the INOVA Complainants. Your Honor, I must apologize on behalf of Mr. Trainer (ph.). He had an unavoidable conflict for today and I hope the Court will permit my appearance today.

THE COURT: Certainly.

All right. Mr. Bettius?

DIRECT EXAMINATION

BY MR. BETTIUS:

Q Mr. Wilson, when we adjourned I was asking you if the Court were to conclude that rental, under the 1994 agreement --

MR. BETTIUS: And, Your Honor, I want you to understand that that's not our position and that it is a proper charge.

BY MR. BETTIUS:

Q But if you afforded to the Respondents rent all the way through to 2005, have you made those adjustments?

A Yes, I have.

Q Do you have them on an exhibit?

J.APP.2034

1   A   I do.

2   MR. BETTIUS: Your Honor, we'd like this
3 identified as our next exhibit.

4   THE COURT: I'm not sure where we are for
5 the Complainant. We were using zeros, weren't we?

6   MR. BETTIUS: Can we call it Plaintiff's
7 AAA? We'll correct the numbers later.

8   THE COURT: All right. Let's just call it
9 Plaintiff's AAA.

10   (Whereupon, a document was marked as
11 Plaintiff's Exhibit AAA.)

12   BY MR. BETTIUS:

13   Q   If rent pursuant to the '66 lease,
14 Mr. Wilson, is carried to the year 2005, can you give
15 the Court the total amount of the adjustment that's
16 necessary to make to your previous number?

17   A   Yes, I can. And, actually, just to clarify
18 that, if we were to adjust the '66 lease and then the
19 legitimate lease subsequent to that, that reflected
20 that additional occupancy of space, such as the '68
21 lease, it crescendos out beyond 1994 to 2005. That
22 would have the impact of increasing the rentals on
23 those leases by approximately 4.8 million dollars,

J.APP. 2035

1 which would, in effect, in my view, add to the profit
2 under those leases to Respondents by approximately 4.8
3 million in addition to the approximately 3.2 million
4 dollars of profit, of profit in those leases as was
5 referred to in our accounting.

6 Q If you extend that rent forward, is there
7 any real property or improvement to real properties
8 that's actually being enjoyed by INOVA or anyone else
9 past 1994?

10 A Well, in 1994 the hospital ceased to
11 operate. There was no occupancy and, hence, no, in my
12 mind, no occupancy costs.

13 Q Who has had control and use of the
14 improvements since the execution of the settlement
15 agreement?

16 A Since the execution of the settlement
17 agreement?

18 Q Yes.

19 A The joint venture has.

20 Q You had previously testified -- I'd like to
21 finish up, if I could, Mr. Wilson, the 1982 lease
22 agreement. Can you tell me, sir, what was done or
23 what use was made by Respondents of the 2.2 million

1 dollars that was paid for the tangible and intangible
2 operating assets of JMHC?

3 A Right. You've got 2.2 million dollars of
4 proceeds that came from acquiring those assets.
5 Essentially it went for ultimately two purposes. One
6 was to pay off the remaining mortgage obligation and
7 also to, in a year or two hence, to repay -- redeem,
8 in effect, outstanding stock, about 129,000 shares.

9 Q Is there any track of that money to
10 ultimate fourth floor improvements that were made,
11 Mr. Wilson?

12 A I didn't see any evidence of that.

13 Q Is there any basis that you can determine
14 for the rental of the third or fourth floors if
15 there's not an existing hospital on the site?

16 A No.

17 Q If there is no existing hospital on the
18 site -- strike that. Do you recall what the recited
19 consideration was for the -- let me go back. The rent
20 that was to be paid -- and who was the lessor under
21 the 1982 agreement?

22 A The lessor was the operating company, JMHC.

23 Q What was the rent that was to be paid to

J: JAPP.2037

1 JMHC?

2 A By HGV?

3 Q Yes, sir.

4 A A million dollars a year.

5 Q Do you view that in terms of your
6 understanding of the agreement -- in fact, the
7 Respondents' own testimony -- as being anything that
8 relates to just real estate?

9 A What HGV was acquiring were the rights to
10 operate the hospital with full license or for a period
11 of the lease.

12 Q If the Respondents are correct in their
13 testimony that it was an obsolete hospital, what
14 effect does that have on your judgment as to whether
15 or not this was a payment for real estate or the use
16 of buildings?

17 A Well, it would suggest to me that if the
18 physical facility were obsolete, that the entire value
19 of those lease payments really relates to, again, the
20 license or the operating ability.

21 Q In fact, the lease itself breaks down --
22 does the lease make any division of payments for
23 mortgage obligations and debt service on the real

1 estate?

2 A Yes, it does. It spells out \$760,000 of
3 the million that's, kind of, basic rent; and then,
4 along with other provisions, provides for \$240,000
5 designated, at least in the document itself, as the
6 amounts to cover existing obligations.

7 Q So, all of the existing obligations are
8 covered by the \$240,000 payment that's segregated on
9 the document; is that your understanding?

10 A Presumably, and the lease, yes.

11 Q Now, is the exaction of \$240,000 for
12 obligations consistent with the '66 lease?

13 A No. It's not consistent with that
14 provision at all.

15 Q Do you recall where that \$240,000 number
16 comes from, which amendment?

17 A Let me think. I don't know if I recall. I
18 don't recall.

19 Q Let me show you the document. I know there
20 are a lot of transactions to keep in your mind.

21 MR. BETTIUS: I'm going to show the witness
22 Exhibit 324.

23 MR. COCHRAN: Can we identify for the

J.APP.2039

1 record what the exhibit is?

2 MR. BETTIUS: The 1980 lease, lease
3 amendment.

4 BY MR. BETTIUS:

5 Q Does that refresh your recollection as to
6 where the \$240,000 a year obligation for lease and
7 mortgage payments arose?

8 A Well, the 1980 lease increases the rent and
9 specifies that it was due primarily to expansions,
10 renovations and updating care facilities, certain
11 hospital rooms, et cetera.

12 Q Are those the MOB improvements, sir?

13 A Yes.

14 Q Now, is that lease consistent, sir, with
15 the 1966 lease?

16 A No, it's not.

17 Q You are reciting what was going on with the
18 2.2 million dollars, Mr. Wilson. Do you know what
19 \$909,000 of that money was used for?

20 A Yes. That was used to redeem, again,
21 approximately 129,000 shares of stock.

22 Q Do you recall the circumstances that gave
23 rise to the issuance of the stock issue of which that

1   \$129,000 was a part?

2   A   The original stock issue?

3   Q   Yes, sir.

4   A   That was ultimately redeemed?

5   Q   Yes.

6   A   That goes back to 1971 purportedly with the
7 transaction that whereby JMHC was created and issued
8 240,000 shares to the participants in the joint
9 venture at that time.

10   Q   Do you know what the nature of the assets
11 conveyed were from 240,000?

12   A   Yes. In return for that 240,000 shares,
13 the partnership conveyed its operating assets, which
14 consisted of real estate, land and buildings.

15   Q   In terms of your understanding of this
16 \$909,000, what relationship does it have to the
17 purported equity contribution of the Respondents in
18 this case?

19   A   Well, it's well in excess of any equity
20 contribution of the Respondents, that's for sure.

21   Q   At this point, do the Respondents, in terms
22 of having contributed any equity to the transaction,
23 have any money invested in the transaction?

1   A   Not by anything that I would be willing to
2 determine and, in fact, there is references in
3 memoranda minutes that suggest that the partners at
4 one time had no money in the property.

5   Q   Do you know -- you've indicated that the
6 residue of the money was invested by the Respondents
7 and used to pay off the mortgage?

8   A   Yes, invested in CDs basically and also
9 used to pay off the mortgage.

10   Q   And I'm going to ask you if you can take a
11 look at this exhibit and tell me if those investments
12 had another objective.

13   MR. BETTIUS: I'm showing the witness
14 Dr. Peters' letter. I think he testified to it
15 before, which is Exhibit 971, as to what was done with
16 the money relative to the fourth floor.

17   MR. COCHRAN: Your Honor, he went over this
18 on Friday.

19   THE COURT: It does sound awfully familiar.

20   MR. BETTIUS: I withdraw the question.

21   BY MR. BETTIUS:

22   Q   Is there a quintessential transaction on
23 all the transactions engaged upon the Respondents that

1 really evidences the commingling or self-interests of
2 the Respondents in dealing with the operating assets
3 of the charity or with JMHC?

4 A Well, as I testified on Friday, I think the
5 whole period of time is replete with commingling of
6 the charity's assets with that of the Respondents'. I
7 guess, to me, it sort of culminates in the 1992
8 binding agreement between INOVA or Fairfax Hospital
9 Association and the Respondents where up to that time
10 INOVA had an operating lease arrangement since 1985 to
11 operate the hospital.

12 Based on documentation I was able to read,
13 they wanted to get out of that lease for sure. They
14 wanted to shut down the hospital. And there was this
15 correspondence back and forth between Dr. Tauber and
16 others and INOVA representatives where they hit upon a
17 notion of exchanging real estate assets, commercial
18 building for the hospital, and that appeared to be all
19 about trying to achieve a tax-free exchange building
20 for building and then a rental stream, if you will, of
21 the hospital itself continues to flow to the
22 Respondents by virtue of a rental agreement, in
23 effect, to lease space in the building. I mean, to

1 me, that probably constitutes the turn of events, if
2 you will, of this vast commingling that occurred.

3 Q Based on what you've seen, in terms of
4 putting -- mixing the real estate issues with the
5 consideration of business issues, was there any
6 valuation problem with what they were trying to do in
7 terms of how they were valuing the hospital assets in
8 the exchange?

9 MR. COCHRAN: Objection, Your Honor. The
10 witness has testified, both in this trial and the last
11 trial, he's not a valuation expert. He has no
12 expertise --

13 MR. BETTIUS: I'm not asking him to make a
14 valuation, Your Honor.

15 THE COURT: Just a minute, Mr. Bettius.

16 MR. COCHRAN: He just asked him what was
17 the -- a question dealing directly with valuation.

18 THE COURT: I'll overrule the objection.

19 BY MR. BETTIUS:

20 Q In terms of the values that were
21 established in the exchange, were they based upon any
22 value or fair market valuation or appraisal?

23 A Well, based upon the letters that I saw,

1 the value determination was predicated on the
2 underlying value of the Cambridge Court building. And
3 that was, in effect, translated or became the value of
4 the hospital in this purported transaction.

5 Q Do you remember what that number was?

6 A It was 12 million plus 700,000 or something
7 like that.

8 Q That's correct. In terms of valuations
9 submitted in this case, what was the approximate value
10 that the parties now concede was the real value of
11 that building at this time, do you know?

12 A I'm sorry?

13 Q Have you seen valuations that are going to
14 be submitted in this trial?

15 A In this trial?

16 Q Yes, sir. What the real value of that
17 building was in 1992.

18 MR. COCHRAN: Your Honor, if there's an
19 appraisal or a document, we need not ask Mr. Wilson
20 about that. The document will speak for itself.

21 THE COURT: The question was if he has seen
22 one?

23 MR. BETTIUS: Yes.

1 THE COURT: I'll let him answer that.

2 BY MR. BETTIUS:

3 Q Do you know what the relative amount of the
4 appraisals that are being exchanged by the parties
5 are?

6 A Well, if you're referring to the
7 Respondents' accounting and the value of the -- the
8 net value, if you will, of the assets as of the 1992
9 dates, I recall it was a million two or something.

10 Q If the building was, in fact, as has been
11 testified to here, an obsolete white elephant, is
12 there any basis upon which you could understand a
13 value being attached to that building being worth 12.7
14 million dollars without a license?

15 MS. BEACH: Your Honor, I would, again,
16 like to make an objection. This is not a valuation --

17 THE COURT: He hasn't asked him a valuation
18 question. He's asked him an accounting question, I
19 thought.

20 MS. BEACH: Your Honor, he's asked him
21 about the value that he could place on the building --

22 THE COURT: He didn't ask him about placing
23 a value. He's using the values that have been placed

1 on the building. I overrule the objection.

2 I'm sorry, Mr. O'Donnell.

3 MR. O'DONNELL: I would have to agree. I
4 think what he's asking the witness is to opine about
5 whether or not a value of 12 million dollars for the
6 building is appropriate in his opinion. He is not an
7 expert in real estate valuation. He hasn't been
8 qualified.

9 THE COURT: I've overruled the objection.

10 BY MR. BETTIUS:

11 Q If the building's a white elephant and now
12 isn't going to have a license, based on their own
13 testimony, can you find any reasonable basis for
14 asserting that the building that's being transferred,
15 the hospital building, is worth 12.7 million dollars?

16 A The building itself is only worth as much
17 as either the operating license or the revenue that
18 might flow from the related transaction.

19 Q Based on what the parties did, did you see
20 any evidence at all that they really tried to bargain
21 over what the license was worth without mixing all
22 these real estate issues in?

23 A No. It seemed to me it was structured as a

1 real estate deal, pure and simple, and revenues in
2 rentals flowing out of that.

3 Q In effect, for tax purposes, what would
4 this upward value of 12.7 million and attaching it the
5 building, what value did that have to the Respondents?

6 A There are tremendous tax advantages to
7 having it structured as a tax-free exchange.

8 Q Would it be fair to assume that both
9 parties dealing with the transactions, that they were
10 both very cognizant that there were values being
11 exchanged for tax purposes?

12 MR. COCHRAN: Your Honor, how can he assume
13 that?

14 THE COURT: Tell me about that one,
15 Mr. Bettius.

16 MR. BETTIUS: Your Honor, that's common
17 sense --

18 THE COURT: Maybe I could figure that out
19 without the expert witness testifying to it?

20 MR. BETTIUS: I withdraw the question.

21 THE COURT: I didn't say I had figured it
22 out, I said maybe I could. The objection is
23 sustained.

1 MR. BETTIUS: Let me show the witness
2 Exhibit 203. This is a --

3 THE COURT: I'm sorry. The number again,
4 Mr. Bettius?

5 MR. BETTIUS: 203, Your Honor. Excuse me,
6 461. I've given you the wrong number. It's a letter
7 from Dr. Tauber to his investors.

8 BY MR. BETTIUS:

9 Q Does he give some indication of what their
10 basis is with respect to their ownership of the
11 building?

12 A Yes, he does. I have reviewed this
13 previously. If you would like me to paraphrase?

14 Q Just tell me what the basis is, how he
15 described their basis.

16 A Their tax basis is basically zero.

17 Q Well, if it's practically zero, can you now
18 tell me whether or not there are substantial benefits
19 that are attached to a 12.7 million --

20 MR. BETTIUS: Your Honor, I think you can
21 figure that out without -- I withdraw the question.

22 BY MR. BETTIUS:

23 Q Now, the litigation ensued relative to that

1 agreement, did it not?

2 A Yes, it did.

3 Q Did that litigation have anything to do
4 with the value of the license as you understand it?

5 MR. COCHRAN: Objection, Your Honor. Lack
6 of foundation.

7 MR. BETTIUS: Your Honor, I'm going to ask
8 the Court to take judicial notice. It's an issue that
9 was tried in this very court and had nothing to do
10 with the license. It was a question of title. As you
11 recall, they tried to file a title action and the
12 parties settled. We can get the file up here if we
13 need to.

14 MR. COCHRAN: My only objection is this
15 witness has no knowledge and has not been shown to
16 have any knowledge about that lawsuit.

17 THE COURT: Objection sustained.

18 BY MR. BETTIUS:

19 Q In terms of the resolution of that suit,
20 can you find any basis whatsoever to attribute any
21 value based on that document to the land, buildings,
22 or improvements?

23 MR. COCHRAN: Your Honor, same objection.

1 If he doesn't have any knowledge about the lawsuit, he
2 cannot testify as to how the lawsuit was settled.

3 THE COURT: I'll let him answer that one.
4 I'll overrule the objection.

5 BY MR. BETTIUS:

6 Q Can you find any basis whatsoever under
7 that settlement agreement to attribute any value to
8 the land, buildings or improvements?

9 A Well, I have read the binding agreement and
10 I have read the settlement agreement and tried to tie
11 the two together. I've seen no reference whatsoever
12 in the settlement agreement to any land, buildings or
13 other real estate considerations that revolve around
14 licensure and hospital licensing ability.

15 Q Do you ever see that the Respondents in all
16 the documents that you've seen, Mr. Wilson, that there
17 was any, during this period of time, attempt by the
18 parties to value the license?

19 A No.

20 Q If, in fact, the Court concludes from
21 reading this file that the land was simply withdrawn
22 as part of the resolution and they went on, can you
23 determine from that if that's -- well, I'll ask you a

1 hypothetical. If they simply withdrew the land and
2 settled and if the Respondents got the land back and
3 INOVA was permitted to terminate, can you find any
4 basis on that kind of hypothetical situation to afford
5 any value in the INOVA settlement to anything but the
6 license?

7 A No. It would strictly be 100 percent
8 applicable to the license itself.

9 Q If, indeed, there had been direct marketing
10 for the license, can you come to an opinion, from the
11 standpoint of your knowledge of the transaction and
12 accounting of the transaction, if ultimately a lot
13 more money or significantly more money would have been
14 obtained for the license without the litigation and
15 the other problems?

16 MR. COCHRAN: We are really asking a
17 valuation question here, Your Honor. I'd like a
18 continuing objection.

19 THE COURT: I need you to repeat that. You
20 lost me about halfway through. Repeat your question,
21 please.

22 BY MR. BETTIUS:

23 Q If, in fact, there had been direct

1 bargaining for the license instead of this commingled
2 bundle of rights, do you think, based on what you've
3 seen and your understanding of the transaction, that
4 there would have been substantially more money
5 produced --

6 MR. COCHRAN: Your Honor --

7 THE COURT: Please let me hear the
8 question. Go ahead, Mr. Bettius, finish the question.

9 BY MR. BETTIUS:

10 Q -- if the license would have achieved a
11 much higher value if it had not gotten involved in all
12 the real estate issues and litigation?

13 THE COURT: Objection sustained.

14 MR. BETTIUS: Your Honor, if the Court will
15 hear me on this issue. You can't have the back side
16 of a transaction and then say once the real estate is
17 removed, then all this values and the license and
18 that -- they appropriately established the value of
19 the license. More than a year had gone by. They had
20 lost their tenant for the property and they dealt with
21 commingled assets, they took those out. And you're
22 going to hear an argument somewhere down the line that
23 this litigation was beneficial to the license, they

1 never dealt with the license so we'll never know. And
2 that's basically my position.

3 THE COURT: All right. Objection is
4 sustained.

5 BY MR. BETTIUS:

6 Q We have discussed the issue of private
7 inurement in this case, Mr. Wilson. Can you find
8 after the repayment of the stock issue -- the 1972
9 stock issue -- any basis whatsoever for entitlement by
10 the Respondents to anything other than the '66 lease?

11 A Well, after that point in time, that is the
12 repayment for the redemption actually of the stock for
13 bonds and the ultimate payment to pay off the bonds.
14 There was no basis that I could tell for any position
15 that the Respondents had in the operating company.
16 And everything that flowed through the operating
17 company subsequent to that down through today and
18 beyond would be driven and, I think, dictated by the
19 '66 lease, again, as the primary economic relationship
20 between the parties that was established back then.

21 Q If they received any additional money
22 whatsoever, what has to be the source of that money,
23 based on your understanding?

1   A   It's coming from the operations and the
2   operating license.

3   Q   Respondents testified that the doctors put
4   in a lot of time in connection with the hospital. Is
5   that in any way -- can you tell us how that relates to
6   your experience with all those hospitals that you deal
7   with on a regular basis?

8   A   Well, hospitals -- physicians make
9   hospitals run; they make them successful. Physicians
10   spend untold hours around hospitals in voluntary
11   positions, even sitting on boards; that's just the way
12   the industry is. And I think that any economic
13   relationship between physicians and hospitals where
14   physicians are paid for services still has to meet
15   legal tests with respect to private inurny and private
16   benefit.

17   Q   Have you ever seen a hospital where the
18   physicians are disinterested in its operations?

19   A   Have I ever seen an example of that?

20   Q   Yes.

21   A   Usually if there's great antipathy between
22   the physicians and hospital administration for some
23   reason.

1   Q   In terms of where we are in these
2 transactions, the location of the Respondents and
3 their offices next to the site, based on your
4 experience, who does that benefit?

5   A   Well, it benefits both the physicians and
6 the hospital.

7   Q   And Mr. Cobb testified that if physicians
8 cease to support hospitals, they fail. Do you agree
9 with that?

10   A   I agree with that wholeheartedly.

11   Q   Do you see that in this case?

12   A   Yes.

13   Q   In Mr. Cobb's methodology, there's been
14 some testimony that your methodologies are the same,
15 were not very different. Do you agree with that?

16   A   No, I don't agree with that.

17   MR. COCHRAN: Your Honor, he answered this
18 question Friday as well.

19   MR. BETTIUS: I'm just going to use that as
20 a basis to establish the question.

21   THE COURT: All right. Go ahead.

22   BY MR. BETTIUS:

23   Q   When you employ a methodology such as

1 Mr. Cobb's, do you think it's unusual that he missed
2 transactions?

3 A No, I don't. I think it's -- it could be a
4 likely outcome because of what appears to be, kind of,
5 taking, again, the creation of hypothetical balance
6 sheets that have one foot in reality and one foot
7 based upon some presumed or hypothetical transactions
8 and then trying to roll those forward.

9 I think it's very likely that you're going
10 to miss some things. And particularly if you haven't
11 had the opportunity to get underneath and behind the
12 true inner workings of the relationship between the
13 parties here in this case, you're going to miss some
14 of that.

15 Q Was there a significant or was there an
16 insignificant basis or data that informed you exactly
17 what happened in connection with the sale of the lease
18 back in '75, that it was a swap for bonds? Did you
19 find that well documented within the transaction?

20 A Yes.

21 Q Mr. Cobb, I think, testified that he had
22 never seen the 1982 lease amendment between
23 Respondents and the hospital. Do you think that was a

1 relatively important or unimportant transaction in
2 terms of the diversion of income?

3 A I think that transaction was one of the
4 most important in doing this accounting.

5 Q Is that where the major diversion of
6 results begins between the two of you?

7 A It begins there and goes full force in 1985
8 with the INOVA lease.

9 Q What is the economic impact on an annual
10 basis of the failure to appropriately account for the
11 '82 amount?

12 A About \$900,000 a year.

13 Q And it carries forward from what period of
14 time to what period of time?

15 A That carried forward from 1982 to 1985.

16 Q And then what happened in terms of 1985
17 forward?

18 A In 1985 we now have a new lessee, Fairfax
19 Hospital Association. The economic impact of that is
20 about 1.375 million dollars a year because none of the
21 revenue flows from that transaction stayed within the
22 operating company; and then it escalated from there
23 because there are provisions for increasing.

1   Q   Can you find any basis or justification --
2   and if you can, tell me what it is -- for dividing
3   rents between the third floor and -- strike that.
4   Can you find any basis for not honoring the \$11,760
5   payment for the third MOB lease going forward?

6   A   No.

7   Q   Did they ignore that in subsequent numbers
8   that they represent in their accounting?

9   A   Yes, they did.

10   Q   On what basis do they allocate fourth floor
11   rentals, if you know?

12   A   It was on the basis of square footage usage
13   that they're applying, what seemed to me, to be a
14   very, very high rental rate of \$20 a square foot. And
15   using that, in effect, to penalize the charity, the
16   operating company, for space utilized at a very high
17   rate.

18   Q   Is there any basis whatsoever to -- for the
19   Respondents to claim that they contributed a single
20   dollar to the fourth floor?

21   A   No.

22   Q   Is there any evidence of a capital
23   contribution to any improvements in the hospital after

1 1975?

2 A I couldn't find any.

3 Q Do Respondents claim any capital
4 contributions to any improvement in the hospital in
5 their accountings after 1975?

6 A I couldn't find any accounting for capital
7 contributions at all in their accounting.

8 Q You previously testified, I believe, that
9 what occurred in 1975 was that they began to act like
10 a taxpayer, decreasing revenues from the operations
11 and moving them into lease payments.

12 A Correct.

13 Q What was wrong with that?

14 A Well, this was a charity. This was an
15 organization that had been established to provide
16 medical services and to uphold its charitable purpose.
17 It wasn't about meeting profit and paying taxes on
18 those profits.

19 Q Whose assets were they dealing with?

20 A We're dealing with the charity's assets.

21 Q If you own or have the right to deal with
22 these assets, what do you call that, tax planning?

23 A In what kind of a scenario?

1   Q   Let's suppose you've got two related
2 companies and there's an identity of ownership of
3 assets and in order to minimize corporate tax you
4 start shifting revenues.

5   A   Sure.

6   Q   You do that every day, don't you?

7   A   It happens all the time. That's fair and
8 legitimate under the guidance of the tax code.

9   Q   What do you call that if there are
10 charitable assets and they do that?

11   A   I would probably call that private
12 inurement.

13   Q   Now, have you gone back and looked at your
14 accounting and the way the Respondents were viewing
15 their operations to see if there's a match between the
16 results that you're reporting and the way they were
17 dealing with the assets?

18   A   We did go back and compare and try to
19 understand the Respondents' accounting and how that --
20 and juxtaposed that against our accounting, yes.

21   Q   When you say the hospital's doing well,
22 what do the corporate minutes and the Respondents'
23 reactions say?

1   A   There's many, many references to having a
2   good year, volumes are up, the desire at one point to
3   go to Wall Street and issue stock publicly in the
4   hospital.

5   Q   How are the Respondents' conclusions at
6   various times to deal with the way the Respondents
7   are, in fact, treating the assets?

8   A   Well, they don't square with one another.

9   Q   When you value an accounting or a financial
10   document, do you look at what happened or do you look
11   at it in a hypothetical sense?

12   A   Well, I think accounting is all about
13   trying to quantify actual events that take place so
14   you deal with reality.

15   MR. BETTIUS: Your Honor, I'm just going to
16   go through some final numbers.

17   BY MR. BETTIUS:

18   Q   Do you find that JMHC was ever wound up?

19   A   No.

20   Q   Has a final tax return ever been filed for
21   it?

22   A   I saw no evidence of that.

23   Q   Does it still have assets on its books?

1   A   The last tax return that I saw had a
2 balance sheet that showed assets and liabilities.

3   Q   Are they any way accounted for in this
4 case?

5   A   No.

6   Q   Do you have a copy, sir, of your income
7 statement summary?

8   A   I believe I do, but let me check and make
9 sure of that. Yes, I do.

10   Q   And does it reflect the income, accounting,
11 for the total income of Jefferson Memorial Hospital
12 from 1965 through the year 2006?

13   A   Yes, it does.

14   Q   And is this net income?

15   A   This is net income.

16   MR. BETTIUS: Your Honor, I guess that's
17 going to be AAA1.

18   THE COURT: Let's call it four As.

19   BY MR. BETTIUS:

20   Q   Mr. Wilson, that final number of net
21 income, total net income, is what, sir?

22   A   The total net income is \$51,75,583.

23   Q   Now, that's not adjusted, is it, for

1 present value?

2 A No, it's not.

3 Q And it contains no valuation assumptions
4 whatsoever?

5 A None whatsoever.

6 Q Now, I asked for the calculation, and I
7 guess this would be AAA, which has already been
8 admitted in evidence. If the Court awards Respondents
9 through the entire terms of the lease, the '66 lease
10 rental, have you come to a number that would have to
11 be subtracted from the 51 million?

12 A Yes.

13 Q And that would be the \$4,819,794?

14 A That's correct.

15 Q Have you, in addition, done a
16 reconciliation between the two accountings, yours and
17 Respondents'?

18 A Yes, of sorts. It requires an explanation.

19 Q All right, sir.

20 MR. BETTIUS: Your Honor, this would be
21 five As, I guess?

22 THE COURT: All right. That will work.

23 BY MR. BETTIUS:

1   Q   The Court has this document. Would you
2 explain -- you said it needs an explanation.

3   A   I just want to make sure I'm looking at the
4 same copy the Court is looking at. If you look at the
5 last page, last column, last line, you'll notice the
6 \$51,75,583. The Respondents are accounting for
7 income. And income in this case, I believe, based
8 upon a reconciliation of conversations we had late
9 last week, is \$2,788,52. The explanation that needs
10 to be made here, though, is that the Respondents'
11 accounting is not driven off of identify and account
12 for all revenues and expenses. It's about trying
13 to --

14   Q   In fact, it doesn't ever attempt to account
15 for total revenues and total expenses?

16   A   That's correct. Their methodology is
17 really more about trying to take revenues and net
18 revenues and push them forward year to year and then
19 stop at those four balance sheet dates that I referred
20 to in my previous testimony and use that as a basis
21 for making a valuation determination.

22   Q   Do you think that a valuation determination
23 is appropriate in a fiduciary account?

1   A   I don't think so. I think fiduciary
2   accounting is about accounting for revenues, expenses,
3   accretions, benefits, anything that flows from the
4   assets and use of those assets.

5   Q   What adjustment -- and I assume the
6   adjustments need to be made between this \$51,075,000
7   and the 2 million and 7, is that what you're talking
8   about, these right here?

9   A   Yes.

10   Q   What should the Judge have there as the
11   appropriate numbers, Mr. Wilson, or are these the
12   appropriate numbers?

13   A   To the best of my knowledge, these are the
14   appropriate numbers. They certainly are our
15   appropriate numbers.

16   Q   So the revisions you were talking about and
17   the explanations are accounted for in this document?

18   A   I believe so.

19   Q   Did you prepare a sheet that indicates the
20   differences in methodologies?

21   A   Yes.

22   MR. BETTIUS: And that's the next exhibit,
23   Your Honor.

1 THE COURT: All right. Let's switch
2 letters and make it a double B.

3 BY MR. BETTIUS:

4 Q One of the questions that has been asked,
5 Mr. Wilson, is whether or not proper provisions were
6 made for capital reserves. Do you have a response to
7 that, sir?

8 A That's hard to judge as proper and adequate
9 levels of capital reserves. I guess I would have to
10 say this: It appears to me on the surface that, in
11 fact, there very well may have been insufficient
12 capital reserves. At least, they could have been more
13 significant. My response to that is, those capital
14 reserves were there all the time other than the fact
15 that 51 million dollars has been taken away from the
16 charity that would have been ample for the operations
17 of the hospital.

18 Q Well, does that analysis -- what effect did
19 noncash expenditures have on the capital reserve, to
20 the extent you have noncash expenditures? Does that
21 increase working capital or decrease it?

22 A Well, it increases working capital if you
23 have noncash expenses.

1 Q Whose money was invested for working
2 capital in this transaction?

3 A The charity's money was invested.

4 MR. BETTIUS: No further questions.

5 THE COURT: Mr. Cochran?

6 CROSS EXAMINATION

7 BY MR. COCHRAN:

8 Q Good morning, Mr. Wilson.

9 A Good morning.

10 Q I take it that you believe Mr. Cobb's
11 accounting has a number of errors in it?

12 A Yes.

13 Q As part of your work on this case and as
14 part of your work on all accountings, you analyze and
15 review financial statements, do you not?

16 A Yes.

17 Q And that was the starting point in this
18 case for both your analysis and Mr. Cobb's analysis?

19 A That's correct.

20 Q You would agree with me, would you not,
21 that the footnotes to financial statements are an
22 integral part of most statements?

23 A I would.



1 Q And is it safe to say that you reviewed
2 both the financial statements and the footnotes
3 carefully before rendering your accounting?

4 A I did my best.

5 Q And you saw Mr. Cobb's accounting before
6 completing your accounting, did you not?

7 A Yes.

8 Q So you had the benefit of his analysis
9 before finalizing your accounting?

10 A I believe that's true.

11 Q And I think you testified on Friday that
12 you did not make any errors in your accounting?

13 A To the best of my knowledge.

14 Q But you made a major error, did you not, a
15 \$765,000 error?

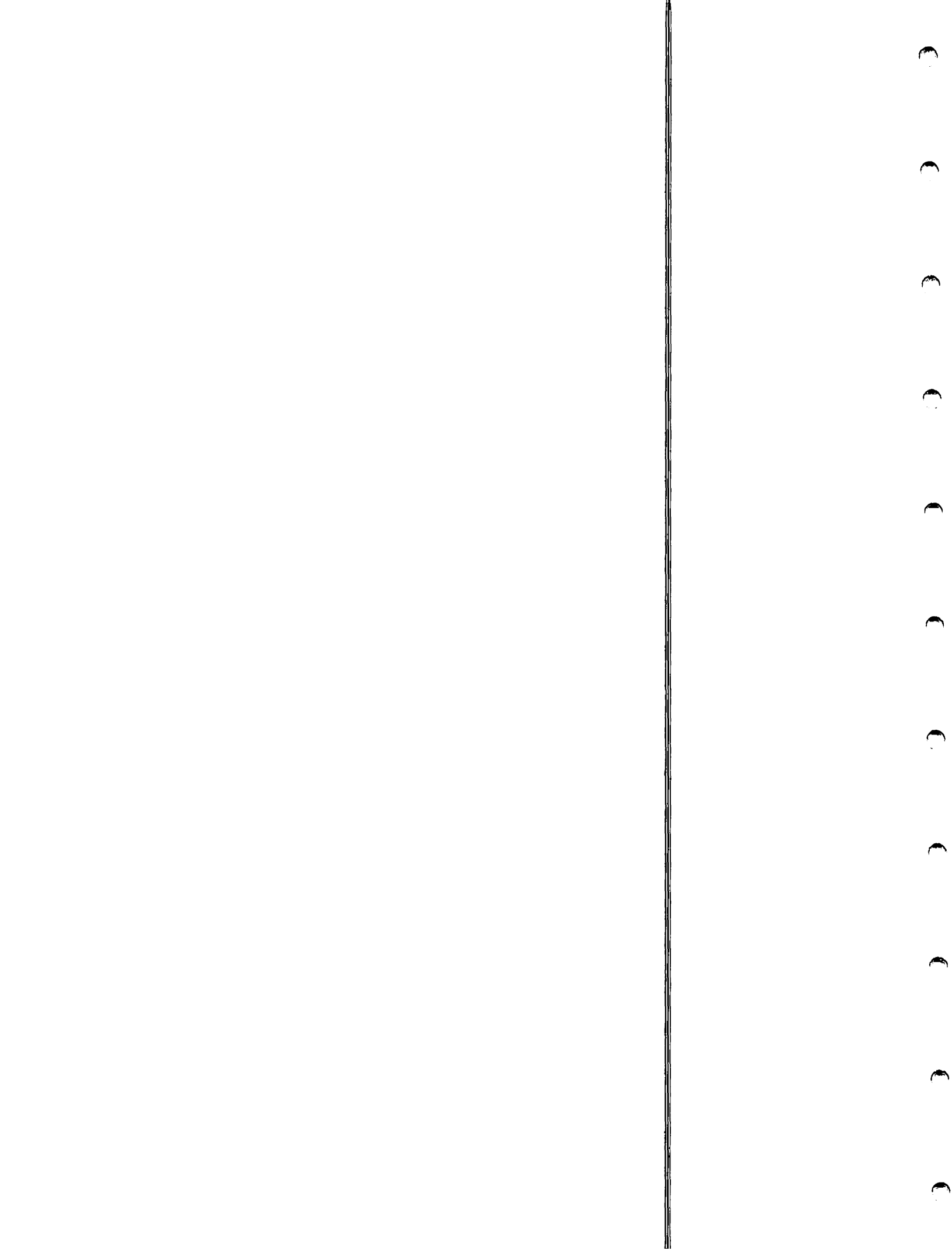
16 A It was a difference in approach that led to
17 a different result.

18 Q We're talking about the equipment leases,
19 are we not?

20 A Yes, we are.

21 Q And the footnotes specifically address the
22 equipment leases, do they not?

23 A Yes, in some years they do, although maybe



1 not completely.

2 Q But they do address those in some of the
3 footnotes, yes or no?

4 A Yes.

5 MR. BETTIUS: Your Honor, I'm going to
6 object. He said we didn't report it. It was reported
7 in the rebuttal. I mean, it wasn't reported in the
8 first accounting, but before it was ever called to our
9 attention -- I want a foundation for what he's talking
10 about. There was an accounting before the
11 supplemental accounting was filed. He's wrong.

12 THE COURT: If that's an objection,
13 Mr. Bettius, it's overruled.

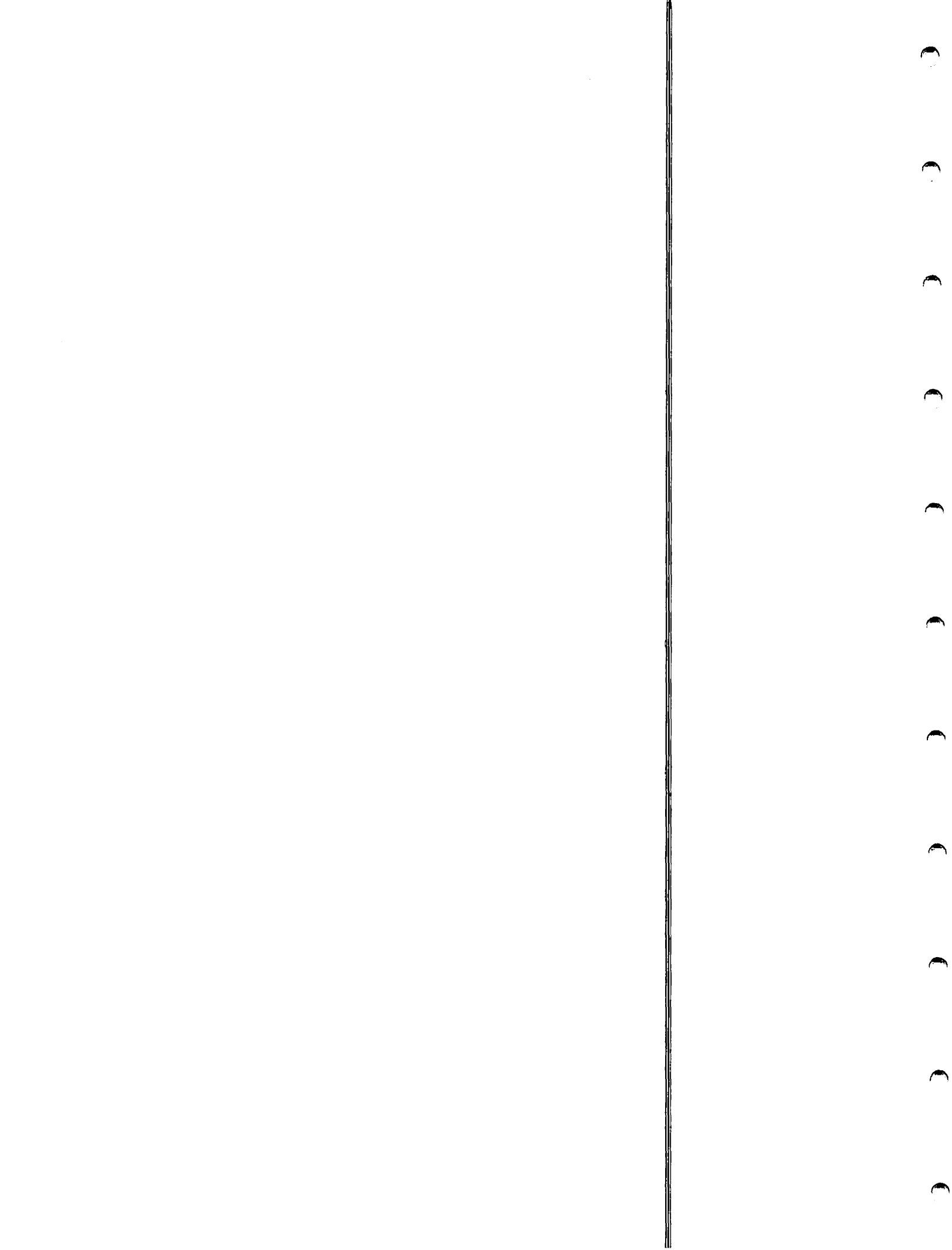
14 BY MR. COCHRAN:

15 Q Between the time you filed your original
16 accounting and at the time you filed your revised
17 accounting, you made a revision of over \$700,000 for
18 the equipment leases, did you not?

19 A That's correct.

20 Q And when you said you had made no errors on
21 Friday, you were referring to your original
22 accounting, were you not?

23 A That's true.



1 Q So that was not an accurate statement, was
2 it?

3 A Well, it was accurate as it relates to --
4 upon discussion with Mr. Cobb, it was an item that
5 needed to be adjusted, that's true.

6 Q You recognized that you had to revise your
7 accounting to reflect those equipment leases?

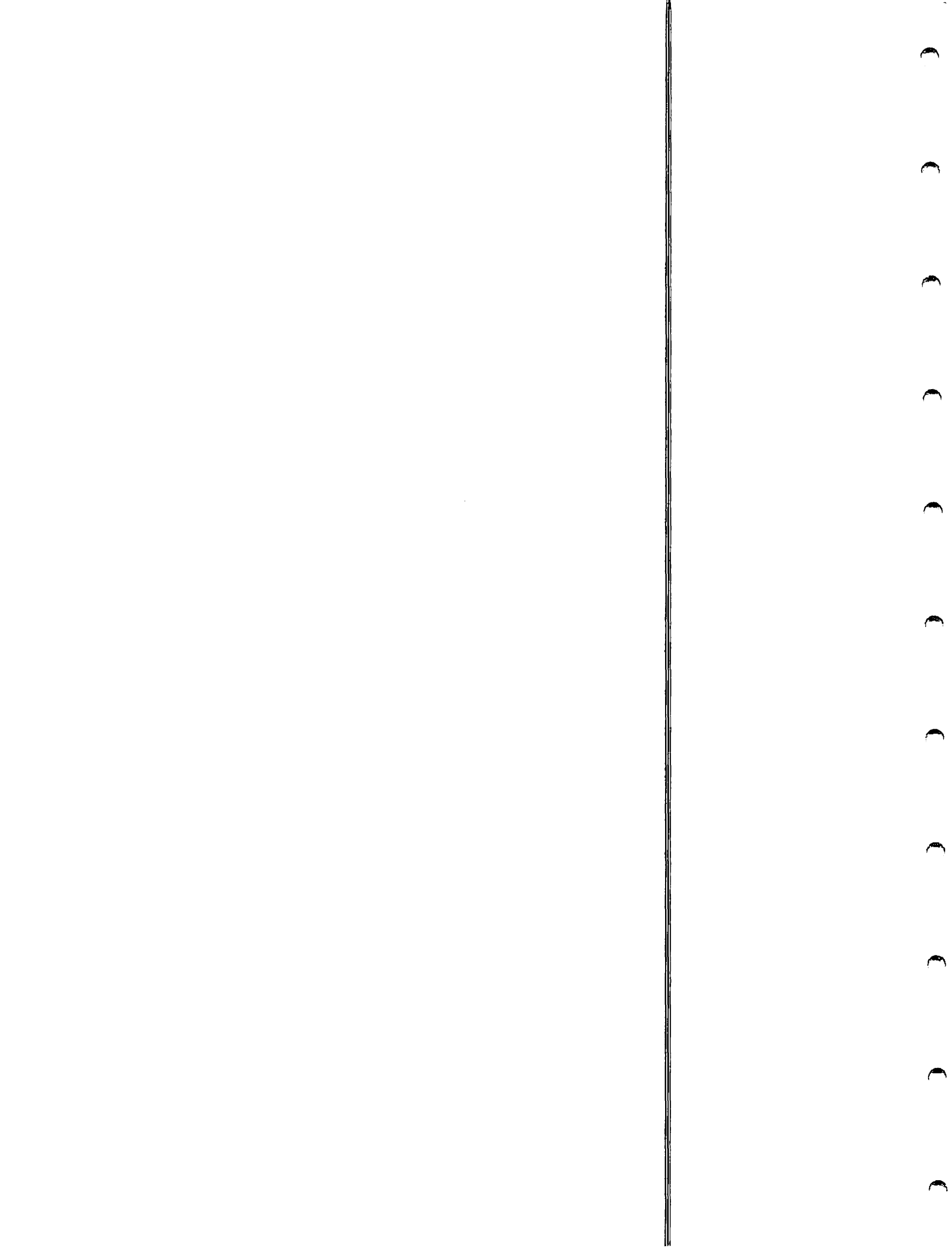
8 A That's true.

9 Q And as a matter of fact, on Friday when
10 you were up here reviewing this blowup of page 39 in
11 your accounting, you looked at the bottom line and
12 said, Your Honor, \$51,573,000 is the total net income,
13 didn't you?

14 A In my mind there were a number of things
15 that were in motion at that point in time --

16 Q Just answer the question. It was a simple
17 question. Didn't you tell His Honor that there was
18 \$51,573,111 in total net income throughout the
19 operation of the hospital?

20 A I did make that statement in the context
21 that there were ongoing discussions, very fluid, as
22 you were very well a part of last Thursday and Friday,
23 relative to accounting on the Respondents' part and



1 that one item in our accounting.

2 Q But you had already, before you testified,
3 done a reconciliation that included about \$660,000 as
4 appropriate payments on equipment leases?

5 A That was in our rebuttal, that's correct.

6 Q But you didn't bother to change that before
7 you went over this exhibit on Friday, did you?

8 A I didn't change it. I didn't have the
9 opportunity to.

10 Q You knew that number was in error, did you
11 not?

12 A I knew it was an item that needed to be
13 adjusted.

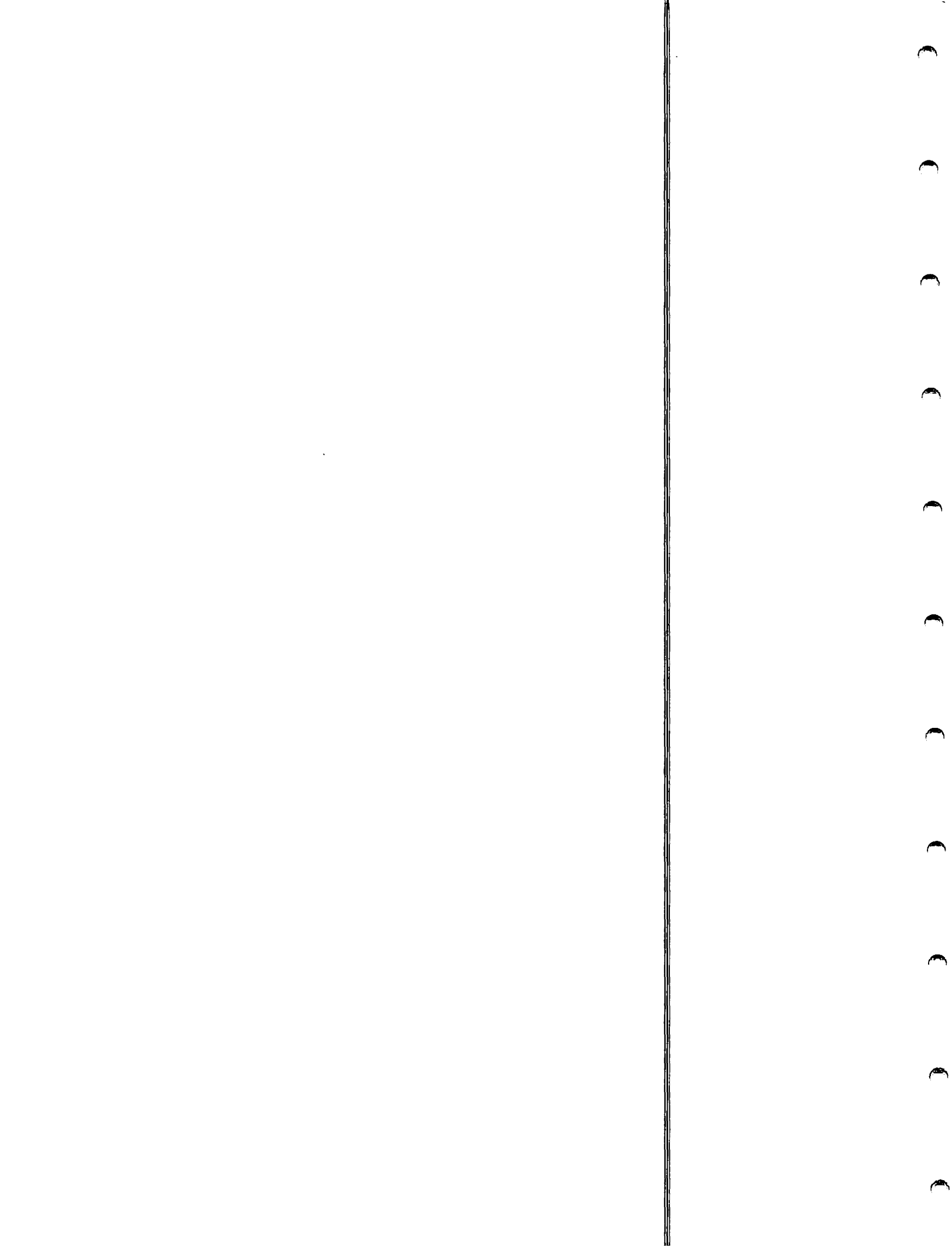
14 Q So you knew that that number was in error
15 when you testified on Friday, yes or no?

16 A I knew it was in error based upon a
17 difference in methodology.

18 Q But you just chose not to call it to the
19 Court's attention?

20 A I didn't call it --

21 MR. BETTIUS: Calling it to the Court's
22 attention in the way of cross examination. That's not
23 fair.



1 THE COURT: Objection is overruled.

2 THE WITNESS: It wasn't a matter of
3 choosing. Again, there were items that were in a
4 state of flux at that time. I didn't knowingly avoid
5 talking about it; I would have been happy to do that.

6 BY MR. COCHRAN:

7 Q Well, the item as to the equipment lease
8 was always in a state of flux as to the \$100,000
9 difference between the actual equipment lease payments
10 and what you adjusted at \$660,000; is that not
11 correct?

12 A Well, to be honest with you, I guess I
13 wasn't familiar enough with the court procedure to
14 know that we would be changing things in midstream
15 rather than presenting what we have and discussing any
16 differences that exist.

17 Q You weren't familiar enough with the court
18 procedures to put on accurate information for His
19 Honor, were you?

20 A I think I just answered the question.

21 MR. BETTIUS: That's argumentative, Your
22 Honor.

23 BY MR. COCHRAN:



1 Q Did Ms. Moore base her calculations on your
2 numbers?

3 A I believe she did.

4 Q And have you advised her to revise her
5 numbers in light of the revisions to your numbers?

6 A I haven't advised her one way or the other
7 on any matter whatsoever.

8 Q So she may be starting from the wrong
9 point?

10 MR. BETTIUS: That's speculation, Your
11 Honor, and I'm --

12 THE COURT: We'll have to wait and see on
13 that one, won't we, Mr. Bettius?

14 MR. BETTIUS: I'm going to assure
15 Mr. Cochran, so that -- he's going to get the absolute
16 correct information --

17 THE COURT: Objection sustained.

18 BY MR. COCHRAN:

19 Q What starting date did you use for your
20 accounting, sir?

21 A 1965.

22 Q Why did you choose that?

23 A Because the charity began its operations in



1 1965 and I made the determination that it was
2 appropriate to give a full accounting of the history
3 of the charity and its relationship with the
4 Respondents.

5 Q What starting date did Ms. Moore use?

6 A I don't recall.

7 Q You don't recall that she used 1971?

8 A I would be happy to look at her report, but
9 I don't recall.

10 MR. BETTIUS: Can we hear Ms. Moore's
11 testimony during her case, Your Honor?

12 THE COURT: What's the purpose of this,
13 Mr. Cochran?

14 MS. BEACH: Your Honor, if I may --

15 THE COURT: No, Ms. Beach. I asked
16 Mr. Cochran. What's the purpose of your question?

17 MR. COCHRAN: To show that there are
18 rampant inconsistencies with his numbers. Ms. Moore
19 bases her numbers off of his accounting, but uses a
20 completely different starting date.

21 THE COURT: Well, you'll have to take that
22 up with her. I'll sustain the objection.

23 BY MR. COCHRAN:



1 Q What is the difference between starting in
2 1965 and starting in 1971?

3 A Right. If I recall, the charity --
4 operating company charity had an accumulated net loss
5 in that period of time of about \$160,000.

6 Q And in 1971 it actually had a slight net
7 income if you don't look at accumulated losses?

8 A In the year 1971?

9 Q Yes.

10 A Yes, correct.

11 Q And that, according to your accounting, I
12 think the total income in 1971 was \$50,000?

13 A Our accounting?

14 Q Your accounting.

15 A Yes.

16 Q So if that's the starting point for
17 Ms. Moore's accounting where we start with a profit,
18 isn't her accounting starting at least \$210,000
19 further ahead than it should?

20 A I don't -- show me the numbers.

21 Q Well, if you want to look at your report,
22 you show, as you just testified, that there was a
23 cumulative loss through June of '71 of \$160,000.



1   A   That's correct.

2   Q   And you show an adjusted income of \$50,799?

3   A   Correct.

4   Q   So if we start in 1971 with the valuation
5 process, isn't Ms. Moore ignoring \$160,000 in losses?

6   THE COURT: Why do you keep asking him
7 about Ms. Moore's testimony, Mr. Cochran?

8   MR. COCHRAN: Your Honor, because his
9 testimony forms the basis of her calculations.

10   THE COURT: Well, you can take that up with
11 her, and if his calculations are wrong, then that may
12 affect hers, but he didn't prepare her report, as I
13 understand it.

14   Ms. Beach, you obviously wish to be heard?

15   MS. BEACH: I do, Your Honor, thank you.
16 Your Honor, at the beginning of the testimony of this
17 witness, I objected to his testifying about
18 Ms. Moore's accounting. Your Honor overruled me
19 and --

20   THE COURT: He hasn't said a word about any
21 valuation or Ms. Moore's report.

22   MS. BEACH: Your Honor, the record will
23 speak for itself.



1 THE COURT: It sure will, Ms. Beach. Go
2 ahead, Mr. Cochran.

3 BY MR. COCHRAN:

4 Q As an accountant, Mr. Wilson, are you a
5 member of the AICPA?

6 A Yes, I am.

7 Q Are you familiar with their standards?

8 A Yes, I am.

9 Q And can I assume that you believe that your
10 report is consistent with those standards?

11 A As to the extent that there's guidance
12 given by the AICPA.

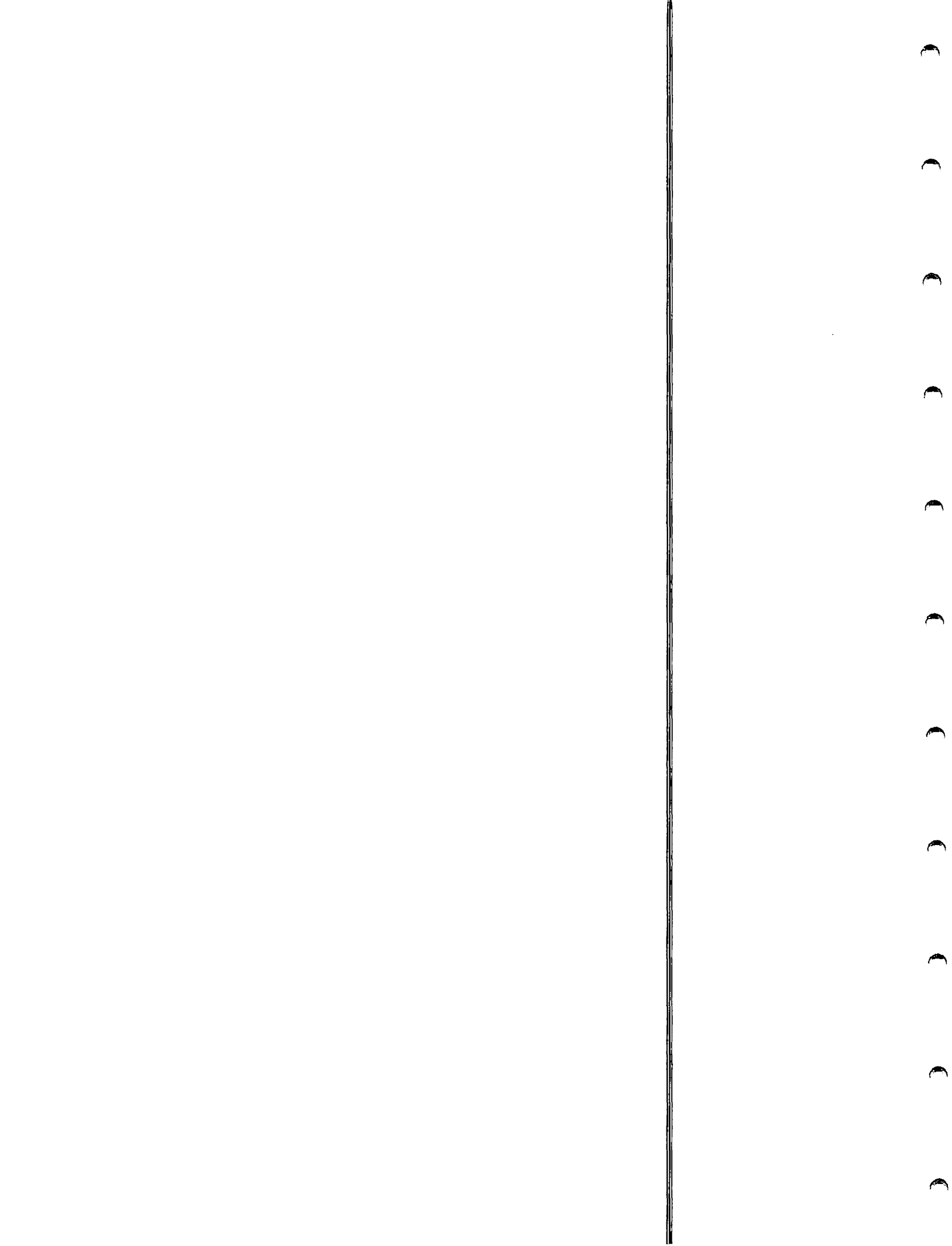
13 Q Under those standards, is it appropriate
14 for you to rely upon the advice of counsel in
15 preparing an accounting?

16 A Advice of counsel? I don't think that's --
17 I'm not sure what that term means. Could you explain
18 what you mean by advice?

19 Q You mentioned a number of times as to the
20 information you had gotten from counsel.

21 A Provided documentation.

22 Q Do you understand advice of counsel to be
23 discussions with and opinions offered by counsel for



1 your client?

2 A My responsibility was to provide an
3 accounting, an objective accounting, based upon my
4 understanding of what the court order was asking for
5 in terms of a fiduciary accounting of the charity's
6 assets.

7 Q Well, my question is: Did you rely upon
8 advice of counsel during the course of this
9 undertaking?

10 A I relied upon the underlying financial
11 records, tax returns, board minutes, memoranda, and
12 financial statements.

13 Q My question, sir, was: Did you rely upon
14 advice of counsel during the course of this
15 undertaking?

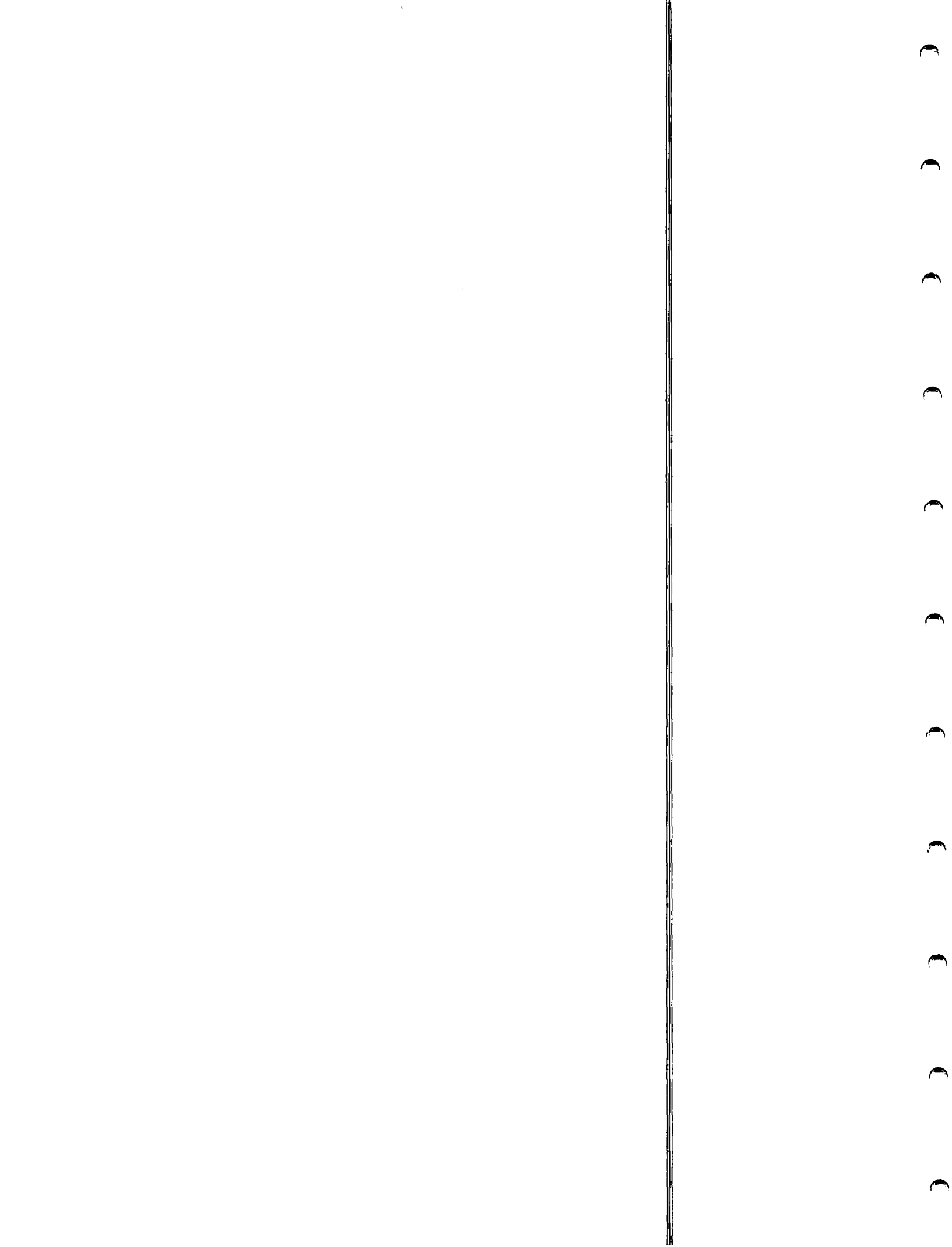
16 A I did not.

17 MR. COCHRAN: May I pass up his deposition,
18 Your Honor?

19 THE COURT: All right.

20 BY MR. COCHRAN:

21 Q Let me ask you to turn to page 21 in your
22 deposition. Do you recall my taking your deposition
23 in this case, sir?



1   A   Yes, I do.

2   Q   You intended to testify truthfully at that
3 time, did you not?

4   A   Yes, I did.

5   Q   Page 21.

6   A   Yes.

7   Q   Line 14, my question to you: Did you rely
8 upon advice of counsel at any time during the course
9 of preparing this accounting? Your answer: In the
10 sense that we understood our -- I understood our role
11 as to provide an accounting as dictated and requested
12 by the Court's opinion. We had discussions with legal
13 counsel regarding what that meant, I mean, how to
14 interpret that, what's the legal implication of that.
15 So, yes, there was discussions that we had some
16 reliance upon their legal understanding.

17   Which answer is correct, sir?

18   A   I think both of them are correct, actually.
19 There was no reliance in the sense of the accounting
20 duty for which I was charged. Were there discussions
21 with legal counsel? Certainly. I mean, we were
22 dealing with a matter that emanated from a court
23 order. I needed to have some basis in reading that



1 court order, what was intended, what was meant.

2 Q You testified earlier this morning, I
3 think, that the 1975 lease was voided by this Court's
4 decision?

5 A My understanding is that it was.

6 Q Isn't that understanding based upon advice
7 from counsel that you obtained from Mr. Bettius?

8 A No, actually I read that in the court order
9 itself.

10 Q Are you aware of any accounting that's ever
11 been done that's covered 25 years' worth of
12 transactions?

13 A I think I've had many corporate clients
14 that have been in existence for more than 25 years.

15 No, I'm not -- let me put it this way -- many
16 companies have a corporate life of well more than 25
17 years and produce financial statements over an
18 extended period of time.

19 Q Do they produce financial statements at one
20 point in time covering all of 25 years' worth of past
21 history?

22 A I would say that's pretty unusual.

23 Q And you would agree with me, would you not,



1   that this presents a fairly unique problem?

2   A   It presents a problem with respect to
3   potential incompleteness of financial records, that's
4   correct.

5   Q   But this whole undertaking, this accounting
6   for 25 years' worth of financial affairs, is a unique
7   event, is it not?

8   A   Well, what do you mean by unique?

9   Q   You don't recall my asking you that
10   question at your deposition, Mr. Wilson, and your
11   answer was, yes, this is a unique situation?

12   A   I don't recall that. I may have.

13   Q   You agree, do you not, that there is no
14   prescribed format for a fiduciary accounting?

15   A   That's correct.

16   Q   And do you agree that you are not an expert
17   in fiduciary duties?

18   A   I have years of experience working with
19   not-for-profit organizations that have a fiduciary
20   responsibility to their constituents.

21   Q   My question, sir, was: You agree, do you
22   not, that you are not an expert on fiduciary duties?

23   A   Fiduciary duties?



1 Q Yes.

2 A As opposed to accounting?

3 Q Fiduciary duties.

4 A Other than my role as being in a fiduciary
5 role on not-for-profit boards and dealing with board
6 members of not-for-profit organizations for the last
7 15 or 20 years, I think that gives me some
8 qualification.

9 Q Have you ever testified as an expert on
10 fiduciary duties?

11 A I have not.

12 Q Have you ever testified as an expert on
13 fiduciary accountings?

14 A I have not.

15 Q Have you ever testified as an expert on
16 valuation?

17 A I have not.

18 Q And you're not offering yourself as an
19 expert of valuation, are you?

20 A No, I'm not.

21 Q You're not competent to provide that
22 opinion, are you?

23 MR. BETTIUS: Your Honor, I think only the



1 Court may be competent to derive that opinion. I
2 don't think we're here to opine on matters of law.

3 THE COURT: It is sort of redundant, isn't
4 it, Mr. Cochran?

5 BY MR. COCHRAN:

6 Q What is the primary purpose of an
7 accounting?

8 A The primary purpose of an accounting is to
9 render an accurate financial reflection of a body of
10 transactions or events that have economic
11 significance.

12 Q Isn't that purpose really to look at the
13 economic substance of the transaction?

14 A I think it's to look at the economic
15 substance and the light of the economic form of the
16 transaction, that's correct.

17 Q And the purpose is not to look at
18 legalities, is it?

19 A To look at legalities? I think you have to
20 make some judgments regarding what documents are
21 purporting to say or describe in doing an accounting.

22 Q And I gather that you did look at both this
23 Court's decision and this Court's order?



1   A   I did.

2   Q   And this Court's order does list assets and
3 liabilities of JMHI; is that not a fair statement?

4   MR. BETTIUS: Your Honor, the Court's order
5 says what it says, and I think it's very important to
6 be literal about what it says.

7   THE COURT: Go ahead, Mr. Cochran.

8   BY MR. COCHRAN:

9   Q   Where do you list assets of --

10   THE WITNESS: Do you want me to answer that
11 question?

12   THE COURT: I thought you said it did.

13   THE WITNESS: I did not.

14   THE COURT: Go ahead and answer the
15 question.

16   THE WITNESS: I don't think that was a
17 complete explanation of what the Court asked for.

18   BY MR. COCHRAN:

19   Q   I didn't ask if it was complete, but the
20 order specifically says that the Respondents are to
21 account for the assets and liabilities of JMHI.

22   A   That's a partial explanation of what the
23 Court ordered and I could agree with that statement.



1   Q   Can you tell me where you account for the
2   assets and liabilities of JMHI as of 1973?

3   MR. BETTIUS: Your Honor, I'm going to
4   object. That's their theory, that the Court ordered
5   that they had to wind this thing up and come to an
6   accounting as JMHI. Hanshaw is very clear, and the
7   Court's order is very clear. He's getting into a
8   legal argument with this witness as to whether the
9   Court ordered some hypothetical liquidation.

10   THE COURT: All he asked him was whether he
11   did it or not. I'll let him answer that.

12   BY MR. COCHRAN:

13   Q   Did you account for assets and liabilities
14   of JMHI as of 1973?

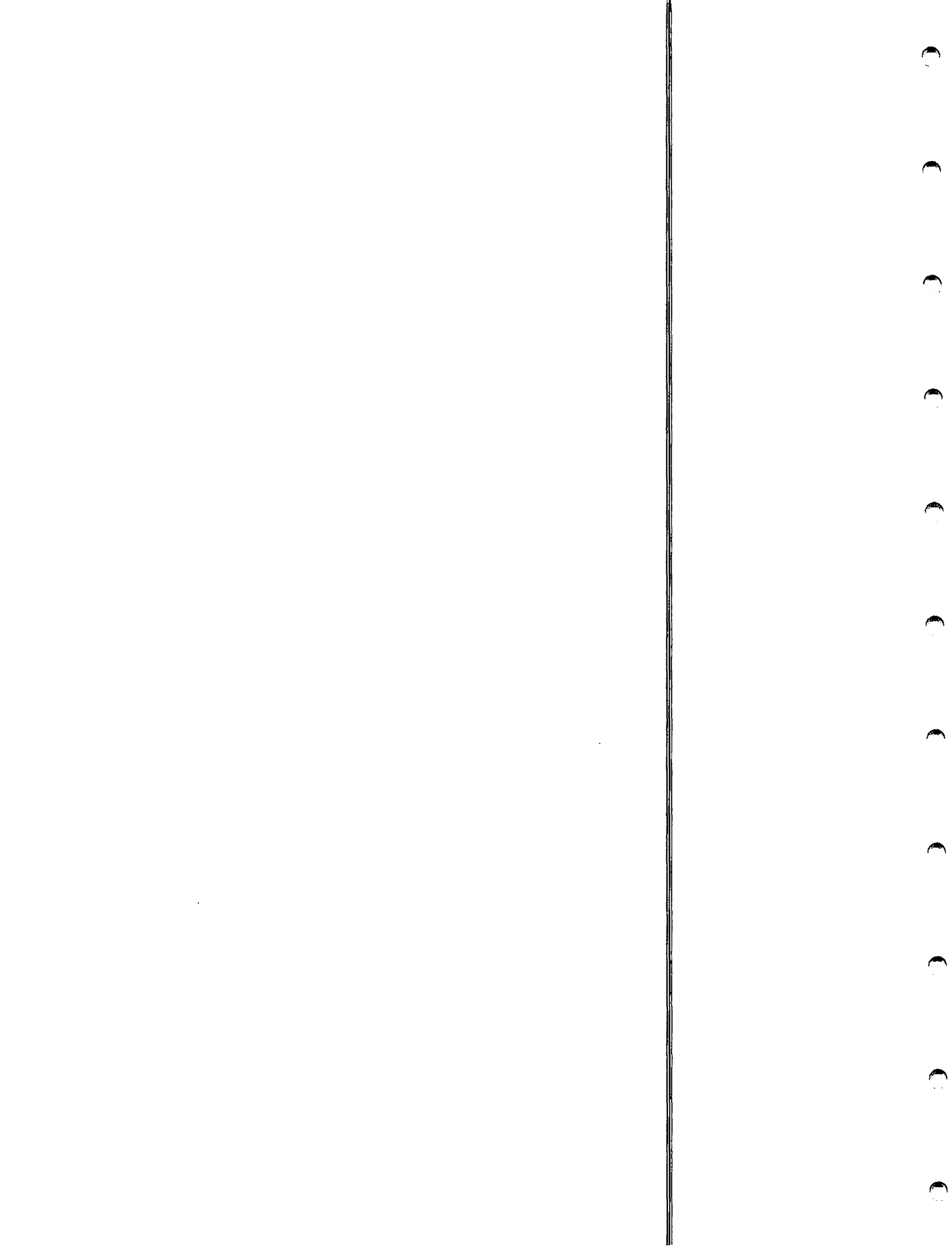
15   A   As of 1973?

16   Q   Yes.

17   A   No. I accounted for assets and liabilities
18   and the activities generated by those assets and
19   liabilities over an entire course of time, not as of a
20   point in time.

21   Q   But you don't have a document that shows
22   assets and liabilities as of that point in time?

23   A   No, but the Respondent does in a balance



1 sheet.

2 Q You don't have a document that shows the
3 assets and liabilities as of 1982, do you?

4 A Do not.

5 Q And you don't have such a document for 1992
6 or 1994, do you?

7 A I didn't find it necessary to stop at those
8 points and create a balance sheet.

9 Q You made a comment on Friday that the
10 hospital got off on the wrong foot when someone other
11 than the hospital built the building. Do you recall
12 that?

13 A I don't know if I said built the building
14 or owned the building.

15 Q Who would have built the hospital if the
16 Respondents had chosen not to build it?

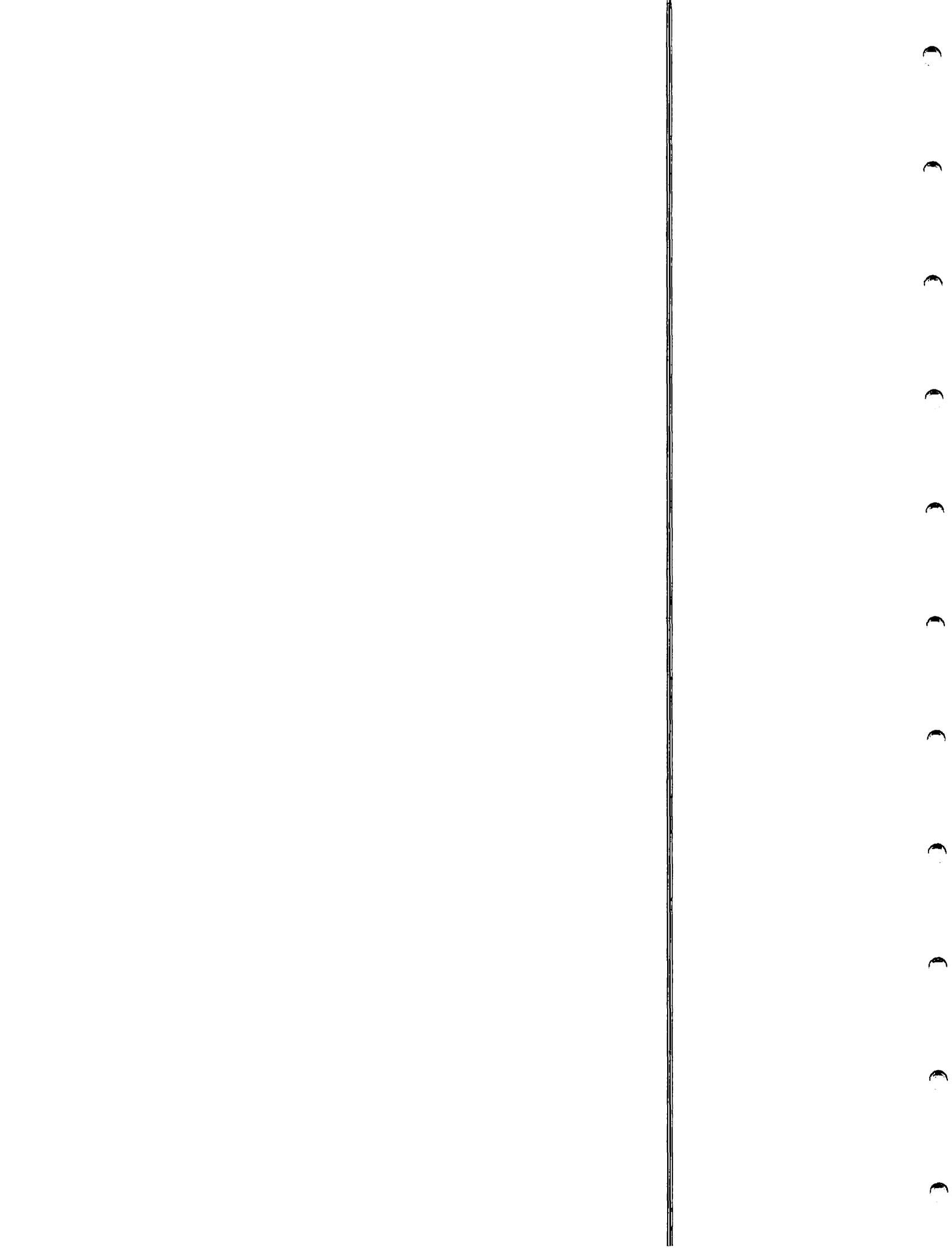
17 MR. BETTIUS: That's speculation, Your
18 Honor.

19 THE COURT. The objection is overruled. He
20 can answer if he knows.

21 THE WITNESS: I don't know.

22 BY MR. COCHRAN:

23 Q You also criticized the fact that there was



1 a lease that had a cost of living escalation provision
2 every ten years. Isn't it standard to have a cost of
3 living escalation provision on at least a three-year
4 basis?

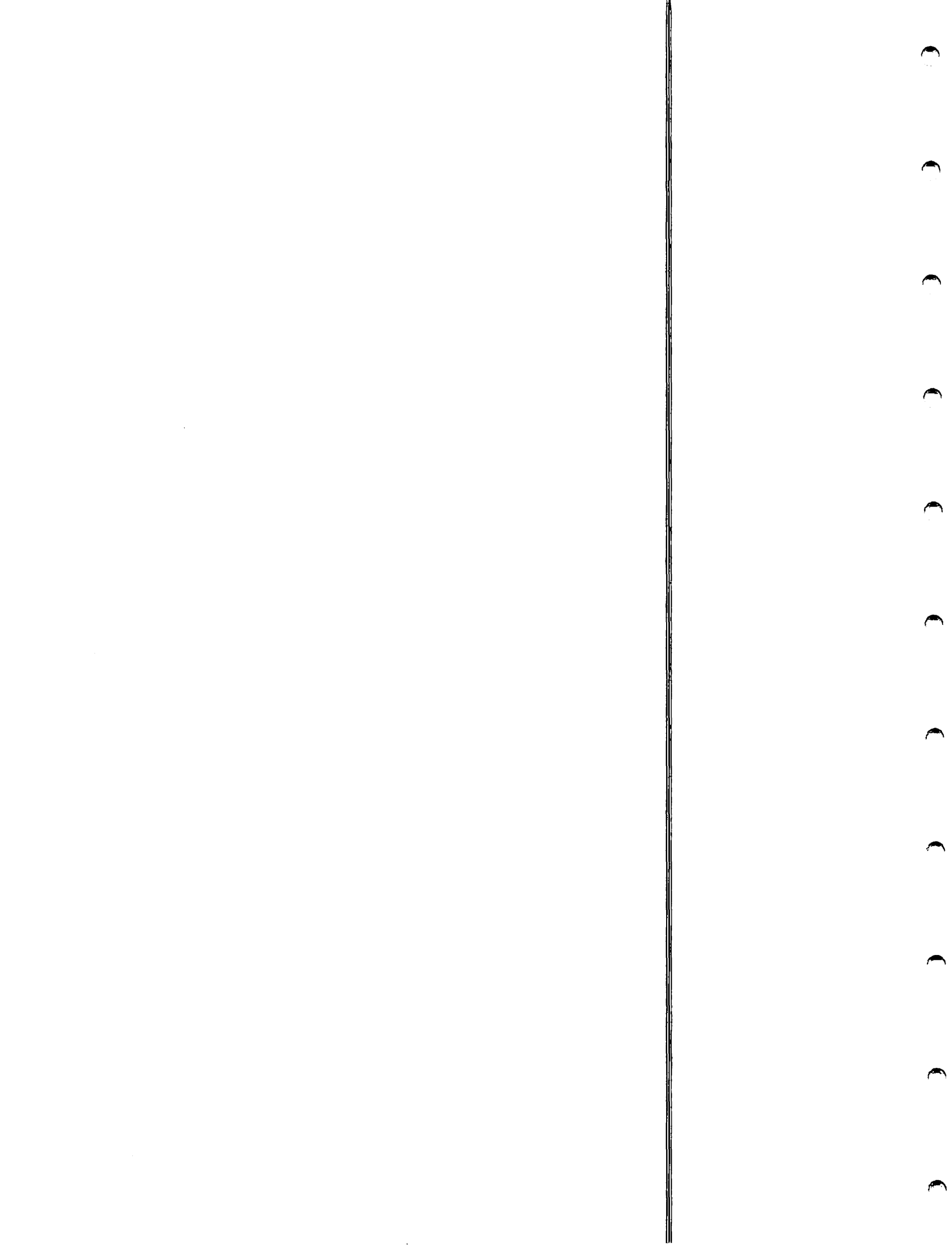
5 A I'm not so sure that would be the case in
6 an economic lease arrangement between a hospital set
7 up as a charity and another group of parties that
8 supposedly were acting as directors of that charity
9 and trying to sustain its value as a community asset.

10 Q Is it your testimony, Mr. Wilson, that if
11 the ownership entity negotiates a lease with the
12 operating entity, even though they may be related
13 parties, that they did not have the opportunity to
14 gain some economic benefit from the transaction?

15 MR. BETTIUS: Your Honor, the IRS ruled
16 that and that's in this case and the Court has already
17 made decisions on these issues. Are we going to retry
18 that whole issue?

19 THE COURT: The objection is overruled.

20 THE WITNESS: I think that what we're
21 dealing with here, is a special class of related
22 parties. We're not talking about ordinary related
23 parties that have similar interests in terms of profit



1 motivation, we're talking about related parties as
2 between -- on one hand, parties that do have a profit
3 motivation, apparently, if they're looking for a cost
4 of living increase and profit margins in a lease, and
5 a vulnerable, charitable organization does not have
6 the ability to negotiate in and of itself.

7 BY MR. COCHRAN:

8 Q So my question is: Is it your position
9 that the Respondents, as the ownership entity, did not
10 have the right to any economic benefit for building
11 the facility?

12 MR. BETTIUS: Your Honor, that's a question
13 of law and it's already been decided both by the IRS
14 and by this Court.

15 THE COURT: I think he already answered the
16 question. I thought he already answered that,
17 Mr. Cochran.

18 BY MR. COCHRAN:

19 Q Hospitals are occasionally started on a
20 shoestring, are they not?

21 A They may be and sometimes are.

22 Q Doesn't your company represent such
23 hospitals?



1   A   I'm sure we have.

2   Q   And it's customary, is it not, when you're
3 starting up a new business, whether it's a new
4 hospital or whether it's a dot.com business, to both
5 lease the space where you operate and lease the
6 equipment that you need to operate?

7   A   If you otherwise don't have the means to
8 own, you may have to do that.

9   Q   Isn't that pretty much true of most start
10 ups, sir?

11   A   Yes. And clearly we have, in this case, an
12 example where there was sufficient underlying capital
13 from the parties that started the hospital and chose
14 to establish themselves as directors of that
15 not-for-profit hospital.

16   Q   What capital did we have in 1965,
17 Mr. Wilson?

18   A   When you say we, you're referring to what?

19   Q   JMHI.

20   A   I don't believe it had very much capital
21 except, perhaps, for some donated land.

22   Q   What capital did it have in 1971?

23   A   On a book basis you mean?



1 Q On any basis.

2 A It had very little capital.

3 Q What capital did it have in 1973?

4 A It had little capital because it had gone
5 away because it was paying its capital to somebody
6 else through a lease agreement.

7 Q If the hospital was built by the charity,
8 it would have mortgage payments, would it not?

9 A Yes, it would.

10 Q So what you're talking about is an original
11 lease that was mortgage payments plus 10 percent, so
12 we're not talking about a lot of money, are we?

13 A The actual cost plus 10 percent? I don't
14 have a value judgment on that as to whether it's a lot
15 of --

16 Q What was the original rent on the 1966
17 lease?

18 A Approximately \$80,000 a year.

19 Q So \$80,000 a year represented the markup in
20 profit to the joint venture?

21 MR. BETTIUS: Your Honor, there's not
22 supposed to be any profit and that's the issue.

23 THE COURT: Objection overruled.



1 BY MR. COCHRAN:

2 Q My question is: It was \$80,000 a year and
3 if we carry that forward from 1971, we have a grand
4 total of an additional \$56,000 in capital in the bank,
5 right?

6 A Yes, I guess if you extend that out over
7 the entire period of our accounting, it's millions of
8 dollars.

9 Q My question was in 1971, Mr. Wilson, by any
10 calculation, even if JMHI was simply paying the
11 mortgage payment, it wasn't going to have much capital
12 in 1971 or 1973, was it?

13 A It was going to have whatever you said it
14 was by 1971. I don't recall the number.

15 Q By 1971 they still had a negative \$160,000
16 carried forward, did they not?

17 A Because of the operating losses in the
18 early years, which is --

19 Q Even if we give them six years' worth of
20 \$80,000 for 48, they're still over \$100,000 in debt as
21 of that point in time?

22 A Again, in part because of the operating
23 losses that had incurred to start up.



1   Q   Do I understand that you criticized
2   Mr. Cobb's accounting, at least in part, because it's
3   based on numerous assumptions?

4   A   There are some assumptions included in it,
5   that's correct.

6   Q   And as I understood your testimony on
7   Friday, you take issue with those assumptions?

8   A   Some of them.

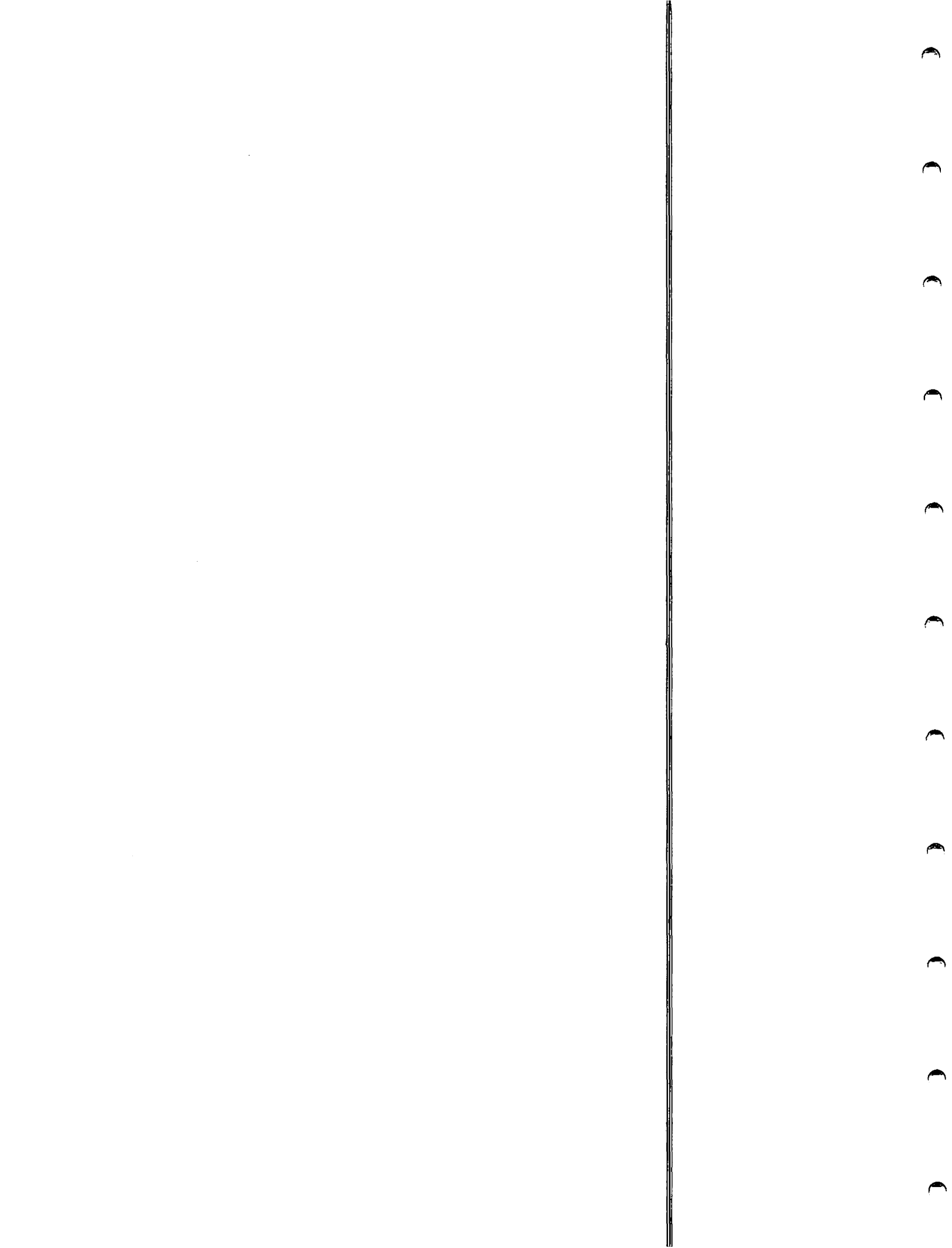
9   Q   You don't believe that the accounting
10   should be based upon assumptions?

11   A   It should be based upon as few assumptions
12   as possible. And when you are required to make an
13   assumption, it should have a basis in economic
14   substance.

15   Q   You based your accounting on numerous
16   assumptions, did you not?

17   A   It was an accounting of the actual results
18   of revenues and expenses, benefits and accretions over
19   the life of the operating company based upon the
20   existing financial records.

21   Q   My question, sir, and we can be here a long
22   time if you want to answer that way, but it was simply
23   a yes or no question.



1 MR. BETTIUS: Asked and answered.

2 THE COURT: He didn't answer it,

3 Mr. Bettius.

4 And the word numerous may be confusing,

5 Mr. Cochran.

6 BY MR. COCHRAN:

7 Q Well, the question before you, Mr. Wilson,

8 is: Isn't your accounting based upon numerous

9 assumptions, yes or no?

10 A It's not based upon numerous assumptions

11 other than dictated by the underlying financial

12 records and my understanding of what the fiduciary

13 accounting rules of the road are, if you will, as

14 prescribed by the court order.

15 Q One of your assumptions is that this

16 hospital somehow could have been built without the

17 profit motive to the joint venture, is it not?

18 A It's entirely possible.

19 Q Isn't it true that one of your assumptions

20 is that the hospital would have survived beyond 1972

21 without the \$221,000 in cash infused from the stock

22 sale?

23 MR. BETTIUS: Your Honor, these aren't



1 assumptions. He's creating hypothetical situations
2 that maybe it wouldn't have happened. He just
3 reported what happened. And that's what the witness
4 has said; he hasn't made any assumptions about whether
5 it would have survived or it wouldn't. He's now got
6 to say everything that happened in the hospital is an
7 assumption because he sees it may have gone the other
8 way.

9 THE COURT: The objection is overruled.

10 THE WITNESS: Would you mind repeating the
11 question, Mr. Cochran?

12 BY MR. COCHRAN:

13 Q Isn't one of your other assumptions,
14 Mr. Wilson, that JMHI would have survived beyond 1972
15 without the \$221,000 in cash infusion from the sale of
16 stock?

17 A Actually, I didn't make any such
18 assumption. The reality is that those two things
19 occurred; there was a stock cash infusion, apparently,
20 and the hospital did survive. I can't describe for
21 you whether that cause and effect was necessary.

22 Q In addition to the infusion of cash from
23 the sale of stock, these doctors gave cash to the



1 hospital in the form of bonds, did they not?

2 A Gave cash to the hospital in the form of
3 bonds?

4 Q They purchased bonds which generated cash
5 for the hospital?

6 A I don't recall when that may have occurred.
7 You'll have to refresh my memory on that.

8 Q Does your accounting reflect, to your
9 recollection, anything for bonds that were purchased
10 by the doctors?

11 A Well, there was a bond-for-stock redemption
12 in '75. I don't recall whether there were some bonds
13 issued in the early years, in the '60s. There may
14 have been, but I don't recall.

15 Q Speaking of that stock-for-bond redemption,
16 wouldn't you agree with me that doctors are more
17 likely to continue to refer patients to Jefferson
18 Memorial Hospital if they see that there's some
19 benefit that they're going to get from doing so?

20 A I don't know the motives of the doctors,
21 Mr. Cochran.

22 Q Isn't it fairly usual, even today, but
23 certainly in the '80s and '90s, to offer incentives to



1 doctors to use a hospital facility?

2 A There were transactions that were created
3 that if they had appropriate economic value and they
4 didn't cross over the line of private inurement, there
5 were those kinds of arrangements, but those should not
6 have been necessarily a condition for any patients to
7 any hospital.

8 Q Well, Mr. Wilson, you're not listening to
9 my question. My question was: Wasn't it common
10 practice in the '70s, '80s, and '90s for hospitals to
11 offer inducements to physicians to attract their
12 business?

13 A I wouldn't characterize them as
14 inducements.

15 Q What would you characterize discounted rent
16 as?

17 A I would characterize that as potentially
18 private inurement.

19 MR. BETTIUS: Your Honor, and so does the
20 IRS and so does Medicaid and Medicare. Those are
21 illegal transactions and counsel knows it.

22 THE COURT: Again, if that's an objection,
23 Mr. Bettius, it's overruled.



1 MR. O'DONNELL: Since we're starting a new
2 week, can we have a rule this week that Mr. Bettius'
3 objections have to be predicated upon some rule of
4 evidence? I mean he does a wonderful job of
5 testifying, Your Honor.

6 THE COURT: It's not just Mr. Bettius,
7 Mr. O'Donnell. Everybody's been doing that.

8 Go ahead, Mr. Cochran.

9 BY MR. COCHRAN:

10 Q Do you recall the question, Mr. Wilson?
11 Now, I'm not asking you as to this hospital. If
12 you'll listen to my question, we'll get through this
13 before the end of the day. Was it not common practice
14 in the '70s, '80s, and '90s for hospitals to offer
15 incentives to physicians so that they would bring
16 their business to that hospital?

17 A Yes. And I would say --

18 Q Was that a yes?

19 THE COURT: That's a yes.

20 THE WITNESS: The answer to that is no.

21 THE COURT: All right.

22 BY MR. COCHRAN:

23 Q You're not aware of hospitals in this area

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1 that offer discounted rent to doctors to use medical
2 office buildings on the hospital campus as a condition
3 to bringing patients to that hospital?

4 A That's illegal.

5 Q As I understand it, sir, one of your major
6 assumptions is that the joint venture would have
7 accepted the sublease with HGV without diminishing any
8 concessions?

9 A I'm sorry, would you repeat the question?

10 Q Isn't one of your major assumptions that
11 the joint venture would have accepted the sublease
12 with HGV without demanding major concessions?

13 A The fact of the matter is that they did. I
14 can only surmise that the parties -- that that
15 sublease had been approved in advance of the need for
16 any consent. I mean, again, the dilemma that I see
17 involved here is that you've got the same parties
18 negotiating both sides of the transaction and nobody's
19 really negotiating on behalf of the charity here.

20 Q So you assume, do you not, that the joint
21 venture could not negotiate an appropriate economic
22 bargain?

23 A The assumption is that the HGV lease had to



1 do with rights to operate the hospital and to obtain
2 access to the license of the charitable organization.
3 That's the assumption that I have included in my
4 accounting.

5 Q But, Mr. Wilson, I asked you about the HGV
6 sublease. Isn't your accounting predicated on the
7 assumption that the joint venture could not obtain any
8 economic advantage out of this relationship?

9 MR. BETTIUS: Your Honor, it's speculation
10 as to what went on. We know what went on. They did
11 sign on both sides of the transaction. And what they
12 could have done or couldn't have done is speculation.
13 I object that it's remote and speculative.

14 THE COURT: Objection overruled.

15 THE WITNESS: My agenda in performing the
16 accounting was that the revenues that flowed from that
17 sublease arrangement were for the license to operate
18 the hospital and therefore accrued to the benefit of
19 the operating company.

20 BY MR. COCHRAN:

21 Q So, again, Mr. Wilson, isn't that making an
22 assumption that the joint venture is not entitled to
23 any kind of economic advantage from the sublease?



1   A   It's simply to account for the actual flow
2 of revenues and expenses that flowed in and out of
3 that operating company and giving it its appropriate
4 recognition as to whether it is a charitable asset
5 accretion or not.

6   Q   You assume, do you not, that no taxes would
7 be payable by JMHC after 1982?

8   A   I wasn't given any financial information
9 for JMHGV that would enable us to get their tax
10 positions.

11   Q   So the answer is you assumed that no tax
12 would be payable thereafter, yes or no?

13   A   The only assumption that's made was an
14 assumption of fact and that is that any taxes that are
15 paid should be entered into the accounting here and
16 not taxes that we know nothing about or don't have
17 information on.

18   Q   During the course of your accounting, did
19 you operate with the assumption that JMHI had a tax
20 exemption both from the federal government and from
21 the state of Virginia?

22   A   During what period of time?

23   Q   In undertaking this accounting. Wasn't

1   that one of the assumptions that you made?

2   A   Yes, it was.

3   Q   Would it surprise you to know that the
4   state of Virginia never gave JMHI a tax exemption?

5   A   I wasn't aware of that.

6   Q   You weren't told that by counsel?

7   A   I didn't see any document that told me
8   that.

9   Q   Isn't your biggest assumption, sir, that
10   all of the INOVA money was for the license and none of
11   it goes for the rent or for the land?

12   A   That's not an assumption. That's based
13   upon my understanding or reading of the settlement
14   agreement.

15   Q   That's a valuation decision, is it not?

16   A   No -- is it a valuation decision? I read a
17   legal document and tried to apply my accounting
18   understanding as an accountant to that legal document.
19   It was not a valuation.

20   Q   Would you agree with me that we could
21   determine the value of the license in 1982?

22   A   I am sure that it could have been done.

23   Q   And we could have made such determination

1 in 1985?

2 A I suppose. I don't think it was done.

3 Q Did you undertake any effort to determine
4 what the value of the license was in either '82 or
5 '85?

6 A As you recall, I'm not a valuation expert.
7 So my job was strictly dealing with it by trying to do
8 the best fiduciary accounting that I could based upon
9 the information that was available to me.

10 Q And because you're not a valuation expert,
11 you undertook no effort to distinguish between what
12 might be attributable to rent and what might be
13 attributable to the license?

14 A During what transaction or what period of
15 time? Can you be more specific?

16 Q Up through 1994.

17 A I saw nothing in any of the documents that
18 I observed that told me that those transactions were
19 about anything other than access and ability to take
20 over the operating rights of the hospital under the
21 auspices of the underlying license that that hospital
22 had.

23 Q My question was, sir: You undertook no

1 effort to allocate between rent and the value of the
2 license, yes or no?

3 A None was warranted so no effort was taken.

4 Q You deemed it irrelevant?

5 A I did.

6 Q And you really made no effort, at least
7 until after your deposition, to closely review the
8 1992 letter agreement or the 1994 settlement
9 agreement, did you?

10 A I read both of the documents.

11 Q You've talked a lot about private
12 inurement, and as I recall your testimony on Friday,
13 you testified that the IRS finding of private
14 inurement established that private inurement had, in
15 fact, taken place. Is that an accurate recollection
16 of your testimony, sir?

17 A I believe so, yes.

18 Q But this was simply a position asserted by
19 the IRS, was it not?

20 A Well, the IRS ultimately revoked tax
21 status. I believe it related to the issues that I saw
22 referred to in correspondence with the IRS.

23 Q My question was: It was a position that

1 was asserted by the IRS, yes or no?

2 A It was asserted.

3 Q Does Arthur Anderson routinely accept
4 asserted positions of the IRS as correct?

5 MR. BETTIUS: Your Honor, it doesn't
6 matter, they accepted it. And I object to what Arthur
7 Anderson routinely does. It's not appropriate and
8 we're getting into a collateral inquiry which he's
9 transacted which Arthur Anderson may have opined and
10 may not have opined.

11 THE COURT: I think that's the objection.
12 I think that's well taken, Mr. Cochran. What they've
13 done in other cases is not applicable here.

14 MR. COCHRAN: Your Honor, if the Court
15 please, what he can tell us about what an acquiescence
16 means as to whether or not that fact should be taken
17 as a given.

18 THE COURT: I thought I'd already found it.
19 I thought I found it in the first phase, Mr. Cochran,
20 but I'll let you go ahead and cross examine him on it.

21 BY MR. COCHRAN:

22 Q The question, Mr. Wilson, was: Does Arthur
23 Anderson routinely accept asserted positions of the

1 IRS?

2 A You know, I really -- I can't comment on
3 that.

4 MR. BETTIUS: I thought the Court sustained
5 that?

6 THE COURT: Yes, I sustained the objection,
7 but you can inquire as to whether he, in doing this
8 accounting, accepted it as a fact, but not what
9 they've done in other cases.

10 BY MR. COCHRAN:

11 Q You did accept that as a fact in this
12 accounting, sir?

13 A I accepted the fact that the IRS had
14 revoked the tax exempt status of JMHI for some cause.

15 Q Did I understand your testimony on Friday
16 to be that you used actual booked income throughout?

17 A My starting point was to take actual booked
18 income.

19 Q Can you show Your Honor or show me where in
20 your accounting you used that actual booked income
21 after 1982?

22 A Yes, I can. What document would you like
23 me to refer to, my accounting?

1 Q Where in your accounting do you show actual
2 booked income for JMHC after 1982, sir?

3 A Well, if you look under tab one, in that
4 document, the line item net income as reported from
5 JMHC coming from the best available source. In some
6 years, it was compiled financial statements, in other
7 years -- or lack of financial statements -- it was the
8 tax return and in three years neither documents were
9 produced for it.

10 Q Well, was this actual booked income on
11 JMHC's returns from 1983 through 1999?

12 A Through 1995.

13 Q Would you agree with me that, at the very
14 least, the sublease with HGV was the most significant
15 financial event in the history of the hospital, at
16 least up to that point in time?

17 A Significant in terms of dollar amount or --

18 Q Significant in terms of dollar amount.

19 A It was significant, yes, I would say.

20 Q Can you point me to something that would
21 have been more significant?

22 A Well, as a single transaction it's probably
23 the most significant. Certainly patient revenues were

1 higher as a source of income for many years, but as a
2 single transaction, it was the most significant at
3 that point in time.

4 Q How long did HGV operate the hospital?

5 A Well, the lease was in place for three
6 years. I believe they operated the hospital for that
7 approximate three-year period.

8 Q Were they able to operate the hospital at a
9 profit?

10 A I don't know.

11 Q Did you review any financial statements or
12 financial documents of any nature regarding HGV's
13 experience in that three-year period of time?

14 A I did not.

15 MR. BETTIUS: I don't see what the
16 relevance could be. They operated and then they sold
17 it to another --

18 THE COURT: The objection is overruled.

19 BY MR. COCHRAN:

20 Q You have no knowledge of operations of the
21 hospital from April 1, 1982 through July of 1985?

22 A None other than the revenues flowing from
23 the HGV sublease.

1 Q But you don't know whether they operated at
2 a profit or a loss?

3 MR. BETTIUS: Asked and answered.

4 THE COURT: He's answered that one, hasn't
5 he, Mr. Cochran?

6 BY MR. COCHRAN:

7 Q Let me go back to the \$221,000, if I may,
8 Mr. Wilson. How do you treat that capital infusion?

9 A It doesn't directly flow into the
10 accounting because, again, we're accounting for
11 revenues, expenses, asset accretions and so forth. So
12 it's a capital infusion if, in fact, there was capital
13 that was infused.

14 Q Do you have any evidence that capital was
15 not infused?

16 A No, I do not have any such evidence.

17 Q And you simply don't treat that in any way,
18 shape or fashion in your accounting, do you?

19 A Other than the fact that we -- well,
20 directly into the changes in flow of economic values
21 to the assets, no.

22 Q And you don't allow any interest or return
23 on that investment at all through the three years

1 before it was exchanged for bond?

2 A Well, as you know, this certainly wasn't an
3 interest-bearing instrument.

4 Q What was it?

5 MR. BETTIUS: Well, he said he treated it
6 as a capital infusion, Your Honor.

7 THE COURT: Do you understand the question,
8 Mr. Wilson?

9 BY MR. COCHRAN:

10 Q What was the \$221,000, Mr. Wilson?

11 A You're talking about the issuance of stock,
12 the 60,000 shares of stock?

13 Q In your view as the accountant in this
14 case, what was it?

15 A What was it? It was the issuance of 60,000
16 shares of stock.

17 Q It wasn't a loan?

18 A I don't think -- unless you're thinking of
19 a different transaction. I think it was the issuance
20 of shares of stock.

21 Q Would it be fair to say when this stock was
22 purchased that the doctors had no assurance that they
23 would ever benefit from this transaction?

1 A I don't know.

2 Q Based upon the condition of the hospital in
3 1972, would you not describe purchase of stock in the
4 hospital as a risky venture?

5 A I would say most stock purchases have some
6 element of risk.

7 Q Mr. Wilson, focus on JMHC; would you not
8 agree that this particular stock purchase was
9 inherently risky?

10 A I think it did have an element of risk, for
11 sure.

12 Q Let's look at 1973. Did you conclude that
13 there was any net income in 1973?

14 A The net income as reported by JMHC was
15 \$163,727 in 1973.

16 Q How much cash was in the bank on June 30,
17 1973?

18 A I don't recall precisely.

19 Q There was less cash in the bank, was there
20 not, than net income?

21 A That's possible.

22 Q Would it have been appropriate from a
23 fiduciary standpoint for JMHC to have distributed or

1   invested its \$130,000 in net income in 1973?

2   MR. BETTIUS: Speculation, how would he
3   know?

4   THE COURT: Objection is overruled. He can
5   answer if he knows.

6   THE WITNESS: Would it have been
7   appropriate based on the financial condition? I don't
8   think so.

9   BY MR. COCHRAN:

10   Q   Did you and Ms. Moore -- strike that. If
11   JMHI were actually operating the hospital in 1973,
12   where would this \$160,000 net income have gone?

13   A   If they had been operating the hospital, I
14   would assume it would have stayed in the business.

15   Q   They would have invested it in the ongoing
16   operations of the business, would they not?

17   A   I imagine.

18   Q   As a matter of fact, they did invest their
19   net income year to year in the ongoing operations of
20   the business, did they not?

21   A   As well they should have, yes.

22   Q   So they wouldn't have had this net income
23   available to make any kind of investment, would they?

1   A   Investment in what?

2   Q   In anything. Do you know what I mean,
3 stock --

4   A   This hospital, like most hospitals,
5 continued to file their operating capital back in the
6 business for capital additions, equipment. And if
7 they have excess, they invest that in usually very
8 safe investments.

9   Q   But given what you saw and what your
10 accounting says about the hospital, it was entirely
11 appropriate, was it not, for JMHC to invest all of its
12 net income, at least in 1981, in the continued
13 operations of the hospital?

14   A   I think that's correct.

15   Q   Did you, in your accounting, deduct any
16 taxes on any investment income that might have been
17 earned?

18   A   Earned by whom?

19   Q   By JMHC.

20   A   If there were taxes paid, we reflected that
21 in our accounting as a deduction from income.

22   Q   But in this hypothetical where we're
23 talking about investment income that could have been

1 made, you do not allow anything for the additional tax
2 that that investment income would generate --

3 MR. BETTIUS: Your Honor, we have put forth
4 no hypothetical investment of income at any time in
5 this case. And they want to construe that perhaps we
6 have. Let them deal with Ms. Moore on that issue.
7 Again, we believe income was invested, but it was our
8 income. There has been no hypothetical investment of
9 income made by this witness. He's now, again, arguing
10 Ms. Moore's report and she'll address that issue.

11 THE COURT: I don't recall hearing the
12 testimony that the accounting was based on that,
13 Mr. Cochran. Maybe I missed something. If you want
14 to point it out.

15 MR. COCHRAN: Your Honor, I think this is
16 the witness, this is the expert who has made the
17 decision as to the tax effect of income, be it
18 investment income that's hypothetical or otherwise.
19 And I don't think Ms. Moore is going to be able to
20 address that issue. Let me rephrase the question.

21 THE COURT: All right, rephrase it.

22 BY MR. COCHRAN:

23 Q Mr. Wilson, was it your decision not to tax

1 income after 1982?

2 A It was my decision to account for actual
3 revenues and expenses including tax payments made when
4 they occurred and not by a hypothesized what should
5 happen when they didn't occur.

6 Q Was it your decision not to tax the
7 additions to income that your accounting came up with?

8 A That's correct, for the very same reason.

9 Q And that decision was made by you as to the
10 income created by the rates of return that Ms. Moore
11 came up with?

12 A I had nothing to do with Ms. Moore's
13 accounting.

14 Q You did not make the decision that the
15 income generated by a hypothetical investment should
16 not be taxed?

17 MR. BETTIUS: Assumes facts not in
18 evidence.

19 THE COURT: That's the problem,
20 Mr. Cochran. Unless I missed something in
21 Mr. Wilson's testimony, which is entirely possible, I
22 don't recall him talking about hypothetical investment
23 returns and that kind of thing.

1 BY MR. COCHRAN:

2 Q Did you discuss with Ms. Moore her present
3 value calculations, Mr. Wilson?

4 A I did not.

5 Q Did you discuss with her whether or not
6 there was any tax effect as a result of her
7 calculation?

8 A I did not.

9 Q You increased the income of JMHC in
10 practically every year from '65 through '82 above what
11 the financial statement showed, did you not?

12 A Yes, whatever didn't come to be reflected,
13 it got reflected.

14 Q But you did not list any additional taxes
15 that would have been incurred as a result of those
16 additions to income, did you?

17 MR. BETTIUS: Asked and answered, Your
18 Honor.

19 THE COURT: I thought he said he didn't.

20 BY MR. COCHRAN:

21 Q Does your accounting seek to reverse the
22 revocation of JMHI's tax exemption?

23 A Attempt to reverse the revocation of a tax

1 exemption? No. Again, as I said earlier and I'll say
2 again, all we attempted to do was to account for
3 actual revenues and expenses including tax payments
4 when they were made.

5 Q Would you agree with me that JMHC was a
6 tax-paying entity in 1983?

7 MR. BETTIUS: Your Honor, this line of
8 argument is specifically precluded by the exact
9 all-fours holding of Hanshaw. What these people were
10 going to do was take charitable assets, take tax
11 deductions for them and the money was going to
12 charity. And the Court said, no, you can't divert the
13 assets of the charity, take a tax deduction for it and
14 claim it no matter if you're going to devote the whole
15 money to charity. These people never had the second
16 step that they were going to devote it to charity.
17 They never should have had it in the first place and
18 that's what Hanshaw says.

19 THE COURT: I think, Mr. Bettius, if you're
20 concerned with the state of the record, your objection
21 to the differences in the accountings are clear for
22 the record. I'll overrule the objection. He can
23 inquire about it. I mean, that's their theory.

1 BY MR. COCHRAN:

2 Q Do you recall the question, Mr. Wilson?

3 A No.

4 Q Was JMHC a tax-paying entity in 1983?

5 A Yes, it was.

6 Q Was it a tax-paying entity for every year
7 thereafter?

8 A Yes.

9 Q As a tax-paying entity, JMHC should be
10 paying taxes from 1983 onward, should it not, on any
11 income that it earned?

12 MR. BETTIUS: May I just have a continuing
13 objection?

14 THE COURT: Yes, sir.

15 THE WITNESS: It did pay taxes on any
16 income it earned, I believe.

17 BY MR. COCHRAN:

18 Q So it should be?

19 A It did.

20 Q And if we were to now impute additional
21 income to JMHC for that 15-, 16-, 17-year period of
22 time, they would be required to go back and amend
23 their returns and report that income, would they not?

1 MR. BETTIUS: Objection on what they would
2 have to do.

3 THE COURT: Finish the question,
4 Mr. Cochran.

5 THE WITNESS: Are you stating that as a
6 hypothetical?

7 BY MR. COCHRAN:

8 Q Yes.

9 A Hypothetically, possibly. I have no basis
10 for knowing what taxable income would be, what the tax
11 rates would be, who the tax-paying entities would be
12 or any of the above.

13 Q But there would have to be tax paid, would
14 there not --

15 A There would be --

16 THE COURT: Let him finish asking the
17 question.

18 BY MR. COCHRAN:

19 Q There would have to be tax paid if you were
20 going to add a million dollars a year in income, would
21 there not?

22 A To a tax-paying entity, yes.

23 Q And JMHC had expenses, but not enough

1 expenses to write off against a million dollars a year
2 in income after 1982, did it?

3 A I don't think so based on the financial
4 statements, right.

5 Q Am I correct -- and I may be beating the
6 horse a little bit beyond its death here, Mr. Wilson,
7 but am I correct that under your theory, until a
8 winding up actually occurs, all of the INOVA money
9 should be paid to JMHC?

10 A That's correct. May I correct that
11 slightly? Under the INOVA settlement, you said?

12 Q Yes.

13 A Yes.

14 Q Your assumption flows from the beginning,
15 from the 1966 lease, does it not?

16 A Yes, it does.

17 Q You assume that that lease had a perpetual
18 applicability, do you not?

19 A It had a 99-year term.

20 Q But as far as your accounting, it had a
21 perpetual applicability?

22 A Because of its term and because the '75
23 lease was invalidated by the Court.

1 Q And you never stopped considering the '66
2 lease to be an operative document, did you?

3 A That's correct.

4 Q In 1994 how many years were left on that
5 lease?

6 A Well, let's see, it had a 40-year original
7 term, a 40-year extension followed by a 19. So I
8 guess that would have been 29 years.

9 Q Where do you honor the 1966 lease after
10 1994?

11 A It's not honored because at that point in
12 time there's no landlord/tenant relationship that
13 exists that I could find.

14 Q Where do you make any allowance for
15 discharging any liability related to the balance of
16 the term on that lease?

17 A There's no --

18 MR. BETTIUS: Your Honor, at what time? I
19 don't understand the questions. In '94, '92?

20 MR. COCHRAN: In '94.

21 MR. BETTIUS: There is no term on the
22 lease. It's cancelled by the agreement.

23 THE COURT: I thought that was the

1 question. Did he account for any expenditure for the
2 termination?

3 BY MR. COCHRAN:

4 Q Do you understand the question, Mr. Wilson?

5 MR. BETTIUS: Your Honor, we can only
6 account for the data --

7 THE COURT: Mr. Bettius. If you have an
8 objection, Mr. Bettius, you can make it on some rule
9 of evidence.

10 MR. BETTIUS: Foundation, Your Honor.
11 There's no foundation.

12 THE COURT: I need you to rephrase the
13 question, Mr. Cochran.

14 BY MR. COCHRAN:

15 Q Mr. Wilson, did you make any allowance for
16 the discharging of the liability of the balance of
17 that lease as of 1994?

18 A No. I had no basis for knowing what the
19 cost of any discharge would have been if it were still
20 an operative lease at that time.

21 Q Would you agree with me that if you've got
22 70-some years left on a lease, you have a significant
23 liability?

1   A   Again, it's an --

2   MR. BETTIUS: The lease is terminated by
3 the document. How can you have liability on a lease
4 that's terminated?

5   THE COURT: The objection is overruled.

6   BY MR. COCHRAN:

7   Q   Would you agree with me that that is a
8 liability, sir?

9   A   I'm not convinced of that. And I'm not
10 convinced of it because of the -- again, the lessor in
11 this case are the trustees of the asset. Their basis
12 in this underlying asset is the building we're talking
13 about, the land. The mortgage has been paid off by
14 the operations of the charity. There have been
15 distributions made on the operations of the charity.
16 I'm not sure why it would be a continuing liability --
17 by what I would characterize as a very vulnerable
18 charity here.

19   Q   Isn't a continuing liability created by
20 your assumption that the lease has a perpetual nature?

21   MR. BETTIUS: The witness has never
22 testified that it had a perpetual nature. That's
23 counsel's words.

1 THE COURT: I think that was your language,
2 Mr. Cochran.

3 MR. COCHRAN: He said perpetual
4 applicability, I think.

5 THE COURT: Can you answer that question,
6 Mr. Wilson? Do you understand the question?

7 THE WITNESS: Yes, I do. I don't think
8 there were any -- and I may be wrong about this -- I
9 don't think there were any remaining lease obligations
10 or lease agreements that were in place at the time of
11 the INOVA settlement in '94.

12 BY MR. COCHRAN:

13 Q But your accounting ignores what has
14 happened. It seems to assume certain events that
15 should have happened, does it not?

16 A You'll have to be more specific.

17 Q You're ignoring the subsequent leases,
18 right?

19 A What leases --

20 Q The leases subsequent to 1966, Mr. Wilson.

21 A No, that's not true. It includes the '68
22 lease, it includes the leases that relate to the MOB
23 and physical therapy space and all additional square

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1 footage that was occupied by the hospital.

2 Q Where in your accounting do you give the
3 joint venture any credit for the rent or other value
4 that would accrue to the joint venture if that lease
5 continued beyond 1994?

6 MR. BETTIUS: That's a hypothetical, Your
7 Honor. It didn't continue.

8 THE COURT: He can answer it if he can. I
9 would assume the answer is none.

10 THE WITNESS: I didn't give credit to it
11 because it didn't exist.

12 BY MR. COCHRAN:

13 Q You did treat the joint venture as a
14 separate entity, did you not?

15 A Yes.

16 Q Going back to the HGV lease, did you make
17 any determination whether \$900,000 a year was a fair
18 market rental?

19 A Did not make a determination as to whether
20 it was a fair market rental. Again, that agreement
21 was between the operating company JMHC and HGV.

22 Q Did you deem this irrelevant to your
23 accounting as to whether \$900,000 was a fair market

1 rental?

2 A It was not relevant to my accounting in the
3 sense that what HGV was paying for was the operating
4 license and the right to use the hospital and,
5 therefore, the rentals did not belong with HGV.

6 MR. BETTIUS: Your Honor, I'm going to
7 object to the entire line of inquiry on another
8 ground. I thought I would never have to cite this
9 case again. We've got Massey versus Turnstone (ph.)
10 here. They get up on the stand and their accountant
11 says that guidance is the '66 lease and it takes us
12 all the way through this transaction. I honored the
13 '66 lease and now they're impugning this witness
14 because he did the same thing. I don't think they can
15 rise above their own case. And they say '66 is the
16 guiding document.

17 THE COURT: The objection is overruled.

18 MR. COCHRAN: Thank you, Your Honor. I
19 love Massey v. Turnstone, by the way.

20 THE COURT: Nobody understands it. If you
21 try to give a jury instruction on what it means, their
22 eyes glaze over and they look at you like you're
23 crazy. So nobody understands it.

1 MR. COCHRAN: It's a wonderful case and
2 I'll call it to my associate's attention if he's not
3 familiar with it.

4 MR. BETTIUS: I just objected on it.

5 BY MR. COCHRAN:

6 Q Mr. Wilson, you just said a second ago,
7 before counsel had his colloquy with the Court, that
8 HGV paid for the license?

9 A No, they didn't pay for the license. They
10 paid for the right to use the license.

11 Q The value that they placed upon that
12 license is reflected in the premium they paid for
13 receivables and equipment, is it not?

14 A I have no -- I don't think so, first of
15 all. And I have no basis for making that judgment.

16 Q You heard Mr. Denial's testimony, did you
17 not?

18 A Parts of it.

19 Q Did you hear him say that the 15 percent
20 premium above the receivables and equipment
21 represented payment for good will, the license, and
22 other intangibles?

23 A I don't know if he said that or not. If he

1 did, I can't agree with him.

2 Q Didn't you say that, as a matter of fact on
3 Friday, yourself, that that premium is allocable to
4 intangibles such as goodwill and the license?

5 A That's a part of what might be allocable to
6 the license and goodwill, but you have to also
7 consider the stream of income, that million dollars a
8 year under the lease itself for ten years.

9 Q And you do view the HGV lease as a market
10 transaction, do you not?

11 A Which one, sir?

12 Q The original '82 lease.

13 A It was between a willing buyer and seller,
14 so I assume it was.

15 Q So it gives us at least something of a
16 benchmark of what the marketplace used to value the
17 license to be?

18 A Could be.

19 Q For the three years that HGV operated the
20 hospital, how much did you allocate to the license?

21 A A million dollars a year.

22 Q Isn't that a totally arbitrary allocation
23 on your part?

1   A.   No, I don't believe so. The underlying --
2   what they were acquiring -- again, I'm not a valuation
3   expert so I can't tell you about valuation
4   allocations, but I can --

5   Q   So don't tell me about valuation
6   allocations --

7   THE COURT: You just asked him to,
8   Mr. Cochran. You asked him what he allocated to the
9   license. He said the whole million.

10   BY MR. COCHRAN:

11   Q   Excuse me, Mr. Wilson. Go ahead.

12   A   I forgot what your follow-up question was.

13   Q   What was the basis for allocating the
14   entirety of that one million dollars to the license?

15   A   The building itself, as an accountant, had
16   little or no value other than the operating license
17   underneath it. The operating license is the engine
18   here that runs this hospital. The bricks and mortar
19   are simply the chassis. The value is in the license.

20   Q   But as you're saying again, Mr. Wilson, you
21   are again making a valuation decision to reach that
22   conclusion, are you not?

23   MR. BETTIUS: Asked and answered, Your

1 Honor.

2 THE COURT: I thought he said he didn't try
3 to do any valuation, he just made the allocation; is
4 that correct?

5 THE WITNESS: That's correct.

6 THE COURT: Let me ask you, Mr. Cochran,
7 how much longer? I'm not trying to hurry you along.
8 I just want to know for scheduling purposes.

9 MR. COCHRAN: Probably 30 minutes or so.

10 THE COURT: Why don't we take a short
11 recess and then we'll continue.

12 (A short break was taken)

13 THE COURT: Mr. Wilson, if you'd resume the
14 stand, please.

15 BY MR. COCHRAN:

16 Q Can I assume that you could have allocated
17 it both on the HGV and the INOVA leases between rent
18 and the license to operate?

19 A No, I don't believe so.

20 Q You don't make that assumption?

21 A As I stated earlier, what HGV and INOVA
22 were acquiring in that transaction was the right to,
23 hopefully, operate this hospital in such a way that

1 they would enjoy economic value. That's what they
2 were paying for and they weren't paying for the
3 building. They were paying for the right to operate
4 the hospital, see patients, treat patients, and
5 generate income.

6 Q That's not responsive to my questions,
7 Mr. Wilson. Let me repeat the question.

8 MR. BETTIUS: I'm going to object to his
9 characterization, Your Honor. I don't think that's a
10 determination.

11 THE COURT: Go ahead and repeat the
12 question, Mr. Cochran.

13 BY MR. COCHRAN:

14 Q Can I assume that you could allocate
15 between rent and the license to operate under both the
16 HGV and the INOVA leases?

17 A And I answered, no, I couldn't.

18 Q Why don't you turn to page 223 of your
19 deposition, Mr. Wilson. Do you still have it up
20 there?

21 A Yes.

22 Q Specifically line 14 at the very back, sir.
23 Do you have that there?

1 A Yes.

2 Q Do you see my question at line 14: Can you
3 allocate the HGV payments from '82 to '85 or the INOVA
4 payments thereafter between rent and license? And you
5 answer: I don't know whether that could be done or
6 not. I'm assuming that it could --

7 MR. BETTIUS: Your Honor, that's not an
8 impeachment. He says he doesn't know if it could be
9 done.

10 THE COURT: The objection is overruled.

11 BY MR. COCHRAN:

12 Q Didn't you testify at your deposition that
13 you assumed that allocation could be made, Mr. Wilson?

14 A I said I assumed it could.

15 Q And that's not what you're saying here
16 today, is it?

17 A That's correct. I'm more informed on the
18 matter now upon closer review of the documents and
19 lease agreements.

20 Q Isn't what really happened is you deemed
21 any allocation between rent and license simply to be
22 immaterial?

23 A No. I based it on the reading of the "

1 underlying agreements.

2 Q But you hadn't read this at the time of
3 your deposition?

4 A I had probably read it at some time in the
5 distant -- I hadn't recalled it more specifically.

6 Q In order for your accounting to be
7 accurate, don't you have to make precisely that
8 allocation?

9 A Which allocation is that?

10 Q Between rent and the license to operate?

11 A I didn't make that allocation.

12 Q My question is: In order for your
13 accounting to be accurate, don't you have to make such
14 an allocation?

15 A I stand on my accounting, which is
16 accurate. I didn't make any allocations, so I guess I
17 don't need to make that allocation.

18 Q Were you given by counsel the April 2, 1992
19 analysis done for INOVA Hospital by Mr. Schot?

20 A No.

21 Q Were you given any of the memos in the June
22 1992 time frame between Mr. Magenheimer and
23 Mr. Singleton at INOVA?

1   A   I don't recall seeing those, no.

2   Q   Did you see any documents in which INOVA
3 discusses how it valued the license to operate?

4   A   No, I did not.

5   Q   You don't think those would be material to
6 a determination as to what, if any, portion of these
7 payments should be attributable to the license to
8 operate?

9   MR. BETTIUS: Your Honor, I'm going to
10 object. He's not a valuation expert. He reflected
11 the transactions as recorded. And, at best, we're
12 dealing with a commingled asset he's asking this
13 witness to trace. I don't think that burden falls on
14 us. And he's asking if the accounting is accurate.
15 We can't trace a commingled event and, Your Honor, I
16 think that that's contrary to the law.

17   THE COURT: The objection is overruled.

18   THE WITNESS: I tried to rely upon all the
19 legal documents that were made available to me, leases
20 being the primary legal documents. Now, if there is a
21 legal document here that talked about allocation of
22 price, perhaps I could have seen it, but if it wasn't
23 a legal document, I don't think it entered into my

1 accounting.

2 Q You testified earlier, as I recall, that
3 you believe that market transaction is an indication
4 of value; is that not correct?

5 A Yes.

6 Q And it's an indication of value at least in
7 part because that's what the parties to the
8 transaction themselves are looking at as the value?

9 A Correct.

10 Q And wouldn't it be important, to come up
11 with an accurate decision, to look at what these
12 parties put on the license to operate as a value?

13 A I don't think so. The valuation is only
14 important if you are winding up and liquidating a
15 business, disposing of assets and liabilities. That
16 didn't occur in '82, it didn't occur in '85, and it
17 didn't occur in '92, and it didn't occur in 1994, and
18 hasn't occurred yet. Therefore, any valuation
19 information at any point in time is nothing more than
20 a reflection of what might be. And I tried to account
21 for what was there.

22 Q Is the license to operate a hospital at the
23 Jefferson Memorial facility transferable?

1 A No, it's not.

2 Q Could you have operated a hospital facility
3 even if you had the license if you did not lease the
4 facilities?

5 A No.

6 Q The go hand in glove, do they not?

7 A Yes.

8 Q You can't have one without the other?

9 A Correct.

10 MR. BETTIUS: Stipulated.

11 BY MR. COCHRAN:

12 Q When was the license lost?

13 A I believe the license was lost in 1994 or
14 shortly thereafter.

15 Q Isn't it true the license was forfeited in
16 1993?

17 A You may be right. If you want to show me
18 something to --

19 Q When did the hospital cease operating as a
20 hospital?

21 A I think it ceased operating somewhere in
22 the '93 time period, although I believe INOVA
23 continued to make payments on the lease arrangement."

1   Q   Didn't it cease operating the hospital on
2   December 31st 1992, Mr. Wilson?

3   A   If you say so, I'll believe you.

4   Q   Wasn't that license declared forfeited when
5   they didn't operate the facility for six months
6   thereafter?

7   A   I don't know.

8   Q   Isn't it true that that license did not
9   exist at the time that the settlement agreement was
10   entered into between INOVA and the joint venture?

11   A   I don't know.

12   Q   Isn't that important to make an accurate
13   determination as to what value to place on that
14   license?

15   A   It would be. And in reviewing the
16   settlement agreement there are references to a live
17   license as consideration between the parties. So was
18   the settlement inaccurate? I don't know.

19   Q   Is your calculation based upon what you say
20   is in the settlement agreement that reflects the
21   license as being a live license as you describe it?

22   A   That's correct.

23   Q   Your determination would be different,

1 would it not, if that license was already forfeited?

2 A If the license or the ability --

3 MR. BETTIUS: The witness hasn't made a
4 valuation.

5 MR. COCHRAN: Your Honor --

6 MR. BETTIUS: The witness has not made a
7 valuation.

8 THE COURT: Do you want to rephrase it and
9 put accounting in there, Mr. Cochran?

10 MR. COCHRAN: Your Honor, he's made a
11 valuation -- that's the crux of this issue -- if he
12 has valued everything as to the license.

13 THE COURT: Well, being hypertechnical, he
14 said he allocated in his accounting 100 percent for
15 the license, basically.

16 BY MR. COCHRAN:

17 Q Would your decision to allocate, in your
18 accounting, 100 percent of the payments to the license
19 be affected by the fact that the license had already
20 been forfeited prior to the settlement in 1994?

21 A Well, I think that's hypothetical unless my
22 reading of the settlement agreement was inaccurate
23 because I think there was reference to an existing

1 license.

2 Q That is a critical fact whether the license
3 was in existence in 1994?

4 MR. BETTIUS: Your Honor, it's a critical
5 fact how the parties treated it. And I think that's
6 what the witness is saying. And I object to him
7 saying whether it was critical or not. The agreement
8 is contained within the agreement itself and how the
9 parties treated the agreement.

10 THE COURT: The objection is overruled.

11 BY MR. COCHRAN:

12 Q It is a critical fact, is it not,
13 Mr. Wilson?

14 A It's a critical fact to determine what the
15 consideration was for the -- and it's specified in the
16 settlement agreement whether it's a license or --
17 whatever the consideration is, it's important to
18 understand what that is.

19 Q How many square feet does the 1966 lease
20 cover?

21 A I don't recall.

22 Q How many square feet existed in 1982?

23 A I can't tell you.

1 Q Did you make that determination at any
2 point in time?

3 A No.

4 Q Would it surprise you to know that the
5 original 1966 lease only covers approximately 50
6 percent of the total space that existed in 1983?

7 A It wouldn't surprise me.

8 Q If you don't accept the validity of the
9 subsequent leases, such as the '75, the '78, and the
10 '80 leases, isn't your assumption that JMHC should
11 receive all the INOVA money fatally flawed?

12 A No, it's not.

13 Q When was the fourth floor completed?

14 A The fourth floor was never completed and
15 occupied.

16 Q It was never built?

17 A I believe it was shelled in and never
18 completed and occupied.

19 Q The interior was not finished off?

20 A It never became usable space, to my
21 knowledge.

22 Q But as I understand from your testimony
23 this morning, you couldn't trace any of the HGV money

1 to the cost of the construction of the fourth floor?

2 A The fourth floor was essentially funded
3 through hospital operations.

4 Q My question, sir: Did you not state this
5 morning that you could not trace any money from HGV as
6 having been used to pay for the fourth floor?

7 A Directly from HGV?

8 Q Yes.

9 A I could not. I don't think I could, no.

10 Q Do you even know who built the fourth
11 floor?

12 A Physically built it? Financed it?

13 Q Who was responsible for the construction of
14 the fourth floor?

15 A I believe it was the operating company.

16 Q Do you recall testifying at your deposition
17 that you did not know who built the fourth floor?

18 A I don't recall that. I very well may have.

19 Q And you don't know who paid for it, do you?

20 A I didn't see any evidence of any financing
21 transactions related to it. It was paid for through
22 operations.

23 Q Did the Respondents not take out loans that

1 they personally guaranteed for the construction of the
2 hospital and its additions?

3 A Yes, they did.

4 Q And aren't those personal guarantees of
5 significant value?

6 MR. BETTIUS: Your Honor, he would have to
7 speculate on that. I object.

8 THE COURT: The objection is overruled.

9 THE WITNESS: I'm not sure what the value
10 would be. If they were necessary to secure the
11 financing, it would be worth those guarantees.

12 BY MR. COCHRAN:

13 Q Wouldn't you agree with me that a start-up
14 business is always a risky venture?

15 A I would.

16 Q So certainly in the '65 time frame, any
17 monies that were borrowed that were personally
18 guaranteed by the Respondents would be at significant
19 risk?

20 A It could be.

21 Q Back to the fourth floor, I'm sorry for
22 digressing there, Mr. Wilson, the \$375,000 that INOVA
23 paid for the fourth floor --

1 A Yes.

2 Q -- do you treat that as flowing to the
3 joint venture?

4 A No, I do not.

5 Q The fourth floor didn't exist in 1966, did
6 it?

7 A It didn't exist in '66.

8 Q It didn't exist even in '82?

9 A That's correct, or 1985 as a usable space.

10 Q Let's go back to market transactions. I
11 take it from your testimony yesterday that the
12 purchase by INOVA of HGV stock is a market
13 transaction?

14 A I think that's an indicator of market value
15 at that point in time.

16 Q And that would be an indication of market
17 value of the license to operate the hospital, would it
18 not?

19 A The factors that I would consider in
20 looking for indications of market value would be the
21 amount that INOVA paid for the stock of HGV, which is
22 5.8 million dollars plus the future revenue streams
23 that are guaranteed through the operating lease

1 agreement going forward.

2 Q Wouldn't you say that the 5.8 million
3 dollars alone represents a market valuation of the
4 license to operate the hospital?

5 A Far from that, actually.

6 Q The 5.8 was a gross number, was it not?

7 A In what sense?

8 Q There was actually 2.1 million dollars in
9 debt that was paid off by HGV as part of this
10 transaction, was there not?

11 A HGV's debt, you mean? Whose debt?

12 Q HGV's debt. HGV discharged 2.1 million
13 dollars of its own debt as part of the stock purchase
14 by INOVA?

15 A That could be. I don't recall. I'd have
16 to look at the agreement.

17 Q So the actual cost to INOVA was closer to
18 3.6 million dollars, was it not?

19 A To acquire the stock of HGV, yes, that's
20 correct, if your statement is accurate.

21 Q What exactly was it that Fairfax got when
22 it purchased this HGV stock?

23 A I believe it got the stock of HGV.

1 Q Did it not get the ability to operate the
2 hospital into the future?

3 A Fairfax was willing to -- you can't look at
4 that part of the transaction in isolation, certainly
5 HGV didn't and Fairfax didn't. They looked at the
6 purchase of the stock for 5.8 million dollars, perhaps
7 less debt, and the obligation to pay rentals of 1.375
8 million and escalating over the ensuing ten years.

9 Q Well, let's back up a second, Mr. Wilson.
10 We have two documents here. We have the purchase by
11 INOVA of the HGV stock for 5.8 less the 2.1 in debt
12 paid off. And then we have a new lease being entered
13 into by INOVA, do we not?

14 A Correct.

15 Q And, again, I'm going to ask you
16 specifically, is it not true that when Fairfax paid
17 for the stock, they purchased the ability to operate
18 the hospital into the future?

19 A They did not -- you cannot exclude the
20 lease agreement that enables them to operate that
21 hospital in the future.

22 Q You can't have one without the other?

23 A That's correct.

1   Q   But that 5.8 less the 2.1 is a market
2 measure of the ability to operate the hospital into
3 the future, is it not?

4   MR. BETTIUS: Objection.

5   THE COURT: The objection is overruled.

6   THE WITNESS: Not in and of itself.

7   BY MR. COCHRAN:

8   Q   Is it a substantial indication?

9   A   It's a portion of an indicator.

10   Q   And there's nothing in the 1985 lease that
11 ascribes anything to the license to operate, is there?

12   A   I think that there's -- would you like me
13 to review the document?

14   Q   I'm asking if you recall, sir.

15   A   I don't recall.

16   Q   Did you look at any financial documents
17 that would demonstrate whether INOVA made or lost
18 money in the seven years it operated the hospital?

19   MR. BETTIUS: Your Honor, I object to that.
20 What relevance does it matter, if the money is coming
21 in, what INOVA did or didn't do? I don't think
22 anybody hides from the fact that they were buying in
23 the negative when they bought that license back and

1 bought the lease back, they were, by and large,
2 negative. I mean, I don't think it's relevant. The
3 real relevance is what was received by these parties.
4 I can't imagine what they did is relevant at all.

5 THE COURT: The objection is overruled.

6 BY MR. COCHRAN:

7 Q Did you review any financial documents that
8 showed us how INOVA did financially in this '85 to '92
9 time period?

10 A I didn't because I didn't deem them to be
11 relevant.

12 Q Now, you're telling the Court that you
13 think whether they made or lost millions of dollars,
14 it's irrelevant to your decision as to whether to
15 ascribe all of the 35 million to the license or not?

16 A I didn't try to speculate as to what
17 INOVA's motives were for entering into the
18 arrangement. It could have been any number, I
19 suppose. I'll repeat again, what I referred to in
20 doing my accounting was the underlying financial
21 information as best as it was available to us, albeit
22 there were some gaps in it, unfortunately, and tried
23 to apply my best accounting interpretation to the

1 existing legal documents and that included the HGV,
2 INOVA lease and the settlement agreement, but not
3 peripheral information such as somebody else's
4 financial statement.

5 Q Aren't you speculating entirely to
6 attribute the 35 million dollars to the license and
7 nothing else?

8 A I don't believe so.

9 Q Did your client tell you that the Fairfax
10 Hospital was projecting 81 million dollars in losses
11 over the term of the lease?

12 A I think I've heard that actually in this
13 courtroom.

14 Q Doesn't that indicate that the right to
15 operate this hospital has little, if any, value?

16 A It desperately wanted the right to that
17 hospital to do something with it, whether it was to
18 let it lapse or whether it was to use it to operate.
19 That's what I read in the settlement agreement. There
20 are specific paragraphs that talk about that. To me,
21 that's an indication -- and I didn't see any other
22 considerations spelled out in that agreement other
23 than the fact that they would stop suing each other.

1   Q   You didn't see that there was an exchange
2 of buildings that was contemplated by the '92
3 agreement?

4   MR. BETTIUS: Your Honor, '92 or '94? And
5 when he's asking that question -- the agreement
6 says -- the '94 agreement says the '92 agreement's
7 void.

8   THE COURT: I thought we'd been through
9 this, Mr. Cochran. Is there something different about
10 this?

11   MR. COCHRAN: There is, Your Honor.

12   THE COURT: All right. Go ahead.

13   BY MR. COCHRAN:

14   Q   You did review the 1992 letter agreement?

15   A   Yes, I did.

16   Q   Wasn't that essentially a land swap?

17   A   It was -- here's my understanding of what
18 it was: INOVA wanted the hospital license to do
19 something with it. They had a building, there was
20 opportunity here for the Respondents to get the best
21 of both worlds; to do an exchange, get rid of the
22 hospital and the license, get a stream of rental
23 revenue by taking an office building back in return on

1 a cash-free basis. That's my understanding of what
2 the binding agreement was all about, which has very
3 little to do with the '94 settlement agreement -- and
4 to settle the lawsuit.

5 Q They were exchanging the Cambridge for the
6 Jefferson facility, correct?

7 A The binding agreement --

8 Q The letter of 1992?

9 A Yes.

10 Q And Fairfax was going to pay 2.2 million
11 dollars a year in rent to the joint venture on the
12 Cambridge Court building?

13 A That's correct.

14 Q Are you giving the Respondents the benefit
15 of any doubt whatsoever when you determine that the 35
16 million dollars was all attributable to rent?

17 A Yes, I'm giving the Respondents the benefit
18 for a number of things over the entire accounting.
19 The fact that there's -- depending on how you look at
20 it --

21 Q My question, sir, was as to the 35 million
22 dollar payment to INOVA. Aren't you giving the
23 Commonwealth the benefit of all doubt as to that in

1 allocating 100 percent of that into their column?

2 A I'm giving the Commonwealth the benefit of
3 my accounting for which I don't think there's any
4 doubt, based upon my review of the documents.

5 MR. COCHRAN: I have nothing further of
6 this witness.

7 THE COURT: Mr. Bono?

8 CROSS EXAMINATION

9 BY MR. BONO:

10 Q Mr. Wilson, on Friday did you testify that
11 in your accounting the October 1992 letter agreement
12 was not material?

13 A It didn't enter into my accounting at all
14 because my understanding is that it was never
15 consummated.

16 Q So your accounting proceeded on the basis
17 that that October letter agreement never existed; is
18 that correct?

19 A It was never executed so I didn't include
20 it explicitly in my accounting, that's correct.

21 Q So your accounting proceeds on the basis
22 that that agreement never existed; is that right?

23 A It never was -- that's correct.

1   Q   Now, this morning in your direct testimony
2   you went to great lengths to explain the implications
3   of that letter agreement to your accounting, did you
4   not?

5   A   I described my understanding of what was
6   included in that letter.

7   Q   Now, do you mean to change your testimony
8   from Friday to this morning with respect to the
9   materiality of the October letter agreement to your
10   accounting?

11   A   No, I think the letter speaks for itself.

12   Q   So am I correct then --

13   MR. BETTIUS: Let him finish.

14   MR. BONO: I'm sorry. I thought he was
15   finished.

16   THE COURT: I thought he was finished.

17   BY MR. BONO:

18   Q   So am I correct then that you're still
19   adhering to your original position that your
20   accounting proceeds on the basis that the October
21   letter agreement has no materiality to it; is that
22   correct?

23   A   It's not in any way reflected in my

1   accounting.

2   Q   And therefore you proceeded to do your
3   accounting as if that document and agreement never
4   occurred; is that right?

5   A   Other than to understand what was in that
6   document to see whether it, by its context to either
7   the '85 lease agreement or the '94 settlement, which
8   surrounded the '92 letter.

9   Q   As a result of that analysis, you concluded
10   it had no basis or no impact on your accounting; is
11   that right?

12   A   It's not in any way reflected in my
13   accounting.

14   Q   Did you conclude that the October letter
15   agreement had no relationship to the 1985 lease or the
16   1994 settlement agreement?

17   A   I wouldn't go so far as to say that. I
18   think it --

19   Q   So there is a --

20   MR. BETTIUS: Please let him finish.

21   THE COURT: There was a pause there. Go
22   ahead and finish.

23   THE WITNESS: Clearly there was a history

1 and a pattern of relationships between INOVA and JMHC
2 or JMHSV. This was part of that pattern.

3 BY MR. BONO:

4 Q Well, I'm not interested in that pattern.
5 My question was: Is there a relationship between the
6 October letter agreement and the 1985 lease and the
7 1994 settlement agreement, yes or no?

8 MR. BETTIUS: Your Honor, I object. He's
9 impeaching the parties' own dealing with the
10 transaction. They say it's void. They specifically
11 say it's void.

12 THE COURT: The objection is overruled.

13 MR. BONO: There's no use --

14 THE COURT: It's overruled, Mr. Bono. I
15 ruled in your favor.

16 Can you answer the question about the
17 relationship with the '92 letter agreement?

18 THE WITNESS: I don't think it had any
19 direct relationship other than describing the parties'
20 relationship at that point in time. The '85 lease was
21 still in effect, as I understand it.

22 BY MR. BONO:

23 Q So you proceeded to do your accounting on "

1 the basis that you didn't think that there was any
2 direct relationship between the 1994 settlement
3 agreement and the October letter agreement; is that
4 right?

5 A I concluded that there was no direct
6 relationship.

7 Q On what factual basis did you conclude that
8 there was no direct relationship between the
9 settlement agreement and the October letter agreement?

10 A Because the settlement agreement -- excuse
11 me -- the binding agreement, as I read it, was all
12 about the exchange of real estate and there was clear
13 intent of what was intended, who was going to benefit,
14 and how much they were going to benefit. The
15 settlement agreement, other than the fact that one of
16 the things that the parties agreed to do was to stop
17 suing each other over the binding letter agreement,
18 was about -- it spoke to consideration having to do
19 with licenses to operate and certificates of need and
20 things of that nature.

21 Q Did you base your determination on anything
22 else other than what you just said?

23 A My determination of?

1 Q That there was no direct relationship
2 between the settlement agreement and the binding
3 letter agreement, other than what you just testified
4 to?

5 A Not that I recall.

6 Q Did you bother to get any factual
7 information, other than what you testified to, from
8 the Commonwealth?

9 A Factual information?

10 Q Yes.

11 A No, I read the '85 agreement, I read the
12 binding settlement agreement, I read the '94
13 settlement agreement. I don't recall getting any
14 other information.

15 Q Other than just reading those cold
16 documents, you did not get any further information on
17 how to understand them; is that right?

18 A Such as agreements and correspondence and
19 so forth, is that what you're referring to?

20 Q Any factual information, Mr. Wilson, from
21 anyone other than just reading those cold documents?

22 MR. BETTIUS: Your Honor, that assumes a
23 fact not in evidence. If there is any relevant

1 information, and if there is they had a duty to
2 produce it. They're the Respondents and they're
3 accountable.

4 THE COURT: The objection is overruled.

5 THE WITNESS: Any other factual
6 information? Not that I recall.

7 BY MR. BONO:

8 Q Would the negotiations leading up to that
9 settlement agreement be relevant in interpreting the
10 settlement agreement?

11 MR. BETTIUS: Integrated document, Your
12 Honor.

13 THE COURT: The objection is overruled.

14 THE WITNESS: Would the negotiations be
15 relevant?

16 BY MR. BONO:

17 Q Yes.

18 A I suppose it might. Again, I looked at the
19 actual accounting as it existed and existing financial
20 records and tried to be led by actual legal documents
21 that bound the parties together.

22 MR. BONO: Your Honor, I would ask that the
23 witness be instructed to respond to the question.

1 THE COURT: I thought he was responsive to
2 the question.

3 MR. BONO: Your Honor, I wasn't asking
4 about accounting. I was asking what he looked at in
5 interpreting those --

6 THE COURT: For purposes of accounting, I
7 mean, that's what he's here for. Go ahead.

8 BY MR. BONO:

9 Q Did you review any depositions to interpret
10 those agreements?

11 A I did not.

12 Q Did you review any correspondence?

13 A I believe that there were documents
14 produced that -- there was correspondence with
15 investors of the joint venture and things of that
16 nature.

17 Q My question was: Did you review any
18 correspondence directly relating to the settlement
19 agreement?

20 A No, I did not.

21 Q Did you have any discussions --

22 MR. BETTIUS: It assumes a fact not in
23 evidence that there were such documents.

1 THE COURT: The objection is overruled.

2 BY MR. BONO:

3 Q Did you have any discussions with counsel
4 representing the Commonwealth to obtain any facts in
5 order to interpret the settlement agreement and its
6 relationship to the binding letter agreement?

7 MR. BETTIUS: May I have a continuing
8 objection based on an integrated document?

9 THE COURT: Yes, sir.

10 THE WITNESS: Well, we certainly discussed
11 it at that period of time but, again, I drew myself
12 back to -- and I think that those documents strung
13 together describe pretty specifically what was going
14 on between the parties between 1985 and 1984.

15 BY MR. BONO:

16 Q Does the settlement agreement identify
17 specifically what the monthly payments are being paid
18 in consideration for?

19 A I would need to be able to refer back to
20 the agreement to be able to answer that.

21 Q It's Exhibit R, Mr. Wilson, in the white
22 notebook. I'll direct your attention, Mr. Wilson, to
23 paragraph 1. And my question is: Does paragraph 1

1 identify what is the consideration for the monthly
2 payments, or does it simply say that the monthly
3 payments will be made?

4 A This particular paragraph states the fact
5 that the payments will be made.

6 Q Do you know whether or not, for a fact,
7 that the consideration being given for those payments
8 was the release of the lease obligation on Cambridge
9 Court?

10 MR. BETTIUS: It's a settlement agreement,
11 Your Honor. It says settlement agreement.

12 THE COURT: I understand.

13 THE WITNESS: I don't recall any specific
14 reference to that unless I'm just missing --

15 BY MR. BONO:

16 Q So you don't know, do you, Mr. Wilson?

17 A Well, I can read the document and tell you.

18 Q Do you know for a fact whether the
19 consideration exchanged for those monthly payments was
20 a release of the Cambridge Court rent, yes or no?

21 A I can read the document and tell you what
22 the document says. Would you like me to do that?

23 Q You may do so. Does the document identify

1 in any way what those payments are for?

2 THE COURT: It speaks for itself, doesn't
3 it, Mr. Bono?

4 MR. BONO: I'll ask the Court to read the
5 document and I'll proffer --

6 THE COURT: I've read it.

7 MR. BONO: I'll proffer that it does not.

8 BY MR. BONO:

9 Q And my question, Mr. Wilson, is: Do you
10 know for a fact whether or not the consideration for
11 those monthly payments was the Cambridge Court rent?

12 A I'll have to respond the same way. I'd be
13 happy to read the agreement and tell you the specific
14 reference to it; otherwise, I can't tell you.

15 Q I'll tell you there's no specific reference
16 to it --

17 MR. BETTIUS: Your Honor, I object --

18 MR. BONO: I'll tell you there's no --

19 THE COURT: It doesn't work if you both
20 talk at once. The document speaks for itself,
21 Mr. Bono.

22 Did you have any other information other
23 than what's in the document about that particular

1 aspect of the transaction?

2 THE WITNESS: No.

3 THE COURT: All right.

4 BY MR. BONO:

5 Q Do you know whether or not the
6 consideration was the Cambridge Court rent, yes or no?

7 THE COURT: I think we've done about as
8 much of this as we can, Mr. Bono.

9 MR. BONO: Your Honor, I believe I'm
10 entitled to an answer from the witness. He either
11 knows or he doesn't. And if he doesn't know, I think
12 I'm entitled to the answer. This is a critical fact
13 in his analysis.

14 MR. BETTIUS: Objection, Your Honor.

15 THE COURT: He's answered as best he can.
16 He said if it's not in the document, he has no other
17 fact upon which to base that conclusion.

18 BY MR. BONO:

19 Q So you don't know?

20 MR. BETTIUS: Objection, Your Honor.

21 THE COURT: Go ahead and answer the
22 question. He's going to ask it until he gets the
23 answer.

1 THE WITNESS: If I'm accepting your
2 statement as accurate that there's no specific
3 reference, if that is the caveat, I would say then
4 that it is not specifically referred to as
5 consideration because I haven't reviewed any other
6 document.

7 BY MR. BONO:

8 Q Now, Mr. Wilson, let me turn you to the
9 paragraph of the settlement agreement, which is Number
10 3, that deals with the 10 million dollar payment on
11 October 1, 2005. My first question is: Does the
12 agreement recite what the consideration is for that
13 payment or does it simply say that payment will be
14 made?

15 A I think it just -- a quick read -- I think
16 it just refers to the fact that payment would be made.

17 Q Do you know for a fact what the
18 consideration was for that 10 million dollar lump sum
19 payment?

20 MR. BETTIUS: Objection, Your Honor. It
21 says the settlement of a lawsuit.

22 THE COURT: The objection is overruled.

23 THE WITNESS: Well, again, based upon my

1 reading, I didn't see any distinction between the 10
2 million or any of the other payments that were made.

3 BY MR. BONO:

4 Q Did you bother to find out, or to make any
5 inquiries other than reading this document, as to what
6 the 10 million dollar payment pertained to?

7 MR. BETTIUS: Relevance and materiality.

8 THE COURT: The objection is overruled.

9 BY MR. BONO:

10 Q Did you endeavor to find out what that 10
11 million dollar payment was being paid for?

12 A I read the agreement.

13 Q Other than reading the agreement, did you
14 make any other inquiries to ascertain what was the
15 nature of that 10 million dollar payment and what the
16 consideration was for it?

17 A I did not.

18 Q Now, let me turn to paragraph four of the
19 settlement agreement; this is a paragraph -- I think
20 you referred to the word existing in your testimony;
21 do you recall that?

22 A Yes.

23 Q Did you, based upon reading the word

1 existing, assume that the license was in good standing
2 at the time of the settlement agreement?

3 A Yes, I did. There's language in here that
4 specifies that JMHGV would write a letter to the state
5 specifying that INOVA owned the license et cetera, et
6 cetera. I interpret that to mean that the license
7 still existed.

8 Q So you made no independent inquiry about
9 ascertaining whether or not, in fact, the license had
10 already expired, did you?

11 A I did not.

12 Q Did you know at the time that you gave your
13 accounting that the hospital had been closed by INOVA
14 at the end of 1992?

15 A I knew it had been closed sometime in that
16 '92 to '93 time period.

17 Q But did you know, for a fact, that the
18 hospital had, in fact, been closed prior to the end of
19 1992?

20 A I can't say for certain whether I knew that
21 for a fact.

22 MR. BETTIUS: Your Honor, I'm going to have
23 an objection and if you want the witness to leave the

1 room, I don't mind. But these parties litigated for
2 two years as to whether that license was existent or
3 nonexistent. A case came back to be heard before
4 Judge Haddock as to whether this license was still
5 alive. And Dr. Tauber ultimately sued the hospital
6 asserting that they didn't continue litigation
7 relative to the license as to whether it was alive or
8 not. It's how these parties dealt with it in their
9 agreement that matters, Your Honor, not whether the
10 license had been terminated. Litigation went on for
11 two years, which I was party to, where Dr. Tauber sued
12 INOVA because INOVA didn't continue a fight to say
13 that this lease was still alive. It's totally
14 collateral and this agreement needs to be construed
15 within its four corners. And these parties are
16 treating this thing as an existing license in light of
17 what's going on. And we're going to try two or three
18 other lawsuits here. If I have to, I'll go back and
19 get all the other records of the other lawsuits and
20 bring them up here where the parties were arguing that
21 the license was still alive. And Mr. Bono knows
22 because he was in the lawsuits.

23 THE COURT: If that's an objection,

1 Mr. Bettius, it's overruled.

2 MR. O'DONNELL: I think the last question,
3 Your Honor, was: Did he know that the hospital had
4 closed operations prior to the end of 1992. He gave
5 an answer and then Mr. Bettius stood up and gave his
6 soliloquy.

7 BY MR. BONO:

8 Q I don't wish to repeat, but let me just
9 pick up my train of thought, Mr. Wilson. Am I correct
10 that at the time you did your accounting, you did not
11 know for a fact that the hospital had, in fact, closed
12 its doors prior to the end of 1992?

13 A Yes, I didn't know precisely when they had
14 closed their doors.

15 Q Now, Mr. Wilson, you are not an expert on
16 licensure of hospitals in the Commonwealth of
17 Virginia, are you?

18 A No, I'm not.

19 Q And I take it then you would have no basis
20 to opine or form a conclusion as to what is the impact
21 on the operating license with respect to a closure of
22 the hospital at the end of 1992, are you?

23 A No, I know that there -- other than I

1 believe that there was an eventual rescinding of the
2 license at some point in time after it's been closed.

3 Q Are you aware that under the Virginia
4 licensure regulations the hospital license expires
5 within 12 months of a closure of the facility?

6 MR. BETTIUS: Now we have two dates; six
7 months, twelve months, Your Honor.

8 THE COURT: Well, are you aware of that?

9 THE WITNESS: I'm not aware of it.

10 THE COURT: He said he thought it was some
11 time period. He said he didn't know.

12 BY MR. BONO:

13 Q And were you aware at the time you rendered
14 your opinions in this case and gave your accounting
15 that the hospital's license had, in fact, expired on
16 December 31, 1993?

17 A I wasn't aware that it expired at that
18 precise date.

19 Q You were not?

20 A I was not aware of that.

21 MR. BETTIUS: Continuing objection to
22 relevance.

23 THE COURT: I understand.

1 BY MR. BONO:

2 Q Were you aware that before this settlement
3 agreement was signed by INOVA that the INOVA board of
4 directors met to approve this agreement?

5 A To approve which agreement?

6 Q To approve the settlement agreement?

7 A Before it was consummated?

8 Q Before it was signed.

9 A Before signing? I didn't know that for a
10 fact, but it wouldn't surprise me.

11 Q And would it be a breach of fiduciary
12 obligation on the part of the INOVA board of directors
13 to pay millions of dollars for an expired license?

14 MR. BETTIUS: Opinion. Objection.

15 THE COURT: Objection sustained.

16 BY MR. BONO:

17 Q Since the license had expired -- strike
18 that. Does the fact that the license expired have an
19 impact on whether INOVA would pay money for that
20 license?

21 MR. BETTIUS: There's no evidence that the
22 license expired.

23 MR. BONO: Oh, yes there is.

1 MR. BETTIUS: There is no evidence that the
2 parties treated it as expired.

3 THE COURT: The objection is -- well --
4 rephrase the question, Mr. Bono.

5 BY MR. BONO:

6 Q Does the expiration of the license have an
7 impact on whether any of these monies should be
8 allocated to the license?

9 THE COURT: I'll let him answer that
10 question.

11 THE WITNESS: It may. I based my
12 conclusions on the agreement itself.

13 BY MR. BONO:

14 Q You based your conclusion on the assumption
15 that the license actually existed at the time the
16 settlement agreement was signed, didn't you?

17 A The agreement itself specifies that the
18 license existed.

19 Q I'll ask you to answer my question: You
20 based your opinion and accounting in this case on the
21 assumption that the hospital's license was valid and
22 in existence at the time the INOVA settlement
23 agreement was signed, didn't you?

1 MR. BETTIUS: About four times he's said he
2 based it on what he saw in the agreement, Your Honor.

3 THE COURT: I'll let him answer.

4 THE WITNESS: I would say it was based upon
5 a reading of the agreement, not an assumption of what
6 the agreement said. I know what it said.

7 BY MR. BONO:

8 Q Other than referring to the word existing,
9 that was the sole basis for your opinion; is that
10 right?

11 A There is discussion in that same paragraph
12 referencing where the parties were acting as if the
13 license existed. There was a letter written to state
14 authorities saying it existed and, in fact, INOVA
15 owned it.

16 Q INOVA owned the license; is that right?

17 A Let me refer to the paragraph.

18 Q Did you ever bother to ascertain whether,
19 in fact, the license had expired or not at the time
20 the settlement agreement was entered into?

21 THE COURT: He's answered that, Mr. Bono.
22 He said he didn't.

23 BY MR. BONO:

1   Q   Now, paragraph four of the settlement
2 agreement starts off by saying that JMHGV shall make
3 no application for a new license or certificate of
4 public need for the Jefferson Hospital facility until
5 either the earlier on January 1, 1995, or upon such
6 date that the Commonwealth of Virginia Administrator
7 of Authorities have ruled on INOVA's application to
8 transfer the existing acute care licenses and COPN for
9 Jefferson Hospital --

10   MR. BETTIUS: If they don't exist, Your
11 Honor, how can they be transferred?

12   THE COURT: Please, if you have an
13 objection -- first of all, it wasn't a question. I
14 mean, I can read the document and that's the language
15 that's in there. Now, what's your question, Mr. Bono?

16   MR. BONO: Your Honor, I was merely reading
17 the sentence as a preface to the question.

18   THE COURT: All right. Try to get to the
19 question.

20   BY MR. BONO:

21   Q   My question is: This document is not
22 exactly precise, is it, Mr. Wilson, because it refers
23 to a transfer of licenses and you knew at the time you

1 rendered your opinions in this case that you can't
2 transfer licenses in Virginia; isn't that right?

3 MR. BETTIUS: Objection to the reference of
4 what he knew. He didn't sign the agreement.

5 MR. BONO: He's rendering an interpretation
6 of this agreement, Your Honor, and he bases his
7 accounting on it. And now he's trying to use the word
8 existing as if it's the end all, be all. And I'm
9 going to point out that the agreement is very loose in
10 its language and it's not precise. And in the very
11 same sentence, and it should have triggered an inquiry
12 by this witness to inquire further before --

13 THE COURT: Well, he already said he didn't
14 do that, Mr. Bono, didn't he?

15 MR. BONO: Yes, Your Honor, but I'm trying
16 to point out these other points. He didn't look.

17 THE COURT: He said he didn't look. How
18 much further can you go than that?

19 MR. HIRSCHKOP: Your Honor, can I just be
20 heard on that for a moment?

21 THE COURT: No. If you have an objection
22 to one of Mr. Bono's questions, Mr. Hirschkop, you can
23 make it, but you don't get to stand up -- are you

1 going to support Mr. Bono's question?

2 MR. HIRSCHKOP: Yes, I am.

3 THE COURT: That's not proper.

4 MR. HIRSCHKOP: I think it's important to
5 my client.

6 THE COURT: I've ruled on the objection.
7 Your objection is noted as well.

8 MR. HIRSCHKOP: I didn't hear a ruling.

9 THE COURT: I said he's already answered
10 the question that he did not make any further inquiry
11 based on his reading of this document as to whether
12 that license was in existence at the time.

13 MR. HIRSCHKOP: Can I just address the
14 Court as to why it's important to allow that question
15 to be answered?

16 THE COURT: Go ahead. I thought he'd
17 answered it, but go ahead.

18 MR. HIRSCHKOP: He's avoided answering it
19 continuously. Whether that --

20 MR. BETTIUS: I object --

21 THE COURT: Sit down, Mr. Bettius.

22 MR. HIRSCHKOP: -- that would trigger a
23 reasonable inquiry that he should have inquired

1 further yes, he said he never inquired further, but
2 where, on the face of this, contrary to his own
3 knowledge, he should have inquired further and why he
4 didn't.

5 THE COURT: All right. That's your
6 argument to make, Mr. Hirschkop. I'll stick by my
7 ruling.

8 BY MR. BONO:

9 Q Mr. Wilson, were you aware of the fact that
10 there was never any COPN issued for Jefferson
11 Hospital?

12 A There was never a COPN issued? I'm not
13 aware of that.

14 Q Did you assume in your analysis that a COPN
15 had been issued to Jefferson Hospital?

16 A That there was an inoperative license and a
17 COPN for other aspects, I believe, of the MOB and COPN
18 approval.

19 Q My question is very simple: Were you aware
20 of whether a COPN had been issued for the operation of
21 the hospital?

22 A Well, I don't think a COPN was required
23 back in '65 before when it was built and licensed.

1   Q   My question is: Was a COPN ever issued at
2 any time between 1964 and the date of the INOVA
3 settlement agreement in 1994 for the operations of the
4 hospital?

5   A   I believe so. I think it was
6 grandfathered.

7   Q   Did you know that fact at the time you
8 reviewed the INOVA settlement agreement?

9   A   Yes.

10   Q   And when you saw the reference to COPN in
11 the settlement agreement, did you make any further
12 inquiries?

13   A   No, I didn't.

14   Q   Now, when you reviewed this agreement --
15 strike that. In reviewing this agreement, did you
16 view paragraph five as being the consideration given
17 for paragraph four?

18   A   Do you mind if I take a moment to refresh
19 my memory?

20   MR. BETTIUS: Your Honor, I think the
21 Court's going to let him answer the question, but it's
22 clearly legal conclusion as to what paragraph is in
23 consideration to the next paragraph.

1 THE COURT: Give him a chance to read it.

2 THE WITNESS: I've read those paragraphs.

3 And your question was?

4 BY MR. BONO:

5 Q My question was: Was paragraph five the
6 consideration given for paragraph four?

7 A I don't know. There are two specific
8 actions that were agreed to by the parties. I'm not
9 sure if one was consideration for the other.

10 Q And since you didn't know, and don't know,
11 did you make any inquiries?

12 A No.

13 Q Now, paragraph four makes a reference to
14 INOVA having the right to file an application to
15 transfer the acute care pass. Do you see that
16 reference?

17 A Yes.

18 Q Do you know whether or not INOVA ever made
19 any application?

20 A I don't know.

21 Q Did you make any inquiries?

22 A I don't think they did, but I don't know if
23 I heard that through discussions or whether -- I

1 didn't make a specific inquiry about that.

2 Q Now, the settlement agreement in paragraph
3 seven makes a specific reference, does it not, to a
4 federal lawsuit?

5 A Yes.

6 Q Did you make any inquiries as to the nature
7 of that lawsuit?

8 A I did not.

9 Q You didn't think it was important in your
10 evaluation to find out what the lawsuit was that was
11 agreed to be dismissed as part of this settlement?

12 A I didn't think it was important enough to
13 try to develop an understanding of it from a legal
14 standpoint, no.

15 Q But, Mr. Wilson, you understood from
16 reading this agreement that there was a federal
17 lawsuit filed by the joint venture against INOVA that
18 was being dismissed as part of this agreement; isn't
19 that right?

20 A That's correct.

21 Q And the dismissal of that lawsuit was
22 consideration, was it not, for the other provisions of
23 this agreement?

1   A   It was certainly an action that they agreed
2 to talk about from litigation.

3   Q   Did you ascribe any allocation of the
4 payments being made in this case to the dismissal of
5 that lawsuit?

6   MR. BETTIUS: Objection. It puts the
7 burden of tracing on the Commonwealth and we don't
8 accept that.

9   THE COURT: The objection is overruled.

10   THE WITNESS: I didn't ascribe any value to
11 that. I ascribed value to what appeared to be, again,
12 the intent of going back to the binding agreement in
13 1992. It was clear that INOVA wanted access to the
14 hospital license or to do something with that. That
15 transaction was never able to be consummated. There
16 was litigation surrounding that and in the end what
17 INOVA got was what they wanted in the first place,
18 which was the ability to, presumably to either
19 relicense and relocate the hospital or in some other
20 way have access to the license.

21   Q   But in making your determination, you made
22 no inquiry as to the nature or value or dollar amounts
23 that were at issue in that lawsuit, did you?

1   A   No.

2   Q   And then, as I take it from your opinion,
3   you literally ascribed to that dismissal a value of
4   zero in your analysis; isn't that right?

5   A   I ascribed a value of zero because I had no
6   basis for ascribing any other value.

7   Q   Well, of course you had no basis, you never
8   made any inquiries, did you?

9   MR. BETTIUS: Argument, Your Honor.

10   THE COURT: Why is that question not
11   argumentative, Mr. Bono?

12   MR. BONO: I'll withdraw it, Your Honor.

13   THE COURT: All right.

14   BY MR. BONO:

15   Q   Now, I refer you to paragraph 11 of the
16   settlement agreement, Mr. Wilson. Does the settlement
17   agreement make a direct reference to the binding
18   letter agreement executed by the parties on October
19   14, 1992?

20   A   Yes.

21   Q   And it says that that agreement shall be
22   terminated; is that right?

23   A   Yes.

1 Q Does the settlement agreement say that that
2 agreement is void?

3 A It says it's terminated.

4 Q Do you think that there is a difference
5 between the word terminated and the word void in a
6 legal document or do you treat them just the same?

7 A Well, that's a legal conclusion. I don't
8 have a conclusion on that or an opinion.

9 Q So you don't know whether the binding
10 letter agreement was void or not, do you?

11 A I don't know whether it was void or
12 terminated. I don't think it was ever operative.

13 Q Are you aware that Mr. Singleton, the
14 president of INOVA, testified in sworn testimony --

15 MR. BETTIUS: I'm going to object to him --

16 THE COURT: Let him finish the question.

17 BY MR. BONO:

18 Q -- that that binding letter agreement was
19 an enforceable contract between the parties? Were you
20 aware of that?

21 MR. BETTIUS: I'm going to object to --

22 THE COURT: Objection sustained.

23 BY MR. BONO:

1 Q Did you view the binding letter agreement
2 as an enforceable contract in your analysis?

3 MR. BETTIUS: Foundation. At what time?

4 BY MR. BONO:

5 Q In doing your accounting analysis and
6 making your allocations under the settlement
7 agreement, did you view the binding letter as an
8 enforceable contract?

9 A I did not give it effect because it never
10 was consummated, there was litigation that came out of
11 it, and to my knowledge there was never any
12 consideration that flowed as a result of that binding
13 agreement. So I discounted it in my analysis.

14 Q My question was: Did you view it as an
15 enforceable contract, yes or no?

16 MR. BETTIUS: Foundation --

17 THE WITNESS: Well, I don't know --

18 THE COURT: Wait a minute, Mr. Wilson.

19 When you see Mr. Bettius stand up, just stop.

20 MR. BETTIUS: Foundation. What time?

21 BY MR. BONO:

22 Q In performing your accounting analysis in
23 which you ascribed all of this 35 million to JMHI, at

1 that time did you view the binding letter agreement as
2 an enforceable contract?

3 A I think whether it was an enforceable
4 contract is a legal determination that ultimately got
5 handled through the settlement. I did not consider it
6 in my accounting because I did not see any economic
7 flows coming out of that agreement, no money.

8 Q And in paragraph 9 of the settlement
9 agreement, wasn't INOVA released from the 1985 lease?

10 A Yes, it was.

11 Q Now, Mr. Wilson, you're not representing
12 that you're an expert on corporate law in Maryland or
13 Virginia, are you?

14 A No.

15 MR. BETTIUS: Not offering, Your Honor.

16 THE COURT: Is that sort of a rhetorical
17 question, Mr. Bono?

18 MR. BONO: I had a follow-up question.

19 THE COURT: What's your question?

20 BY MR. BONO:

21 Q You said in your direct testimony that
22 there was conduct or actions that you saw in the
23 nature of winding up; is that right?

1   A   Correct.

2   Q   Do you have an understanding of what
3 winding up of a dissolved corporation is?

4   MR. BETTIUS: Your Honor, it doesn't matter
5 what his understanding is. This Court has held -- and
6 that's why we're here -- we're here in a liquidation
7 and winding-up hearing now because it was never done.
8 And I know Mr. Bono has had a theory that there were
9 mergers and that there are liquidations, but we are
10 here under a section of the Code and there's no
11 difference in Maryland. Winding up of a charitable
12 organization is a very corporate-formality-oriented
13 duty. If we start using things outside the legal
14 definition of winding up, I've got a problem.

15   THE COURT: Well, Mr. Wilson can answer
16 insofar as his understanding when he said that there
17 was no winding up, what his understanding was.

18   BY MR. BONO:

19   Q   Do you have an understanding of what
20 winding up -- I'm sorry. Let me repeat the question.
21 Do you have an understanding of what winding up a
22 dissolved corporation involves?

23   A   I probably have a better understanding of

1 it from an accounting and business standpoint than
2 from a legal standpoint. I know in legal terms it
3 needs to be done in an orderly way, it needs to be
4 done in a way that presumably enhances or maximizes
5 the value of the corporation in the windup. From an
6 accounting and business standpoint, it literally means
7 closing the business, disposing of assets, discharging
8 liabilities and whatever remains after that winding up
9 should flow to the owners or whoever is the
10 responsible party.

11 Q Let me show you what has been marked as
12 Exhibit 137.

13 THE COURT: Tell us what it is, Mr. Bono.

14 MR. BONO: It is the minutes of a special
15 meeting of the members of Jefferson Memorial Hospital,
16 Inc., on the 27th day of January, 1975.

17 MR. BETTIUS: Your Honor, I'm going to
18 object. This case is a motion for a new trial. The
19 Court held that JMHI after 1973 could take no legally,
20 juristically (sic.) recognizable actions. We're
21 trying the first case all over again. The Court has
22 held that those transactions, and the Supreme Court
23 held right after it, any actions purportedly taken in

1 the name of JMHI after the 18th of, I think it's, May,
2 1973, are invalid.

3 THE COURT: Your objection is noted.

4 Go ahead, Mr. Bono.

5 BY MR. BONO:

6 Q Mr. Wilson, have you reviewed that
7 document?

8 A Yes.

9 Q Now, did you see that document before you
10 did your accounting?

11 A I looked at a lot of documents. I'm sure
12 this was one.

13 Q Did you give any relevance or materiality
14 to that document in terms of doing your accounting?

15 A I did not because JMHI -- to my
16 understanding -- did not exist at this date. It had
17 been lapsed. I believe its existence has been
18 terminated.

19 Q As a result of the dissolution of JMHI, was
20 it your understanding, Mr. Wilson, that the directors
21 operated as trustees in dissolution as a matter of
22 law?

23 A That's my understanding.

1 MR. BETTIUS: Your Honor, I object. It's a
2 collateral attack and I've got to go back -- they
3 didn't have the right directors. Mr. Richards
4 testified he used the '65 minutes book and
5 Cloverfields is precisely on point. When they attempt
6 to act -- we're really going back, Your Honor, and
7 impeaching the rulings of the Court in a prior
8 proceeding. And this point was exactly ruled on by
9 the Supreme Court.

10 THE COURT: Your objection is noted.

11 Go ahead, Mr. Bono.

12 BY MR. BONO:

13 Q Is it your understanding, Mr. Wilson, that
14 after JMHI's dissolution in 1973, the directors were
15 transformed into trustees in dissolution by operation
16 of law?

17 A I believe that's the case.

18 Q And so they were vested with the authority,
19 were they not, to wind up and dispose of the assets of
20 JMHI?

21 A I probably would characterize it more as a
22 responsibility.

23 Q Now, that minute, does that not specify

1 that the members of JMHI approved a resolution after
2 full discussion to sell all of the assets and
3 liabilities of JMHI to JMHC?

4 MR. BETTIUS: Continuing objection.

5 THE COURT: Yes, sir.

6 BY MR. BONO:

7 Q Does it specify?

8 A It does specify that and it gets to the
9 very heart of this matter.

10 Q Now, Mr. Wilson, in your accounting, did
11 you identify the assets and liabilities precisely of
12 JMHI as of July 1, 1971?

13 A They were reflected in JMHI's financial
14 statements as of that date.

15 Q Isn't your accounting report -- and I
16 looked at it and read it three times and I don't
17 see -- and maybe I can hand it to you and you can tell
18 me. Is there somewhere where you identify on a
19 balance sheet precisely the assets and liabilities of
20 JMHI as of July 1, 1971?

21 A Did not do that because it wasn't called
22 for in the accounting.

23 Q That's your assumption?

1   A   That's not an assumption.

2   Q   You did not believe that the Court required
3   an indemnification of the assets and liabilities of
4   JMHI as of July 1, 1971?

5   A   I would be happy to go back to the order
6   and paraphrase my understanding of it.

7   Q   My question is: You didn't think that that
8   was necessary?

9   A   It was not necessary to do an accounting as
10   of that date.

11   Q   Now, the Court ruled in its opinion that,
12   quote, the assets remained in JMHI until its
13   dissolution. At the time of dissolution these assets
14   passed into and remained in the hands of Respondents
15   as trustees, unquote. My question is: As of the date
16   of dissolution, April 18, 1973, did you identify
17   specifically in your accounting analysis the assets
18   and liabilities of JMHI that passed into the
19   directors' possession as trustees as of April 18,
20   1973?

21   A   Did not do that because there was not a
22   liquidation and windup of business.

23   Q   You didn't feel it was necessary to do

1 that?

2 A There was no windup or liquidation of
3 business. It was not necessary until that happened to
4 get a full accounting.

5 Q Didn't the Court order an accounting of the
6 assets and liabilities of JMHI?

7 MR. BETTIUS: Your Honor, I object to the
8 paraphrasing.

9 THE COURT: The order speaks for itself.

10 THE WITNESS: Yes, the order itself says an
11 accounting of the assets, revenues, accretions, issues
12 and other benefits.

13 BY MR. BONO:

14 Q And, Mr. Wilson, don't you have to have a
15 starting point of the identification of the assets and
16 liabilities for the accounting to begin?

17 A We did have a starting point in 1965.

18 Q But the Court's order talks about the time
19 of dissolution. It doesn't talk about 1965, does it?

20 A We could have started in 1971, I suppose.

21 Q But you didn't do that?

22 A Actually, it worked to the benefit of the
23 Respondents.

1   Q   But you didn't do it for 1973 either, did
2   you?

3   A   We gave full accounting to all --

4   Q   My question is: Did you identify the
5   assets and liabilities that passed into the hands of
6   the Respondents as trustees as of April 18, 1973, yes
7   or no?

8   A   We have done a full accounting of those,
9   the assets continued to accrete and will continue to
10   accrete until 2005 absent other circumstances.

11   Q   I'll show you your report, but I don't see
12   any balance sheet identification of the assets and
13   liabilities of JMHI as of April 18, 1973; is that
14   correct?

15   MR. BETTIUS: Asked and answered, Your
16   Honor.

17   THE COURT: Yes, I thought he said he
18   didn't do that..

19   MR. BONO: I thought he was trying to say
20   he did it, but it's clear that he did not do that.

21   BY MR. BONO:

22   Q   Is that right?

23   A   We did not do a balance sheet accounting as

1 of April 13, 1973.

2 Q Now, Mr. Wilson, in your direct testimony
3 you testified that the, quote-unquote, charity never
4 gave up ownership of its license?

5 A Correct.

6 Q Did you check with the Virginia Department
7 of Health to ascertain to which entity the operating
8 license was issued from 1982 to 1992?

9 MR. BETTIUS: Your Honor, it's here. We
10 put it in evidence, Dr. Tauber -- I hate to use Massey
11 the second time in a day -- Dr. Tauber said that
12 license never transferred, in the contemplation of the
13 parties it never transferred out of JMHI. Why are we
14 doing this again -- strike that, Your Honor, I object.

15 THE COURT: The objection is overruled.

16 THE WITNESS: I didn't check with the
17 Department of Health to determine during that period
18 of time; however, I saw -- no document was produced to
19 me that evidenced a transaction that transferred the
20 license from JMHI to anybody else.

21 Q Do you know to which entity the operating
22 license was issued by the state authorities when
23 Health Group of Virginia was running the hospital

1 between 1982 and 1985?

2 A Well, I think at that point in time it was
3 JMHC operating essentially as the charity.

4 Q Do you know?

5 A I can't say I know that until I see a
6 document.

7 MR. HIRSCHKOP: Your Honor, I assume you'll
8 be breaking soon for lunch. May we address, before
9 you leave for the lunch break, some procedural
10 matters?

11 THE COURT: Sure.

12 BY MR. BONO:

13 Q So you don't know whether the operating
14 license was issued to Health Group of Virginia, do
15 you?

16 A I don't believe it was.

17 Q Doesn't the Health Group of Virginia lease
18 specify that Health Group of Virginia was to obtain
19 its own operating license?

20 A I would have to look at the agreement to
21 refresh my memory.

22 Q Mr. Wilson, let me show you a copy of the
23 Health Group of Virginia lease and I'll refer you to

1 paragraph 3.

2 THE COURT: What's the exhibit number or
3 letter?

4 MR. BONO: It's Exhibit 24, Your Honor, to
5 the Respondents' accounting.

6 THE COURT: All right.

7 MR. BONO: Your Honor, this was trial
8 Exhibit 326.

9 THE COURT: All right.

10 BY MR. BONO:

11 Q Mr. Wilson, referring you to paragraph 3,
12 doesn't that specify that the lessee is going to
13 obtain the license to operate the hospital?

14 A Let me take a moment.

15 Q Sure.

16 A Yes, I have read this. Paragraph 3 makes
17 reference to the need for a lessee to obtain all
18 licenses required. I don't know the licensure law in
19 Virginia. I'm assuming that has to do with them being
20 approved as an operator of the hospital under the
21 existing licenses.

22 Q Now, the lessee in this agreement is Health
23 Group of Virginia, correct, not JMHC?

1 A That is correct.

2 Q Now, when INOVA began operating the
3 hospital, do you know whether the license was issued
4 to INOVA?

5 A No, I don't believe so.

6 Q You don't believe so?

7 A Literally the sale of the license?

8 Q The license to operate when INOVA started
9 leasing the hospital in 1985 and continued to lease it
10 from '85 to '92, do you know whether the license to
11 operate was issued to INOVA as the operator?

12 A Yes.

13 Q It was?

14 A I believe that they had access to a license
15 to operate the facility.

16 Q I don't want to know about access, Mr.
17 Wilson --

18 A Well, they didn't buy a license, INOVA did
19 not buy a license in 1985, if that's your question.

20 Q Well, that wasn't my question, but I'll go
21 to that as the next area of inquiry. My question was:
22 During the time that INOVA operated the hospital from
23 1985 to 1992, did the Virginia Department of Health

1 issue the operating license to INOVA?

2 A I don't know.

3 Q So you don't know whether they were the
4 owner of the license during that period of time, do
5 you?

6 A The agreement does not -- well, I have
7 to --

8 Q Do you know, yes or no?

9 A Do you want me to answer or not?

10 Q I want to know whether you know, yes or no?

11 A I read the lease agreement between INOVA
12 and JMHC. I don't recall any language in there that
13 suggested that INOVA purchased the license in that
14 agreement.

15 Q Didn't you think it was necessary to doing
16 the accounting to find out what entity owned the
17 operating license when INOVA operated the hospital?

18 A JMHC owned the license.

19 Q All right. Did you assume in your
20 accounting analysis that the license was owned by JMHC
21 while INOVA was operating the hospital?

22 A Right.

23 Q You weren't aware that the operating

1 license was issued to INOVA and was in INOVA's name in
2 1992 when the hospital closed; you weren't aware of
3 that?

4 MR. BETTIUS: Your Honor, we keep confusing
5 operating license with ownership of the COPN status.
6 And, Your Honor, there's a letter right here that
7 clarifies the issue. And the INOVA lease itself says
8 that we're operating under the COPN exemption. I
9 mean, this is clear obfuscation of what's going on and
10 if Mr. Bono wants to see the letter, I'll show it to
11 him. It said there's no change in ownership of the
12 license; so you don't need to do it.

13 THE COURT: The question is -- you've asked
14 Mr. Wilson what his -- the first question before this
15 one was what his assumption was and he said he assumed
16 that it was the ceased license that was being used by
17 INOVA. That's what he said.

18 MR. BONO: And I asked him a subsequent
19 question, Your Honor.

20 THE COURT: It gets to be argumentative if
21 your question is, well, didn't you know that it was
22 somebody else's license. He said he assumed it was
23 JMHC's license.

1 MR. BONO: Your Honor, I think this area of
2 inquiry -- and I understand the Court, but this is
3 critical inquiry to this accounting analysis. We have
4 heard now for four days from the Commonwealth that
5 this license was purchased by this settlement
6 agreement. And the fact is, it wasn't. If that's
7 what Mr. Wilson is saying, that's what the
8 Commonwealth has been arguing is that INOVA purchased
9 the license in the settlement agreement. They already
10 owned it, Your Honor, and they've owned it since 1985.
11 It is irrational, illogical, and makes no common
12 sense. And this is critical inquiry, Your Honor.

13 THE COURT: You know, that's fine,
14 Mr. Bono, and I understand the importance of these
15 things. I mean, it's not lost on me entirely, but
16 Mr. Wilson said when he did his accounting and he
17 attributes all of this money to the Respondents, he
18 said, my assumption is that that license between '85
19 and '92 was the license originally issued to JMHC,
20 that that was their license all the way through. Now,
21 you can stand up here and you can say, well, didn't
22 you know it was -- did you know whether it was INOVA's
23 license, no, I didn't know that. Did you know whether

1 it was Centero's (ph.) license; well, I didn't know
2 that either. Because he's already answered the
3 question. It's clear what the basis of his accounting
4 is. And we can sit here until 5:00 this afternoon and
5 ask him all kinds of different questions about
6 different entities having licenses and his answer's
7 going to be the same, I didn't know that. I didn't
8 assume that. That's not a part of my accounting.
9 Because his accounting is based on the license issued
10 for JMHC; well, I'm not even sure it was issued to
11 them, but the one that they held. So it's clear; it's
12 in the record. It's clear that that's the basis of
13 his accounting.

14 Mr. Hirschkop, go ahead.

15 MR. HIRSCHKOP: Perhaps it would be a
16 wonderful time --

17 THE COURT: For lunch? My blood sugar's
18 low, is that what you're thinking?

19 How much more do you have to go, Mr. Bono?

20 MR. BONO: I have a little bit longer, Your
21 Honor.

22 THE COURT: An hour?

23 MR. BONO: Probably.

1 THE COURT: All right. We'll adjourn for
2 lunch until 2:00.

3 MR. HIRSCHKOP: Can we --

4 THE COURT: That's right. You said you had
5 some matters.

6 MR. HIRSCHKOP: May we have the Court's
7 guidance, Your Honor, as to whether you want counsel
8 to make closing arguments in this case? We're
9 apparently going to have to rebrief it, given all this
10 factual detail.

11 THE COURT: I'm still considering that for
12 a couple days what my preference is, and I'll let you
13 know.

14 MR. HIRSCHKOP: Thank you. The second
15 matter is there's been some concern expressed that
16 you're not available tomorrow or Wednesday.

17 THE COURT: I'll know about that in a
18 couple hours too. Wednesday's not a problem, I can
19 tell you that, but tomorrow may be. I don't know yet.

20 All right, 2:00.

21 (Recessed at 1:05 p.m. o'clock for lunch.)
22
23

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

(Reconvened at 2:10 p.m. o'clock.)

MR. HIRSCHKOP: Your Honor, do you know
any better whether you're available tomorrow?

THE COURT: We're going to start tomorrow
at 2:00 and we're going to finish tomorrow.   So
however long it takes tomorrow, that's how long we're
going to be here.

MR. COCHRAN: We'll get close to it today.

THE COURT: Well, I've heard that a couple
times before, but my plans are not to have any kind of
closing oral argument and we'll talk about a briefing
schedule at the conclusion of the evidence.

All right.   Mr. Bono.

BY MR. BONO:

Q   Mr. Wilson, in your examination of the
documents, am I correct that there were separate
financial statements and tax returns generated for
each of the separate entities: The Jefferson Memorial
Hospital Corporation, Jefferson Memorial Hospital
Joint Venture, and Jefferson Memorial Hospital, Inc.?

A   I believe that's true.   I'm not sure that's
true for all the years or not, it very well may be.

1   Q   In your review, and it's in your report, I
2 believe, you looked at the transaction in 1971 by
3 which JMHA Associates, the partnership, transferred
4 its assets and liabilities to the corporation; is that
5 correct?

6   A   Yes.

7   Q   Now, in your accounting, did you validate
8 that transaction or did you consider it not to have
9 existed?

10   A   We considered that transaction, that is,
11 the merge trend after the sale of assets and
12 liabilities did not occur. We went through that
13 transaction.

14   Q   Well, I was asking now specifically with
15 respect to Associates, not JMHI. I understand that
16 the Court ruled that the Commonwealth had a right to
17 void the JMHI transaction. But my question
18 specifically is: With respect to the other partner of
19 the transaction, JMHA, there was a transfer of assets
20 and liabilities from JMHA to JMHC, correct?

21   A   Right.

22   Q   And JMHA was a private partnership holding
23 private assets, correct?

1 A Yes.

2 Q And JMHC was a private corporation formed
3 as a Delaware corporation, correct?

4 A Yes.

5 Q Now, my question is: In doing your
6 accounting, did you assume that the transfer of the
7 private assets was void?

8 A Yes.

9 Q And on what basis did you make that
10 assumption?

11 A Again, we looked to the prevailing initial
12 relationship as described in the '66 lease.

13 Q Now, am I correct that the assets held by
14 JMHA at that time were not charitable assets?

15 A That's right.

16 Q Did you assume that there is a constructive
17 trust over those JMHA assets in doing your accounting?

18 A Meaning the building and a portion of the
19 land?

20 Q Correct.

21 A No.

22 Q So the assets of JMHA, as they were in
23 1971, are outside of the constructive trust, from your

1 point of view?

2 A If I understand how you're describing the
3 use of the term constructive trust, I think that's
4 accurate. We did not consider them to be part of the
5 charity's assets.

6 Q Now, in 1975, there was a transfer back
7 under a sale or leaseback arrangement between JMHC and
8 JMHJV concerning the building and part of the land,
9 correct?

10 A Yes.

11 Q And the building and part of the land was
12 held by JMHA prior to 1971, correct?

13 A Prior to 1971, right.

14 Q In your accounting did you assume that the
15 1975 sale and leaseback involving the building and
16 part of the land that had been JMHAs was invalid?

17 A Yes.

18 Q And on what basis did you make that
19 assumption?

20 A I believe that the Court made a stipulation
21 to that effect, that that '75 set of transactions did
22 not occur. There was not corporate authority to
23 enable them to occur.

1 Q Do you have a copy of the Court's opinion?
2 I could hand it to you.

3 A I don't have it.

4 Q Mr. Wilson, I'm just showing you a copy of
5 this Court's memoranda of opinion and I'm simply
6 asking you: Where in the opinion are you basing your
7 decision or assumption in your accounting that the
8 1975 sale back of the building and land is not valid?

9 A I can't find it.

10 Q Now, as I understand it on your chart, am I
11 correct that the first number that you have up on
12 there under the first line, the \$2,792,000 number,
13 that's the number that you have used based upon the
14 assumption that the '75 leaseback and new lease is
15 invalid; isn't that right?

16 A That's right. That represents -- that's
17 right.

18 Q Now, am I correct, Mr. Wilson, that in the
19 judge's opinion, there is, in fact, no reference to
20 Jefferson Memorial Hospital Associates at all?

21 A That's correct.

22 MR. O'DONNELL: Your Honor, could we just
23 identify for the record, when someone is referring to

1 a chart, can we just say which chart?

2 MR. BONO: It's the chart that, I believe,
3 appears on page 29 of Mr. Wilson's report.

4 THE COURT: All right.

5 BY MR. BONO:

6 Q Mr. Wilson, am I correct that the mortgage
7 interest figures on the same chart and the
8 depreciation figures, which you added back, are based
9 upon the building transfer during the period '72 to
10 '75?

11 A That's right.

12 Q And that is based upon the assumption that
13 the JMHC was not able to receive ownership of the
14 building; is that right?

15 A Yes.

16 Q Now, you testified, I believe, that in your
17 calculations you were attempting to calculate a net
18 income figure; is that right?

19 A Right.

20 Q Now, did I understand you to say that the
21 numbers appearing below the first net income number on
22 the same chart deal with the building and the leases
23 and settlement agreement, correct?

1   A   In part.

2   Q   And you were attempting to calculate a net
3 income; is that right?

4   A   Attempting to account for revenues and
5 expenses.

6   Q   Now, in that calculation you ignored the
7 expenses that were incurred by Jefferson Memorial
8 Hospital's joint venture in obtaining the INOVA
9 settlement agreement; isn't that correct?

10   A   That's correct.

11   Q   But you are aware that there were
12 significant legal and expert expenses in order to
13 obtain that settlement agreement, correct?

14   A   I don't know how much they were. I'm sure
15 there were costs incurred.

16   Q   And you just simply did not do an analysis
17 of that?

18   A   Simply did not. I did, in fact, consider
19 it and deemed it not to be an appropriate part of
20 fiduciary accounting.

21   Q   And why would that not be a legitimate cost
22 or expense item if that was what had to be expended in
23 order to get the benefits of the settlement agreement?

1 MR. BETTIUS: That assumes a fact not in
2 evidence, Your Honor. That's a fight for the real
3 estate and that's truly what that action's about. And
4 I don't understand how that becomes part of this
5 accounting.

6 THE COURT: Objection is overruled.

7 THE WITNESS: I think that summarizes it
8 well. Those costs were part of the litigation that
9 ensued and the settlement that came out of that. My
10 belief was that the revenue flow coming out of that
11 should not be jeopardized by virtue of the legal costs
12 that had to be incurred between the parties.

13 BY MR. BONO:

14 Q You just did not include them?

15 A Did not include them, right.

16 Q Now, in the settlement agreement, did it
17 provide that Jefferson Memorial Hospital Joint Venture
18 had to assume the maintenance, insurance, and tax
19 expense on the building from January 1, 1995 forward?

20 A I would have to look at the agreement and
21 determine that.

22 Q Exhibit R in the white book. You probably
23 have it, Mr. Wilson. I'll refer you to paragraph 14.

1   A   Would you repeat the question?

2   Q   My question is: In your accounting, did
3 you take into account that the maintenance expenses on
4 the building including taxes, insurance, and
5 utilities, were being borne by JMHJV after January 1,
6 1995?

7   MR. BETTIUS: Objection to relevance, Your
8 Honor. They own the building and they have sole and
9 exclusive possession of the building. There's no term
10 in the agreement that requires the charity to take any
11 consideration of those expenses.

12   THE COURT: What about that? What's the
13 relevance of it?

14   MR. BONO: Your Honor, it's a direct
15 expense. If the point here is net income and if the
16 settlement agreement is income to the partnership,
17 then they're entitled to proffer the expenses of
18 running the partnership as a net income number just
19 like Mr. Wilson has done for the operations of JMHC.

20   MR. BETTIUS: Your Honor, what that
21 argument fails to take into account is at that point
22 the license is terminated, operations have ceased and
23 they now own the building. Having bargained for the

1 ownership of the building in that settlement
2 agreement, what right do they have to visit the
3 expenses of their conversion to an Alzheimer's
4 facility or whatever they were doing, or renting the
5 building to others, against the assets of the charity?
6 They had their building, the rights of the parties
7 were resolved and the issues were divided. And I
8 object to the relevance of it.

9 THE COURT: The objection is overruled.

10 THE WITNESS: Those expenses were not
11 considered.

12 BY MR. BONO:

13 Q So you did not take them into account?

14 A I didn't take them into account because at
15 that point in time -- may I explain why?

16 MR. BETTIUS: I'd like him to finish his
17 answer.

18 THE COURT: You can ask him on redirect,
19 Mr. Bettius.

20 BY MR. BONO:

21 Q In calculating in general the net income of
22 Jefferson Memorial Hospital Joint Venture, the
23 partnership, one would include generally the expenses

1 of running that partnership to get the net income; is
2 that correct?

3 A If I were doing an accounting of the
4 partnership, I would do that, but I'm not doing an
5 accounting of the partnership.

6 Q Now, Mr. Wilson, you testified earlier
7 about this 12.7 million dollar figure that related to
8 the exchange of the building; do you recall that?

9 A Yes.

10 Q Did you look at the appraisal that had been
11 made on the building and land?

12 A I did not look at the appraisal. It was
13 referred to in the binding letter agreement.

14 Q But you did not actually look at it?

15 A I did not look at it.

16 Q Were you aware of the fact that the
17 appraisal was run by an independent accounting firm at
18 the behest of INOVA?

19 A I wasn't aware of that, but it wouldn't
20 necessarily have influenced me.

21 Q Were you aware of the fact that the
22 appraisal appraised the building as its best use?

23 A I wasn't aware of that.

1   Q   Were you aware that the appraisal appraised
2 the building separate and apart from any operating
3 license?

4   A   No, I wasn't aware of that.

5   MR. BETTIUS: Your Honor, I haven't seen
6 any appraisal, if he wants to put it in.

7   THE COURT: Well, he's asking him what --
8 go ahead, Mr. Bono.

9   BY MR. BONO:

10   Q   My question was: Were you aware of the
11 fact that the appraisal appraised the building
12 separate and apart from any operating license?

13   A   No, I haven't reviewed the appraisal.

14   Q   Now, Mr. Wilson, you, as I recall, were in
15 Seattle until about 1995; is that right?

16   A   That's right.

17   Q   And you had no knowledge of the Northern
18 Virginia hospital market until that time?

19   A   That is correct.

20   Q   And did you do any physical inspection of
21 the facilities in this case?

22   A   No, other than drive by.

23   Q   Now, with respect to the fees in this case,

1 you haven't been paid for your fees in this case;
2 isn't that right?

3 A That's correct.

4 Q Have you incurred substantial time?

5 A Yes, I have.

6 Q Have you submitted a bill to the
7 Commonwealth?

8 A Just recently.

9 Q But have you been paid anything for the
10 work you've done on the accounting?

11 A No, but I would characterize that as a
12 lapse in our administrative capacity with respect to
13 the --

14 Q For how many months did you work on the
15 accounting?

16 A On staff working off and on for probably
17 eight or nine months, I would guess.

18 Q And during that entire time you didn't
19 submit any bills to the Commonwealth?

20 A No, but I would characterize that again as
21 my lapse of administrative capabilities.

22 Q Now, you testified, I believe, in your
23 direct that for a hospital to offer incentives to

1 physicians was somehow illegal?

2 MR. BETTIUS: That's not in his direct,
3 Your Honor, that's in their cross. And he's going
4 back over the same ground he's gone over before. It's
5 been asked and answered.

6 THE COURT: I think Mr. Cochran asked that
7 question, Mr. Bono.

8 THE WITNESS: Let me characterize my
9 understanding of the question and my answer. The
10 question had to do with incentive payments to
11 physicians to induce them to admit patients to that
12 hospital. That's illegal.

13 BY MR. BONO:

14 Q Now, are you aware that hospitals regularly
15 offer discounted rent to physicians for them to locate
16 in medical office buildings either attached or nearby
17 the hospitals?

18 A There are all kinds of those kinds of
19 arrangements, but never explicitly to induce patients
20 to the hospital.

21 Q There's nothing wrong with offering
22 physicians reduced or discounted rent so that they
23 will locate their offices nearby the hospital; is that

1 right?

2 A It needs to meet tests, legal tests,
3 related to private inurement and I cannot hypothesize
4 on a generalization without looking at a specific
5 arrangement.

6 Q Now, did you in your work do any analysis
7 concerning the fairness of any transaction that you
8 looked at from 1978 to the present time?

9 MR. BETTIUS: Your Honor, I don't know that
10 accountants reflect on fairness. And I object to that
11 on relevance.

12 THE COURT: What's the purpose of that, Mr.
13 Bono?

14 MR. BONO: Your Honor, the purpose of that
15 is the law in Virginia changed in 1978. And the
16 transactions that the Commonwealth seems to say should
17 be voided after that those transactions cannot be
18 voided where their fair market considerations paid for
19 the transactions even if they involve insider
20 situations or inside directors. And many, many, many
21 transactions in this accounting are post 1978. And I
22 would submit that the law in Virginia, as of '78,
23 should apply to those transactions.

1 MR. BETTIUS: Your Honor, Mr. Bono thinks
2 that the nonprofit, the Nonstock Conversion Act as
3 many corporations had nonstock where the members owned
4 the assets. If he thinks that that statute sanctioned
5 what went on in this case, we need to read that
6 statute. When there was a conversion, a not for
7 profit -- in the state of Virginia it took a specific
8 act in the legislature -- two years -- two years ago
9 to even set up a procedure to do it. And it was by
10 Delegate Cranwell (ph.) and it's a well-known -- it's
11 from -- Blue Cross/Blue Shield was ultimately taken
12 over and it took a special statute to do it. He's
13 confusing statutes and he's asking this witness for a
14 legal basis.

15 THE COURT: No. The question was whether
16 or not he had done any fairness analysis. I'll permit
17 him to answer that.

18 THE WITNESS: I'll reiterate what our
19 accounting stood upon. It stood on the basic
20 financial statements and my understanding of the
21 directive of the court order, nothing more.

22 BY MR. BONO:

23 Q My specific question is: Did you make any

1 determinations as to whether fair market value was
2 paid for any of the transactions you examined in this
3 case from 1978 to present?

4 A No.

5 Q Now, I would like to show you the Health
6 Group of Virginia lease, if I could. Now, the letter
7 of this agreement provides for the lease of the
8 building and for specified rent; is that right?

9 MR. BETTIUS: Your Honor, I object to the
10 question as to what the letter of the agreement is.
11 He can testify to his understanding of the letter, but
12 the Court's going to determine what it says.

13 THE COURT: The agreement speaks for
14 itself, doesn't it, Mr. Bono?

15 MR. BONO: Yes, Your Honor.

16 BY MR. BONO:

17 Q My question, Mr. Wilson, you testified in
18 your direct that you looked at the transactions in
19 this case as they were engaged in by the parties; is
20 that right?

21 A That's correct.

22 Q And in looking at the Health Group Lease,
23 it provides for rent of a building; is that correct?

1   A   It provides for the use of a building
2 through rentals. There's a difference.

3   Q   Now, if you turn to paragraph 10 of the
4 agreement, under its terms it specifically identifies
5 items that are being purchased, correct?

6   A   Yes.

7   Q   And in your report, you reviewed this
8 agreement and you referred to these as items being
9 purchased, correct?

10   A   Yes.

11   Q   And you referred to a purchase price,
12 right?

13   A   Yes.

14   Q   And in looking at the purchase price, there
15 was a 15 percent amount specified by the parties,
16 correct?

17   A   Yes, there was.

18   Q   And that amounted to approximately
19 \$280,000?

20   A   That's correct.

21   Q   And these were the exact terms that were
22 entered into between Jefferson Memorial Hospital
23 Corporation and an independent, unrelated third party,

1 the Health Group of Virginia, correct?

2 A These terms plus the rentals, yes.

3 Q And Health Group of Virginia had no
4 involvement with the charity, correct?

5 A Not to my knowledge.

6 Q And was the Health Group of Virginia lease,
7 do you know, was it drafted by Health Group of
8 Virginia?

9 A I have no idea.

10 Q But in any event, that was how Health Group
11 specified the terms, right?

12 A Right.

13 Q And as part of this purchase, was the right
14 to -- was Health Group going to get -- I withdraw
15 this, Your Honor. I asked that this morning.

16 In the INOVA lease in 1985, did INOVA, when
17 it entered into that lease at that time, did Health
18 Group operate the hospital and was it selling the
19 operations to INOVA?

20 A I believe it was selling the stock in its
21 company to INOVA.

22 Q And the stock encompassed the operations of
23 the hospital?

1 MR. BETTIUS: Your Honor, we've been over
2 this at great length.

3 THE COURT: Just get to the point because
4 we've been through that.

5 THE WITNESS: I'm not sure if the agreement
6 specifies what it was that INOVA was purchasing other
7 than stock in the company and presumably then the
8 right to step into their lease arrangement.

9 BY MR. BONO:

10 Q Now, purchase price was paid by INOVA to
11 Health Group, that 5.8 million dollars; is that right?

12 A Right.

13 Q There was also separate payment for rent of
14 the building; is that right?

15 A That's right.

16 Q And the building was owned by, at that
17 time, Jefferson Joint Venture; is that right, and not
18 by Health Group?

19 A Yes. The rent was for the operations of
20 the hospital.

21 MR. BONO: I move to strike that response
22 as not responsive.

23 MR. BETTIUS: Your Honor, isn't the Court

1 going to ultimately make this --

2 THE COURT: It was not responsive to the
3 question.

4 BY MR. BONO:

5 Q My question is: The building at that time
6 was not owned by Health Group, it was owned by
7 Jefferson Joint Venture?

8 A That's correct.

9 MR. BONO: I have no further questions.

10 THE COURT: Mr. Hirschkop?

11 MR. HIRSCHKOP: Nothing.

12 THE COURT: Mr. O'Donnell?

13 MR. O'DONNELL: No, sir.

14 THE COURT: All right.

15 REDIRECT EXAMINATION

16 BY MR. BETTIUS:

17 Q Mr. Bono talked about the letter. I want
18 to get to the letter of the '82 agreement. Do you
19 have the '82 lease agreement there?

20 A Yes, I do.

21 Q Do I read correctly that the lease says
22 that the lessor leases the premises to lessee for a
23 term of 10 years and 1 month commencing on the

1 effective date of April 1, 1992, provided the lessee
2 can lawfully operate the hospital? If by September 1,
3 1982, after the exercise of due diligence, the
4 licensee has not been able -- strike that -- the
5 lessee has not been able to operate all licenses, a
6 certificate of public need is required and granting
7 all other federal and state approvals that were
8 required allowing the lessee to lease and operate.
9 Doesn't it say to lease and operate the premises as a
10 120-bed hospital? Is that what it says in the letter?

11 A Yes, it is.

12 Q Let me show you another letter.

13 THE COURT: Show counsel what you're
14 talking about, Mr. Bettius.

15 MR. BETTIUS: This is Exhibit 945. It is a
16 letter from the Commonwealth of Virginia, Department
17 of Health coincident with the April 1, 1982 date.

18 BY MR. BETTIUS:

19 Q Whose license are we operating under at
20 Jefferson? Has there been a transfer or a new
21 license?

22 MR. COCHRAN: Your Honor, I object. This
23 witness is not a licensure expert. The letter and

1 whatever it says speaks for itself. It does not
2 address the question of who's getting the license upon
3 renewal. The letter speaks for itself. He has no
4 expertise, knowledge or, by his own admission, any
5 ability to interpret a document issued by the
6 Commonwealth of Virginia on licensure matters.

7 MR. BETTIUS: Your Honor, that didn't
8 constrain anybody on other questions on this issue and
9 that letter specifically speaks to whose license we're
10 dealing with and the Court can read it. But we've
11 been asking about whose license it is and that letter
12 clearly tells us whose license. There's no new
13 license.

14 MR. HIRSCHKOP: Your Honor, this witness
15 can neither add nor subtract anything to that letter.

16 THE COURT: I'll let him answer furnishing
17 the basis for his understanding for what the situation
18 was with regard to the license.

19 BY MR. BETTIUS:

20 Q Do you have a basis for understanding whose
21 letter we're dealing with here?

22 A Yes. The letter specified that Jefferson
23 Memorial Hospital Corporation was the holder and owner

1 of the license.

2 Q And that there's been no transfers, it said
3 that explicitly and expressly?

4 MR. COCHRAN: Your Honor, counsel is
5 leading this witness.

6 THE COURT: It is leading, Mr. Bettius, and
7 you need to calm down. The letter does speak for
8 itself.

9 MR. BETTIUS: I'm having problems with some
10 of the things being said, Your Honor.

11 BY MR. BETTIUS:

12 Q Now, I'm asking you to assume that the
13 INOVA lease either operates under the previous JMHC
14 license or requires, at the termination of a lease,
15 that the facility be returned with the license intact
16 or that the entity holding the license be transferred
17 to the Respondents. Does that tell you what license
18 issue we're dealing with in terms of the consideration
19 of the INOVA agreement if that's the hypothetical and
20 I'm correct?

21 A That tells me that the INOVA agreement was
22 always about the license and it needed to be reverted
23 back to the holder of the license upon the end of the

1 lease.

2 Q Mr. Wilson, if that agreement further
3 provides, again, take it as totally hypothetical, that
4 if INOVA doesn't perform its covenants, the
5 Respondents can come in and operate the hospital?

6 A Well, that's what the lease says.

7 Q Now, if that's the case, is it clear to you
8 what we were bargaining for in '92 and '94?

9 MR. COCHRAN: Objection, Your Honor, he's
10 leading.

11 BY MR. BETTIUS:

12 Q What were they bargaining for in '92 and
13 '94?

14 A It was about the operating license.

15 Q Now, and even on the considerations of fair
16 market value, does it matter, as you approached this
17 accounting, whether I want to acquire a license to
18 make money or I want to acquire the license to not
19 lose money, does it really make any difference?

20 A That's not relevant to me. We're talking
21 about accountings between the parties.

22 Q Now, before there was ever any appraisal in
23 this transaction, before there was ever any

1 consideration of any appraisal, does this give you
2 some indication --

3 THE COURT: Tell us what you're showing
4 him.

5 MR. BETTIUS: It is Exhibit 809, a letter
6 from Dr. Tauber to the Joint Venture participants.

7 BY MR. BETTIUS:

8 Q Does this tell where the figure 12.7 was
9 assumed or where it came from?

10 A Yes. This letter indicates that INOVA had
11 paid 12.7 million dollars for the building, the
12 Cambridge Court building.

13 Q And they were going to do what?

14 A What were they going to do with it?

15 Q What number were they going to pay? Does
16 it say why they picked the number?

17 A Because they wanted to enter into a
18 tax-free exchange.

19 Q Now, Mr. Bono asked you about whether
20 effect was given by you to the transfer from JMHA to
21 JMHC. Do you recall those questions? And he talked
22 about you reversing it out. Did your accounting in
23 this respect differ at all from their own accounting?

1   A   No. I think we were all operating on the
2   premise that the '66 lease was the prevalent lease
3   throughout, although they departed from that in 1982.

4   Q   If you know for a fact -- if you don't
5   know, I want you to tell me -- didn't they back out
6   the appreciation and act as if the transfer had never
7   happened?

8   A   That's correct.

9   MR. O'DONNELL: Your Honor, again, counsel
10   is doing a lot of leading of this witness.

11   BY MR. BETTIUS:

12   Q   How did they treat that transaction, as if
13   it had occurred or it hadn't occurred?

14   A   They treated it as if it occurred and, in
15   fact, we are identical in our accounting on that
16   issue.

17   Q   What did they do with appreciation that had
18   been shown on JMHC's books?

19   A   They backed it out.

20   Q   What did they do with the amortization
21   schedules -- strike that. How did they reverse --
22   what steps did they take to reverse that transaction
23   which purported to convey a building from JMHA to

1 JMHC? Did they do anything different than you did and
2 tell me if they did?

3 A They didn't do anything different.

4 Q How did both parties deal with the effect
5 of the merger, which the Court said didn't happen?

6 A Ignored it.

7 Q And did both of you, as a result of
8 ignoring it, make certain assumptions about how you
9 were going to treat the land?

10 A Yes.

11 Q And what were those assumptions?

12 A That the land was held by -- a portion of
13 the land was held by the Joint Venture.

14 Q In terms of the accounting, does it make
15 any difference with respect to the numbers how you
16 treat that transaction one way or the other?

17 A Which transaction is that?

18 Q The JMH, JMHC sale. Does it make any
19 difference?

20 A There is a difference in that we're
21 including the rental income on the '66 lease and
22 backing out mortgage interest and depreciation.

23 Q In terms of how the two accounts proceed,

1 do they proceed identically or differently with which
2 is the appropriate lease?

3 A We're together on that in terms of the
4 stated underlying accounting. As I said earlier, we
5 held to the '66 lease, gave the Respondents credit for
6 that over the entire period up to 1994. Respondents'
7 accounting makes that same statement, but when we
8 consider the '66 lease and the related adjustments
9 necessary through 1982, at that point they were going
10 to revert to the '75 lease and amendments to that
11 lease going forward.

12 Q Do they inform the reader that that's what
13 they're doing or do they just assume that the '75
14 amendments relate to the '66 lease?

15 A We had to dig it out. There was no
16 explicit reference for the reader.

17 Q If, in fact, the settlement agreement took
18 ownership of the land and placed it in the -- strike
19 that. As of 1994, what basis exists in fact to
20 continue to charge real estate expenses to the
21 charity?

22 A Well, I saw no basis whatsoever, and,
23 again, I read the documents and what I saw was that in

1 1992 we certainly were dealing with an intended real
2 estate transaction, pure and simple, tax free real
3 estate to real estate exchange. The 1994 agreement
4 had nothing to do with real estate. It had everything
5 to do with access to licenses and renewal licenses,
6 perhaps ever transferring licenses, and my
7 understanding is that the hospital itself, including
8 the real estate was with the Joint Venture and still
9 is with the Joint Venture.

10 Q If the Court in reviewing the judicial
11 proceedings conducted within this Court over the
12 issues between the parties, and by the parties I mean
13 INOVA and the Joint Venture, in the suit over the
14 October '92 agreement, comes to the conclusion that
15 these parties -- that these parties were dealing with
16 a fight over the real estate license, what basis would
17 there be for attributing legal costs in that
18 proceeding to the charity?

19 A There would be none.

20 Q Your accounting proceeds on the
21 assumption -- tell me on what assumption it does
22 proceed as to the reasonable economic expectations of
23 the parties at the beginning and throughout the

1 entirety of their relationship with each other? Do
2 you separate those interests?

3 A I think we're quite explicit in our
4 accounting that once we had gone through all the
5 documents, it was clear to us, in our belief, which
6 runs through the entirety of our accounting, is that
7 the 1966 lease was the initial lease that set forth
8 the economic expectations of the parties in
9 establishing the charity and providing a hospital
10 building vehicle to operate the hospital.

11 Q In each and every transaction that proceeds
12 in this case, 1973 forward, was there any transfer
13 that did not deal with the operations of the hospital
14 as a going-concern? And I'm including shutting it
15 down. Were those all going concern considerations?

16 A They were. I saw no evidence of any
17 transactions that purported to or, in fact, did shut
18 down the hospital or make it cease as a going concern.

19 Q I want to get to the end. We've been
20 through years of history. If at the end there is an
21 attempt by the Respondents to reach across into this
22 transaction for anything other than a rental
23 entitlement, which they said was all they ever wanted,

1 is there any basis for them to have any reaching over
2 to anything but the rental entitlement?

3 A I don't believe there is.

4 Q In any valid transaction that you've ever
5 seen, did JMHI ever give up its license or its 99-year
6 lease?

7 A It did not.

8 Q Any other document other than the MOB lease
9 that you testified to, or any other capital
10 contribution that you can trace -- did you attempt to
11 trace capital contributions?

12 A Yes, we did. We wanted to give appropriate
13 credit where credit was due for capital contributions
14 to the organization to get it started or to continue
15 it. And we found, explicitly, one capital
16 contribution.

17 Q I want to be clear about this; if at the
18 end of the day the Court awards the Respondents, based
19 on an understanding of public census and total
20 revenues and third party transactions, the 1966 rent,
21 can you think of anything else -- and I'm going to ask
22 you to be expansive in that -- that they might be
23 entitled to without incurring private inurement?

1   A   Well, I don't believe there is. And here's
2 the basis for the comment. We found a single capital
3 contribution to the charity, but beyond that we saw
4 many, many instances, in fact, some of which we didn't
5 even account for, call it conservative if you will,
6 where the Respondents had gotten back their original
7 investment many times over. And those things, such as
8 the assumption of the mortgage obligation, the 1.4
9 million mortgage obligation, ultimately the repayment
10 of the mortgage obligation out of hospital-generated
11 funds, the redemption of shares of stock that were
12 issued in 1971 for no cash consideration, but
13 redemption of that stock for cash and other examples
14 that I can go into at length.

15   Q   But for the desire to reduce corporate
16 taxation, can you find any legitimate basis for the
17 shifting of some 14 million dollars in revenue from
18 the charities revenue to the Respondents' personal
19 partnership?

20   A   That's the only explanation that I can come
21 up with.

22   MR. BETTIUS: No further questions.

23   THE COURT: Mr. Cochran.

1 MR. COCHRAN: I just have a very few.

2 THE COURT: I didn't hear much new in that.

3 MR. COCHRAN: Well, he identified 945 for
4 the first time, Your Honor.

5 THE COURT: All right.

6 MR. BETTIUS: No, I didn't, Your Honor. I
7 identified 945 -- I'm sorry, Mr. Cochran, 945 was part
8 of his original testimony. And there's no doubt about
9 it.

10 THE COURT: I'll permit him to testify to
11 that.

12 RECROSS EXAMINATION

13 BY MR. COCHRAN:

14 Q Is it your testimony, Mr. Wilson, that you
15 reviewed the April 1st 1982 letter from the
16 Commonwealth of Virginia to Richard Martin prior to
17 your completing your accounting? It's Exhibit 945.

18 A No, I hadn't reviewed this document
19 specifically.

20 Q So you hadn't relied upon that document in
21 your opinion and you didn't use it for the opinions
22 you rendered in this case?

23 A What I relied upon was --

1 Q Excuse me, sir, it's a yes or no question.

2 MR. BETTIUS: He should be allowed to
3 answer.

4 THE COURT: It's a yes or no.

5 THE WITNESS: I didn't rely upon this
6 document.

7 BY MR. COCHRAN:

8 Q And you mentioned that the 1992 settlement
9 agreement between INOVA and Jefferson had everything
10 to do with real estate and nothing to do with the
11 license. Doesn't that --

12 A Excuse me? I don't think I said that.

13 MR. BETTIUS: He said it was a commingling
14 of those things, Your Honor.

15 THE COURT: Mr. Bettius, please.

16 BY MR. COCHRAN:

17 Q Did you not say that the 1992 letter
18 agreement had everything to do with real estate?

19 A It appeared to me that it was about a
20 tax-free real estate exchange.

21 Q But isn't it true that one of the
22 significant concessions that INOVA got in that letter
23 was the right to close the hospital and terminate the

1 license?

2 A That's right. So there was a commingling.

3 MR. COCHRAN: Nothing further, Your Honor.

4 THE COURT: All right. Mr. Wilson, you may
5 return to your seat.

6 MR. BETTIUS: Your Honor, we call Sharon
7 Moore.

8 SHARON KAY MOORE, called as a witness,
9 being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BETTIUS:

12 Q Ms. Moore, could you state your name,
13 please.

14 A Sharon Kay Moore.

15 Q By whom are you employed?

16 A Arthur Anderson, L.L.P.

17 Q At the time you accepted engagement in this
18 matter, were you employed by Arthur Anderson?

19 A No, I wasn't.

20 Q As a result of your work in this case, did
21 you and Arthur Anderson develop an interest in one
22 another at least from the standpoint of considering
23 employment with them?

1   A   I guess that would be a fair assessment.

2   Q   Would you tell us what your formal
3 education is after high school.

4   A   I have a bachelor's degree in political
5 science and a master's in accounting degree.

6   MR. BETTIUS: I've had a very gracious
7 stipulation from Mr. Cochran that Ms. Moore's
8 qualified as a valuation expert.

9   THE COURT: Does anybody have any
10 objection?

11   MR. BETTIUS: I'll just put it on briefly.

12   THE COURT: All right.

13   BY MR. BETTIUS:

14   Q   Are you also, in addition to having a
15 practice specialty in valuation, a certified public
16 accountant?

17   A   I am a certified public accountant.

18   Q   So you bring to this case both valuation
19 and expertise in accounting; is that correct?

20   A   That would be a fair assessment, yes.

21   Q   And would you give us a summary of your
22 work experience.

23   A   Do you mean from the start of my career?

1 Q Yes, ma'am.

2 A I started as an auditor with Touche Ross
3 1982 and stayed in the audit department of that firm
4 until approximately 1985 when I transferred into their
5 valuation practice. I stayed employed with Touche
6 until 1991 when I left and worked with another small
7 firm. I also spent some time working as a chief
8 financial officer of a health care provider in the
9 state of Georgia. Then I went to work for a national
10 valuation firm by the name of Balamant (ph.)
11 Management Associates. I left there in 1997. I
12 worked at Cumberland Business Advisors where I worked
13 until I joined Arthur Anderson in November of last
14 year.

15 Q And has your practice been specifically
16 limited to valuation issues?

17 A Certainly not over the entire course of my
18 career, no.

19 Q But in recent years?

20 A Primarily.

21 Q Can you tell us some of the representative
22 clients for whom you've worked?

23 A I suppose some of the more recognizable

1 ones would be HCA, Delta Airlines, United Airlines,
2 Metro Golden Mayer, Talbot's, Estee Lauder, KMart,
3 Burger King.

4 Q Now, how about health care experience?

5 A I've worked for the Obtern Clinic (ph.) in
6 transaction, pricing and structuring; Columbia HCA.
7 I've testified in U.S. Tax Court on the matter of
8 hospital accounting methods. I have served as a chief
9 financial officer for a health care provider and done
10 various valuation projects in the health care industry
11 over the years.

12 Q Would you relate to the Court what your
13 assignment was in this case, or is in this case?

14 A Well, my assignment in this case, in terms
15 of work product, was very simple. And that was to
16 provide analysis and testimony for the Court to help
17 understand the current value today of an income stream
18 identified by the other expert in the case,
19 Mr. Wilson, as having been generated by the bundle of
20 assets that was dedicated to the charity initially.
21 And then I was also asked, as part of my assignment,
22 at the time that any type of valuation testimony was
23 offered, to consider that and be prepared to offer my

1 opinion as to the propriety of that valuation
2 testimony.

3 Q Did your testimony in any way, with respect
4 to Arthur Anderson's accounting, deal with theoretical
5 valuations of assets?

6 A Did my testimony? No.

7 Q Did your assignment?

8 A No.

9 Q As I understand it, you just merely valued
10 money that shifted over that should have been with the
11 Commonwealth's money or the charity's money and then
12 had it been paid over value; is that correct?

13 MR. COCHRAN: That's awfully leading, Your
14 Honor.

15 BY MR. BETTIUS:

16 Q All right, Ms. Moore. Tell us how your
17 valuation, or your use of present value techniques,
18 are employed in this case in great detail or as great
19 a detail as you need to inform the Judge what we're
20 doing.

21 A Basically what I did was take an income
22 stream that was identified through the accounting
23 performed by Mr. Wilson, which my understanding was to

1 represent the income stream that was generated over
2 its entire life from the initial group of assets that
3 was dedicated to the charity. And that income
4 stream -- from the point that that income stream was
5 no longer functioning as a not-for-profit entity, it
6 lost its ability to function as a not-for-profit
7 entity, which was 1971.

8 So what I did was attempt to ascertain as
9 of today what that historical income stream would be
10 worth by using some several different alternatives,
11 what I consider to be reasonable rates of return.

12 Q Before you go on to the second part, did
13 this valuation work that you did have anything to do
14 with the results that were ultimately obtained by
15 Arthur Anderson in their accounting? Did they use
16 your valuation techniques to determine their
17 accounting at all in any way?

18 A No.

19 Q Now, you start in 1971. Was it your duty
20 to account for assets or account for income streams
21 from the time that the charity ceased to exist in
22 formal fashion? What was your task?

23 A That was my task, to determine the value

1 today of the income stream that was generated starting
2 with the point that the assets -- that the operating
3 entity lost its not-for-profit status. That's my
4 understanding.

5 Q Based on your understanding, were the net
6 assets of JMHI invested, or were the totality of the
7 assets of JMHI invested, by the Respondents?

8 A You mean invested in the operation of the
9 charity?

10 Q Yes. When they took over, did they just
11 use the net assets or did they use the totality of the
12 assets?

13 A Well, they operated using the entire bundle
14 of assets.

15 Q Now, and I would really like to get from
16 you your sense of what that bundle of assets included.
17 Was it just dollars and machines and equipment? Tell
18 us what was there, Ms. Moore.

19 A Well, I'm happy to do that. And the
20 reason -- and I think this is very relevant in terms
21 of my assessment of the valuations that were
22 performed, but let me give you a background. As a
23 valuation person, what I consider my job to be when

1 I'm asked to do a valuation is to ascertain the
2 economic reality of the transactions of a company,
3 whatever it is that I'm determined to value. And in
4 this case we were looking at an ongoing hospital
5 entity. Now, some of the assets that have been talked
6 about are some of the basic accounting assets that we
7 know existed; there were some receivables, there was
8 some inventory, maybe some cash. But I think anybody
9 that certainly has ever been in a hospital realizes
10 there's a lot more to assets than that. Some of
11 those, for example, would be -- and excluding for a
12 moment the license, which is the license to do
13 business, the asset that undergirds everything. And
14 one would be that any asset has what we in the
15 valuation industry would call the trained and
16 assembled work force. What that means is when I walk
17 in a hospital, there's somebody there that knows I'm
18 coming, knows what to do with me when I get there,
19 knows how to treat me. Those people have --
20 understand and are trained in all the quality
21 assurance guidelines that a hospital must undergo, the
22 medical policies and procedures, the medical codes,
23 when someone calls code blue over the intercom, they

1 know how to respond. It takes enormous amounts of
2 time to train and assemble that work force. Not all
3 businesses have that.

4 Most businesses have a trained and
5 assembled work force, for instance, a retailer. They
6 have clerks that know how to do things. But I think
7 it's important to remember that in a hospital that
8 asset is even more valuable because the result of not
9 having that is not just a customer that's upset, it's
10 a person whose life is lost or damaged or injured. So
11 that asset is very valuable to a hospital.

12 Some of the other assets it had, it had a
13 whole basement full of patient charts and records.
14 And what that means is if I walk into that hospital to
15 be treated, somebody can pull up a document that tells
16 me when I was there last, who treated me, what
17 medicine I got, how much I got, when I got it, what
18 procedures were performed.

19 Q If you're allergic?

20 A If I'm allergic to any drug. And I think
21 it's certainly common sense. That document is very
22 valuable, not only to the hospital, but to any other
23 hospital in the area that would want to treat me as a

1 patient. That's a valuable asset.

2 So those are the kinds of assets that are
3 in place when you have an ongoing business enterprise.
4 And those are the kinds of assets that were employed
5 and dedicated to the operation of the charity
6 initially.

7 Q When this Court ruled that this creation of
8 or this operation that resulted in an excess of
9 assets -- liabilities over assets, that wasn't a
10 defense because this was a going concern, is that what
11 you're talking about valuing, that going concern value
12 of a breathing hospital?

13 A Yes. I'm saying that if one were asked to
14 value this ongoing entity, which I wasn't, but if I
15 had been asked to, then I would consider it important
16 for me to look at the value of all the underlying
17 assets that were used in the generation of this
18 income.

19 Q Ms. Moore, when you look at the operational
20 structure of the hospital and compare it with the
21 ownership structure of the assets and the way this
22 operation was put together, is it hard to understand
23 that their liabilities did exceed their assets?

1 MR. COCHRAN: Your Honor, I think this is
2 beyond the purview of her expertise. It's certainly
3 beyond the purview of her report. She is here to talk
4 about rates of return on any constraining present
5 value.

6 MR. BETTIUS: Your Honor, she's here to
7 talk about the valuation methods that were used by
8 these Respondents. To come up here and put net
9 assets -- there's an abundance of testimony in this
10 case that this was a created scenario on this balance
11 sheet. They always wanted -- there was no capital, it
12 was perfectly structured --

13 THE COURT: I'll let her answer the
14 question.

15 BY MR. BETTIUS:

16 Q Ms. Moore, do you find any evidence that
17 this imbalance was a created situation as opposed to
18 an actual situation? Strike that. Was it a created
19 situation?

20 A Are you talking about the situation where
21 the book value of the assets was less than the
22 liabilities?

23 Q Yes.

1   A   It appears to me that that was structured
2 to be that way, yes.

3   Q   Now, in terms of the way the hospital
4 operated, you've heard the testimony, can you think of
5 any circumstance or is it in any way appropriate to
6 value businesses off of balance sheets?

7   MR. COCHRAN: Your Honor, if the Court
8 please, she is not a valuation expert.

9   MR. BETTIUS: I thought that's what she was
10 offered for.

11   MR. COCHRAN: To value an income stream.
12 Her report does not seek to place a valuation on this
13 hospital at all. And if she's being offered for that,
14 I certainly object. She has valued this income
15 stream. She is like a forensic economist, but she is
16 not someone who can appraise or value the structure as
17 it existed.

18   MR. BETTIUS: Counsel needs to look at her
19 designation. She was going to offer criticism and
20 critique the valuation methods used by the
21 Respondents. You've heard two witnesses here get up
22 and tell you they're going to value net assets off a
23 theoretical balance sheet. And I want to ask her

1 within valuation parlance and squarely within her
2 designation: Does anybody ever buy or sell anything
3 off a balance sheet.

4 THE COURT: I'll overrule the objection.

5 BY MR. BETTIUS:

6 Q Ms. Moore, would you answer that question?

7 A I'm sorry. Can you ask the question again?

8 Q Do you think it's appropriate, in the
9 context that you've seen it in this courtroom, that
10 you would value the assets of this corporation off its
11 balance sheet, created or not created?

12 A Well, let me respond to that in a couple
13 ways. One thing is for sure, no one, no testimony
14 that I have seen has valued all of the assets of this
15 entity; not even the balance sheets that were put up
16 here as part of Mr. Cobb's testimony have any of the
17 assets that I have talked about, the intangible assets
18 of the hospital. So clearly, no one has identified or
19 put a number to all of the assets of the hospital. If
20 I understand your question to be that is it
21 appropriate to assume that the value of a hospital or
22 any company is reflected in the book value assigned to
23 it on assets on the balance sheet, then unequivocally

1 the answer is no.

2 Q Have you ever seen any valuation expert
3 using the three traditional methods of valuation get
4 up and make such an argument in the courtroom?

5 MR. COCHRAN: Your Honor, whether she's
6 ever seen it or not --

7 THE COURT: Objection sustained.

8 BY MR. BETTIUS:

9 Q Is it validated in any learned treatise
10 that you've ever read?

11 A To simply assert that the value of a
12 company is based on the value of the accounts
13 classified in its balance sheet, no.

14 Q Now, did you hear Mr. Denial's testimony?

15 A I believe I heard most, if not all, of it.

16 Q Do you approve of the methodology that was
17 used?

18 A No.

19 Q Would you tell the Court why you disagree
20 with the methodology used by Mr. Denial?

21 A Well, a couple of reasons, a couple of
22 general reasons and then more specific reasons. I
23 guess, in general, I think, as I said, I think the one

1 measure in valuation is whether it reflects economic
2 reality. And I think that, at least from my
3 standpoint, to assert that an ongoing hospital with
4 all of the valuable assets that this one had, to
5 assert that the value is zero or less than zero just
6 on its face doesn't reflect economic reality, in my
7 opinion. And, therefore, that in and of itself is one
8 reason I would disagree.

9 Second, I think that Mr. Denial's
10 testimony, verbal testimony, with regard to what he
11 did was somewhat misleading. I believe that I heard
12 him make a statement that he simply relied on the
13 financial statements, but, in fact, if you look at the
14 exhibit that was provided to the Court as part of his
15 testimony, I think especially with regards to the
16 valuation of 1982, I actually went back and tried to
17 trace the numbers on that exhibit to any financial
18 statements that I had ever seen as part of this. And
19 the results of my doing that, I believe, were the
20 minority of the numbers on that exhibit could ever be
21 traced to any financial statement or income statement.
22 In fact, the majority of the numbers on that exhibit
23 were averages or weighted averages or estimates or

1 hypothetical numbers that were derived as part of this
2 analysis. And I don't think that one should
3 testify -- should characterize their analysis as
4 something other than what it was.

5 Q Have you concluded your answer, Ms. Moore?

6 A No, I'm sorry. One other thing is the
7 appraisal was supposedly, at least the testimony I
8 heard, was related to a valuation date as of 1982.
9 And yet, as I read the report it specifically excluded
10 from the analysis any of the results of operations for
11 the year ending 1982. So those were my observations
12 and, again, they're my observations with regard to the
13 discrepancy between the verbal representation of the
14 analysis and what the analysis actually represented.

15 Q Ms. Moore, is consistency something that
16 you look for in valuations in terms of the treatment
17 of transactions in the universe of matters that are
18 being considered by the valuation expert?

19 A Well, I certainly think that it's important
20 to be consistent, yes.

21 Q Did you hear the testimony that there was
22 no money to pay out for investment capital and that
23 the hospital needed every cent it had to operate?

1   A   I did hear that testimony, yes.

2   Q   What did they do with their own supposed
3 capital investment of -- the 220 of the stock
4 investment?

5   A   Are you talking about how did they consider
6 it in their analysis?

7   Q   Yes. In terms of their treatment of it,
8 did they pay themselves interest?

9   A   I believe that part of the testimony that
10 was offered, at least by Mr. Denial -- well, and
11 Mr. Cobb -- was that there should have been some
12 interest attached to that capital contribution.

13   Q   Well, are you aware in their exhibits that
14 they provided for an 8 percent return on the capital
15 invested?

16   MR. COCHRAN: Your Honor, is Mr. Bettius
17 testifying or is this witness?

18   MR. BETTIUS: I apologize.

19   BY MR. BETTIUS:

20   Q   If there was an attribution of interest by
21 both Mr. Cobb and Mr. Denial, do you remember a
22 buildup rate of interest of 26 percent by Mr. Cobb
23 with respect to what people would expect to invest in

1 hospitals?

2 A I remember hearing that number. I don't
3 remember if it was Mr. Cobb or -- I thought it was
4 Mr. Denial, but I do remember that number.

5 Q Well, if they afforded interest to
6 themselves for invested capital, do you find that the
7 charity had capital invested in this transaction?

8 A Well, it would be apparent that the charity
9 was probably the primary investor.

10 Q And I want you for a moment to assume that
11 we're just entitled from a valuation point of view,
12 Ms. Moore, to a return on the \$224,517 that is found
13 to be positive, the charity's assets, you just take it
14 that's going to be now -- we'll just ignore that it's
15 an investment of the total assets -- let's just take
16 that investment, okay. And would you tell me -- first
17 of all, was the charity a voluntary investor like the
18 Respondents?

19 A It wouldn't appear to me to be that, no.

20 Q Well, if one were to make an equity
21 investment in the hospital, what risk factor and what
22 rate of return would you attribute as appropriate to
23 that \$225,000?

1   A   If you were asking a willing investor to
2 invest in this particular venture --

3   Q   And I want you to assume, Ms. Moore, that
4 he's telling you it's nearly bankrupt and may not be
5 in business next week and it has no assets.

6   A   Then I would say that would be the one and
7 maybe the only point in which Mr. Denial would agree,
8 and that is, that a reasonable rate of return on that
9 would be somewhere in the neighborhood of 25 percent a
10 year.

11   Q   To show where these analyses go, if you get
12 into the role of a hypothetical, if you attribute that
13 interest rate to \$224,000, what's the present value of
14 our investment, based on that alone?

15   A   I didn't calculate that. I didn't make
16 that calculation, although I could quickly if I could
17 get my calculator.

18   Q   Where is it?

19   A   In my briefcase.

20   Q   And that's from 1973.

21   A   I just want to do it twice to make sure.
22 That would be approximately 70 million dollars.

23   Q   70 million dollars. Did you find this the

1 kind of analysis -- strike that. Did you do any other
2 present value calculations based on their numbers?

3 A I did, for purposes of my testimony today,
4 do the present value of the same historical income
5 stream I valued as part of my analysis, using a 25
6 percent return as well as a 13 percent return, which I
7 believe was approximately the return that Mr. Cobb
8 used. And, again, based on the same income stream
9 that I valued in the first place, if you use a 13
10 percent return, the current value of that income
11 stream would be approximately 98 million dollars, and
12 for using a 25 percent return, approximately 500
13 million dollars.

14 Q Did you ever find any evidence that the
15 hospital's net assets were invested in bonds or the
16 S&P or anything like that?

17 A The hospital's assets?

18 Q Yes. They put net asset values on the
19 hospital. Were we given any choice where we invested
20 so that you could use a 13 and a half or 14 percent or
21 26 percent return?

22 A Well, certainly the point of our analysis
23 is that the Commonwealth wasn't given the opportunity

1 to make any investment decisions with any of the
2 proceeds from the assets to be dedicated to the
3 charity.

4 Q If there was capital necessary, the
5 Respondents also had the opportunity to put it up,
6 didn't they, if they wanted to?

7 A Sure.

8 Q And the money that they invested,
9 supposedly, when they issued that stock, in terms of
10 accounting and valuation, is there any basis at all to
11 convert that equity investment to debt and attach an
12 interest rate to it?

13 A I can't see any that would reflect any kind
14 of economic reality.

15 Q But it does determine, does it not, that
16 capital investment in the hospital should be paid a
17 return based on their analysis; do you find that to be
18 a fair conclusion?

19 MR. COCHRAN: Your Honor, again, we're
20 leading this witness.

21 BY MR. BETTIUS:

22 Q Now, there's been a lot of testimony that
23 you used a 9 percent return on the income stream,

1 Ms. Moore. Would you explain to the Court why you
2 used 9 percent.

3 A In my analysis what I used was -- what I
4 did actually is look at each year for which there was
5 an income stream identified by Mr. Wilson, and for
6 each individual year what was a reasonable rate of
7 return based on the financial instruments at that
8 time. And the one that I finally concluded an opinion
9 based on was the actual return that the Commonwealth
10 of Virginia achieved on the money it had in its
11 general fund for each of those individual years. Now,
12 it is true, I believe, that if you look at that on an
13 average or blended rate, that's something less than 9
14 percent, but that characterization of my work and
15 testimony was not made by me.

16 Q Did you assume any investment of that money
17 or is that just assuming -- did you assume that the
18 Commonwealth got the money? Is that, in essence, the
19 heart of your assumption?

20 A Well, in essence, the heart of my
21 assumption is that the Commonwealth, in fact, didn't
22 get the money and didn't have the opportunity, not
23 only to invest the money, but to do with it or with

1 the results of the proceeds from the charity, what it
2 was designed to do, which was a good thing for the
3 people of the Commonwealth.

4 Q If you're going to use their methods of
5 valuation, would you use 9 percent?

6 A If I've understood their approach or the
7 way they would like to characterize my approach, which
8 is that somehow we're assuming that this money was
9 invested in the hospital and that we are attempting to
10 quantify the reasonable return on an investment in
11 this hospital, which, again, is not what I did, but if
12 one wants to characterize it that way, then I believe
13 that the appropriate rate of return would be something
14 in the neighborhood of 25 percent. Again, the numbers
15 based on that are ridiculous.

16 Q And if they're going to use your method the
17 way they say they used it, the way they characterized
18 your method, what's the appropriate rate of return?

19 A I think something in the neighborhood of
20 return that Mr. Denial asserted, which was 25 percent.

21 Q Did you see the analysis that was done by
22 Mr. Cobb -- and I think maybe this will refresh your
23 recollection of the return on their equity investment.

1 Mr. Cobb, I believe, did an analysis -- and I don't
2 find it immediately on the board -- where he
3 contrasted the INOVA bonds and found that a discounted
4 rate on the INOVA bonds was about 14 percent. Do you
5 remember that testimony?

6 A Vaguely.

7 Q And let me construct a hypothetical. If he
8 was using that kind of a comparison to the exchange of
9 bonds that occurred in 1975, do you see any similarity
10 between INOVA bonds and the bonds of Jefferson
11 Memorial Hospital, Inc. or C?

12 A Well, again, let me say, as part of my
13 analysis I didn't delve into the detail of these
14 transactions so I can't speak to the detail of the
15 transactions, but I can speak from a valuation
16 perspective of how, as an appraiser, I would perceive
17 the difference between a bond issued by INOVA and a
18 bond issued by Jefferson Memorial Hospital in whatever
19 entity it was functioning at the time. And I think
20 it's pretty clear that a bond issued by INOVA would be
21 much less risky than that issued by Jefferson Memorial
22 Hospital and, therefore, the rates of return would
23 have to be commensurate with that level of risk.

1 Q Do you know if INOVA sells bonds in the
2 open market every day?

3 A No, I do not.

4 Q And you don't know that they were trading
5 then?

6 A Don't know.

7 Q Did you hear Mr. Cobb in his A or double A
8 testimony?

9 A It's possible. I don't recall.

10 Q What does A or double A mean to you in
11 terms of valuation?

12 A Well, it's a proxy -- it's a way to
13 determine the level of risk that's associated with a
14 bond, a company's bond.

15 Q And your A or double A -- how do you trade,
16 for instance, with relationship to crime or other
17 bonds? Is that a low risk investment or high risk
18 investment?

19 A A double-A bond?

20 Q Yes.

21 A As far as a bond goes, I think that's about
22 as good as you can get.

23 Q Now, in terms of taking your analysis the

1 way you did it, tell the Court what you compared the
2 rates of return to and the result that you'd come to
3 with respect to the Respondents, the claim against
4 Respondents, the monies before 1999, up till the date
5 of judgment or whatever cutoff date you've chosen?
6 What is the Respondents' liability to the Commonwealth
7 on behalf of the public for funds that they received
8 from the operations of Jefferson based on your Arthur
9 Anderson accounting? Do you have a number?

10 A I do. The analysis that I did to determine
11 the value as of the cutoff day I used, which was June
12 30, 1999, I calculated that the value as of June 30th
13 of that historical income stream brought forward was
14 approximately 52 million dollars. Now, there were
15 some conversations over the last few days where
16 Mr. Wilson, I believe, and Mr. Cobb met and did some
17 things, made some changes.

18 Q Did you make those adjustments?

19 A And so I made those adjustments to my
20 analysis and the result of those adjustments concluded
21 that the current value, instead of 50 million, was
22 approximately 49 million.

23 Q Now, did then -- I assume the Court with

1 respect to future payments has two options. And one
2 you don't have to value, they just say the
3 Commonwealth gets the INOVA money and you don't need
4 to be concerned with that, that's the Court's
5 decision. If the Court, in fact, values, for purposes
6 of a present judgment, the INOVA settlement back, what
7 is its present value and what did you use as a
8 discount rate and how did you select that discount
9 rate?

10 A Well, what I used as a discount rate for
11 that future stream of income was approximately a prime
12 lending rate. And basically my assumption was that
13 that would be a reasonable rate of return to debt
14 holders for INOVA and I used 7.8 percent, that was my
15 discount rate moving forward, which is, I think, and,
16 again, as consistency is important, is consistent with
17 the way that I determined the annual rates of return I
18 used for my present value of the historical cash flow
19 stream.

20 Q Did you come up with a number?

21 A I did. Approximately 17.59.

22 Q So the total liability of the Respondents
23 in connection with all these operations would be the

1 combination of those two numbers; is that correct?

2 A Well, the total value of both historic and
3 prospective income streams is the combination of those
4 two numbers, yes.

5 Q Now, you, at least educationally and on an
6 equal footing with Mr. Cobb, you can approach
7 valuation both as an accountant and as a valuation
8 expert, which was his offering. You've observed his
9 methodology and the results he obtained from his
10 methodology, Ms. Moore?

11 A Yes, I have.

12 Q Could you comment, A, first, on the
13 appropriateness of the techniques he used, the
14 valuation techniques combined with the valuation
15 techniques as he employed them?

16 A Well, again, I would go back to my initial
17 response, which is that I think, at least as far as
18 valuation is concerned, the best yardstick of
19 determining a valuation, whether it's correct or
20 appropriate, is whether it reflected economic reality.
21 And in any of the dates of the analysis that was
22 performed by Mr. Cobb, in light of the fact that there
23 was an ongoing business enterprise, it had a license,

1 it had a whole bundle of very valuable assets, in my
2 mind to say that the value of those assets was
3 basically de minimis doesn't reflect economic reality.
4 So, on the face, I would take issue with the model
5 because it doesn't come up with results that are
6 meaningful.

7 The second problem I have with his -- and I
8 believe he's been very up-front about the fact that
9 he's based it on a liquidation approach. And, in my
10 mind, looking at it independently, I don't understand
11 why that was used. In my understanding, the only time
12 liquidation value is really appropriate is either, A,
13 when someone specifically requested a liquidation
14 value for some specific purpose, whether it's
15 bankruptcy or whatever that might be, or if it's been
16 determined that the value of the ongoing business
17 enterprise is less than the value of the individual
18 assets. In other words, if you take a company and
19 sell off its parts, it's worth more to you than if you
20 leave it employed. And I can't imagine any construct
21 of fact in this case that would indicate that that's
22 the case here.

23 Q It would have been a disaster for both

1 parties, wouldn't it, to do that?

2 MR. COCHRAN: Object, leading, Your Honor.

3 MR. BETTIUS: It is leading. I apologize.

4 BY MR. BETTIUS:

5 Q If, in fact, you liquidated it and there
6 was no license, would that have benefited the
7 Respondents as JV owners, as property owners, if they
8 liquidated the license?

9 A Well, from a valuation or economic
10 perspective I can't think of one, but that's the only
11 way I can comment on that.

12 Q Did history tell us in terms of market
13 transactions specifically dealing with the subject of
14 whether or not it was a valid business objective to
15 continue the operations, the charitable operations,
16 under JMHC's name?

17 A Well, I guess in terms of valuation
18 techniques there's two ways that I would make that
19 decision as to whether the ongoing business is worth
20 less or more than the sum of its parts. Clearly, in
21 any sort of valuation textbook or body of knowledge,
22 the clear indication of value of any asset or any
23 company is what somebody is willing to pay for it.

1 And in this case, based on my understanding, and,
2 again, that's from an economic standpoint not a legal
3 standpoint, there were two market transactions which
4 give an indication of the ongoing business enterprise.
5 One was the original transaction with HGV and the
6 second one was INOVA stepped in or took over that
7 transaction.

8 Now, I think that Mr. Denial, if my memory
9 serves me correctly, really doesn't make any pretense
10 of evaluating those transactions in terms of
11 indication.

12 Q He caps the book off and says there's a lot
13 of noise?

14 A What I believe that Mr. Cobb did --

15 MR. COCHRAN: I'd like to take the stand
16 also. He just keeps testifying. What he just said
17 was --

18 MR. BETTIUS: Ignore that comment.

19 MR. HIRSCHKOP: Counsel should be
20 admonished enough times and he gets to learn a lesson.

21 THE COURT: Go ahead, Mr. Bettius. Ask a
22 question.

23 BY MR. BETTIUS:

1   Q   You were testifying about Mr. Denial and
2   you said he didn't pretend to value it. And then
3   would you continue your testimony.

4   A   And if I read Mr. Cobb's report as well, I
5   don't recall that those transactions were referenced
6   in his report, although my memory could be faulty, but
7   I do recall testimony with regard to the transactions,
8   especially the 1982 transaction. And my concern about
9   that was it was characterized as if there was a
10   transaction for approximately 2.1 million dollars and
11   that was a way to determine or some indication of
12   value, but in reality the total consideration for that
13   transaction, if I understand him correctly, was
14   somewhere in excess of 12 million dollars.

15   Q   Now, can you tell the Judge what you're
16   basing that on.

17   A   I'm basing that on a 2.157 and some change
18   down payment, for lack of a -- in terms of economic
19   terms. And then a million dollars a year for ten
20   years beyond that, that that was the total deal that
21   was on the table. And I can't speak to the legalities
22   of how you allocate that, but in terms of
23   understanding consideration offered, that was what it

1 was. And it's important to remember that that wasn't
2 to buy the assets. That was just to have an
3 opportunity to benefit from them for ten years.

4 And then in the second transaction, which I
5 believe took place in 1985, there was, if my
6 understanding is correct, a purchase by INOVA of the
7 stock of HGV in order to step into its shoes. And for
8 that they paid initially 5.8 million dollars, again,
9 if my memory is wrong, please correct me, and 1.3
10 million dollars annually for twenty years, in my
11 understanding, was the total consideration in that,
12 which brings the total upwards of 30 million dollars,
13 if my math is correct.

14 Again, that was not for a sale of the
15 assets, as I understand economically, but for the
16 right to simply benefit from them for a period of 20
17 years. Again, I believe there was testimony given
18 about that 5.8 million dollars that that was a gross
19 number and that somehow liabilities should be deducted
20 out of it. And if my reading of the agreement is
21 correct, what it actually said was the payment for the
22 stock would be 5.8 million dollars plus they would
23 assume all of the working capital that was existing at

1 that time minus the liabilities. So in reality that
2 was not a gross number, that was a net number.

3 And the second part of my response is that
4 the second way to really get -- the most preferred way
5 in terms of valuation theory to value an enterprise,
6 this ongoing business enterprise, is basically the
7 future value of all economic benefit to be derived
8 from that entity, which interestingly enough, in this
9 case we actually know. So if my understanding of
10 Mr. Cobb's analysis is correct, he could actually put
11 on a spreadsheet or analysis the income statements for
12 each of the years up until a certain point. So he had
13 available to him all of the future economic benefits
14 and could simply have then calculated the present
15 value of those, but that was not the analysis that was
16 undertaken.

17 Q I want to read two statements to you from
18 Mr. Cobb's report. The first deals with liquidation
19 as of March 31st 1982 -- he says as of March 31st
20 1982, and then he has parens June 30th of '82 --
21 hospital operations are estimated to result in total
22 assets of, and he puts a number which he has
23 subsequently changed, total liabilities. And he says

1 liquidation of the business of JMHI as of March 31,
2 1982 would have expected to have resulted in a
3 realization of cash amounts less than reflected in the
4 balance sheet amounts. Is that what happened? Was
5 there a liquidation and did anything happen that
6 resulted in liquidations at less than book value?

7 A No one has brought any facts to my
8 attention that there was any liquidation. So,
9 therefore -- nothing was brought.

10 Q Then he goes on to say -- have you read
11 Mr. Cobb's report?

12 A I have. I haven't committed it to memory,
13 but I have read it.

14 Q As a result of historical lease payment
15 arrearages of not generating sufficient cash, and no
16 maintaining pace with the hospital industry, JMHI
17 would not be expected to be able to continue and
18 conduct an operation of a hospital center and would
19 not be expected to participate in leasing or
20 subleasing of the lease premises. There is not
21 indication that JMH, JMV or JMHC would have permitted
22 JMHI to sublet the hospital's interest in the '66
23 lease. Do you know if, in fact, there was a sublease,

1 in the testimony that you heard here in court?

2 A No.

3 Q In any event, if the hospital is out of
4 date, it can't pay its payments and it can't compete
5 and it's obsolete; what basis is there from a
6 valuation point of view of attributing a million
7 dollars to the equipment if it's obsolete?

8 A Well, I think there are two questions
9 there. One of my problems with all of the analysis
10 that I've seen is that I don't see the evidence that
11 the hospital was this awful place, that they didn't
12 have any money and they couldn't function other, than
13 the financial statements that were designed to reflect
14 that. But if that's true and if the hospital hadn't
15 been maintained and nobody had spent money on it and
16 nobody swept the floors and whatever the problems
17 were, I can't imagine how it could possibly be
18 generating -- it could possibly be the basis for
19 allocating a substantial amount of revenue to it.

20 Q He's talking about 1982 and said it
21 wouldn't liquidate at book value. Well, it didn't
22 liquidate at book value. There was a payment of more
23 than 2.2 million dollars, wasn't there, for just the

1 operating asset as testified to by Mr. Cobb?

2 A It was a down payment of that amount.

3 Q I'm showing you Exhibit 000. What does
4 that indicate just the tangible operating assets are
5 going to liquidate for?

6 A Well, what that indicates, I assume from
7 reading it, is that approximately 1.7 million
8 dollars --

9 Q The second page. I thought it was 2. --
10 it's not on that?

11 A I thought you asked me the tangible assets.

12 Q All the assets in exchange with respect to
13 the operations, what did HGV pay for those?

14 A Well, again, I think that mischaracterizes
15 the transaction. All this piece of paper indicates is
16 what this portion -- how this portion of the purchase
17 price was allocated for accounting purposes, which has
18 nothing to do with the economic substance of the
19 entire consideration that was paid. This just
20 indicates the accounting treatment of this portion of
21 the purchase price.

22 Q Is there any basis for valuing the two
23 parts of this transaction separately, the part owned

1 BY MR. BETTIUS:

2 Q In terms of this case, have valuation
3 techniques been appropriately applied as a method for
4 accounting for the assets, liabilities, and
5 accretions, and issues and profits in the operations
6 of the charitable organization?

7 A It is my opinion that they have not.

8 Q Have those techniques in this case been
9 used to increase or suppress, and I'm using those
10 terms advisedly, results of the operations of the
11 charitable enterprise?

12 A I'm responding to that by saying that I
13 feel like the methodologies, as they were employed,
14 would not offer anything but a suppressed valuation
15 conclusion.

16 Q In your opinion, do they account for
17 assets, liabilities, accretions, issues, and profits?

18 A Well, clearly they don't account for the
19 profits and accretions. And as I stated earlier, I
20 don't even see an accounting for all of the assets
21 because none of the intangible assets showed up on any
22 balance sheet that was presented that I saw.

23 MR. BETTIUS: Thank you, Your Honor.

1 THE COURT: Let me get some estimate from
2 counsel as to how long. Again, I'm not limiting
3 anybody. We've got plenty of time.

4 MR. COCHRAN: Probably 30 or 40 minutes,
5 Your Honor. And I'm sure Mr. O'Donnell has some.
6 Perhaps now would be a good afternoon recess.

7 THE COURT: Let's take a short recess.

8 (A short break was taken)

9 THE COURT: All right. Mr. Cochran.

10 CROSS EXAMINATION

11 BY MR. COCHRAN.

12 Q Good afternoon, Ms. Moore. Are you an
13 expert in valuation of hospitals and their licenses?

14 A I believe I am.

15 Q Do you recall my taking your deposition,
16 ma'am?

17 MR. COCHRAN: If I might pass this up to
18 the witness.

19 BY MR. COCHRAN:

20 Q I turn your attention to page 35 beginning
21 line 9; do you see that, ma'am?

22 A I do.

23 Q My question to you: Are you an expert in

1 valuation of hospitals and their licenses? Your
2 response: I don't recall putting forth my work as
3 that as an expert in the -- and then you say, could
4 you rephrase the question?

5 QUESTION: Valuation of hospitals and their
6 licenses?

7 ANSWER: The valuation of hospitals and
8 their licenses?

9 QUESTION: So you are not an expert in that
10 area?

11 ANSWER: I didn't say that, but I just said
12 I'm not putting forth my work as being an expert in
13 the valuation of hospitals.

14 MR. BETTIUS: That's not an inconsistent
15 statement. She's evaluating the testimony that's come
16 into court, Your Honor. It's not being inconsistent.

17 THE COURT: I don't think it's
18 inconsistent, Mr. Cochran.

19 BY MR. COCHRAN:

20 Q So are you submitting yourself to this
21 Court as an expert in the valuation of hospitals,
22 ma'am?

23 A Originally, the according to your question

1 in deposition, that wasn't the basis of it, but the
2 basis was for my opinions I'm giving today with
3 regards to the other valuations, yes, I am.

4 Q Nothing in the report that you provided to
5 us had anything about the testimony as to valuations
6 of these assets, did it?

7 A Are you talking about the valuation report
8 that I submitted?

9 Q That's correct.

10 A No.

11 Q And as the principal person responsible for
12 the task, how many hospitals have you been asked to
13 value?

14 A Are you talking about with regards to this
15 assignment?

16 Q No, in your experience, ma'am.

17 A Well, I wouldn't pretend to be able to
18 count them all sitting here, but I would guess it's
19 probably more than a dozen and less than 100.

20 Q You worked with Mr. Riley, did you not,
21 during the first phase of this trial?

22 A I did.

23 Q Didn't he use book value as one of his

1 methods of valuation?

2 A I haven't read that report in years. I
3 couldn't tell you.

4 Q Assuming that he did, ma'am, would you now
5 suggest to the Court that he was wrong in using that
6 method of valuation?

7 A Well, I think that --

8 MR. BETTIUS: Isn't that collateral
9 inquiry, Your Honor, what somebody else did?

10 THE COURT: I'll let him inquire.

11 THE WITNESS: As I said, I don't recall. I
12 haven't read that report in quite some time. I would
13 seriously doubt that your question appropriately
14 characterizes what Mr. Riley did.

15 BY MR. COCHRAN:

16 Q What were the bundle of assets that you
17 valued as of June 30, 1973?

18 A I didn't value a bundle of assets as of
19 June 30, 1973.

20 Q You indicated in your testimony that part
21 of your task was to value a bundle of assets, did you
22 not?

23 A I'm sure that I did not indicate that.

1 Q So you did not put a value on any assets at
2 any time, is that what you're saying?

3 A I believe I explicitly said I did not.

4 Q But you fault the Respondents' accounting
5 for not valuing the assets?

6 A I was asked to give my opinion of the
7 analysis they performed and I did so. And I do
8 believe that what they did it was inappropriate.

9 Q Did Mr. Cobb not analyze the Jefferson
10 Memorial facilities?

11 A You're going to have to be more specific.

12 Q Did he not do an analysis of the facilities
13 of the hospital?

14 A I suppose he did an analysis.

15 Q Did he not specifically, ma'am, do an
16 analysis of the facilities of the hospital?

17 A I agree with you that he did some analysis.
18 My testimony was that I don't believe that it was an
19 appropriate analysis.

20 Q Did he do an analysis of the staff and
21 employees of the hospital?

22 A I don't recall seeing that.

23 Q So if it's in the report, your recollection

1 is not so good, is it?

2 A Well, I didn't claim my recollection was
3 perfect, but I don't recall seeing an appropriate
4 analysis of that done.

5 Q Staffing is one of the intangibles you were
6 talking about earlier this afternoon?

7 A A trained and assembled, in-place,
8 functioning work force is one of the assets I was
9 discussing, yes.

10 Q Where in your report do you discuss that
11 trained and skillful and in-place staff?

12 MR. BETTIUS: Your Honor, he keeps trying
13 to say she did an analysis evaluation. She never did
14 that. She has today criticized the method of
15 valuation done. She valued income streams forward and
16 she discounted her present value future income
17 streams. And then I asked her to comment on the
18 method and application used by the Respondents. And
19 that's the only thing she's testified to do. She
20 never claimed to make such an evaluation, was never
21 asked to. And we've assumed from the beginning of
22 this case that it's inappropriate to do so; you should
23 do an accounting.

1 MR. COCHRAN: Your Honor, Mr. Bettius has a
2 unique habit of testifying without ever stating a
3 basis for his objection.

4 THE COURT: Well, it's a relevant objection
5 to the direct testimony of the witness, Mr. Cochran,
6 wasn't it?

7 MR. COCHRAN: She testified as to her
8 criticisms, Your Honor. I want to know whether she
9 has an independent basis and whether she undertook any
10 effort herself to evaluate staffing and other
11 intangibles that she's testified --

12 MR. BETTIUS: That's a fair question.

13 THE COURT: Objection is overruled.

14 BY MR. COCHRAN:

15 Q Did you undertake any efforts yourself,
16 Ms. Moore, to evaluate the intangibles, such as staff?

17 A No. As I stated, I did not.

18 Q Can you explain to me why you used 1971 as
19 your starting date and Mr. Wilson uses 1965?

20 A Yes. I'll try to explain that again. My
21 understanding, and I can't speak for Mr. Wilson, but
22 it's my understanding that Mr. Wilson started at the
23 beginning to account for all of the profits and

1 accretions as generated by the assets that were
2 devoted to the charity. My task, as it was given to
3 me, was to determine the present value of the income
4 stream that started the date on which the entity lost
5 its charitable status in 1971. And I have always
6 contended that that was the assignment as it was given
7 to me and that's what I did.

8 Q And you were instructed by the Attorney
9 General's office and counsel in this case to utilize
10 that date, were you not?

11 A I was indeed.

12 Q And doesn't utilizing that date ignore
13 accumulated losses of over \$160,000 as of the
14 beginning date of your analysis?

15 A It ignores anything prior to the date of
16 inception of my analysis.

17 Q When was it that you think that the
18 hospital lost its tax exemption?

19 A Well, I didn't form an opinion about that.
20 I was told to do my analysis assuming it was as of
21 1971, but to perform the analysis in such a way that
22 if the Court made a decision that there was a
23 different date that was appropriate, they could still

1 make use of my analysis, which is what I did.

2 Q Did you review Mr. Wilson's report?

3 A I reviewed certain parts of it.

4 Q Was there anything in his report with which
5 you disagreed?

6 A Well, again, I never read the entire
7 report. The parts that I reviewed, there was nothing
8 with which I disagreed.

9 Q Were you asked whether you agreed or
10 disagreed with any contents of the report?

11 A Only by you at my deposition.

12 Q Your calculations presume, do they not,
13 Ms. Moore, that at the end of each fiscal year each
14 dime of net income could be invested?

15 A No. As I responded to that, again at my
16 deposition, the question itself mischaracterizes the
17 entire nature of my analysis. All I did was try to
18 determine the value today of an income stream that was
19 generated in 1971 to the present based on an
20 appropriate annual rate of return. The whole point of
21 my analysis was that the Commonwealth, in fact, did
22 not have the opportunity to do anything with the
23 money. So, therefore, how could you characterize my

1 assessment by saying that I presumed the money was
2 invested?

3 Q You cannot earn any rate of return, can
4 you, if you do not put it in some form of investment?

5 A Again, I didn't assume that there was any
6 rate of return earned. I was simply saying that the
7 income was not available to the Commonwealth, and as a
8 result, the current value of that income stream was
9 diverted elsewhere. That's all I have ever purported
10 my analysis to be.

11 Q So your analysis has absolutely nothing to
12 do with economic reality, does it, yes or no, ma'am?

13 A No, sir, that's incorrect.

14 Q You heard Mr. Wilson's testimony, did you
15 not?

16 A I heard most of it.

17 Q Didn't he indicate that the income from the
18 hospital through 1981 was invested in its operations?

19 A He may have testified to that in this case,
20 yes.

21 Q And wasn't his testimony that that was an
22 appropriate investment on the hospital's part?

23 A Well, again, Mr. Cochran, I --

1 Q Ma'am, please answer the question.

2 A Well, you've asked me a question that I
3 can't answer directly.

4 Q You don't recall his saying that that was
5 an appropriate way to invest the net income, yes or
6 no?

7 A He may have said that.

8 Q If he said that, isn't that contrary to the
9 position you have taken in your analysis that every
10 bit of money could generate certain amounts of income?

11 A No, sir, that's not at all what my analysis
12 was.

13 Q How is it possible, physically,
14 metaphysically or otherwise, to take the net income of
15 this entity and invest it both in the operations of
16 the business and in a vehicle that generates an
17 income?

18 A I'm not presuming that it is possible.

19 Q What was the hospital's net income in 1973?

20 A Are you asking me what it was as it was
21 reported on the --

22 Q What Mr. Cobb claims it to be will be fine,
23 ma'am.

1   A   Well, I was not shown his report. I don't
2 know.

3   Q   Does \$130,000 sound right?

4   A   Again, you'd have to show me his report. I
5 don't know.

6   Q   Let me ask you to assume that it's
7 \$131,000, ma'am. Do you know whether there was any
8 money actually in the bank in 1973 at the close of the
9 fiscal year?

10   A   No. If you show me the financial
11 statements, I'd be happy to tell you that.

12   Q   Am I correct in understanding your
13 analysis, that whether there was a deficit in the bank
14 account or whether there was money in the bank
15 account, it makes no difference in your decision to
16 use the income and treat it as income that could earn
17 additional income?

18   MR. BETTIUS: Your Honor, he assumes
19 something the witness keeps telling him she didn't do.

20   THE COURT: Mr. Cochran.

21   BY MR. COCHRAN:

22   Q   Ma'am, can you answer the question, please?

23   THE COURT: Well, I take that to be an

1 objection by Mr. Bettius.

2 MR. COCHRAN: Your Honor, I don't know what
3 the basis is. I mean she may be arguing with what I'm
4 saying, but you can't generate an income without
5 investing it.

6 THE COURT: Well, I must say I'm confused
7 by her testimony anyway. Mr. Bettius, tell me what
8 the -- I heard some numbers and I heard some
9 valuations based on the income streams.

10 MR. BETTIUS: What she did was she said
11 that if you want to take their scenario and invest it
12 in the company and if you want to use that
13 methodology, you're going to die by that methodology.
14 If you say that this money is not distributed and you
15 want to take it as -- they had two choices, Your
16 Honor, they could either invest it in the company or
17 they could set it aside and say this is the net money
18 that comes from the Commonwealth's assets. What she
19 has said is if you take the money that's set aside
20 that belongs to the Commonwealth, and the Commonwealth
21 got it, they would have gotten this much money from
22 them. And that has nothing to do with whether they
23 invest it or they don't invest it. What she's saying

1 is if you use Cobb's own analysis and Denial's own
2 analysis and you say that it's 26 percent return if
3 you invest it in the business, because that's what he
4 did, he was giving us 13.5 if we invest it in Wall
5 Street. She said if we're going to use that kind of
6 analysis give us the rate of return Mr. Cobb says that
7 you'd want for an equity investment on a risk basis.
8 And that's 26 percent. And she was pointing out how
9 ridiculous their own analysis is if you apply it to
10 the facts as they've asked her. What she's basically
11 saying is that there's net revenue; I'm going to
12 assume that if the Commonwealth had had that net
13 revenue available to them rather than these people
14 taking it and investing it in their business, it would
15 achieve a certain rate of return; and I had to find
16 out if the appropriate money had been distributed to
17 the Commonwealth and this is what the Commonwealth had
18 been earning on its money.

19 THE COURT: All right. She can answer the
20 question then about whether it makes any difference.

21 Go ahead and ask the question again,
22 Mr. Cochran.

23 BY MR. COCHRAN:

1   Q   How is it possible to both invest the
2 income that the hospital earned annually in its
3 operations and still generate an investment return or
4 a rate of return or whatever it is you call it that
5 you claim should be going to the Commonwealth?

6   A   Well, again, if -- the question leads me to
7 believe that I haven't clearly communicated to you
8 what I did. I'm sure that I have never said or
9 hypothesized that one could invest the money in the
10 operations and take it out at the same time.

11   Q   You're sure, are you not, that you could
12 not have avoided investing that in the operations and
13 have any reasonable hope that the operations would
14 survive, are you not?

15   A   Again, that's not what I said.

16   Q   Did you undertake to do any kind of
17 analysis that would tell us whether the hospital could
18 have financially survived if you withdrew every penny
19 of net income on an annual basis?

20   MR. BETTIUS: That's speculative, Your
21 Honor. They had a lot of other opportunities. It's
22 remote and speculative.

23   THE COURT: Objection's overruled.

1 BY MR. COCHRAN:

2 Q Did you do any analysis to determine
3 whether or not the hospital could have survived had it
4 invested every net income of its business on an annual
5 basis?

6 A No.

7 Q In 1973 was there an infusion of capital by
8 Respondents, '72 reported on the '73 financial
9 statement?

10 A I believe that I had heard that there was.

11 Q Did you not see in the records that there
12 was one?

13 A I possibly had seen a record that there was
14 one.

15 Q Wasn't that infusion of capital in excess
16 of the income earned per Mr. Wilson's statement?

17 A Without looking at the numbers again, I
18 couldn't answer that question.

19 Q Assuming that the income invested by the
20 Respondents was in excess of the net income as
21 reported by Mr. Wilson, would you agree with me that
22 it would be inappropriate for the hospital to invest
23 its net income?

1 MR. BETTIUS: Your Honor, assumes a fact
2 not in evidence. They were investing the charity's
3 income and that's the difference, did they have a
4 right to do that.

5 THE COURT: The objection is overruled.

6 BY MR. COCHRAN:

7 Q Is it appropriate or is it not appropriate
8 for a year in which cash from the sale of stock
9 exceeds the amount of net income for that entity to
10 invest its total net income?

11 A Well, for that individual year, again, the
12 answer would be that if a capital contribution was
13 required in excess of what they had, that would
14 indicate that they didn't have money to invest outside
15 the business.

16 Q Isn't that exactly what Mr. Wilson said --

17 MR. BETTIUS: You didn't let her finish her
18 answer.

19 BY MR. COCHRAN:

20 Q I'm sorry. Did I step on your answer,
21 Ms. Moore? I didn't mean to.

22 A Well, I think what I was saying was that
23 that doesn't compromise my analysis in any way.

1   Q   Didn't you hear Mr. Wilson testify that if,
2   in fact, or in fact, since there was a \$221,000 cash
3   infusion from the sale of stock, it would have been
4   inappropriate to invest any income that year?

5   A   Well, I also heard Mr. Wilson testify --

6   Q   Ma'am, it was a yes or no question.

7   A   Was your question did I hear him say that?

8   Q   Yes.

9   A   I don't recall.

10   Q   If he said that, would you disagree with
11   that?

12   A   I would admit that Mr. Wilson would be the
13   expert in dealing with the accounting issues, so I
14   would not presume to do so.

15   Q   If in my somewhat dense fashion I'm
16   beginning to grasp your methodology, you're saying
17   that every cent of net income, had things been done
18   correctly, would have been turned over to the
19   Commonwealth of Virginia?

20   A   No. I'm saying, in fact, it wasn't and
21   that the Commonwealth didn't have the opportunity to
22   either invest that money to earn money on it or to do
23   things to benefit the Commonwealth. The basis of my

1 analysis is that they did not have that opportunity.

2 Q Would they have had that opportunity short
3 of a liquidation and winding up of the affairs of the
4 hospital completely?

5 A Well, from Mr. Wilson's testimony my
6 understanding is there was several millions of
7 dollars, I believe the number was 16 million dollars,
8 that was taken out of the operations of the hospital
9 through the joint venture. So I guess if that had not
10 happened, there would have been lots of money to
11 invest in the operations of the hospital.

12 Q Well, my question was: Isn't it fair to
13 say that the income that you say should have been
14 available to the Commonwealth would not have been
15 available to the Commonwealth short of a full winding
16 up of the business?

17 MR. BETTIUS: We'll stipulate that the
18 problem wouldn't have occurred if they wound up.
19 That's what he wants.

20 THE COURT: She can answer the question.

21 BY MR. COCHRAN:

22 Q Please answer the question, Ms. Moore.

23 A I think, in fact, that is my argument.

1 Q And did you tax in your analysis the
2 additional income that you claim should have been
3 earned?

4 A No.

5 Q Was that your decision?

6 A Of course.

7 Q Was it Mr. Wilson's decision?

8 A Are you asking me was it Mr. Wilson's
9 decision to -- as to how I calculated my number?

10 Q No, as to whether or not to tax the income
11 that you claim should have been generated.

12 A I simply relied on Mr. Wilson's assertion
13 as to the income that not should have been generated,
14 but was generated. And, therefore, I didn't make any
15 decisions about how that number was derived any more
16 than he didn't make any decisions about how my number
17 was derived.

18 Q Ma'am, I don't think you understand my
19 question. In your report the income that is derived
20 from '71 forward is not treated as having been taxed;
21 is that not correct?

22 A It is my recollection of Mr. Wilson's
23 testimony that --

1   Q   It's not Mr. Wilson's testimony. I've
2 asked you in your report, did you tax effect the
3 additional income you claim should have been earned
4 from the net income on an annual basis?

5   MR. BETTIUS: Your Honor, Mr. Cochran
6 obviously doesn't understand the methodology. She
7 didn't derive the income figure, Mr. Wilson did.

8   THE COURT: She can answer the question,
9 Mr. Cochran.

10   THE WITNESS: I did not.

11   BY MR. COCHRAN:

12   Q   Was that a conscious decision on your part?

13   A   Absolutely.

14   Q   What is the basis for your decision not to
15 tax the investment income?

16   A   Well, that question would have two answers.

17   Q   I want the right answer.

18   MR. BETTIUS: That's argumentative.

19   THE COURT: That wasn't appropriate.

20   MR. COCHRAN: I'm sorry, Your Honor.

21   THE WITNESS: The first right answer is
22 that that was not part of my analysis to determine the
23 income, before tax, after tax, whatever. My analysis

1 was taking the income that was derived by Mr. Wilson.
2 And as a result, no, I didn't think it was appropriate
3 for me to then perform a further adjustment to that
4 number.

5 BY MR. COCHRAN:

6 Q Wasn't there at least a partial liquidation
7 in 1982?

8 A Are you asking me for my valuation opinion?

9 Q I'm asking you, based upon the documents
10 that you reviewed and based upon the testimony you
11 offered on direct, wasn't there at least a partial
12 liquidation in 1982?

13 A That is not how I would characterize it,
14 no.

15 Q Debts were paid off, were they not?

16 A People pay off their debts all the time.

17 Q Ma'am, that's a yes or no question.

18 A Debts were paid off, it's my understanding.

19 Q Assets were sold off, yes or no?

20 A I believe there were some assets for which
21 consideration was paid.

22 Q Business operations by JMHC as a hospital
23 ceased?

1   A   Now I've lost track. Are we talking about
2 after 1982?

3   Q   Yes, ma'am.

4   A   To my knowledge, the hospital functioned
5 the day before and the day after just the same.

6   Q   My question was: Hospital operations by
7 JMHC ceased on March 31st 1982, did they not?

8   A   I think that's -- I don't know.

9   Q   When HGV purchased the assets, they were
10 purchasing receivables and equipment, were they not?

11   A   I believe that there was some consideration
12 paid for some of those assets, yes.

13   Q   2.1 million dollars?

14   A   Yes.

15   Q   But that represented cash for assets, did
16 it not? We purchased a dollar's worth of assets for a
17 dollar's worth of cash?

18   A   No, I think the document showed that we
19 purchased a dollar's worth of assets for something
20 less than a dollar's worth of cash.

21   Q   Doesn't it indicate that there was actually
22 a 15 percent premium paid for these assets, ma'am?

23   A   No, in fact, it does not. It simply

1 presents that that portion of the purchase price --
2 that there was a 15 percent premium over the value
3 allocated to those assets from that portion of the
4 purchase price.

5 Q You keep calling this a portion of the
6 purchase price. Is it your opinion that the HGV
7 transaction was a sale?

8 A I'm sorry. I should say transaction price.

9 Q HGV could not have operated the facility as
10 a hospital if it did not have a lease for the
11 facilities, could it?

12 A I don't know what options it had available
13 to it.

14 Q Well, you've been talking about economic
15 reality, Ms. Moore. Isn't the economic reality that
16 the license to operate has absolutely no value if you
17 don't have a building in which to operate it?

18 A I don't recall offering any testimony that
19 that wasn't the case.

20 Q So you agree with me that without the right
21 to occupy, without the obligation to pay for that
22 right, the license to operate has no value?

23 A I would say in this case they are almost

1   inextricably linked.

2   MR. BETTIUS: And we will stipulate to
3   that, Your Honor.

4   BY MR. COCHRAN:

5   Q   Did you at any time determine and list the
6   assets of JMHI?

7   A   I'm sorry?

8   Q   Did you at any time determine and list the
9   assets of JMHI?

10   A   No, I did not.

11   Q   Do you know what the facilities of
12   Jefferson Memorial Hospital consisted of?

13   A   No.

14   MR. COCHRAN: I have nothing further, Your
15   Honor.

16   THE COURT: Mr. Bono.

17   CROSS EXAMINATION

18   BY MR. BONO:

19   Q   Ms. Moore, as I understand from your
20   report, the only thing you really did as far as
21   calculations was take the net income figures that
22   Arthur Anderson calculated year to year to year, and
23   present value; is that correct?

1   A   I think that would be a fair description of
2 my analysis.

3   Q   And was that the only number calculations
4 that you did in your report, present valuing the net
5 income figures as had already been calculated by
6 Arthur Anderson?

7   A   Well, that was a series of calculations,
8 but they were all designed to quantify a value as of a
9 point in time with both historical income stream and
10 the identified assets.

11   Q   And this is fundamental present value
12 technique, correct?

13   A   Well, you use the words present value.
14 It's pretty basic.

15   Q   Right. And you take \$10 a year ago and you
16 say add interest to it or something and you say what
17 is it worth today and you look to future income and
18 you discount it back to today; that's what we're
19 talking about, right?

20   A   In general that's true, yes.

21   Q   And what interest rate did you select in
22 your opinion to apply to present value? Was the
23 interest rate -- did it average around 9 percent?

1   A   Well, I'm sorry, I didn't mean to use the
2   term interest rate, but the rate of return that I
3   identified. I didn't do that calculation. I heard
4   several people say that it averages 9 percent. The
5   rates I used are clearly outlined in my report and if
6   someone is determined that they averaged something
7   under 9 percent, I wouldn't disagree.

8   Q   Now, you present-valued back to today the
9   future INOVA settlement monies in the report; is that
10   right?

11   A   Yes.

12   Q   Who told you to do that?

13   A   Well, I guess I was told by the
14   Commonwealth and counsel that my assignment was to
15   present-value the entire income stream identified by
16   Mr. Wilson, and since it included that time period,
17   that's what I did.

18   Q   Is there any contractual right for the
19   Commonwealth to take those future payments and have a
20   right to be paid those amounts today as opposed to be
21   paid that in the future?

22   A   I have no idea.

23   Q   You didn't make that judgment?

1   A   No, sir.

2   Q   Now, in your resume, am I correct that the
3 word hospital does not appear?

4   A   I don't know. I haven't read this resume
5 in a while, but I'd be happy to look at it again.

6   Q   Could you look? I want to be sure.

7   A   I don't see it from a cursory review, no.

8   Q   And as I understand, you did not undertake
9 to perform any valuation of the license to operate
10 Jefferson Memorial Hospital, did you?

11   A   I did not.

12   Q   You were not asked to undertake that task;
13 is that correct?

14   A   That's correct.

15   Q   And you understand that that was not a part
16 of your analysis?

17   A   I do.

18   Q   Now, did you perform in your work any
19 valuation of Jefferson Memorial Hospital's operations
20 at any point in time?

21   A   No, sir, I did not.

22   Q   So you don't know, having not undertaken
23 that valuation, whether or not Mr. Denial's valuation

1 analysis as of '71, '73, and '75 is accurate or not,
2 do you?

3 A I wouldn't agree with that statement.

4 Q You don't know what the valuation should be
5 for '71, '73, and '75 since you didn't perform one; is
6 that right?

7 A I didn't perform a valuation. I do,
8 however, have my opinion about how it should have been
9 done.

10 Q The question is: You don't know what the
11 valuation would be in those three years since you
12 didn't perform the valuation; is that right?

13 MR. BETTIUS: Your Honor, I object to the
14 relevance.

15 MR. BONO: I withdraw the question.

16 BY MR. BONO:

17 Q Did you perform a valuation of the
18 hospital's operations for 1982 at the time Health
19 Group came in and took over the hospital?

20 MR. BETTIUS: Your Honor, this is
21 repetitive. We're not here to do a valuation and
22 that's been my whole problem with their presentation.
23 And it's now coming out, the difference in

1 methodologies -- we should do an accounting and not a
2 valuation.

3 THE COURT: The objection is overruled.

4 BY MR. BONO:

5 Q Did you do a valuation of the operations of
6 Jefferson Hospital as of 1992 when the hospital
7 closed?

8 A I did not.

9 Q Did you do a valuation of the operating
10 license at any of those dates?

11 A No, I did not.

12 Q Now, you used to be employed by Willamette
13 Associates; is that right?

14 A Willamette Management Associates.

15 Q And you worked with Mr. Riley?

16 A I worked for Mr. Riley, yes.

17 Q And didn't you work on the valuation that
18 Mr. Riley submitted in this very case?

19 A I did some work on those, yes.

20 Q And did you do each of those three years
21 that Mr. Riley had worked on? Did you work with him
22 on those?

23 A I don't recall.

1   Q   Now, in your report you took these figures
2 of net income from Arthur Anderson's initial work; is
3 that right?

4   A   Yes.

5   Q   And if those figures now were adjusted,
6 then your report, likewise, needs to be adjusted; is
7 that right?

8   A   That's correct.

9   Q   What compounding did you do in your
10 analysis?

11   A   I'm sorry?

12   Q   What compounding did you do with respect to
13 the rate of return? Did you compound it at all?

14   A   Well, could you be a little more specific
15 about what part of my analysis we're talking about?

16   Q   Well, you have a compound value factor in
17 each of your exhibits and my question is: When you're
18 dealing with either rates of return or interest, is it
19 simple rate of return interest or is it compounded
20 annually? What did you do in your report?

21   A   Annually.

22   Q   Now, am I correct that in starting your
23 analysis you started with 1971 as far as selecting a

1 net income that had been calculated by Arthur
2 Anderson?

3 A That is correct.

4 Q And you simply ignored their net income
5 figures going back from 1965 to 1971; is that right?

6 A I did.

7 MR. BONO: I have no further questions.

8 THE COURT: Ms. Beach? Mr. Hirschkop?

9 CROSS EXAMINATION

10 BY MR. HIRSCHKOP:

11 Q You said it was the value of the going
12 concern in 1971; is that correct?

13 A I'm sorry?

14 Q Did you make a conclusion that it was the
15 value as a going concern in 1971?

16 A I've seen no evidence -- no analysis done
17 to demonstrate that there was not.

18 Q Do you know whether there was or was not?

19 A I'm sorry?

20 MR. BETTIUS: Your Honor, it was concluded
21 by the Court's ruling that there was a going concern
22 in 1973, the date of dissolution.'

23 THE COURT: The objection is overruled.

1 BY MR. HIRSCHKOP:

2 Q Do you know in '71 whether it was or was
3 not valued as a going concern?

4 A Again, I've seen nothing to tell me that
5 there isn't.

6 Q Did you see anything that says there is?

7 A Well, yes, there was revenue generated for
8 the next 30 years, that tells me that there was.

9 Q What about in '71?

10 A I'm sorry?

11 Q Let me withdraw that. I'll ask you this,
12 you testified about 20 times as I understand it?

13 A I said that was probably a reasonable
14 assessment.

15 Q When was the last time you testified as to
16 the fair market value of a hospital?

17 A That I've testified about that?

18 Q Yes, if ever?

19 A I don't recall.

20 Q Can you name a case when you testified as
21 to the fair market value of a hospital?

22 A I can't recall one where I had to testify.
23 I've given many examples where I had to determine the

1 value.

2 Q So in the 20 cases in which you've
3 testified, you can't remember one where you testified
4 as to the fair market value of a hospital; is that
5 correct?

6 MR. BETTIUS: And we're not doing that
7 today either, Your Honor.

8 THE COURT: Can you answer the question,
9 ma'am? I thought she already answered it,
10 Mr. Hirschkop. She said she couldn't recall any.

11 BY MR. HIRSCHKOP:

12 Q Now, in all these cases in which you
13 evaluated the fair market value of a hospital, what
14 formula did you use to attribute the value of the
15 medical staff?

16 A Well, typically I prefer not to
17 characterize any of my work as formula. But typically
18 the way you value a trained and assembled work force
19 is all of the cost that it takes to recruit, train,
20 and hire to the same level of efficiency a similar or
21 comparable work force.

22 Q Does the JCAH make any recommendation of
23 how you value this kind of work force in a hospital

1 setting?

2 A Does what?

3 Q JCAH. Are you familiar with that?

4 A JCAH?

5 Q The Joint Committee on Accreditation of
6 Hospitals.

7 A I have no idea.

8 Q You don't know who they are?

9 A I don't have any idea if they have a
10 recommendation on how to value.

11 Q Do you know what that group is even?

12 A I assume that it's the group that does the
13 accreditations for hospitals.

14 Q You've been valuating hospitals and you've
15 never used any JCAH standards to do those valuations?

16 A No, I use valuation standards to value
17 hospitals.

18 Q And where are these valuation standards
19 written up that we may look at them?

20 A Well, there are several different
21 professional bodies that determine valuation
22 standards; there's the American Society of Appraisers,
23 the American Institute of Certified Public

1 Accountants.

2 Q What about for hospitals and hospital
3 staffs particularly?

4 A The same.

5 Q Just general, nothing specific that you can
6 point to; is that correct?

7 A Well, there's a lot of written text on how
8 to value all kinds of assets, including a hospital.

9 Q Can you name one?

10 A Can I name one?

11 Q On how to value a hospital staff, the value
12 of a hospital staff. In the first few questions you
13 answered, you said to this Court there is a certain
14 value on this hospital staff and you don't know what
15 it was because you never valued it. Where can we
16 look, the text, is there a specific document that you
17 would use in valuing a hospital staff?

18 A Well, to my recollection, I don't recall
19 there ever having been anything written specifically
20 about how to value a hospital staff.

21 Q When INOVA took over, are you familiar that
22 they cleaned house, they had a huge turnover of staff?
23 Do you know anything about that?

1   A   I don't.

2   Q   Do you know when HGV took over if they had
3 a cleaning of house and a huge turnover of staff?

4   A   I haven't heard any testimony about that.
5 I don't know.

6   Q   In the generalities you've posed in your
7 testimony to the Court about the value of staff, does
8 it make a difference whether staff are in specialties
9 or not?

10   A   Does it make a difference to the value?

11   Q   Yes.

12   A   And of a work force?

13   Q   Yes. For instance, a trained
14 cardiovascular team or a trained thoracic team working
15 over a period of years in a surgical suite, there's
16 certainly some value in that, isn't there?

17   A   Of course.

18   Q   How big was the cardiovascular team in this
19 hospital?

20   A   I have no idea.

21   Q   Do you know if they had a cardiovascular
22 unit?

23   A   I don't know.

1   Q   What was the turnover of this hospital
2 relative to other hospitals in this community?

3   A   I don't know.

4   Q   What about the records? Did you ever see
5 the records in this hospital?

6   A   No.

7   Q   Did you ever hear of a hospital in this
8 community, Northern Virginia, selling its medical
9 records?

10   A   No.

11   Q   Do you know if those records still exist?

12   A   I have no idea.

13   Q   Do you know when they last existed?

14   A   No, sir.

15   Q   You're not able to put a value on any of
16 those things, are you?

17   A   Well, I wasn't asked to nor did anyone
18 else.

19   Q   And what you did in this case, as I
20 understand it, is you took numbers from Mr. Wilson and
21 you applied an appreciation rate, an interest rate,
22 put it in your computer and you worked up a
23 bottom-line figure; isn't that essentially what you

1 ended up doing?

2 A Well, I like to think I did something a
3 little more sophisticated than that, but I suppose
4 that would be a way to simplify it.

5 Q I'm not seeking to demean what you did, but
6 whatever you did -- how much were you paid all told to
7 do that? How much are your total billings?

8 A I believe so far my billings to date are
9 approximately \$43,000 or \$44,000.

10 Q I thought your original retainer letter was
11 \$40,000?

12 A No, I don't believe that's correct.

13 MR. HIRSCHKOP: Nothing further.

14 THE COURT: Mr. O'Donnell?

15 MR. O'DONNELL: I just want to clear up a
16 couple things.

17 CROSS EXAMINATION

18 BY MR. O'DONNELL:

19 Q Ms. Moore, can you turn to page 6 in your
20 report, please? And I'm the last of the tag-team
21 wrestlers here so --

22 I just want to make sure I'm clear, in your
23 valuation methodology you had four steps identified

1 there at the top of the page. The first step is the
2 quantification of the appropriate annual economic
3 income stream to be valued; is that correct?

4 A That's correct.

5 Q And you performed that analysis or
6 quantification, as I should say?

7 A To the extent that it was required, yes, I
8 did.

9 Q What did that quantification consist of
10 other than taking Mr. Wilson's adjusted net income
11 numbers -- and I understand you said that's what you'd
12 done. I'm not trying to rehash it. I want to make
13 sure that the quantification process did not involve
14 anything more.

15 A No, it didn't.

16 Q Now, how do you then know -- because what
17 you testified to today is that you take that economic
18 income stream and you present-value it and you
19 essentially apply investment rates of return to that
20 income stream; is that correct?

21 A I guess that's a fair statement.

22 Q How do you know that the net income on
23 Mr. Wilson's adjusted income statements equates to

1 dollars available for investment?

2 MR. BETTIUS: Your Honor, we've been
3 through that three times.

4 THE COURT: I'll permit him to inquire.

5 THE WITNESS: Well, I don't know that. And
6 as I said, that wasn't the basis of my analysis;
7 however, what I do know just from understanding the
8 way that financial statements are derived, that what
9 was identified by Mr. Wilson was -- to my
10 understanding, was the net income, which is always, in
11 most cases, lower than the actual cash generated by a
12 business because within that net income number there
13 are deductions for noncash expenditures. We didn't
14 attempt to add those back. I simply took the net
15 income number and therefore I knew from my analysis
16 that that was not, and didn't purport to be, the total
17 amount of cash generated by the company.

18 BY MR. O'DONNELL:

19 Q But you do know as a CPA that net income
20 for a given year for any entity does not equate to
21 cash available by that entity at the end of the year,
22 does it?

23 A I agree. I never said that it did.

1   Q   For example, you may have a net income,
2 portions of that net income represented at the end of
3 the year in accounts receivables as opposed to cash;
4 is that correct?

5   A   Well, that's not actually an accurate
6 statement.

7   Q   Why isn't it?

8   A   Well, net income is a reflection of results
9 of operation and accounts receivable is a reflection
10 of the -- results of operations for a year. Anything
11 on the balance sheet is a result of cumulative
12 operations over the entire life of the asset. So one
13 is not a reflection of the other.

14   Q   If we have an entity that earns \$100,000 in
15 a year and during the course of that year collects
16 that \$100,000 in the form of accounts receivables,
17 which it has yet to liquidate, at the end of the year
18 it doesn't have cash available to invest, does it?

19   MR. BETTIUS: I didn't understand the
20 question, Your Honor.

21   THE COURT: But does the witness understand
22 the question?

23   THE WITNESS: I understand that the

1 question mischaracterizes the way financial statements
2 are derived. But I believe I've already said that I
3 did not purport to presume that the net income stream
4 relates to the cash generated in that year. In fact,
5 it was something less than the cash generated in
6 almost any year of my analysis.

7 Q I looked at your list of exhibits that you
8 reviewed in preparation for your report. You
9 indicated that you did review the financial statements
10 of the hospital entity from '71 through '82; is that
11 correct?

12 A I did some review of those, yes.

13 Q Did you review the statement of changes in
14 financial position?

15 A I may have.

16 Q Then, for the Court's edification, the
17 statements of changes in financial positions
18 identifies uses of cash separate and apart from the
19 net income reported by the entity; isn't that correct?

20 A That is what a statement of cash flow is
21 supposed to do, yes.

22 Q Did you look at any of the balance sheets
23 to be able to determine at the end of each of these

1 years how much cash was actually available within the
2 entity to be able to invest? Because your testimony
3 here, as I understand it, is that net income is always
4 going to be less than the cash available to invest.

5 A That is not what my testimony was, so let
6 me clarify that, if I might. I believe what I said
7 was that the net income generated is typically -- and
8 I think that's the case in this instance -- lower than
9 the total cash flow generated by virtue of noncash
10 expenditures during the year.

11 Q You're telling me that net income is less
12 than total cash flow. I mean, I didn't understand
13 that. Total cash flow has nothing to do with the
14 money available to invest at the end of the year, does
15 it?

16 A No.

17 Q If we're going to take a hypothetical
18 dollar and invest it, that dollar has to be available,
19 we have to be able to pull it out of our pocket or
20 pull it out of a bank somewhere to go and invest it,
21 don't we?

22 MR. BETTIUS: Your Honor, they continually
23 fail to understand they invested the whole of the

1 assets. It's not money --

2 THE COURT: The objection is overruled.

3 MR. HIRSCHKOP: Your Honor, I wish he would
4 quit making speeches when all he does is coach the
5 witness.

6 THE COURT: Let's move along,
7 Mr. O'Donnell.

8 BY MR. O'DONNELL:

9 Q Can I ask you, please, to turn to Exhibit 7
10 in your report.

11 MR. O'DONNELL: And I apologize, Your
12 Honor. It's not a numbered page. If you have the
13 report in front of you, the numbered pages go up to 17
14 and then you have appendix A. Exhibit 7 is Roman
15 numeral 7 and it starts on page 1 of 4.

16 BY MR. O'DONNELL:

17 Q Do you have that in front of you?

18 A I do.

19 Q I just want to make sure I understand these
20 first two pages because I think there was some
21 confusion about how the numbers were arrived at in
22 your valuation. And let me focus, for the sake of
23 argument, on your '71 through '82, which is the first

1 component. My understanding in reading this report is
2 that for fiscal years '71 through '82 your value,
3 present value of the income streams for those years
4 generated by the hospital, equates to \$13,010,364; is
5 that correct?

6 A The value as of June 30th, that would be
7 correct.

8 Q Now, if I can get you to turn to the second
9 page, if I can follow this through so that I
10 understand your methodology here, what you've done is
11 take the top line, which is adjusted net income, which
12 indicates that that's per the Arthur Anderson
13 accounting, and for example if I take the first full
14 year, which is 1972, Mr. Wilson reported adjusted net
15 income of \$201,400. You then apply your compound
16 value factor, which in 1972 is 7.75 and then you come
17 up with a present value of 1,561,249; is that correct?

18 A Well, I would call it a compound value, but
19 I think you're using the terms interchangeably and
20 that's fine.

21 Q I'm not meaning to confuse you.

22 A I understand.

23 Q You would agree with my characterization

1 that that is how your analysis works for years '71
2 through '82, which is set forth on this sheet?

3 A Yes.

4 Q Do you also recall hearing -- and I think
5 it's one of the things they agreed on -- both Mr. Cobb
6 and Mr. Wilson agreed and testified that the entirety
7 of these monies from '71 through '82, the net income
8 numbers on the top line there, were reinvested in the
9 hospital during that period of time for modernization,
10 equipment, and plant upgrades; do you recall that
11 testimony?

12 A I don't recall it being that detail, but as
13 I said earlier, I recall the testimony that whatever
14 profits were there had been reinvested in the company.

15 Q And both Mr. Wilson and Mr. Cobb agreed
16 with that. If all that money was reinvested, all that
17 money on that top line is reinvested back into the
18 business, how is it available for investment such that
19 we could equate a million dollar value to the citizens
20 of the Commonwealth for those dollars?

21 A Let me try again --

22 Q Just answer --

23 A Well, you didn't ask me -- I didn't hear a

1 question. I was just trying to explain.

2 Q I'm not asking a yes or no question. You
3 can take your time and explain it. Understanding that
4 the other experts testifying in this case have agreed
5 that that entire stream of net income was reinvested
6 in the business for modernization, equipment
7 purchases, et cetera, how is it that you have
8 determined that those dollars are available for
9 investment on behalf of the citizens of the
10 Commonwealth?

11 MR. BETTIUS: We've done this six times.

12 MR. O'DONNELL: We haven't, Your Honor.

13 THE COURT: We have, Mr. O'Donnell, but
14 you're entitled to go into it.

15 THE WITNESS: Let me try to answer this in
16 a way that will hopefully communicate this fully. My
17 assumption, as I said from the start, is not that this
18 money was available to invest. The purpose of my
19 analysis was to quantify the amount of money that was
20 not made available to the Commonwealth to do anything
21 with, whether it's invested, whether it's to provide
22 health care for the people of the Commonwealth, or
23 whatever beneficial thing they might have envisioned

1 for anything generated by this hospital. They, in
2 fact, did not have that opportunity. And so my
3 analysis was just simply designed to determine as of
4 today what the value is of this income stream that was
5 diverted. One day it was supposedly generated for the
6 benefit of the Commonwealth, the next day it was
7 generated for the benefit of the shareholders. And
8 that was all my analysis was designed to do.

9 Had I wanted to do an analysis, which has
10 been continuously characterized by the Respondents, of
11 what return the Commonwealth should have gotten on
12 this money had they had it to invest, my number would
13 have been huge because, in effect, since they didn't
14 have the money to invest, they became captive
15 investors in an entity for which millions of dollars
16 were being pulled out for the benefit of the
17 stockholders, which is fine if it's a for-profit stock
18 company, but at the time -- if I'm an unwilling
19 investor, then I want to be compensated as well as all
20 classes of investors.

21 So while I keep hearing over and again that
22 I have assumed the money was to invest, the explicit
23 purpose in understanding my analysis is that the money

1 was never made available. It is simply an attempt to
2 show the value today of an income stream that was
3 diverted from the Commonwealth by reason of it being
4 converted to an income stream to the benefit of the
5 hospital, which was run for the benefit of the
6 shareholders. I don't know how to say it any more
7 plainly than that.

8 BY MR. O'DONNELL:

9 Q You have probably sufficiently confused me,
10 but what I want to understand is how was the money
11 diverted if it's put back in the hospital operations?

12 A Because --

13 Q Did a shareholder of this entity benefit
14 from this stream of income that you have identified on
15 page 2 of Exhibit 7?

16 A Absolutely.

17 Q How?

18 A Because they were the recipient of all the
19 money that was taken out of the hospital through rent,
20 through payments for condominiums, for investments and
21 tax shelters --

22 Q We're talking about the adjusted income
23 stream now, Ms. Moore, which takes into account all

1 those adjustments. This is Mr. Wilson's adjusted net
2 income, which makes all adjustments for those figures.
3 It takes all of those numbers and says that that money
4 has been reinvested back into the business. Now, that
5 number, that top line on Exhibit 7, if all that has
6 been reinvested in the business, how is it that it's
7 been diverted?

8 MR. BETTIUS: Your Honor, asked and
9 answered.

10 THE COURT: I thought she'd answered it,
11 Mr. O'Donnell.

12 BY MR. O'DONNELL:

13 Q Ms. Moore, what you're telling me, and I
14 want to make sure I understand it, is that your
15 analysis of this is predicated upon a hypothetical set
16 of circumstances which don't exist; is that correct?

17 A That's absolutely false.

18 MR. O'DONNELL: That's all. Thank you,
19 Your Honor.

20 THE COURT: Any redirect?

21 MR. BETTIUS: Briefly.

22 THE COURT: Very briefly, Mr. Bettius.

23 REDIRECT EXAMINATION

1 BY MR. BETTIUS:

2 Q Ms. Moore, I want to take you back to the
3 day when they decided we're not going to be a charity
4 anymore. We just decided we're not. Did they dismiss
5 the patients from the hospital?

6 A Not to my knowledge.

7 Q Did they liquidate the equipment?

8 THE COURT: I've heard this for five days,
9 Mr. Bettius. Let's move on to something else.

10 BY MR. BETTIUS:

11 Q What I'm trying to say is, that equipment
12 that they used, who did it belong to?

13 THE COURT: You went through this on direct
14 too.

15 MR. BETTIUS: Well, your Honor, I just
16 heard three lawyers get up and testify they don't
17 understand what she's done. And clearly what
18 Ms. Moore had done is to say --

19 THE COURT: Well, she's explained it.

20 BY MR. BETTIUS:

21 Q Now, Ms. Moore, right from the beginning,
22 were there several hundred thousand dollars' worth of
23 net operating losses that belonged to the charity?

1 MR. COCHRAN: Your Honor, if the Court
2 please, it's beyond the scope of any of the cross.

3 THE COURT: Well, somebody asked about
4 that, Mr. Cochran. Are you talking about from '65 to
5 '71?

6 MR. BETTIUS: Yes. What I'm asking about
7 is in terms of the assets, Your Honor, the first
8 \$300,000 or \$400,000 of money these people made was
9 tax sheltered and that income wasn't there --

10 THE COURT: It's mind boggling. It's just
11 mind boggling. Go ahead, Mr. Bettius, ask a question.

12 BY MR. BETTIUS:

13 Q Did they, right from the get-go, all the
14 income that they had up to the extent of these net
15 operating losses that they took for the charity, was
16 it sheltered? Did they use the net operating losses
17 against taxable dollars?

18 A That would appear to be the case.

19 THE COURT: Sit down, Ms. Beach, because I
20 don't understand it so it's really not much help,
21 quite frankly. I can't even associate it with the
22 cross examination.

23 MR. BETTIUS: Well, Your Honor, they are

1 trying to say that those assets were all in there and
2 nothing was -- it merely was the number that she
3 recited.

4 THE COURT: I have them. I wrote them
5 down.

6 MR. BETTIUS: Fine. I have nothing
7 further.

8 THE COURT: Thank you, ma'am, you may
9 return to your seat.

10 MR. BETTIUS: Your Honor, we have some
11 exhibits to move and, as I understood -- one of which
12 is the appraisal. We're going to move Mr. Reed's
13 appraisal. I understand there's no objection to that.

14 MS. BEACH: We haven't even seen it.

15 MR. BETTIUS: Your Honor, I want to call
16 Mr. Reed in the morning.

17 THE COURT: What?

18 MR. BETTIUS: I understood that there was
19 to be no problem with submitting Mr. Reed's appraisal.
20 And I was given that impression from the beginning. I
21 would have that if Mr. Reed's appraisal isn't
22 submitted, I want to put it in, I want to put his
23 testimony in. I understood that they had gotten

1 together, that the parties understood it and there was
2 no problem. And based on that, I don't have Mr. Reed
3 here. And I'm totally prepared to put him on. I
4 understood there was no doubt about this issue.

5 MR. COCHRAN: Your Honor, if the Court
6 please, we've said all along that if you have
7 something you want us to stipulate to, an appraisal or
8 otherwise, let us have it and I suspect we can agree
9 upon it. I have never seen it and there is something
10 of a disagreement between Mr. Reed and our expert as
11 to whether we're including four parcels or five. And
12 we've asked to see the appraisal so we can see what's
13 going on. We haven't stipulated to anything because
14 we haven't seen it yet.

15 MS. BEACH: Your Honor, I have personally
16 had conversations with Mr. Bettius as recently as
17 Friday saying show me something and I'll take it to
18 our expert and see if he can agree with it or not and
19 we can take care of. As of this moment, I have not
20 seen one thing.

21 MR. BETTIUS: I have one more witness, Your
22 Honor, I would like to call tomorrow morning.

23 THE COURT: I'm not doing it tomorrow

1 morning. I'm doing it at 2:00 if we're going to do
2 it, but I was under the impression that we were done.
3 We were done is what I was told earlier this
4 afternoon.

5 MR. COCHRAN: We have Mr. Cobb to call in
6 rebuttal, Your Honor.

7 THE COURT: All right. We'll come back at
8 2:00 tomorrow.

9 MR. BETTIUS: Thank you, Your Honor.

10 - - -

11 (Whereupon, at 4:10 p.m., the proceedings
12 were adjourned.)

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1 I, JEAN TOWNSEND, NOTARY PUBLIC, DO HEREBY
2 CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE AND
3 CORRECT RECORD OF THE TESTIMONY OF THE WITNESSES AND
4 STATEMENTS OF THE COURT, COUNSEL AND THE PARTIES TO
5 SAID PROCEEDING. THAT I AM NEITHER COUNSEL FOR,
6 RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE
7 ACTION; AND, FURTHER, THAT I AM NOT A RELATIVE OR
8 EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE
9 PARTIES HERETO, NOR FINANCIALLY OR OTHERWISE
10 INTERESTED IN THE OUTCOME OF THE ACTION.

11
12 NOTARY PUBLIC IN AND FOR THE
13 COMMONWEALTH OF VIRGINIA

14 My Commission Expires:
15 September 30, 2001
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23

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

-----X

COMMONWEALTH OF VIRGINIA, et al.,

Complainants,

v.

LASZLO N. TAUBER, et al.,

Respondents.

-----X

ORIGINAL

In Chancery
No.: 96-1241

PARTIAL
TRANSCRIPT

VOLUME VI

Alexandria, Virginia

Tuesday, February 8, 2000

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

J.APP. 2331

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J.APP. 2332

WITNESS:

PAGE

Arthur Cobb:

Redirect Examination by Mr. Cochran	4
Redirect Examination by Mr. Bono	38
Recross-examination by Mr. Bettius	48
Redirect Examination by Mr. Cochran	77

EXHIBITS

IDENTIFIED RECEIVED

Respondents:

Exhibit W	24	
Exhibit EE1	36	38

Complainants:

Exhibit CC	61	

J.APP. 2333

P R O C E E D I N G S

Whereupon,

ARTHUR H. COBB

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

REDIRECT EXAMINATION

BY MR. COCHRAN:

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

A I did.

Q What did you do in that regard?

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

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

A I did.

Q And what did you do in that regard?

A Starting back three years ago, I made considerations of the size of the medical staff, the

J.A.P.P. 2334

1 specialties represented, the admitting patterns. There
2 was testimony at the last trial regarding the nature of
3 the physician group and practices in Northern Virginia,
4 so I had considered the inter-dynamics, if you will, of
5 the medical staff and their practices at Jefferson.

6 Q What did you do, if anything, to analyze the
7 service area of Jefferson Memorial Hospital?

8 A I'd identified a primary and a secondary
9 service area -- and that included descriptions of that
10 in my first report -- the primary service area being
11 the City of Alexandria and Arlington County, the
12 secondary service area being Fairfax County. I was
13 also aware of other admissions from the Commonwealth of
14 Virginia, greater Commonwealth, and from the
15 Washington, D.C. Metropolitan Area.

16 I made considerations of populations,
17 demographics, and then in relation to that, looking at
18 other hospitals, I made considerations of admission
19 patterns and utilization patterns.

20 Q And in that regard did you also look at
21 competitors in the marketplace for health care
22 services?

23 A I did.

JAPP. 2335

1 Q And what did you do in that regard?

2 A I identified other hospitals, Jefferson,
3 Alexandria, Arlington, National Orthopedic, Northern
4 Virginia Doctors, Commonwealth in Fairfax. I got
5 statistics regarding beds, admissions, occupancy
6 measures starting in 1971 and going through, as I
7 recall, about 1995.

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

11 MR. COCHRAN: No, sir.

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

20 THE COURT: Let me permit it. If it's not
21 appropriate, Mr. Bettius, I'll strike it. I've got to
22 hear it.

23 BY MR. COCHRAN:

J.APP. 2336

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

3 A Not that I've identified or shows in their
4 reports.

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

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

9 THE COURT: All right.

10 BY MR. COCHRAN:

11 Q Were you present yesterday during Ms. Moore's
12 testimony?

13 A I was.

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

19 MR. BETTIUS: Your Honor, I'm going to object
20 to him saying what she said and then having this
21 witness respond to it. It's not appropriate to quote
22 another witness' testimony as if it's quoted from the
23 record and then have the witness respond to it. He can

JAPP.2337

1 ask him whether this net income was less or not, but
2 that's a very improper question.

3 THE COURT: Rephrase the question.

4 BY MR. COCHRAN:

5 Q Do you recall what this witness said
6 yesterday?

7 MR. BETTIUS: I'm going to object that, Your
8 Honor.

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

12 BY MR. COCHRAN:

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

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

23 Q As part of your accounting, did you do a cash

J.APP.2338

1 summary?

2 A In effect, yes. It's included in the balance
3 sheet analysis that we did where we took the beginning
4 balance sheet, we took the earnings amount and made the
5 various postings to identify the changes that had been
6 made year to year in the balance sheet accounts.

7 Q If Ms. Moore had wanted to present value
8 actual net --

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

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

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

17 BY MR. COCHRAN:

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

21 A It was reported in the various financial
22 statements as to how much was for JMHC. In my analysis
23 I've gone through '82, similar to Mr. Wilson, and have

1 identified hospital operation amounts and then have
2 brought those forward in the balance sheets, which
3 allowed calculation estimation of the cash balances
4 related to operations.

5 MR. BETTIUS: I'm going to object to
6 estimations, Your Honor. This is precisely the point.
7 He creates balance sheets and creates income
8 statements. They have no reflection to the actual
9 income statements or balance sheets. It's
10 hypothetical.

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

13 THE COURT: Objection's overruled.

14 BY MR. COCHRAN:

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

17 A As I use the word hypothetical, yes.

18 Q How is it hypothetical?

19 A What I set out to do, at least through '82,
20 and what Mr. Wilson set out to do, is to make
21 determinations of the earnings of JMHI under the
22 assumption or the presumption that JMHI and JMHA had
23 never gone together. Those amounts can, in effect, be

1 extracted from JMHC's financial statements.

2 So we have a resulting -- I'll use the income
3 statements. We have resulting income statements, mine
4 or Mr. Wilson's, that are, in effect, operating
5 statements or JMHI statements. But JMHI, no one
6 prepared JMHI's statements in concurrent time periods.

7 So to that extent I would characterize, and
8 -- I don't know how legally the word flows back and
9 forth, but I would characterize the statements that I
10 prepared, that Mr. Wilson prepared, as being
11 hypothetical.

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

22 THE COURT: Objection's overruled.

23 MR. COCHRAN: Thank you, Your Honor.

1 BY MR. COCHRAN:

2 Q If JMHC had invested all of its net income
3 each year outside of ongoing operations, what, if
4 anything, would have happened to its ability to
5 continue to operate?

6 MR. BETTIUS: Speculative.

7 THE COURT: Objection's overruled.

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

11 BY MR. COCHRAN:

12 Q Are you familiar with hospitals that are set
13 up with a separate ownership entity and a separate
14 operating entity?

15 A Yes.

16 Q Where could we find these kinds of -- sources
17 for these kinds of information?

18 A There are many places. The -- for example,
19 the financial statements for the hospital companies
20 that were considered in the last trial by myself, by
21 Mr. Kettler, by Mr. Riley, include disclosures of
22 acquisitions, of hospitals that were made by Extended
23 Care, HCA and the like.

J.APP. 2342

1   Those very financial statements in that time
2   period include disclosures of hospitals that had
3   operating companies that leased and operated
4   facilities, that leased and operated facilities on top
5   of land.

6   MR. BETTIUS: Two objections. Foundation,
7   we're not dealing with charities here, we're dealing
8   with private hospitals. My second objection, Your
9   Honor, this doesn't rebut anything that was put on
10   yesterday. It doesn't rebut our case in chief. The
11   witness is now trying to buttress his previous
12   testimony issued in direct. It has nothing to do with
13   previous testimony.

14   THE COURT: How is this rebuttal?

15   MR. COCHRAN: If the Court please, Mr. Wilson
16   testified with some degree of absoluteness that he had
17   never heard of any such structure or if he had, it was
18   awfully unusual. So it's appropriate rebuttal to his
19   testimony.

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

22   THE COURT: Objection's overruled.

23   BY MR. COCHRAN:

J.APP. 2343

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

2 A No, but I forgot where I was and I was pretty
3 much done anyway.

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

6 A The footnotes to the JMHC June 30, 1980
7 financial statements, for example, show leases with RCA
8 for television and remote patient units, with General
9 Electric for x-ray equipment, lessors, monitoring
10 equipment for intensive care, a contract with Kenneth
11 R. Fox, M.D. for ophthalmic equipment, and a lease with
12 First Virginia Bank leasing department and Continental
13 Bank of Illinois that included 11 leases for various
14 types of hospital equipment.

15 So there were equipment leases that covered
16 various of the departments, various of the equipment
17 used by the hospital.

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

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

22 Q Is there anything unusual about a hospital
23 leasing equipment like this?

J.APP. 2344

1 A Not at all.

2 Q If we assume that JMHC should have received
3 all of the income from HGV and Inova, what are the tax
4 implications?

5 A If we assume which entity received the
6 payments?

7 Q JMHC.

8 A JMHC, as a taxable entity, would have had to
9 report those amounts --

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

15 All taxes paid were actually honored. This
16 is the largest red herring in the case. They're
17 setting themselves up now as the taxing authority, if
18 you listen to them. They're not saying -- they're
19 saying if they had done what they should have done,
20 they would have paid taxes.

21 The issue is, all taxes have been accounted
22 for and they're now setting up a taxing authority and
23 asking for credit, Your Honor, for money that they

J.APP. 2345

1 never distributed, and if they did distribute it, they
2 distributed it to individuals or they expensed it
3 within the company.

4 So they're creating a hypothetical tax and
5 withdrawing it.

6 THE COURT: I'll overrule the objection.
7 That's your argument as to what weight, if any, I
8 should give to that evidence, Mr. Bettius.

9 THE WITNESS: JMHC, as a taxpaying entity,
10 the revenues that they received would have been subject
11 to taxes.

12 BY MR. COCHRAN:

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

15 A Mr. Riley looked at hospital revenues and he
16 had a tax rate, I believe, and he changed it, of about
17 49 percent that he carried forward for all years.

18 Q How does your number as to net income through
19 1982 compare to that of Mr. Wilson's, now that all of
20 the revisions have been done?

21 A There's not a great dollar difference. There
22 are some -- I think the biggest conceptual difference
23 is Mr. Wilson's position that there would not be

1 incremental taxes, because Mr. Wilson's honoring only
2 the taxes that have been paid.

3 I'm looking at JMHC, JMHI as a taxable entity
4 and then I'm taxing them. So in concept I think that's
5 a big difference. In dollars and cents, at least
6 through 1982, it's not a big difference. It is
7 thereafter.

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

11 A I don't follow your question.

12 MR. BETTIUS: What number?

13 MR. COCHRAN: As of 1982.

14 MR. BETTIUS: Your Honor, the question is
15 nonsensical, with all due respect.

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

18 THE WITNESS: No.

19 THE COURT: All right. Repeat it.

20 BY MR. COCHRAN:

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

23 A The summation of it?

1 Q The summation.

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

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

7 A All right.

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

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

15 I took those earnings and looked at the
16 changes those earnings would cause and the other
17 balance sheet amounts and went through the accounting
18 cycle of debits and credits so that I had not only
19 annual operating statements, income statements, but
20 annual balance sheets.

21 The equity amount, that would be the total
22 assets minus the total liabilities, and I've considered
23 each of the total assets and the total liabilities, the

J.APP. 2348

1 net amount of those is referred to as equity. So for
2 June 30, 1973, the equity indicated is \$224,517, and
3 that becomes a balance sheet amount.

4 I also made considerations, as we went
5 through a little bit with Mr. Bono, of the market
6 values for those amounts. I also had previously, in
7 the last trial, made determinations about the fair
8 market value as of June 30, 1971, June 30, 1973 and
9 June 30, 1975.

10 Q Mr. Wilson describes his number as adjusted
11 net income. Is there any significant difference in
12 your two approaches?

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

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

23 The only other now remaining difference is

JAPP.2349

1 the \$221,000 common stock in the -- JMHC. There
2 couldn't have been common stock in JMHI, so we treated
3 it as debt and assigned a cost to that debt --

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

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

6 BY MR. COCHRAN:

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

8 Do you have an opinion as to whether or not
9 rents, maintenance -- and maintenance costs after 1994
10 are appropriate to deduct from any income that JMHC
11 made in the --

12 MR. BETTIUS: Your Honor, that's also been
13 asked and answered. He's really now putting his case
14 back on.

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

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

20 MR. BETTIUS: But in addition --

21 THE COURT: Is it the same as his direct
22 testimony?

23 MR. COCHRAN: Yes, sir.

J.APP. 2350

1 THE COURT: I have that. All right.

2 BY MR. COCHRAN:

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

6 A Ms. Moore started with income streams from
7 1971. That does not take into consideration the lost
8 stream from 1965 coming forward, and doesn't take into
9 account, and this is similar, the negative equity that
10 existed in 1971.

11 Q And does that inflate or deflate the number
12 that she comes up with?

13 A It makes the number higher.

14 Q Did your office analyze the fees and costs
15 incurred in the litigation between the hospital and
16 Inova that resulted in the 1994 agreement?

17 MR. BETTIUS: Objection, there's no
18 foundation in reasonableness for any of these fees.
19 They haven't been testified to, the reasonableness of
20 them hasn't been established. It's all hypothetical,
21 Your Honor, and I'm going to object to it.

22 There's no supporting evidence put in in his
23 case in chief. He's now trying to put in evidence of

J.APP.2351

1   what these expenses were when it wasn't put in in his
2   case in chief and I object to it.

3   THE COURT: What is it rebuttal to, Mr.
4   Cochran?

5   MR. COCHRAN: Your Honor, number one, my case
6   in chief and my testimony through Mr. Cobb only went
7   through 1982 in the first place, the Complainants have
8   put on their accounting claiming it should go through
9   2005. I think it's appropriate for him to testify as
10   to whether or not the fees and costs incurred in the
11   litigation are appropriate and correct deductions to
12   take from any income.

13   MR. BETTIUS: Your Honor, his accounting went
14   through 2005. Counsel elected to cut it off at 1982.
15   If Your Honor has any doubt about that, you can look at
16   it.

17   In addition, I took the year 2005 all through
18   his testimony. He was asked direct questions about
19   whether these were legitimate expenses. We're coming
20   up now for five days. If he elects to cut the
21   presentation off in his case in chief, he has no right
22   to come back at this point in the trial and start to
23   put in objective evidence of what costs are to be

1 considered by this Court as legitimate parts of his
2 accounting and I object to it.

3 Put on the support of his accounting in his
4 case in chief. He can't put support for his accounting
5 on in the rebuttal, Your Honor.

6 THE COURT: Would you say, Mr. Cochran, that
7 because of the manner in which you presented your case
8 in chief and the manner in which the Commonwealth
9 presented its case that you can now come back and offer
10 rebuttal evidence on everything from '82 through 2005?

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

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

21 MR. BETTIUS: In his case in direct often he
22 asked this very witness were there substantial expenses
23 incurred, and he can't offer objective evidence that

1 he's going to ask the Court to consider as part of his
2 accounting in his case in rebuttal, Your Honor. It's
3 just beyond the pale and we object to it.

4 THE COURT: I'll overruled the objection.

5 MR. BETTIUS: Your Honor, in addition I'd
6 like to point the Court to his accounting which has
7 operations through 2005.

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

10 MR. COCHRAN: Thank you, Your Honor.

11 MR. BETTIUS: Again, Your Honor, by way of
12 foundation, there's no foundation as to the
13 reasonableness of these expenses.

14 THE COURT: I understand.

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

16 THE COURT: These are actual expenses?

17 MR. COCHRAN: These are actual bills, Your
18 Honor.

19 (Whereupon, Respondents'

20 Exhibit No. W was marked

21 for identification.)

22 BY MR. COCHRAN:

23 Q Mr. Cobb, let me hand to you Exhibit W. Are

1   those the bills for attorneys fees and expenses
2   incurred in the Inova litigation that your office
3   reviewed or analyzed?

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

6   THE COURT: Almost everything in the
7   accounting is hearsay, Mr. Bettius.

8   MR. BETTIUS: Your Honor.

9   THE COURT: That's one of the things experts
10   can consider.

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

14   THE COURT: I understand. Go ahead, Mr.
15   Cochran.

16   BY MR. COCHRAN:

17   Q   Are those the bills that you analyzed, Mr.
18   Cobb?

19   A   These are the bills that were provided that
20   we summarized, yes.

21   Q   What is your opinion as to whether these are
22   appropriate expenses to deduct from any income received
23   after 1994?

1 MR. BETTIUS: How can he have such an
2 opinion, Your Honor, as to whether they were
3 appropriate or not?

4 THE COURT: You're talking about appropriate
5 from an accounting standpoint?

6 MR. COCHRAN: Yes, sir.

7 THE COURT: As opposed to the reasonableness
8 of the charges?

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

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

12 THE COURT: Objection's overruled.

13 THE WITNESS: I think it would be appropriate
14 to reduce amounts for the costs incurred to generate
15 those amounts, including legal costs.

16 BY MR. COCHRAN:

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

19 A No.

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

23 A I'm not sure that you can. You can calculate

JAPP. 2356

1 earnings on those assets, but that may not show all of
2 the pluses and minuses.

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

6 THE COURT: I thought I heard some of that,
7 didn't I, Mr. Cochran?

8 MR. COCHRAN: Your Honor --

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

11 MR. COCHRAN: No, sir.

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

15 THE COURT: I recall that. Go ahead, Mr.
16 Cochran.

17 BY MR. COCHRAN:

18 Q Did your accounting identify and value assets
19 and liabilities of JMHI?

20 A Yes.

21 Q In what way did you do that?

22 A We started with the opening balance sheet of
23 JMHI and then we looked at operations related to JMHI

1 and brought forward balance sheets --

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

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

4 MR. COCHRAN: Your Honor, but I don't think
5 you heard the additional testimony that this is
6 evidence of assets and liabilities and accretions
7 thereon.

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

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

13 MR. COCHRAN: Okay, Your Honor.

14 BY MR. COCHRAN:

15 Q Very briefly, Mr. Cobb, what do those balance
16 sheets reflect?

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

20 Q How did they reflect any accretions in the
21 assets?

22 A They reflect the increases in assets as they
23 occurred, reported in JMHC's balance sheets, and then

J.APP.2358

1   thereafter based on earnings.

2   Q   Do the balance sheets reflect net or gross
3   assets?

4   A   Both.

5   Q   As part of the work that you undertook to do,
6   did you calculate approximately how much space was
7   covered by the 1966 lease?

8   MR. BETTIUS: That was asked and answered,
9   Your Honor, and then he went into how he apportioned
10   them based --

11   THE COURT: I recall that. I could almost
12   give you the numbers, I suspect.

13   BY MR. COCHRAN:

14   Q   Could either the HGV or the Inova leases have
15   been done if the additions that were built after 1966
16   were not included?

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

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

22   MR. BETTIUS: It was, Your Honor. He asked
23   him how he got, after 1982, apportioning the fourth

1 floor. He asked him what was built, what wasn't built,
2 what was under the '66 lease. Mr. Cobb's testimony was
3 it wasn't under the '66 lease, because obviously they
4 didn't exist at the time of the '66 lease.

5 They're retrying their case.

6 THE COURT: Go ahead, Mr. Cochran.

7 BY MR. COCHRAN:

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

9 A No.

10 Q Could either the HGV or Inova leases have
11 been concluded if the additions built after 1966 were
12 not included?

13 A Not to my knowledge.

14 Q Was Mr. Wilson's testimony that the \$35
15 million --

16 MR. BETTIUS: I'm going to object to him
17 repeating the testimony of Mr. Wilson and asking him to
18 opine on it.

19 MR. COCHRAN: Your Honor, I --

20 THE COURT: Go ahead and finish the question.

21 MR. COCHRAN: Let me finish the question. I
22 would ask Mr. Bettius both not to interrupt me and
23 please don't make objections during the middle of

J.APP.2360

1 answer. If he has an objection, he should make it --

2 THE COURT: He knows how. Go ahead and
3 finish the question.

4 MR. COCHRAN: Thank you.

5 BY MR. COCHRAN:

6 Q Is Mr. Wilson's testimony that the \$35
7 million in payments from Inova entirely attributable to
8 the license an accounting conclusion or a valuation
9 conclusion?

10 A I think it has to do with valuation.

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

12 A The indications of value as of 1994 stem from
13 the losses that Inova had reported since it had taken
14 over operations --

15 MR. BETTIUS: Your Honor, he testified at
16 length that Inova's motivation for doing the
17 transaction with continuing declinations in revenue. He
18 testified to a study that was done by Inova. We're
19 really trying the case again, Your Honor.

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

23 THE COURT: Stand there, Mr. Bettius.

J.APP.2361

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

2 MR. COCHRAN: Excuse me, Your Honor. I
3 apologize.

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

6 MR. COCHRAN: It's pretty difficult to put on
7 rebuttal testimony that has any flow or any
8 comprehension to it if you don't repeat a little bit of
9 this and put it in context, Your Honor. That's all
10 that we're doing here.

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

13 Go ahead, Mr. Cobb.

14 THE WITNESS: I looked at the factors
15 generated by the significant losses generated by Inova
16 during the time period for which it operated JMH, the
17 hospital. It changed the name to Jefferson Hospital.
18 I looked at the Inova information that indicated that
19 Inova anticipated additional losses into the future
20 totalling some \$81 million.

21 I looked at Inova information that identified
22 that utilization was down, admissions were down,
23 patient days were down, use of various of the ancillary

J.APP. 2362

1 services were also down. That indicated that the
2 operating license in place would allow an operator to
3 generate significant losses, and therefore,
4 indicated --

5 MR. BETTIUS: I object. That is his
6 testimony.

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

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

10 BY MR. COCHRAN:

11 Q Did either you or Mr. Wilson make any
12 allowance for the Tauber Foundation's 25 percent
13 interest in the land or its 9.33 interest in the Joint
14 Venture?

15 A No.

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

J.APP. 2363

1 Honor, and I object.

2 THE COURT: Objection's overruled.

3 BY MR. COCHRAN:

4 Q Did either you or Mr. Wilson make an
5 allowance for the Tauber Foundation's interest in the
6 land or the Joint Venture?

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

8 Q Do you have an opinion as to whether these
9 are appropriate charitable contributions?

10 MR. BETTIUS: Your Honor, not in rebuttal,
11 please. I object to that. If he was going to put that
12 on, he had to put that on in his case in chief. That
13 happened in 1975.

14 THE COURT: You're talking about from an
15 accounting standpoint?

16 MR. COCHRAN: Well, from an accounting
17 standpoint is it a charitable -- is it an appropriate
18 charitable deduction.

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

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

23 THE WITNESS: Would you ask the question

1 again?

2 BY MR. COCHRAN:

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

6 MR. BETTIUS: Your Honor, that's a conclusion
7 of law, and it is one of the issues that, Your Honor,
8 he's not permitted to opine on. I know that the rule
9 has been relaxed with respect to what experts can
10 testify to, but not as to issues such as this.

11 THE COURT: Objection's overruled.

12 MR. HIRSCHKOP: I would object to the
13 obstreperous comments of counsel.

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

19 We're just not going to start that now. Mr.
20 Bettius has been acting that way for five days, Mr.
21 Hirschkop.

22 MR. HIRSCHKOP: And I just commented.

23 THE COURT: I mean, come on. We're near the

J.APP. 2365

1 end. You all are doing just great. Everybody in this
2 room has been a big help to me and I don't want to see
3 it start now. Please don't start it now.

4 Go ahead, Mr. Cochran.

5 MR. COCHRAN: Thank you, Your Honor.

6 BY MR. COCHRAN:

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

9 A I have.

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

12 A No.

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

16 A Yes and no.

17 Q Do you have that document there? Let me hand
18 it to you.

19 MR. COCHRAN: Your Honor, I would ask that
20 this be EE1.

21 (Whereupon, Respondents'

22 Exhibit No. EE1 was marked

23 for identification.)

J.APP.2366

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

2 MR. COCHRAN: I gave it to you.

3 MR. BETTIUS: Is this it?

4 MR. COCHRAN: No.

5 MR. BETTIUS: Where is it?

6 MR. COCHRAN: I handed it to you.

7 BY MR. COCHRAN:

8 Q Can you explain to the Court the calculations
9 that are reflected on EE1?

10 A Yes. I went through with Mr. Bettius, as I
11 recall, and put on a flip chart calculations that I had
12 made through September 30, 2005. And those are the
13 first amounts under each of these two grids. So my
14 calculations based on 9 percent through September 30,
15 2005 would be \$8,215,672 and at 13.35 percent, it would
16 be \$14,954,571.

17 You asked if I would make calculations,
18 taking that from September 30th to October 1st, October
19 1st being the date of the \$10 million payment. So I
20 took the \$10 million payment, I tax-affected it as a
21 capital gain, and then calculated the present value of
22 \$10 million from October 1, 2005 to December 31, 1999.

23 At a 9 percent rate I got \$4,505,379 and at a

J.APP. 2367

1 13.35 percent rate I got \$3,594,861.

2 MR. COCHRAN: Your Honor, I would move that
3 exhibit into evidence.

4 THE COURT: Any objection?

5 MR. BETTIUS: It is their theory of the case,
6 Your Honor.

7 THE COURT: All right.

8 (Whereupon, Respondents' Exhibit
9 No. EE1 was received in evidence.)

10 MR. COCHRAN: I have nothing further of Mr.
11 Cobb, Your Honor.

12 THE COURT: Mr. Bono?

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

15 THE COURT: EE1.

16 REDIRECT EXAMINATION

17 BY MR. BONO:

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

20 A No.

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

23 MR. BETTIUS: Objection to what may have been
JAPP.2368

1 appropriate, Your Honor.

2 THE COURT: Objection's overruled.

3 THE WITNESS: I believe so.

4 BY MR. BONO:

5 Q After -- strike that.

6 Did Mr. Wilson make any allocations in his
7 net income analysis between operations and physical
8 plant?

9 A I think he did through 1982.

10 Q After 1982, did Mr. Wilson make any
11 allocations as to net income between operations and
12 physical plant?

13 A Primarily, no.

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

16 MR. BETTIUS: Your Honor, we know what he
17 did.

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

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

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

J.APP.2369

1 MR. BONO: Yes.

2 THE COURT: Go ahead.

3 THE WITNESS: Generally speaking, yes.

4 BY MR. BONO:

5 Q And is it your opinion that that was not
6 appropriate?

7 A Yes.

8 Q That it's not appropriate?

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

10 Q Now, Mr. Wilson also testified several times
11 that assets were commingled?

12 A Yes.

13 Q Now, did Mr. Wilson make any pro rata
14 allocation with respect to those allegedly commingled
15 assets between JMHI's assets and private assets that
16 have been contributed?

17 A I don't follow your question.

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

19 THE COURT: I'll let Mr. Bono ask the
20 question, Mr. Bettius.

21 MR. BONO: I'll rephrase the question, Mr.
22 Cobb.

23 BY MR. BONO:

J.APP. 2370

1 Q With respect to the commingled assets --

2 A All right.

3 Q -- did Mr. Wilson allocate the income with
4 respect to those commingled assets between the JMHI
5 assets that had been contributed and the private assets
6 that had been contributed?

7 A At least through 1982, yes.

8 Q Did he do any of that after 1982?

9 A Not by my reading. I know that under his
10 theory he believes that he did.

11 Q But under your analysis, did he?

12 A I don't believe that he did.

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

16 MR. BETTIUS: Your Honor, we went through
17 this.

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

20 MR. BONO: Thank you, Your Honor.

21 BY MR. BONO:

22 Q Mr. Cobb, prior to 1971, did JMHI utilize any
23 tax benefits that had been given to it by the

1 Commonwealth of Virginia?

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

5 THE COURT: Is this the question of whether
6 they were tax-exempt under Virginia law for Virginia
7 tax purposes?

8 MR. BONO: No, Your Honor. This is a
9 question that goes directly to the accounting analysis
10 that Mr. Wilson did and Ms. Moore did. They testified
11 about the tax benefits that the charity allegedly
12 received. I'm simply asking the question under Mr.
13 Cobb's analysis did they utilize any of those tax
14 benefits.

15 THE COURT: All right. I'll permit it. I'll
16 note your objection.

17 BY MR. BONO:

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

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

23 Q Now, there was testimony yesterday concerning

1 the transition from JMHI to JMHC and the patients
2 didn't know that that happened and didn't know that it
3 was a for-profit entity. Do you recall generally that
4 testimony?

5 A I do.

6 Q Mr. Cobb, when a -- what generally happens
7 when a for-profit entity or another buyer comes in and
8 takes over an existing hospital? What generally goes
9 on?

10 A In terms of the hospital --

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

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

19 MR. BONO: No, just the patients, the
20 transition, what the patients know, that kind of thing.
21 I mean, that's the focus of the question.

22 THE COURT: Do you understand the question,
23 Mr. Cobb?

JAPP. 2373

1 THE WITNESS: I do.

2 THE COURT: All right. Go ahead.

3 THE WITNESS: It's usually relatively
4 seamless.

5 BY MR. BONO:

6 Q And could you explain what you mean by
7 relatively seamless?

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

16 Q So would it be correct that what happened
17 here would be the typical situation in terms of the
18 seamlessness of the transition from JMHI to JMHC from
19 the patients' point of view?

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

23 THE COURT: It isn't relevant whether or not

1 it's typical or not, Mr. Bono, it happened here.

2 MR. BONO: Your Honor, the implication from
3 the Commonwealth is that -- that the -- because JMHC
4 continued the operation of the hospital the very next
5 day after JMHI stopped, that somehow that is a fact
6 which would implicate JMHC as being JMHI. We've heard
7 this argument from starting argument --

8 THE COURT: He's already testified that --
9 you asked him what usually happens and he's explained
10 that.

11 MR. BONO: All right.

12 MR. BETTIUS: Your Honor --

13 THE COURT: I'll sustain the objection.

14 MR. BONO: Thank you, Your Honor.

15 BY MR. BONO:

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

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

21 THE COURT: Is this the right witness to ask
22 this question?

23 MR. BONO: From an accounting point of view.

J.APP.2375

1 A wind-up from an accounting point of view.

2 MR. BETTIUS: I object, Your Honor.

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

5 THE WITNESS: A corporation can change its
6 existence, come and go, and operations continue through
7 separate ownership or what have you.

8 BY MR. BONO:

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

11 MR. BETTIUS: He only had one report that I
12 know of.

13 MR. BONO: The report in the first trial,
14 which is Exhibit 710.

15 THE WITNESS: What page, Mr. Bono?

16 MR. BONO: Page 33, your conclusions.

17 MR. BETTIUS: Your Honor, his conclusions in
18 the first trial couldn't possibly be rebuttal in this
19 trial. I object.

20 THE COURT: Let me hear the question.

21 BY MR. BONO:

22 Q What was the last conclusion that you drew at
23 that time in the last sentence?

1   A   The last sentence reads, upon dissolution,
2   whether June 30, 1971, April 18, 1973 or January 29,
3   1975, net assets of JMHI were not distributed to any of
4   the members of JMHC.

5   MR. BETTIUS: Your Honor, I'm not going to
6   ask anyone be admonished, because that's not my role,
7   but that's obviously not rebuttal. It's testimony in
8   the first trial being reiterated and reiterated.

9   THE COURT: How is that rebuttal, Mr. Bono,
10   to what?

11   MR. BONO: It directly rebuts Mr. Wilson's
12   testimony that in this accounting millions of dollars
13   of assets of the charity's were given away or taken by
14   these Respondents.

15   MR. BETTIUS: If that's what his concept of
16   rebuttal is, that's what his whole case in chief was
17   supposed to be.

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

19   MR. BONO: All right.

20   THE COURT: The answer will stand.

21   BY MR. BONO:

22   Q   Mr. Cobb, do you continue to adhere to that
23   conclusion?

J.APP.2377

1 A As best I know, yes.

2 MR. BONO: I have no further questions.

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

4 MR. HIRSCHKOP: Nothing. Thank you, Your
5 Honor.

6 THE COURT: Mr. O'Donnell?

7 MR. O'DONNELL: No, sir.

8 THE COURT: All right, Mr. Bettius.

9 RECROSS-EXAMINATION

10 BY MR. BETTIUS:

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

15 A In order to support -- continue to support
16 the operations, it was important that the money be
17 reinvested in the hospital.

18 Q What were perhaps the two most critical
19 elements of its capital base in '73 through '75? The
20 two most important elements.

21 A Of its capital base?

22 Q Yes, sir.

23 A In what year?

J.APP.2378

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

4 A From a structure, no, because the building
5 was leased. From -- in terms of running the
6 operations, absolutely.

7 Q Yes, sir.

8 A You have to have a facility in which to
9 operate.

10 Q And how about its equipment?

11 A It was very important.

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

18 A Not as I sit here today.

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

20 A I'm sure -- I'm sure if you traced it through
21 and you looked at the assets of JMHA and kept them in
22 focus while looking at the assets of JMHI, the building
23 ownership moving in that fashion may or may not impact

JAPP. 2379

1 the hospital operations.

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

6 A As the hospital was then operating in JMHC,
7 yes.

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

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

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

19 MR. COCHRAN: Your Honor, I think this is
20 beyond the scope of redirect and rebuttal. I would
21 object to it.

22 MR. BETTIUS: Your Honor, he's talking about
23 the necessity of keeping capital. They stripped out

1 the two most important capital assets of the charity
2 and then rented them back at higher rates and totally
3 took the credit balance out. It's perfectly good
4 rebuttal.

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

7 Ms. Beach?

8 MS. BEACH: I also object, Your Honor, it's
9 contrary to testimony. Much of these funds were put in
10 by the private individuals. Mr. Bettius' depiction of
11 it is not accurate with the testimony this Court's
12 heard.

13 THE COURT: All right. The objection's are
14 overruled.

15 BY MR. BETTIUS:

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

18 A I only saw one.

19 THE COURT: We've been through this.

20 MR. BETTIUS: Yes.

21 BY MR. BETTIUS:

22 Q Isn't it true that in the '75 transaction
23 that they stripped out the two most critical capital

J.APP.2381

1 assets of the corporation in a transaction that was
2 totally self-beneficial to themselves; isn't that
3 correct?

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

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

7 A They did.

8 Q And they ended up converting it --

9 THE COURT: Mr. Bettius, I appreciate the
10 position you think you're in, but I'm not going to go
11 through the whole cross-examination of Mr. Cobb, which
12 last took, I believe, a whole day. I'm not going to do
13 it again.

14 MR. BETTIUS: Your Honor, I just want the
15 Court to understand our position, and it's critical.
16 While they're saying that they took the building off
17 the balance sheet, Your Honor, that had \$500,000 owed
18 against it, it's the biggest capital asset that they
19 had.

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

23 BY MR. BETTIUS:

J.APP.2382

1 Q Did they, other than the money that they --
2 you can trace no additional capital; isn't that
3 correct?

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

6 Q Did the Respondents ever put a dollar in this
7 hospital at any time that they didn't secure by some
8 sort of indebtedness that created a profit to
9 themselves?

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

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

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

16 BY MR. BETTIUS:

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

19 A By ability --

20 Q Perhaps putting money in or lending money?

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

23 Q Well, there's no doubt, is there, Mr. Cobb,

1 to the extent that you've found these accretions, these
2 benefits, these net assets, that that was the charity's
3 money being reinvested; isn't that correct?

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

7 Q And you've testified, have you not, that
8 based on your analysis, assets exceed liabilities by
9 \$224,517; is that correct?

10 A As of June 30, 1973.

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

13 A I believe so.

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

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

21 MR. BETTIUS: Here, Mr. Hirschkop.

22 THE COURT: Well, we don't have it identified
23 by number because it hasn't been offered as an exhibit

1 yet.

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

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

6 MR. BETTIUS: I think we're going to find
7 out.

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

11 MR. BETTIUS: No, Your Honor.

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

15 MR. BETTIUS: He invested it piecemeal, Your
16 Honor. He has three dates of liquidation. I want to
17 show them, since they've continued to stay in business,
18 what would happen if they took, on his dates of
19 liquidation, and invested all three of them rather than
20 reinvesting them in the business.

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

23 MR. BETTIUS: Your Honor, we're not going to

1 reopen it at all. It's taking his 13.5 percent and
2 saying you didn't go out of business. The next year --
3 the next two years you liquidate it again, and if you
4 take that and you invest the difference in three
5 separate transactions at these three separate
6 liquidation dates, you come to \$24,000,000.

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

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

1 liquidations seriatim, because they continued in
2 business

3 MR. COCHRAN: Your Honor, if the Court would
4 please, it's not appropriate cross, number one. Number
5 two, he's already testified that he does not believe
6 you could do it. Number three, this was his case and
7 this is what his valuation expert said. If you took
8 each dollar and invested it, you can get X. We've been
9 through that.

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

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

16 I want to take the witness' testimony. He
17 has three liquidation dates. They don't liquidate on
18 that first date. You take that balance and run it
19 forward to the second date. Subtract the first from
20 the second and then you've got the use of the money
21 through two liquidation dates and then you go to his
22 third liquidation.

23 There weren't -- these are hypothetical

1 liquidations that ignore any forward use of the assets.

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

5 MR. BETTIUS: First today he said he properly
6 accounted for accretions. I objected to it. Your
7 Honor let him go into it. Secondly, he said Ms. Moore
8 failed to properly invest the income of the charity.
9 He has taken the investment of the charity in isolated
10 situations, ignoring the continued operation of the
11 charity.

12 I want to ask him if he takes the net revenue
13 that results from the continued operations, does he not
14 come to these small figures, and he said the capital
15 should remain in the hospital.

16 What we're doing here is leaving the capital
17 in the hospital. This analysis leaves the capital in
18 the hospital and then appropriately accounts for it
19 going forward. I don't think he has appropriately
20 accounted for it going forward.

21 If he does properly account, he can disagree
22 with these numbers. This leaves the capital in the
23 hospital from liquidation date to liquidation date and

1   then values it, which is what he said should have
2   happened. This is the only way to value the
3   accretions, not doing theoretical liquidations that are
4   seriatim in time.

5   MR. O'DONNELL: Your Honor, if I may address
6   one thing, I recognize I came in a little bit late and
7   I'm relying on my colleagues' representation that this
8   wasn't covered in direct. The biggest issue, Your
9   Honor, is using this document at all and offering it to
10   the Court at all. This is our rebuttal. We're allowed
11   to introduce rebuttal exhibits in the context of this.

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

17   This is not permissible. It is not
18   appropriate from the standpoint of the conduct of this
19   trial. It is not appropriate to throw it at Mr. Cobb
20   and ask him to testify about another expert's report at
21   this stage on rebuttal.

22   I have to assume it didn't get covered in
23   direct examination.

J.APP. 2389

1 THE COURT: I don't think it did, Mr.
2 Bettius.

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

6 THE COURT: He said that today?

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

8 THE COURT: I'm sorry.

9 MR. BETTIUS: That it was inappropriate. He
10 said it was inappropriate for Ms. Moore to invest the
11 capital back in -- not to invest the capital back into
12 the operations. This chart shows what happens if you
13 do invest the capital back in the operations and then
14 account for it on each of his liquidation dates.

15 He's done seriatim liquidations, Your Honor.
16 When he goes forward to the next date, he doesn't
17 account for the use of the capital invested on the
18 first date.

19 What this exhibit does is to take his own
20 analysis and say if there's a balance in '74 and you
21 invest it going forward and then you liquidate, you
22 have to take these investment dates out individually,
23 because that's the date of reinvestment of capital.

1 Otherwise, you have in no sense of the word reinvested
2 the capital in the building -- in the business.

3 He has said he has reinvested it. He said
4 that today and he said the Respondents have taken it
5 out. This is an analysis that shows the real result of
6 leaving it in. He can say he doesn't agree with it.
7 I'm entitled, I believe, to inquire as to whether he
8 has, in fact, done what he says he's done.

9 THE COURT: I'll sustain the objection.

10 MR. BETTIUS: All right.

11 THE COURT: What I'm going to do is I'll mark
12 this as Complainant's Exhibit CC and I'll mark it as
13 denied.

14 (Whereupon, Complainant's
15 Exhibit No. CC was marked
16 for identification.)

17 MR. BETTIUS: Thank you.

18 MR. HIRSCHKOP: What was it marked? I'm
19 sorry.

20 MR. BETTIUS: Can I give it to the bailiff,
21 Your Honor?

22 THE COURT: CC.

23 MR. HIRSCHKOP: Thank you.

1 THE COURT: I have it.

2 BY MR. BETTIUS:

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

6 A She testified that she did. Her calculation
7 implicitly assumes that the cash would be invested to
8 generate various returns while, in fact, that cash was
9 left in the business.

10 Q We know the Respondents took the hospital and
11 conveyed it out. Did you, in your methodology leave
12 and give credit for the reinvested capital at the
13 subsequent or next liquidation date?

14 A Yes.

15 Q So you're telling the Court, and I just want
16 to be clear about this, that when you had an investment
17 balance you started tracking the value of that
18 reinvested capital in the business? Did you ever do
19 that, Mr. Cobb?

20 A Yes.

21 Q How did you do that?

22 A I started with the 1971 balance sheet. I
23 looked at the earnings statements across, and then I

1   took the starting balance sheet and I posted the
2   earnings statements within the balance sheet and it got
3   me to the second year.

4   I posted the second year's earnings
5   statements and that got me to the third year, and so it
6   went.

7   Q   And then isn't what you did to do a
8   liquidation as of that year and say this is the capital
9   balance or this is the balance in excess of
10   liabilities, this is the net asset value and then value
11   that forward? Is that what you did?

12   A   I don't follow your question.

13   Q   In each succeeding liquidation -- in each
14   succeeding liquidation you didn't consider, did you,
15   anything but the net assets as you viewed them on that
16   date in liquidation; is that correct?

17   A   No.

18   Q   What did you do?

19   A   I just said what I did. I took the balance
20   sheets, the starting balance sheets, and I posted the
21   earnings. I looked at all the assets, all of the
22   liabilities for that given year and had the balance
23   sheet of the second year. I took the balance sheet of

J.APP. 2393

1 the second year, I posted the earnings to it. I looked
2 at all the changes to all of the assets, all of the
3 liabilities, went to a third year and so on.

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

7 A Continuing them in the operations.

8 Q And then come to another hypothetical value?

9 A I looked at where the money went, and the
10 money -- earnings money in that regard when back into
11 the hospital. So if the hospital made money on that,
12 it made whatever the documents showed. It is lost
13 money, it lost money as the documents showed.

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

16 A That's not true.

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

19 A 1971, 1973, 1975. I made considerations of
20 the HGV purchase in 1982 and of the Inova purchase in
21 1985.

22 Q How is a liquidation consistent with a going
23 concern?

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

5   MR. BETTIUS: Your Honor, I see your
6   impatience. I'm sorry.

7   THE COURT: I've been through this, Mr.
8   Bettius.

9   BY MR. BETTIUS:

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

13   A   If there was a liquidation of the operations,
14   yes, not necessarily if there was a liquidation of the
15   corporation.

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

20   A   Not necessarily.

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

22   A   I think if there had been a liquidation in
23   1971 or a sale at a fair market value, that the

J.APP.2395

1 liabilities would have consumed the asset values,
2 including the going concern. I think that that would
3 have been true or near true in '73 and '75 as well.

4 Q Didn't you purport to create a liquidation in
5 '82?

6 A Yes.

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

9 A It does.

10 Q How would the patients not know if you sold
11 off the assets? Don't you go out of business when you
12 sell out the assets?

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

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

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

2 A It's my understanding that it was.

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

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

7 MR. BETTIUS: Your Honor, I want to know what
8 he calls --

9 THE COURT: He got into it today though.
10 They went into it today. Go ahead, Mr.
11 Bettius.

12 BY MR. BETTIUS:

13 Q Are you calling the transfer of a business as
14 a going concern a liquidation?

15 A It certainly can be. If I sell as one of my
16 assets a business on a going concern basis and I
17 marshall my assets and I take amounts and I meet my
18 liabilities, that certainly could be a liquidation.

19 Q Well, doesn't liquidation mean you're going
20 out of business?

21 A Not -- well, it depends on who I am. The
22 corporate entity may, the hospital operations may
23 continue.

J.APP.2397

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

5   THE COURT: I know we spent a day on that,
6   Mr. Bettius.

7   MR. BETTIUS: Your Honor, it shows that the
8   basis for explanation of these transactions has no
9   legal basis in fact.

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

15   BY MR. BETTIUS:

16   Q   Now, you said that Mr. Wilson did no
17   allocation of assets between the operations and the
18   land and buildings?

19   A   I said that I know that -- I believe that he
20   believes he did. For example, if I look -- take after
21   1992, Mr. Wilson had 100 percent of the amounts
22   received from Inova going to, in effect, what he
23   characterized the charity. So there was no amount

1 going to -- going back in history to JMHA.

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

5 A All of what fees?

6 Q Legal fees and other fees in connection with
7 '92 and '94 going forward; is that correct?

8 MR. COCHRAN: He hasn't opined as to the
9 reasonableness.

10 THE COURT: He never said they were
11 reasonable.

12 BY MR. BETTIUS:

13 Q You opined that they were transaction costs;
14 is that correct?

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

17 Q Do you know when you opine that there are
18 transaction costs what the litigation was about in '92
19 and '94?

20 A At least generally speaking.

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

22 A I understand that Inova had filed a claim
23 that the deeds for properties underlying Jefferson,

1   some of the land, had not been properly filed or what
2   have you or perfected, so there were difficulties in
3   conveying the land to Inova.

4   I understand that there was litigation in
5   federal court that included anti-trust issues that
6   Inova was involved in, predatory or monopolistic or
7   whatever practices.

8   Q   And I want to take both these issues that
9   you've opined are transactional costs in this case.
10   All the legal fees with respect to Inova were title
11   issues that dealt with the real estate; isn't that
12   correct?

13   A   All of them? Not to my knowledge.

14   Q   Do you think there was an operational aspect
15   argued in that case with --

16   A   That's not what I said.

17   Q   Well, isn't it true that this Court has
18   opined, based on your testimony, that, in fact, the
19   land issue was very much alive in this case; is that
20   correct?

21   A   I don't know.

22   Q   Well, if the issues in the Inova-JMHJV
23   litigation dealt with the real estate, why are they

1 incurred or what do they have to do with anything that
2 relates to the license, Mr. Cobb?

3 A That's an excellent point.

4 Q Thank you.

5 A They would relate to the real estate, as
6 would the payments to settle that litigation. If that
7 litigation is about real estate issues and the real
8 estate, going back in time, is attributable to JMHA,
9 that shows that a substantial portion of not only the
10 revenue but the expense side of that would associate
11 with the real property.

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

15 A I can't answer that.

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

20 A To my understanding, some grouping of the
21 Respondents has ownership and custody of the properties
22 at 4600 or 4800 King Street.

23 Q Well, how, if they've gotten all of the real

1 estate back and there's no longer any payment of rent
2 and the lease has been terminated, can this have
3 anything to do with the real estate, this settlement?

4 A As you know, Mr. Bettius, I'm not
5 well-schooled on the settlement. I wasn't aware of the
6 settlement.

7 Q Then I won't ask you that.

8 A You can certainly continue if you want.

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

13 A Not necessarily.

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

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

19 Q Well, do you do allocations of accounting
20 based on what you imagine or does it have to really be
21 related to the legitimate interest of a party to whom
22 your allocating the cost or benefit?

23 A That's a rather unfair grasping of the word,

1 Mr. Bettius. You do accounting based on what's there.
2 I have not done an analysis of -- I've not read
3 documents regarding the anti-trust claim. I've not
4 done an analysis with particulars of the settlement.

5 When you look at the settlement, I look first
6 at the license that didn't exist at the time of the
7 settlement, because it had been terminated or whatever
8 the word is. I look at the economic value of the
9 license at that time. This is a license that had
10 generated substantial losses in the hands of a very
11 sophisticated, very high-level operator; I looked at
12 the prospect of future losses, some \$81 million by the
13 estimate, and I find in those measures an inability to
14 attribute much, if anything, to the license.

15 I find in the various documents around the
16 Inova settlement and the agreement references and
17 materials regarding real property. I've not made final
18 determinations in that regard.

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

21 A I have.

22 Q It required, did it not, Inova to return the
23 property to the Respondents with the license intact or

J.APP. 2403

1 to transfer the entity that had the license; is that
2 correct?

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

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

7 A I believe that one of the factors that Inova
8 looked for was canceling the lease.

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

10 A All right.

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

13 A I had not read the sublease.

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

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

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

22 MR. BETTIUS: Yes.

23 BY MR. BETTIUS:

J.APP.2404

1   Q   Now, when you made your allocation you had no
2   idea what the actual document provided; isn't that
3   correct?

4   A   You have to be more specific.

5   Q   I'm going to be terribly specific. When you
6   made in your report -- when you opined about the
7   allocation in the '82 lease amendment by which \$1
8   million of rent, \$900,000 was diverted, you hadn't a
9   clue what the document said, did you -- had you?

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

11   Q   Well, the financial statement incorrectly
12   reflects the transaction, doesn't it?

13   A   I don't know, Mr. Bettius, as I sit here
14   today.

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

18   A   As being correct?

19   Q   As being the document that embodies what the
20   parties were entitled to take from the transaction by
21   way of rent; is that correct?

22   A   Not necessarily, though that's what you've
23   stated a number of times. I looked at the '66 lease.

J.APP. 2405

1 I paid attention to the terms of it that included that
2 there needed to be continuous operations of a general
3 hospital, that the sublet was encumbered or had to have
4 approvals issued, and I found a hospital operation that
5 was, at best, floundering; as I looked at it, a
6 hospital that needed help and needed to get out from
7 under that lease. Enter Health Group of Virginia,
8 later Inova. So I made considerations of a company in
9 that kind of position attempting, instead of just
10 walking away from the liability that it had at that
11 time for future lease payments, given operational
12 difficulties, some ability of that enterprise to
13 negotiate some sort of continuing participation in the
14 overall leasing of the facility.

15 Q Mr. Cobb, haven't you clearly in your
16 depositions, in your (sic) trial and in your report
17 taken the position that your accounting is tied to the
18 '66 lease?

19 A It certainly is.

20 Q And haven't you further acknowledged that
21 there are questions -- the '66 lease is irreconcilable
22 with the '75 lease, isn't it? Its provisions are
23 different?

JAPP. 2406

1   A   Its provisions are different.

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

6   A   I lost you.

7   Q   Isn't it true that your allocation based on
8   the 1966 lease cannot stand under provisions of the --
9   strike that.

10   Isn't it true that the allocation that you
11   made is inconsistent with considerations expressly
12   stated in the '66 lease? Let me cut right to the
13   chase. The '66 lease did not provide for cancellation
14   on six months' notice, did it?

15   A   It did not.

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

18   THE COURT: Anything further, Mr. Cochran?

19   MR. COCHRAN: Just one question.

20   REDIRECT EXAMINATION

21   BY MR. COCHRAN:

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

1 MR. BETTIUS: Your Honor, that's been gone
2 over.

3 THE COURT: Is that your one question, Mr.
4 Cochran?

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

6 THE COURT: I'll let him answer it, even
7 though it's been answered I don't know how many times
8 in the course of this trial.

9 THE WITNESS: Yes. Yes, it did.

10 MR. COCHRAN: Nothing further, Your Honor.

11 THE COURT: Thank you, Mr. Cobb.

12 (End of partial transcript.)

13 * * * * *

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 3rd day of March, 2000.


Eva M. Bridget
Verbatim Reporter

JAPP. 2409

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

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

Alexandria, Virginia

Wednesday March 24, 1999

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 11:10 a.m., before Eva M.
Bridget, Verbatim Reporter, when there were present on
behalf of the respective parties:

J.APP. 2410

APPEARANCES:

On Behalf of the Complainants:

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DEBORAH O'CONNELL, ESQ.
Lawson & Frank
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On Behalf of the Respondents:

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Long, Aldridge & Norman, L.L.P.
701 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004

* * * * *

J.APP. 2411

P R O C E E D I N G S

MR. BETTIUS: Marc Bettius on behalf of the Commonwealth of Virginia and the Attorney of the City of Alexandria, and I'm assisted by Deborah O'Connell of our firm.

Your Honor, the case is on today for motions to compel with respect to discovery. I can't emphasize strongly enough, Your Honor, how truly important I think this motion is, for a number of reasons.

This case is no longer in an adversary posture. Dispositive findings have been made by this Honorable Court, affirmed by the Virginia Supreme Court and certiorari has been denied by the United States Supreme Court.

The posture of the case today is that the Court has found that the Respondents occupy a fiduciary relationship to an undefined class of beneficiaries who are citizens of Northern Virginia. The Court has also found that there has been a fundamental breach of that trust and that it's now appropriate to account.

I want for purposes of this record, as an auctioneer does before he drops the hammer, to issue fair warning to these Respondents the dispositive

1 rulings with respect to ownership of property, with
2 respect to ownership of assets, all of that testimony
3 has already been presented to this Court. It's our
4 intention, Your Honor, to produce that record which has
5 been transcribed, together with findings of fact and
6 conclusions of law that support what this Court has
7 already decided.

8 This Court had made certain dispositive
9 findings concerning a 1970 transfer, and the Supreme
10 Court also picked up on that transfer. So we find the
11 case in this posture.

12 The fair warning is we can demonstrate with
13 preciseness the amount of revenue that has been
14 received by these Respondents from the use of these
15 assets. We know those numbers. We have retained
16 Arthur Andersen.

17 Your Honor, I have made representations to
18 this Court about what this case is going to show, and
19 I'm making those representations again. We can prove
20 the income and we can prove the future income to be
21 received from the assets and licenses that were usurped
22 by these Respondents.

23 What we attempt to do and feel it's our

1   burden, because of the serious nature of the case, is
2   to also make a good faith effort to judge what logical
3   receipts are subject to credits for costs and expenses.

4   I represent to the Court, Your Honor -- and I
5   commend to their reading such cases as Hooper versus
6   Mussolino -- the situation that a trustee in breach
7   finds itself in when he comes to the Court to account
8   when the revenue stream is known, it is my opinion --
9   and, of course, I don't represent these Respondents --
10   I would be bending over backward to supply to the
11   Commonwealth every bit of information I could with
12   respect to logical disbursements and deductions to be
13   made from the revenue stream.

14   To complicate this matter further, Your
15   Honor, based on information which we have received, we
16   now know that there was, in addition to everything else
17   that the Respondents have done, a commingling. They
18   went out after having usurped the assets, and you'll
19   recall that we said this was going to be a multi-
20   million dollar enterprise, and it became just that --
21   so the Respondents, because of their desire to quit
22   paying income taxes, have again gone out and bought tax
23   shelters. So there's now an amazing commingling of our

1 assets with other assets.

2 In response to requests -- in effect, Your
3 Honor, they went out and bought coal mine ventures.
4 They went out and bought condominium units to generate
5 depreciation prior to the tax law changes. Your Honor,
6 we find a complete presentation of financial records
7 for early periods, but when we had this commingling and
8 the funny movement of assets to avoid paying the taxes,
9 we find gaps in the middle and, strangely enough, Your
10 Honor, gaps in financial documents since the parties
11 have been in litigation. They're pointing at a reason
12 for that.

13 We're not here as the Internal Revenue
14 Service and we don't care what problems they may or may
15 not have with the Internal Revenue Service. The fair
16 warning I want to issue to these people, I want them to
17 clearly understand at this juncture of the case, that
18 they have a duty as fiduciary in breach to account.
19 They are producing literally nothing, Your Honor.

20 I took the trouble, because I knew what was
21 going to happen, of photographing, of taking a
22 videotape of the production that we got. Ms.
23 O'Connell's going to give you the status of production.

1   We were directed to where there were boxes.
2   About two-thirds of the production was production of
3   exhibits that had already been made in this case. They
4   were the trial exhibits. Well, they dealt with 1975,
5   Your Honor. We didn't need to see the previously
6   submitted trial exhibits.

7   In the additional boxes were some corporate
8   matters totally incomplete. There were some trial
9   balance runs of accounts receivable for the year 1985
10   and an abundance of stock certificates and former bond
11   facsimiles and bond issues.

12   Now, Your Honor, we are -- we have Arthur
13   Andersen standing by at this point, and I want to tell
14   the Court, and I represent to you on behalf of the
15   Commonwealth, in an attempt to try and come to a number
16   -- that's in an attempt to try to come to a number to
17   determine what are appropriate disbursements that
18   should be credited against the income stream, and they
19   are giving us the limp leg. We are getting absolutely
20   nothing.

21   The fair warning that I want to issue to
22   these people is I know this case hates to be an
23   arbitrator of discovery, but we're going to continue to

1 persevere and try and get this information. Arthur
2 Andersen is totally at a loss at this point to try and
3 justify their accounting.

4 Your Honor, one of the questions, for
5 instance, that we asked in Interrogatories is what's
6 the beginning date of your accounting, what's the end
7 date. No answer. What assets do you believe you're
8 going to have to account for in broad categories, what
9 liabilities. No answer.

10 They're 30 days away, Your Honor, from the
11 time they have to render to this Court an accounting
12 and file it. They're telling us at this point in time
13 that they can't give us receipts and disbursements and
14 they can't tell us what the inventories of assets are
15 and they can't tell us what the beginning dates and the
16 end dates of the account are. I want to know what
17 they're doing with this 120 days.

18 Ms. O'Connell, for the rest of our time, I'd
19 like her to address what we've asked for and what we've
20 gotten, Your Honor.

21 THE COURT: I'm not sure -- what are you
22 asking me to -- again, I've asked everybody, what are
23 you asking me to do today?

1 MR. BETTIUS: Your Honor, I want them
2 ordered, compelled -- we've been told, for instance,
3 that the first issues that were raised were privileged
4 and attorney work product. I'll furnish to the Court
5 the dispositive ruling on these issues in Sandberg,
6 which basically says, if you're a fiduciary, you don't
7 have a work product or attorney-client privilege.

8 They finally saw the wisdom of that and
9 they've withdrawn those objections. They told us
10 they're going to answer by April 1st. They also told
11 us they were going to make a production of documents.
12 We went and that was a hollow effort. I want them
13 under an order. I truly want them under an order.

14 Your Honor, the purpose of this is, frankly,
15 I don't care if they comply or they don't comply. When
16 this case gets to you for a decision, I want this Court
17 to know I have made every effort I can to document the
18 legitimate credits against the income stream.

19 If they don't produce that -- in effect, Your
20 Honor, it's time for them to wake up and smell the
21 coffee. I'm not in here trying to hurt them. I'm in
22 here because I think the Court visits on me a duty to
23 present a fair and objective case with reference to

1 these people.

2 I want to tell the Court I don't care if they
3 ever produce another thing. I'm going to go through
4 the motions of setting forth motions to compel. I'm
5 going to do everything that I need to do so that there
6 is no excuse when this Court finds that there's no
7 basis for subtracting disbursements in this case for a
8 judgment for the entire income stream.

9 Your Honor, you can't get down in the mud
10 with us and wrestle with what's produced and not
11 produced. I want to tell you that's not produced at
12 this point and I want a motion to compel and I don't
13 care if they comply with it or not, because, as I said,
14 we're not in an adversary proceeding. This is fair
15 warning. They either give us the stuff that allows us
16 to make a fair calculation or what should be deducted
17 from the income stream or you're going to get a
18 judgment for the total amount.

19 THE COURT: Yes, ma'am. Let me hear what,
20 specifically, you're interested in.

21 MS. O'CONNELL: Thank you, Your Honor.

22 As we set forth in our Supplemental Motion to
23 Compel, we had taken the documents that were provided

1 to us, primarily the tax documents, compiled them into
2 schedules and charts which we attached to our original
3 document.

4 After several letters from Mr. Bono -- this
5 gentleman here is brand new counsel. After several
6 letters from Mr. Bono, I went back and he basically
7 said he didn't understand what we were doing and we
8 were not correct.

9 I went back and touched every document that
10 they had provided to us, and what I ultimately found
11 was that we did find two documents that we said were
12 missing and we found the documents we had listed that
13 were there and were not missing. So I do have a
14 supplement for the Court and I'll provide that to the
15 Court. This is what we're going to be visiting with
16 today.

17 Your Honor, primarily the items that -- we
18 had Interrogatories, we've had Requests for Production
19 of Documents. You will see in the documents that we
20 have -- some things we have, not other things. For
21 example, in the joint venture tax documents, financial
22 statements the years '78 to '86 were missing, but
23 concomitant to that, if you look over at Jefferson

1 Corporation, JCA, those documents and the sister
2 corporation, if you will, or daughter corporation,
3 however you want to view their family, those documents
4 were provided.

5 These folks had the same accountant, Mr.
6 Marmelstein, up through 1992, and now they have a Mr.
7 Grossman. What they're responding to us with is this
8 is all we have, nothing else is available. We're free.
9 We're done. We don't have to do anything else for you.
10 This is their continual response in letters and also in
11 their objection which was filed with the Court to our
12 Motion to Compel.

13 Again, as Mr. Bettius said, we find it very
14 hard to believe that corporations of this stature have
15 some financial records but don't have all of the
16 financial records available.

17 The other thing we can visit with the Court
18 is, if you compare side by side some of these
19 documents, what's available in one document -- for
20 example, in 1980, the Jefferson Memorial Hospital
21 Corporation financial statement talks about leases with
22 the hospital, talks about flow of money with the
23 hospital, the rent goes from \$112,000 to \$230,000 per

1 year. But, coincidentally or not, there are no joint
2 venture documents receiving those funds.

3 There's no joint venture documents to show
4 how it flows from this side to this side. Perhaps an
5 oversight, Judge, we don't know. We don't know whether
6 they're playing a shell game or not. Where there have
7 been some significant financial dealings -- and I can
8 give the Court three or four more examples, if you like
9 -- on one side it's documented, on the other side it's
10 not documented. We feel that there are some glaring
11 items there.

12 Mr. Bettius talked about us going down and
13 looking. They basically responded to many of the
14 Interrogatories and Requests for Production of
15 Documents, we have them here, you can come down and
16 look at them.

17 We wrote them a letter and said fine, if you
18 relegate them to distinct responses, these are the
19 documents we're producing in response to Request for
20 Production number one or Interrogatory number one,
21 we'll come down and look at them.

22 Your Honor, we did go down and look. They
23 were all of their exhibits from the previous trial,

J.APP. 2422

1 boxes and boxes. Judge, these were copies delivered to
2 us yesterday. From all the requests we have, these are
3 the only things and these are marginally responsive to
4 10, 11 and 12, they have to do with some stock
5 transactions, this is all we got. This is all that was
6 responsive in six or seven boxes of documents.

7 Everything else there was just junk. There
8 was nothing responsive, even though that is what they
9 had provided as answers and what they had represented
10 to the Court that they had done; we have the documents,
11 you come look, we're in compliance. This is what was
12 there in those boxes, Your Honor.

13 As far as the Interrogatories, again, they
14 first started everything with a blanket answer, we have
15 and will produce the documents that will give the --
16 breaks the privilege. They've withdrawn the privilege,
17 but these were answers to questions, Your Honor. These
18 were not Requests for Production of Documents. The
19 production of documents was not responsive to those
20 Interrogatories.

21 In the last letter that we got from Mr. Bono
22 before, I guess, he went on vacation, he now is telling
23 us, well, I will provide these answers, even though

1 before he's maintained that he had answered them, we've
2 given you the documents, go fish, basically. Now he's
3 saying well, we will supplement these answers, we will
4 supplement these answers.

5 As Mr. Bettius said, many of these responses
6 that he's given -- beginnings and endings. They're
7 simple questions, Your Honor. They're simple
8 questions. Several of the answers that he gave to us
9 were we haven't done our accounting yet, so we don't
10 know what our answer's going to be.

11 Clearly, beginnings and endings, what your
12 assets are, what your liabilities are, those ought to
13 be straightforward lists that at least we could provide
14 or, under Rule 4:8(f), which they've invoked, they
15 ought to be able to point to the documents that say
16 this is what the answer's going to come from. They've
17 invoked the rule, but then haven't provided us with any
18 documents form which to rely on.

19 Basically, Judge, we've had several letters,
20 again from Mr. Bono. He claims he's supplied
21 everything he has. If that's truly the case, then I
22 guess we're probably done and it's not going to make
23 our life easy. On the other hand, we would like these

J.APP. 2424

1 financial documents if we're going to do a complete
2 accounting for the Court or he is going to do an
3 accounting for the Court, these documents need to be
4 produced for us.

5 The chart that I've given you has to do
6 primarily with taxes and financial statements.
7 According to them, that's all they have and there
8 aren't any other items available. If that's true, then
9 that should be responded to under oath.

10 All the other things, the leases, the various
11 documents they're going to use in their accounting, we
12 might get them, according to them, by April 1st, but
13 then again, they've been promising since the 29th of
14 February. We've gotten exactly the same responses all
15 along.

16 THE COURT: Briefly. Briefly.

17 MR. BETTIUS: I'll state our position and
18 then I'll sit down. The Commonwealth's under no duty
19 to render an accounting in this case. In order to
20 fairly present this case -- because I told you at the
21 outset we're talking in magnitudes of \$30 million and
22 \$40 million. I wanted, in fairness -- and the
23 Commonwealth has authorized the expenditure of the

J.APP. 2425

1 monies -- to do a complete and full accounting based on
2 documents that we have. We can't do that.

3 Judge, I want to repeat again, we've got the
4 income stream. I want a motion to compel answers, full
5 and complete answers, by April 1st, which is when he
6 said he'd respond. That's all I want, Your Honor. If
7 he doesn't want to do this, that's fine with me.

8 I just want them to understand that the Court
9 will have a continuous record of what we received in
10 this case so that when an accounting comes in, what
11 purports to be an accounting -- Your Honor, I've been
12 practicing law for almost four decades and this isn't
13 my first accounting. I've also been in cases that
14 involve breach of fiduciary duty. I know what the
15 Court's response is: You'd better have your
16 disbursements from the income stream well-documented.

17 I'm breaking my back to try and bring this
18 Court that fair presentation. Fair warning is, if you
19 don't have it, that's fine. The Court's already
20 determined who the assets belong to and what should
21 happen to them.

22 Your Honor, we deal with, at this point in
23 time, a revenue stream of over \$2 million a year and

1 they're sitting there passively earning that on the
2 investments.

3 Your Honor, we also have in this case \$4
4 million that has been spent by these Defendants to
5 defeat -- in counsel fees -- legitimate claims of third
6 parties to these assets. We have had no documentation
7 of those fees. We're going to ask the Court to
8 disregard it.

9 THE COURT: All right, sir.

10 MR. COHICK: Your Honor, obviously there is a
11 long history to this case which I have not been a part
12 of. As far as I can tell, we're not resisting. The
13 Respondents are not resisting any discovery requests
14 that have been made in this case.

15 Mr. Bono has been working on this case for
16 some years. I have no reason to doubt what he has told
17 me and what he's stated the response, the opposition
18 that we filed, which is that every document that we
19 have been able to find has been produced, that
20 Interrogatories are sufficiently answered by the
21 documents that we produced, because that's all we have,
22 that's all we've been able to find. That information
23 is equally discernible by the Complainants as by the

J.APP. 2427

1 Respondents.

2 With respect to the questions about the
3 accounting, it doesn't seem unfair to me to say that we
4 can't answer accounting questions until we're finished
5 with our accounting. It's not due, as I understand it,
6 until May 1st, and yet we have offered to supplement
7 our responses to the questions pertaining to the
8 accounting by April 1st.

9 There's been a lot of correspondence in this
10 case which I have reviewed, which indicates that there
11 have been demands made for many things and Mr. Bono has
12 regularly responded by producing documents and saying
13 this is all we have.

14 I think this motion is needless for that
15 reason. We're not resisting discovery. We're making
16 our best effort to produce everything that we have so
17 they can have it and to answer Interrogatories as soon
18 as we have information that's responsive to those
19 Interrogatories.

20 I don't think there's any indication of bad
21 faith here simply because documents are missing, or at
22 least we haven't been able to find documents. I
23 haven't had a chance to really look over the log of

JAPP. 2428

1   what's missing to try to compare that. I'm not sure
2   Mr. Bono has either.

3   Simply because something's missing doesn't
4   mean that we haven't made a diligent search to find it.
5   I have every reason to think that we did.

6   It is certainly possible, as is always the
7   case with these things, that further documents might be
8   discovered in the future. If that's the case, I don't
9   believe that there's any record here that would
10   indicate that we were withholding those documents or
11   that that would be evidence of bad faith.

12   We're making diligent efforts to find all the
13   documents that we can from these various clients of
14   ours. For that reason, I think that the motion is not
15   necessary and should be denied.

16   THE COURT: What's the trial date in this
17   case? Is it next February?

18   MR. BETTIUS: February 1st.

19   THE COURT: When is the discovery cutoff?

20   MR. COHICK: I don't know the answer to that,
21   Your Honor.

22   MR. BETTIUS: Your Honor, the way the case is
23   to go down -- I don't know that there has been a formal

J.APP.2429

1 discovery cutoff. It's apparent they have 120 days for
2 the accounting. We have 120 days to respond to that
3 accounting. Then the time has been set aside -- two
4 months have been set aside for the depositions of the
5 experts and then we go to trial.

6 So, in effect, Your Honor, in terms of
7 discovery, we need an order to do an accounting to
8 verify their accounting, the full panoply of documents
9 by the time we have to start, which is May 1st. I
10 mean, we need to have, in order to justify the
11 accounting, evidence of all their receipts and
12 disbursements.

13 THE COURT: If you don't have that and it's
14 never introduced into evidence in the Court, how could
15 the Defendants get credit for it?

16 MR. BETTIUS: That's my point exactly.

17 THE COURT: In other words, is the burden on
18 them to produce that?

19 MR.. BETTIUS: My point exactly, Your Honor.
20 I just want it clearly understood from the outset that
21 we're going to document very clearly what we're going
22 to get. We're going to take the steps necessary to
23 say, look, we did everything we could to diligently

J.APP.2430

1 produce. Your Honor, if they don't produce it, that's
2 exactly what I'm saying this morning, don't go to the
3 Supreme Court and complain that you have -- you have
4 been hit for a \$40 million judgment when there were
5 legitimate expenses.

6 Your Honor, in this case, there may well have
7 been legitimate expenses. We just don't have the
8 information that's necessary to get to -- to separate
9 the wheat from the chaff. In the absence of that, it's
10 going to hurt them. I want it clearly understood we're
11 trying.

12 THE COURT: What I'm going to do in this case
13 is I will direct that the Interrogatories be answered
14 in writing, fully in writing, by April 1st, which is
15 apparently the deadline that Mr. Bono agreed to.

16 I'm going to take under advisement the
17 Request for Production of Documents, pending the filing
18 of Defendants' accounting, and perhaps a conference
19 call could be arranged with me if there are things that
20 the Complainant feels were not there that should be
21 there, and we can deal with it at that time.

22 I think the way to solve this problem, quite
23 frankly, is to accelerate the date by which each party

1 must file the documents that they intend to rely on at
2 trial. I'm not going to allow this late, oh, we just
3 found this one a month before trial, or we just found
4 this one six weeks before trial or three days before
5 trial.

6 Rather than have -- I'm sure we have a
7 pretrial order in this case that sets that date. I can
8 accelerate that date to six months before trial.

9 MR. BETTIUS: I suggest a pretrial
10 conference, Your Honor. I'll confer with Mr. Bono.

11 THE COURT: Absolutely a pretrial conference.
12 I'm just saying I could order people in -- I think
13 February is the date we had set aside for the hearing.
14 I could order everybody to have all documents that they
15 intend to introduce at trial, say, filed by the 1st of
16 October, and nobody supplements after that.

17 MR. BETTIUS: That's fine.

18 THE COURT: That will take care of the
19 problem of the late documents.

20 MR. BETTIUS: Your Honor, I have a videotape
21 and it will show you the nature of this production.
22 We're left with a paralegal to go in a room with a
23 bunch of boxes and go find what we're looking for.

1   Because, Your Honor, I guess I was determined, I did
2   that. I have that tape. At some future time if the
3   question arises -- and I'm going to continue to
4   videotape everything I get so that Your Honor will have
5   a fair record of whether we've had production or not.

6   Your Honor, I don't want to hide the ball. A
7   lot of things that they say aren't available, I know
8   are available from their -- Mr. Bono's own
9   participation in other cases with third parties. I'm
10   trying now to get information from third parties that
11   actually assists them. I just want the record to be
12   clear.

13   THE COURT: All right. I will take the
14   motion for the production of documents under advisement
15   pending the filing on April 1st, then you all arrange a
16   conference call.

17   MR. BETTIUS: Thank you.

18   MR. COHICK: Thank you, Your Honor.

19   MR. BETTIUS: We'll prepare an order.

20   THE COURT: All right.

21   (Whereupon, at 11:35 a.m., the proceedings in
22   the above-entitled matter were concluded.)

23   * * * * *

J.APP. 2433

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

-----x
COMMONWEALTH OF VIRGINIA, et al.,
Complainants,
v.
LASZLO N. TAUBER, et al.,
Respondents.
-----x
INOVA HEALTH CARE SYSTEMS,
Complainant,
v.
COMMONWEALTH OF VIRGINIA, et al.,
Respondents.
-----x

In Chancery
No.: 96-1241

ORIGINAL

In Chancery
No.: 97-0488

Alexandria, Virginia

Wednesday, June 28, 1999

The above-entitled matter came on for hearing
before the Honorable Alfred P. Swersky, Judge, in and
for the Circuit Court of the City of Alexandria,
Virginia, 520 King Street, Courtroom 4, Alexandria,
Virginia, beginning at 9:10 a.m., before Eva M.
Bridget, Verbatim Reporter, when there were present on
behalf of the respective parties:

J.APP.2434

APPEARANCES:

On Behalf of the Complainant &
Respondent Commonwealth of Virginia:

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DEBORAH O'CONNELL, ESQ.
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On Behalf of Complainant Inova Health
Care Systems:

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On Behalf of the Respondents Tauber, et al.:

GASPARE J. BONO, ESQ.
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Alexandria, VA 22314

* * * * *

J.APP. 2435

P R O C E E D I N G S

(Whereupon, the Court Reporter was sworn by the Clerk of the Court.)

MR. BETTIUS: Good morning, Your Honor.

MR. BONO: Good morning.

MR. TRENGA: Good morning, Your Honor.

MR. BETTIUS: Your Honor, this matter is here this morning on our motion to increase the bond previously ordered by this Court.

In many respects I'm inclined to agree with Mr. Bono's motion. The bond should be increased or go on to appoint a receiver forthwith.

Your Honor may or may not have had an opportunity to examine the documents that have been filed in this case. Those documents, Your Honor, are a total evasion of this Court's order which provided, inter alia, that we were supposed to receive a complete accounting of all rents, issues, profits, depreciations and benefits tangible or intangible which have accrued from the use of the charity's assets.

Your Honor, one would believe that this Court's opinion should have been a reality jolt to these Respondents. If it was not a reality jolt to

J.APP.2436

1   these Respondents, then the Supreme Court's ruling
2   should have been.

3   What we have here is a reiteration of the
4   first position ever taken, that by purloining and
5   converting this charity's assets they did us a favor.
6   If you follow the logic of this accounting, I believe
7   within the next six or seven months we would owe them
8   \$3 million for the theft of the charity's assets.

9   Every piece of evidence in this case totally
10   contradicts that position. Your Honor will recall the
11   unrebutted testimony with respect to the ownership,
12   control and operation of the business, the assets, the
13   real property, the improvements rested in the charity.
14   The license rested in the charity. The grandfather
15   status of the hospital rested in the charity.

16   By the time we get to 1975, we heard Dr.
17   Tauber testifying in the previous trial that he could
18   take charitable deductions of \$15 a share for this
19   stock, because it's COPM licensed, which was issued in
20   1973, grandfathered in 1973, which gave this property
21   unquestioned value.

22   Your Honor may recall that all experts in
23   this case testified that the reason assets exceeded

J.APP. 2437

1 liabilities was because this charity was never, ever
2 given any capital whatsoever, but existed and thrived
3 and flourished under circumstances where it was
4 burdened by debt, all owed to these Respondents.

5 If you heard what the Supreme Court heard,
6 that these were debt-paid positions, they were
7 avaricious. They were unyielding in their desire to
8 make money.

9 When we look at Mr. Wilson's testimony, the
10 accountant from Arthur Anderson, he testified that
11 based on the census, based on Medicaid and Medicare,
12 that there would be a continual stream of profitability
13 into the future. Indeed, Your Honor, you will find
14 that by 1982, on a continuous operation, that the value
15 of this property and its license had increased to \$1
16 million. By 1985 a lease was put in place that
17 increased the profitability into millions of dollars.

18 Your Honor, we have now received preliminary
19 numbers from Arthur Anderson in this case. It appears
20 that minimally the value of the recovery in this case
21 will be about \$45 million to \$55 million. That's going
22 forward and it's going backward.

23 We have repeatedly come into this Court, Your

J.APP. 2438

1 Honor, asking for discovery to try and find out if
2 there were expenditures which we could credit these
3 Respondents with. That discovery has continued up
4 until last week, where we've gone back -- Your Honor,
5 we have a totally viable and complete track of income.
6 We know what income they had. We have attempted from
7 all of the financial records and documents to afford
8 these people every possible deduction that we could
9 give them, and have continued to do so.

10 One of the things that frightens me, Your
11 Honor, is the size of this recovery, because it is
12 substantial. We're trying to figure out this morning
13 where this case will go dollar-wise. We're trying to
14 decide what this Court -- how this Court can best
15 administer these assets in the future, because they are
16 substantial.

17 If Your Honor hasn't read this document, Your
18 Honor, you're in for an evening of some amusement,
19 because it starts with the proposition that we've heard
20 all along, that they did us a favor by taking these
21 assets. It does not, in any year attempt to deal with
22 what the revenue was, the expenditures were. Your
23 Honor, what happened in the case is as it became more

1 and more profitable, it was irresistible that these
2 men, in order to again magnify the profitability, would
3 engage in reckless tax shelter investments, that Dr.
4 Tauber would build condominiums and when he couldn't
5 sell them, he'd dump them into this property.

6 So in addition to everything else we had, we
7 had unbridled commingling and attempts to reduce what
8 was becoming an ever profitable operation.

9 Under these circumstances he doesn't want the
10 bond. Let's go ahead and give him what he should have
11 had at first blush in this case, a receiver. Your
12 Honor, I've had experience with National Union Fire
13 Insurance Company. I got a \$7 million judgment against
14 them for not honoring a bond.

15 If you want to give me an enormous sense of
16 comfort, let's give them what they deserve, a receiver,
17 or, in the alternative, Your Honor, we pray that this
18 bond be increased this morning until we can have a
19 decision on the merits.

20 Thank you.

21 MR. BONO: Thank you, Your Honor. Your
22 Honor, we were here appearing simply on a motion for an
23 increase in the bond. There was no other motion filed

1 with the Court. Your Honor, our position is that we
2 have submitted a bond in the amount of close to
3 \$4,800,000. Our position is that based upon the
4 evidence before Your Honor, the bond amount is more
5 than sufficient to protect any interest in the
6 accounting phase of this proceeding.

7 Your Honor, we have submitted, so far in the
8 Court's schedule, a detailed accounting, contrary to
9 Mr. Bettius' statements. Your Honor, our accounting
10 deals -- I represent this to the Court -- our
11 accounting documents are as thorough as they possibly
12 could be.

13 We have accounted for every entity, JMHI,
14 JNHC, JCA, JMHJV, from 1971 to the present. We have
15 accounted for every dollar of income, revenue, assets,
16 liabilities, expenses. We have produced in the case to
17 the Commonwealth every financial statement of JMHC from
18 1971 to 1985, which was the operating corporation that
19 operated the hospital until 1982.

20 We have produced from 1985 to the present
21 each tax return from JMHJV. Each of these documents
22 deals with every dollar of assets, liabilities, income
23 and deductions.

J.APP.2441

1   Your Honor, we have, contrary to what Mr.
2   Bettius said -- for example Exhibit 10 of our
3   accounting is an evaluation and analysis of the
4   hospital as of April 1, 1982, which was the last date
5   that these Respondents operated the hospital.

6   Your Honor may recall at that point they
7   leased the building to a third-party operator. So this
8   is the last point that the Respondents operated the
9   hospital.

10   Your Honor, this evaluation was done by Bruce
11   Denyle (ph) of PriceWaterhouse. Your Honor may recall
12   he was one of our experts on the stand. He was the
13   hospital evaluation expert whose testimony Your Honor
14   accepted in the first phase of this trial.

15   Mr. Denyle did this analysis, which is
16   Exhibit 10, and his analysis of the hospital
17   operations, as of April 1, 1982, shows that it had no
18   value and, in fact, it had negative value. He used the
19   same methodology to evaluate the operations of the
20   hospital as he did in the trial before Your Honor,
21   which analysis Your Honor accepted.

22   Your Honor, there is no basis to in any way
23   credit the Commonwealth's statements that we haven't

J.APP.2442

1 accounted for every dollar. Now, it's true that they
2 disagree with the analysis and I'm sure they will have
3 their own accounting come September 1.

4 But as far as right now, we have done our
5 job. We have accounted for each asset and we have
6 tried following the decisions of the Virginia Supreme
7 Court to do the accounting that Your Honor directed us
8 to do.

9 Your Honor directed us to do an accounting of
10 the assets and liabilities of JMHI, which was the
11 charity that existed back in 1971, and following the
12 directions of the Virginia Supreme Court, we have
13 traced each asset and liability of the charity from
14 1971 to the present.

15 We have attempted to allocate -- as the
16 Supreme Court of Virginia and treatises have said to
17 do, allocate the assets of the charity and the assets
18 coming from other entities, private entities, and
19 determine whether there are future assets and future
20 income that is attributable to those assets or should
21 be attributable to private assets.

22 That is what the treatise is saying to you
23 and that's what the Virginia Supreme Court says to do,

J.APP.2443

1 an accounting.

2 Be that as it may, we have accounted for
3 every entity and every dollar of income, assets,
4 liabilities and expenses in our accounting. To be
5 sure, they will argue something differently, but I
6 thought under the Court's schedule that we did our
7 accounting and they will do their accounting and then,
8 of course, Your Honor, we will be before Your Honor in
9 February presenting the evidence and we'll be arguing
10 this point and Your Honor will have to make a decision.

11 But at least at this point, on the only
12 motion before the Court on whether the bond should be
13 increased, it is our position that a bond amount of
14 nearly \$5 million is more than sufficient based upon
15 the evidence before this Court.

16 The Commonwealth has put in no showing -- I
17 have seen nothing in their memorandum or anything, no
18 dollar amount, which contradicts our accounting.

19 Your Honor, we have filed Interrogatories
20 asking the Commonwealth ---just like they have filed
21 Interrogatories on us which Your Honor required us to
22 answer back in April before we did our accounting -- we
23 have filed Interrogatories on the Commonwealth saying

J.APP.2444

1 give us the numbers, give us the basis for your ..
2 accounting.

3 They have not given us number one, analysis
4 one and we have filed a motion to compel, because their
5 failure to answer our Interrogatories hampers our
6 analysis and our preparation for trial, because they
7 make these statements about what their accounting will
8 show, but we're not given any dollars and cents or
9 analysis.

10 Your Honor, under the -- secondly, Your
11 Honor, with respect to Inova, Your Honor's prior orders
12 in this court have discharged Inova from liability
13 until any further order of this Court. So under the
14 current status, Your Honor, Inova is protected from any
15 liability.

16 I believe the bond amount is more than
17 sufficient on this matter. Of course, Your Honor, if
18 Your Honor has a different viewpoint on the bond
19 amount, we will comply with the Court's order. We feel
20 it's sufficient.

21 Thank you, Your Honor.

22 THE COURT: Let me hear from Mr. Trenga, Mr.
23 Bettius.

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

2 MR. TRENGA: Thank you, Your Honor. For the
3 record, I'm Anthony Trenga on behalf of the Inova
4 entities that are Complainants in the companion case,
5 Chancery Number 97-0488.

6 In some ways the reason we're here is because
7 of the interpleader action we filed, in which we sought
8 direction from the Court on whom to pay the proceeds
9 under a settlement agreement between Inova and JMHJV of
10 \$177,000 per month.

11 Under the statute we were entitled under that
12 action to simply deposit into the registry of the court
13 those sums, since there was a dispute between Mr.
14 Bono's clients and the Commonwealth of Virginia
15 Attorney General. Both of them continue to this day to
16 have conflicting claims to those amounts.

17 Rather than allow that to take place, we
18 simply deposit it into the registry of the court. Mr.
19 Bono's clients came into court and asked this Court for
20 something rather unusual, and that is to allow the
21 monies to continue to be paid to them directly.

22 In exchange for that -- the Court allowed
23 that, but in exchange for that, the Court ordered a

J.APP. 2446

1 bond that was equal to, in essence, the amount of the
2 payments under the settlement agreement for whatever
3 period of time Your Honor has required. That has been
4 continued now, I believe, three times.

5 This motion is simply to continue that
6 period. The motions technically, I think, are to the
7 end of the year. I would orally move that they be
8 extended another two months until the trial in February
9 of 2000.

10 From Inova's perspective, it's imperative
11 that we have that protection. On the one hand, Mr.
12 Bono is correct that this Court's order authorizing
13 distribution directly to his clients discharges Inova
14 to the extent of those payments. We must remember that
15 those are simply interim orders subject to, at some
16 point, review by a higher court. While we certainly
17 don't anticipate that they will be overturned, at least
18 there is the theoretical possibility of some future
19 exposure.

20 Without the bond, it would also be the case
21 that there may be challenges on some basis, all of
22 which simply would increase the complexities of the
23 case, which we could be drawn into further proceedings.

1   So from our perspective the choice is either
2   to extend the bond or simply go back to the mandates of
3   the interpleader statute and let us deposit the funds
4   into the court's registry until there's a final
5   decision as to who is entitled to those funds.

6   Thank you.

7   MR. BETTIUS: Your Honor, briefly, this bond
8   merely covers -- Mr. Trenga made the point -- the
9   payments that are coming in. We have no objection, if
10   they don't want to increase this bond, having the money
11   paid into the court or having a receiver appointed as
12   the Court's disposed to do.

13   I also have a lingering discomfort in that
14   we've never been furnished with a copy of the bond or
15   any of the riders. We asked for that this morning. I
16   want to make sure ultimately, from the standpoint of my
17   own position in this case, that we have a valid and
18   subsisting bond.

19   Your Honor, we heard testimony about
20   valuation and Mr. Denyle. Well, if ever an expert was
21   properly named, Mr. Denyle is right on the money. Why
22   are we --

23   THE COURT: Mr. Bettius, what I'm going to do

J.APP. 2448

1 is simply rule that the bond is increased by six
2 months' worth of the Inova payments. That's what the
3 bond is for.

4 I'm not going to grant your request, Mr.
5 Trenga, to do it until February, because at the end of
6 the year we may have a much better handle on the
7 numbers that we need and there may be an argument that
8 it shouldn't be extended until trial.

9 I'll do it until December. If there's relief
10 sought at that time, we'll deal with it then.

11 MR. BETTIUS: Your Honor, may we have copies
12 of that?

13 THE COURT: I assumed they were filed with
14 the court.

15 MR. BONO: Yes, Your Honor. I don't know
16 what Mr. Bettius is talking about. All of the original
17 bonds and riders have been filed with the court. For
18 Mr. Bettius' convenience, all copies of those are
19 attached to our papers, so you have them right there.

20 MR. BETTIUS: Your Honor, I'm sorry --

21 THE COURT: One more, Mr. Bono. Go ahead.

22 MR. BONO: Just a few housekeeping matters,
23 if Your Honor is finished, I would like to raise to the

1 Court.

2 MR. TRENGA: I have, also, a housekeeping
3 matter. Maybe it's the same one.

4 THE COURT: All right. Go ahead, Mr. Bono.

5 MR. BONO: Your Honor, on Friday Mr. Bettius
6 and I discussed a schedule going forward. I believe we
7 reached an agreement. I sent him a confirming letter
8 on Friday and I'd like to present it to the Court.

9 Your Honor, as far as going forward and
10 deposing and discovery and experts, Mr. Bettius and I
11 agreed to the following schedule, which I'd like to
12 present to the Court for Your Honor's approval,
13 modification or whatever.

14 Your Honor, we agreed that fact discovery
15 would close October 1; that both parties' expert
16 reports would be submitted October 15; that rebuttal
17 expert reports would be submitted December 1 and that
18 expert discovery would close December 15.

19 MR. BETTIUS: I have only this comment to
20 make with respect to Mr. Bono. I am at a loss to
21 understand what the experts are going to do. This
22 matter, as I understand it, Your Honor -- a lot of us
23 have some years on us -- is an accounting matter.

J.APP.2450

1 We're supposed to present numbers.

2 Now, there is some necessity for -- in terms
3 of arriving at appropriate cap rates to take money
4 forward or discount rates to bring money back. But in
5 terms of experts and an accounting proceeding, I think
6 the role of experts with respect -- other than the
7 matters of discount rates and cap rates is extremely
8 limited. I don't want to see a new accounting under
9 the guise of some expert filing a report that impeaches
10 what was previously filed. So to the extent that there
11 may be that kind of an expert or that kind of rebuttal,
12 that's fine.

13 As far as I know, and I've been doing this
14 almost 40 years now, an accounting is largely did we
15 properly list all the income, did we properly list all
16 the disbursements and how did we treat the capital
17 assets.

18 I have no objection to the schedule. I have
19 an extreme caveat about what these experts are going to
20 do after the accounting.

21 THE COURT: Deal with it if it happens, Mr.
22 Bettius. I suppose -- why don't you all put that
23 schedule in an order so that there is no question about

J.APP.2451

1 it.

2 MR. BONO: I'll be happy to do that.

3 THE COURT: Mr. Trenga?

4 MR. TRENGA: Yes, Your Honor. As you may
5 recall -- you probably don't recall -- when we set the
6 trial date it was the same trial date for both cases
7 and it was my understanding that the cases were
8 consolidated for all purposes, including trial.

9 I'm not sure if there's an order or if that
10 ever was reflected in an order. We're going to check.
11 If there wasn't an order, we can submit one, with the
12 Court's permission.

13 THE COURT: It probably should be done if it
14 hasn't been done.

15 MR. TRENGA: Thank you, Your Honor.

16 MR. BONO: There are two pending motions,
17 Your Honor. I would like to have them scheduled and
18 heard by the Court. Would you like us to check with
19 chambers?

20 THE COURT: How long will it take to argue
21 them? What are they?

22 MR. BONO: Your Honor, the Commonwealth has
23 filed a motion to strike our accounting, and I believe

J.APP.2452

1 it's a totally inappropriate motion, but I'd like to
2 have it disposed of. We have filed a motion to compel
3 on our Interrogatories for their inadequate answers.

4 MR. BETTIUS: Your Honor, he can have his
5 motion to compel Interrogatories any Wednesday. Our
6 motion to strike the accounting is not going to be
7 really mature until our accounting is ready to be filed
8 which is, I think, September 1. Then he can have it
9 any Wednesday he wants.

10 MR. BONO: Your Honor, I don't understand --

11 THE COURT: I don't understand, but I haven't
12 looked at the motions.

13 MR. BONO: -- Your Honor, because under the
14 Court's procedural order that the Court entered six
15 months ago, we file our accounting, the Commonwealth
16 files their accounting. We have expert discovery and
17 then the matter will be presented, Your Honor.

18 Your Honor, it seems to me Mr. Bettius is
19 trying to usurp the whole process. I'd like to have
20 the motion disposed of, Your Honor, because if he has a
21 point, then I think we should deal with it. If he
22 doesn't, then the motion should be withdrawn. I don't
23 want it sitting out there for a year.

4 you, Your Honor, there's going to be one accounting in
5 this case and we're going to provide it --

6 THE COURT: I am, frankly, confused, Mr.
7 Bettius, about a -- the Court has ordered each side to
8 submit what they claim is the accounting.

9 MR. BETTIUS: That's correct.

10 THE COURT: Again, I haven't looked at the
11 motions. I don't know what the grounds are. The
12 grounds either exist now or they don't to argue this
13 motion.

14 MR. BETTIUS: Well, if he wants it heard,
15 Your Honor, he's going to need two or three hours.

16 THE COURT: All right. Put it on at 2:00 on
17 a motions day.

18 MR. BETTIUS: Thank you, Your Honor.

19 THE COURT: Make sure you ask for 2:00.

20 MR. BONO: Thank you, Your Honor.

21 THE COURT: We stand in recess until 10:00.

22 (Whereupon, at 9:30 a.m., the proceedings in
23 the above-entitled matter were concluded.)

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 8th day of JULY, 1999.

Eva M. Bridget
Eva M. Bridget
Verbatim Reporter