

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge

Case No. 09-ALJ-07-0332-CC

Trident Medical Center, LLC, d/b/a
Berkeley Medical Center, ...Appellant/Respondent,

v.

South Carolina Department of Health and
Environmental Control and Roper St. Francis
Hospital-Berkeley d/b/a Roper St. Francis Hospital,

Of Whom South Carolina Department of Health and
Environmental Control is the Respondent, and

Roper St. Francis is the Respondent/Appellant.

Case No. 09-ALJ-07-0333-CC

Trident Medical Center, LLC, d/b/a
Berkeley Regional Medical Center, ...Appellant/Respondent,

v.

South Carolina Department of Health and
Environmental Control, and Roper St. Francis
Hospital-Berkeley, Inc. d/b/a Roper St. Francis
Hospital-Berkeley,

Of Whom South Carolina Department of Health and
Environmental Control is the Respondent, and

Roper St. Francis is the Respondent/Appellant.

RECORD ON APPEAL - VOLUME II OF XVI

(caption continued from cover page):

Case No. 09-ALJ-07-0336-CC

CareAlliance Health Services and Roper
St. Francis Hospital-Berkeley, ... Respondents/Appellants,

v.

South Carolina Department of Health and
Environmental Control and Trident Medical
Center, LLC Respondents,
Of whom Trident Medical Center, LLC is the Appellant.

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2 In Re: Trident Medical Center, LLC vs. SC DHEC, et al.

3 Case Nos: 09-ALJ-07-0332-CC, 09-ALJ-07-0333-CC,

4 09-ALJ-07-0336-CC

5 Deposition of: David L. Dunlap

6 Date Taken: October 25, 2011

7 Taken Before: Heather Curlin

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9 Having read my deposition, no changes are necessary.

10 Signed:

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12 Having read my deposition, I make these corrections:

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20	Page	Line	Correction	
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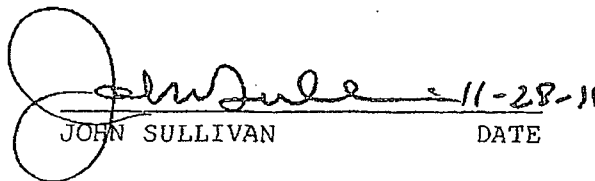
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John Sullivan 10/17/2011

SIGNATURE OF DEPONENT

I, the undersigned, JOHN SULLIVAN, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON
4	15	change "Reid" to "Reed", and "Marion" to "Merion"	Typo
24	13	to add "and Maria Sample of our Perioperative Services and James Island Surgery Center."	Memory
45	21	change "hadn't" to "hasn't", and change "forth" to "to the Board"	Clarification
48	1	delete "well-being"	Clarification
52	24	change "of" to "or"	Clarification
58	22	after "....probably always" insert "been"	Clarification
72	9	after "....the back way up" insert "Highways 41 and 402 into" the back side....	Clarification
76	3	change "Cartersville" to "Cordesville"	Clarification
85	9	insert "might" between "you" and "say"	Clarification
87	11	change "They were." to "Yes."	Clarification
108	9	change "I" to "Doug Bowling"	Clarification
119	21	change "of accessibility" to "accessible"	Clarification
122	1	change "and" to "of"	Typo
122	10	delete "services"	Clarification

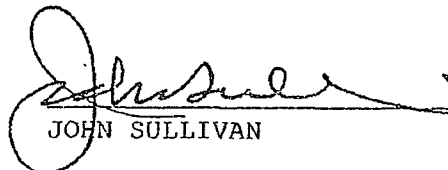

JOHN SULLIVAN 11-28-11
DATE

John Sullivan 10/17/2011

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162	8	change "Grace" to "Grayson"	Clarification
163	15	change to read, "....available in by far...."	Clarification

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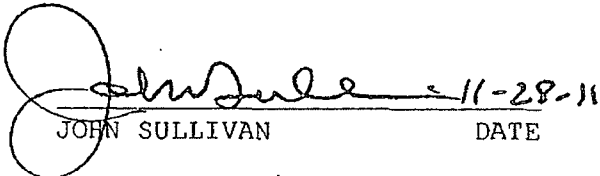
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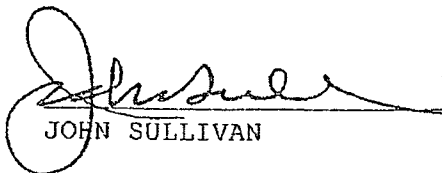

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Trident Medical Center, LLC, d/b/a Berkeley
Medical Center,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and Roper St. Francis
Hospital - Berkeley d/b/a Roper St. Francis
Hospital,

Respondents.

Docket No.: 09-ALJ-07-0332-CC

Trident Medical Center, LLC, d/b/a Berkeley
Regional Medical Center,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control,

Respondent.

Docket No.: 09-ALJ-07-0333-CC

CareAlliance Health Services and Roper St.
Francis Hospital - Berkeley,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Trident Medical
Center, LLC,

Respondents.

Docket No.: 09-ALJ-07-0336-CC

TRIDENT MEDICAL CENTER, LLC'S
MOTION TO ALTER OR AMEND (RECONSIDER)

Pursuant to Rules 29(D) and 68 of the Rules of Procedure for the Administrative Law Court and Rule 59(e), SCRCP, and reserving all of its rights and issues for appeal whether or not addressed herein¹, Trident Medical Center, LLC d/b/a Berkeley Medical Center ("Trident") hereby moves the Court to reconsider the September 26, 2012 Final Order and Decision of the Court ("Order") affirming the decisions of the Department of Health and Environmental Control ("Department") to approve the Certificate of Need applications of Trident and Roper St. Francis Hospital – Berkeley ("Roper") to establish two new fifty-bed acute care hospitals in Berkeley

¹ In moving for reconsideration, Trident addresses those issues and matters which the Court failed to consider or address adequately in its Order. Trident reserves the right to appeal, but does not raise herein, those issues which the Court considered or addressed but decided incorrectly.

FILED

OCT 05 2012

County, South Carolina. Trident moves the Court to vacate or, in the alternative, to modify, its Order on the following grounds.

I. Bed Transfer Provision

In determining that Roper's CON application complies with the *State Health Plan* provision for the transfer of beds between affiliated hospitals, the Court misapprehended or overlooked the following.

1. It is inconsistent, illogical, arbitrary, and contrary to established case law for the Court to determine in its Order at page 3 that "[i]t cannot be denied that, on its face, Section II(G)(1)(A)(4)(j) of the 2008-2009 State Health Plan (the bed transfer provision) appears to anticipate the existence of an existing facility" but to conclude to the contrary at Findings of Fact ## 20, 60, 63, 65, 67 and 94 and Conclusions of Law ## 21, 22, and 39 that the bed transfer provision must be construed to allow Roper to create a new hospital through the transfer of beds under the provision. *See Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) ("The first question of statutory interpretation is whether the statute's meaning is clear on its face...If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.") (Emphasis added).

2. The referenced Findings of Fact and Conclusions of Law are also contrary to the substantial evidence in the record concerning the admissions of the Department's own witnesses that the Department's application of the bed transfer provision to permit the establishment of new hospital facilities contravenes the plain and ordinary English language meaning of the requirements of the bed transfer provision, which requirements can be met only if both the facility giving up the beds and the facility receiving the beds are in existence at the time of the

transfer.² (Brandt, Tr., p. 686, l. 5 – p. 708, l. 17; Shelton, Tr., p. 1070, l. 21 – p. 1086, l. 20).

Under the law, cited above, neither the Department nor the Court can apply the rules of construction and “interpret” a provision that both admit is plain on its face.

3. Moreover, Findings of Fact ## 20, 59-63, 65, 67 and 94 and Conclusions of Law ## 21, 22, and 39 are erroneous and contrary to law in giving deference to the Department’s *ad hoc* policy of allowing the bed transfer provision to be used to create new hospitals when such policy contradicts the plain and ordinary English meaning of the requirements of the provision. See *Media Gen. Comms., Inc. v. S.C. Dept. of Revenue*, 388 S.C. 138, 149–50, 694 S.E.2d 525, 530-531 (2010) (“An agency’s long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled by a reviewing court in the absence of cogent reasons, but the interpretation will not be sustained if it contradicts a statute’s plain language.”). See also *Monroe v. Livingston*, 251 S.C. 214, 217, 161 S.E.2d 243, 244 (1968) (“It is argued that the defendant Tax Commission has construed [the law] over a long period of time as inapplicable to poultry farmers and that its interpretation should be given controlling effect in this case. Such administrative construction however affords no basis for the perpetuation of a patently erroneous application of the statute.”)³

² Trident incorporates by reference all of its arguments and DHEC’s admissions concerning the specific terms in the bed transfer provision which, when considered in their plain and ordinary English sense, can only be complied with by two existing facilities.

³ To the extent that Finding of Fact #59 attempts to address or distinguish *Monroe*, Trident asserts that the Finding is unclear in its reasoning and is contrary to the holding of *Monroe* that an agency’s construction of a law is not entitled to deference if it is patently erroneous, no matter how long or how consistently the agency has followed its construction. Thus, Finding of Fact #59 is flawed in its attempt to determine a “tipping point” after which, presumably, an agency’s erroneous construction would be accepted. Further, whether the agency’s construction makes “consummate good sense” is irrelevant if the plain meaning of the law does not provide for it. Finally, Finding of Fact #59 is contrary to the law insofar as it finds that the Department is the final arbiter of the *State Health Plan* and not subject to *Monroe*’s principles of review. Such a broad construction of the Department’s role as the sole administrator of the CON program would permit no judicial oversight, which is plainly contrary to the law. See S.C. Code Ann. §§ 44-1-60(G) and 1-23-600; *S.C. Dept. of Revenue v. Blue Moon of Newberry, Inc.*, 397 S.C. 256, 260, 725 S.E.2d 480, 483 (2012) (“The construction of a regulation is a question of law to be determined by the court.”). See, e.g., *MRI at Belfair, LLC v. S.C. Dept. of Health & Env. Control*, 379 S.C. 1, 7 n. 4, 664 S.E.2d 471, 474 n. 4 (2008) (“The issue whether the Plan standards satisfy the statutory requirements is a legal conclusion based on statutory interpretation principles. Thus, no factual findings are necessary to determine compliance with § 44-7-180(B).”).

II. Competing Applicants

In upholding the Department's determination that Trident and Roper's CON applications to build two fifty-bed community hospitals providing identical services, in the same service area, eleven miles apart on the same road and in the same zip code are not "competing applications" under the law, the Court misapprehended or overlooked the following issues.

1. Findings of Fact ## 27 (including n.3) and 28 erroneously conclude that, because there are no hospital beds located within the physical boundaries of Berkeley County, its residents have no access to general acute care hospital services. This conclusion is not supported by the substantial evidence in the record, including the undisputed evidence that Trident Medical Center, which has 296 acute care beds, was established under the guidance of the Department for the express purpose of serving the residents of Berkeley County and that Trident's hospitals currently serve over half of the patient population of Berkeley County.⁴ These Findings also contradict the undisputed evidence and the applicable law that the service area for determining need is the area encompassed by Charleston, Berkeley and Dorchester Counties (the "Tricounty Service Area), not Berkeley County alone. Finally, these Findings contradict the Order's later Finding of Fact #30 that there are 1,739 existing hospital beds available to the residents of the Tricounty Service Area, which includes the residents of Berkeley County.

2. Finding of Fact #27, while factually accurate in its recitation of the number of hospitals beds in other counties, does not support the inferences and conclusions drawn by the Court from the information. Specifically, the record is devoid of evidence from which the Court can make any empirical correlation between the use or support of hospital beds in the Florence, Sumter, Anderson, Pickens, Aiken, or Calhoun/Orangeburg service areas and the use and support of hospital beds in Berkeley County, which is not a legally appropriate service area under the

⁴ The rest of the patient population of Berkeley is served by the five other hospitals in the Tri-County Service area.

Plan.⁵ To the contrary, if the Court wishes to make a reasonable (though superficial) comparison, it would be that there are almost as many hospital beds (1,739) in the Tricounty Service Area as there are in all of the other service areas set forth in Finding #27 combined.

3. To the extent that Findings of Fact ## 28, 29, 49 and 81 and Conclusion of Law #25 conclude that “explosive” or increased population growth in Berkeley County supports the need for two new fifty-bed hospitals in that county, the Findings contradict the undisputed evidence in the record and the Court’s own findings that projected population growth is already factored into the *Plan*’s determination of need (Conclusion of Law #18) and that the applicable *Plan* showed no need for new hospital beds in the Tricounty Service Area (Finding of Fact #20).

4. To the extent that Findings of Fact ## 27, 28, 29, 30, 45 and 49 and Conclusions of Law #25 and 27 determine or consider the need for hospital beds with reference to Berkeley County only, rather than Berkeley County as part of the Tricounty Service Area, these Findings are contrary to the applicable *State Health Plan* and constitute an error of law.

5. Finding of Fact #33 is erroneous and not supported by the substantial evidence in the record insofar as it finds that Roper projects that 10% of its *volume* will come from Berkeley County patients who are not aligned with Roper (*i.e.*, patients who would otherwise be served by other providers), the error being that the testimony of Roper’s own expert is that approximately 36% of Roper’s proposed volume will come from non-aligned Berkeley County patients who would otherwise be served by other providers. (Richardson, Tr., pp. 3163-3164). To the extent that the Order incorporates or relies on this erroneous Finding to calculate need or determine adverse impact, those findings and conclusions are erroneous.

6. Findings of Fact ## 32-34 and 81 that there is a need for both proposed hospitals because they propose different geographic service areas and forecast serving separate groups of

⁵ Notably, the Order at Finding of Fact #54 rejects any consideration or comparison of utilization at an actual Roper facility in the relevant service area.

patients already aligned with their systems is erroneous and not supported by the substantial evidence in the record, the error being that Roper proposes to capture a substantial portion of its volume from the market shares of other providers, including Trident, and because the undisputed evidence in the record is that there is substantial overlap in the zip codes proposed to be served by both hospitals. Further, as supported by the substantial evidence in the record, the proposed hospitals are located in the same planning service area, in the same county, on the same road, in the same zip code. Finally, Findings of Fact ## 32-34 also contradict the conclusion of the Court in Finding of Fact #43 that the two proposed facilities are in fact located in the same service area.

7. Findings of Fact ## 35 and 81 that the distinct medical staffs of Roper and Trident support a finding of need for two 50-bed hospitals in Berkeley County is erroneous and not supported by either the substantial evidence in the record or the applicable law, the error being that the record is devoid of evidence from which the Court can draw a correlation or quantify utilization or need for hospital beds in Berkeley County based on medical staff composition. Further, medical staff composition is not a proper criteria or factor for determining need under the *Plan*, the Project Review Criteria, or any other applicable law.

8. Finding of Fact #46 is contrary to the applicable law insofar as it concludes that, because Roper is relocating existing beds, it can be assumed without further analysis that the need for beds in the service area will not be exceeded by the approval of both hospitals, the error being that, under the bed transfer provision (assuming, *arguendo*, its applicability), the receiving facility must demonstrate actual need for the beds at the transfer location.⁶ This Finding also ignores the *Plan*'s determination that neither Roper nor the Tricounty Service Area had a need for beds before the proposed transfer. In other words, even if Roper's transfer did not affect the

⁶ Similarly, Finding of Fact #17 misapprehends the applicable law when it concludes that existing beds can be distributed regardless of whether there is need in the service area. Again, in order to justify the transfer of existing beds, the bed transfer provision requires that the receiving facility demonstrate a need for the beds at the receiving facility's location.

bed need in the service area, the need for beds in the service area would still be exceeded by the approval of both hospitals for purposes of declaring them to be competing applicants.

9. Finding of Fact #47 is erroneous and contrary to the law in that the distance between the proposed projects is not an appropriate or relevant factor to consider when determining whether the projects are "competing". Whether the projects are in the same service area is the appropriate determination under the law, not distance. It is undisputed by any party in this matter that Trident and Roper's projects are located in the same service area and the Court so found in Finding of Fact #43.

10. Finding of Fact #48 is erroneous and contrary to the law in that the geographic size of Berkeley County and the number of population centers therein are not relevant or proper factors for determining whether the need for hospital beds in the Tricounty service area will be exceeded by the approval of two new fifty bed hospitals. Further, there is no evidence in the record from which the Court can draw an empirical correlation between the geographic size of Berkeley County and the utilization of, and need for, hospital beds.

11. For all of the above reasons, Findings of Fact ## 45, 50 and 56 and Conclusions of Law ##25, 27 and 39, as well as the Order's findings and conclusions at page 3, that the approval of both facilities will not exceed the need in the service area and that Roper and Trident are not competing applicants are affected by error of law and not supported by the substantial evidence in the record.

III. "Challenge" to Trident's Application

Findings of Fact ## 68-74 and Conclusion of Law # 23 are affected by error of law and not supported by the substantial evidence in the record insofar as they address and decide an issue not presented to or considered by the Department. Before the Department, Roper took the position that the Department could approve both Trident and Roper's proposed hospitals. (Jt. Ex.

2, pp. 1244-1258) Accordingly, in its June 26, 2009 decision letter granting Trident's application, the Department determined that Trident's proposed Moncks Corner Hospital met all of the requirements of the *2004-2005 State Health Plan* and the applicable criteria set forth in the CON regulations. (Jt. Ex. 1, pp. 0884-0899; Brandt, Tr., p. 776, ll. 4-9). Before the Board, Roper asserted that both applications could be approved, but contended that, *if* the Board considered the applications to be competing, Roper's project should be approved as the superior choice. (Trident's Petition, Case No. 09-ALJ-07-333-CC, Ex. H) Before this Court, Roper continued to assert that both applications could be approved *unless* the Court determined that Roper and Trident were competing applicants. In its amended prehearing statement, Roper for the first time attempted to raise the issue whether Trident's application complies with the Bed Transfer Standard and other transfer provisions of the *2004-2005 State Health Plan*. (Roper's First Amended Prehearing Statement, December 8, 2011, pp. 5-6) This issue was not raised before the Department and, therefore, is not preserved for review. (Jt. Ex. 2; S.C. Code Ann. § 44-7-210(E); *Marlboro Park v. S.C. Dept. of Health & Env. Control*, 358 S.C. 573, 595 S.E.2d 851 (Ct. App. 2004)) To the extent that Roper could be considered to have preserved this issue by raising it for the first time before the Court, Roper offered no evidence at trial that Trident's CON application does not comply with the *2004-2005 State Health Plan* and other regulatory criteria. In fact, Roper itself actually elicited testimony from the Department that Trident complied with the bed need methodology set forth in the *2004-2005 State Health Plan* on which Trident's application was based. (Brandt, Tr., p. 842, l. 25 – p. 844, l. 1)

IV. Financial Feasibility/Adverse Impact

With regard to financial feasibility and adverse impact of the projects if both hospitals are approved, the Court misapprehended or overlooked the following.

1. To the extent that Findings of Fact ## 23, 25, 32, 50 – 52, 55, 56, 89, 91, and 94 and Conclusions of Law ## 25, 27, 32, and 39 use the testimony and analyses of Trident's expert, Mr. Baehr, to determine and support the Court's findings and conclusions that both hospitals are needed, will be successfully utilized, and are financially feasible, these Findings and Conclusions are erroneous, not supported by the substantial evidence in the record, and are demonstrative of a fundamental misunderstanding of Mr. Baehr's testimony and Trident's position in this matter. Mr. Baehr's analyses and testimony demonstrate and support Trident's position's that Trident's Moncks Corner hospital will be successfully utilized and financially feasible only if Roper's proposed Carnes Crossroad's hospital is denied. Mr. Baehr's analyses and testimony (and Trident's position) is that, *if both hospitals are approved*, neither will be fully-utilized or financially feasible. Therefore, Mr. Baehr's analyses and testimony regarding the financial feasibility of Trident's Moncks Corner hospital in the absence of Roper's Carnes Crossroads' hospital cannot be misconstrued and taken out of context to support any of the Findings and Conclusions, referenced above, that both hospitals can be approved. The referenced Findings and Conclusions are also erroneous and not supported by the substantial evidence in the record insofar as they fail to consider that Roper itself projects that approximately one-third of its volume will come from its capture of other providers' market shares.

2. Finding of Fact #52 and Conclusion of Law # 32 are erroneous and contrary to law insofar as they consider and rely on the revenue and earnings of the Trident and Roper systems as support for the conclusion that both proposed projects will be financially feasible, the

error being that Reg. 61-15, § 802(15), which sets forth the criteria for review of financial feasibility, requires that the project itself be financially feasible. The applicable criteria does not allow the revenue and earnings of related or parent organizations to be considered or require that related entities guarantee or support the proposed project. Specifically, the determination in Findings of Fact #52 that Trident's 2010 earnings "give the Court confidence" that the Moncks Corner project will be financially feasible is not supported by the law or any evidence in the record that Trident will allocate or utilize any of its earnings generated by other facilities to support the continued operation of the proposed Moncks Corner hospital.

3. Finding of Fact #83 and Conclusion of Law #34 that Trident overstates the adverse impact of Roper's proposed facility on Trident is erroneous and not supported by the substantial evidence in the record, the error being that, even if Roper is able to redirect its Roper-aligned patients as the Court determines, Roper itself still projects that approximately one-third of its volume will come from its capture of other providers' market shares.

V. Accessibility/Distribution

Findings of Fact ## 79 and 84 and Conclusions of Law ## 29 and 30 are affected by error of law and not supported by the substantial evidence in the record insofar as they conclude that Roper's Carnes Crossroad's hospital will increase accessibility and that such increase in accessibility outweighs any duplication of services. These Findings and Conclusions erroneously equate the testimony and evidence that it will be more convenient for those Berkeley County patients who currently are treated at Roper's other facilities to receive treatment at Roper closer to home. This finding of increased convenience in the use of Roper's services is not legally relevant to, or sufficient to meet, the CON Project Review Criteria, which seeks to measure the increase in access to services afforded by a given project. In this case, even Roper's own expert, Mr. Richardson, admitted that the vast majority of patients to be served by Roper's

Carnes Crossroads hospital already have ready access to hospital services. (Richardson, p. 3402, l. 20 – p. 3403, l. 5). The substantial evidence in the record is that Roper's proposed project creates an increase in convenience for Roper's current patients, not an increase in accessibility for the patients in the service area.

IV. Miscellaneous

In addition to the above detailed errors of fact and law and reiterating and preserving all of its positions on the issues stated throughout the review and contested case process, Trident would direct attention to the following inconsistencies and errors contained in the Order:

1. Finding of Fact #40 is not supported by the substantial evidence in the record or the applicable law insofar as it concludes that the Department properly reviewed and analyzed both applications, the error being that the Department did not analyze whether any need existed for a hospital at the Goose Creek site proposed by Roper as required by the bed transfer provision applied by the Department. Rather, as admitted by the Department, the Department determined that no need analysis was necessary because Roper was proposing a transfer of existing beds.

2. Finding of Fact #53 is an erroneous and gratuitous finding concerning a matter which is not pending before the Court. In the Finding, the Court erroneously concludes that the CON application of Trident's Summerville Medical Center to add thirty new beds to its facility in *Dorchester* County in response to Summerville's determined need for such beds in the *Plan* is contradictory to its position in this matter that there is a need for only one new hospital in *Berkeley* County, which need is supported by the stated *Plan* need for Trident Medical Center. The Summerville CON matter is pending before the Administrative Law Court in another proceeding and is not before this Court for consideration or determination. Further, even if the matter were available for adjudication, it is undisputed that all of the positive bed need from the

Tricounty service area was generated by Trident Medical Center and Trident's Summerville Medical Center. There is no contradiction in Trident's applying to utilize its own need as determined in the *State Health Plan*.

3. Finding of Fact #50 that Trident will not build its Moncks Corner hospital if both hospitals are approved because of the need for Trident shareholders to make money is factually incorrect and based on an erroneous and isolated reading of the testimony of Mr. Todd Gallati. As actually testified to by Mr. Gallati, the significance of the anticipated \$16 Million loss of revenue to the Trident system from Roper's Carnes Crossroads hospital is its affect on Trident's ability to replace technology, meet the needs of the community, expand services and meet its obligations to its shareholders. On the decision not to build the Moncks Corner hospital if both hospitals are approved, Mr. Gallati testified that Trident could not meet the needs of that hospital to provide services and make capital investments if Trident's income were to be impaired by Roper's Carnes Crossroads hospital. (Tr., p. 357, l. 22 – p.360, l. 13).

4. Finding of Fact # 82 that Trident made a "minimal" attempt to address the adverse impact that Roper's proposed project would have on Trident's existing facilities by a submission to the Department three days before decision, is erroneous, arbitrary, and not supported by the applicable law or the substantial evidence in the record, the error being that Trident submitted the detailed adverse impact analysis of its expert, Mr. Baehr, to the Department for its consideration within the time allowed by the law for such submissions. The Court cannot treat the Department's failure to comprehend Mr. Baehr's timely submitted analysis as error on Trident's part.

5. Conclusions of Law ## 16 (including n.6), 17, and 20 are erroneous, not supported by the substantial evidence in the record and contrary to the law insofar as they conclude that Trident failed to raise the issue of the lack of standards in the *Plan* for creation of

new hospitals in the absence of need and that such standards in fact exist. Trident's position at every level of this proceedings, including before the Department, has been that Roper's application does not comply with the *Plan* because the *Plan* provides no mechanism for a new hospital to be created in the absence of need. To the extent that Roper and the Department have relied on the bed transfer provision, Trident's position is, and has been, that this provision does not allow the creation of a new hospital. Further, at trial, Trident questioned, without objection, the Department witness responsible for overseeing the development of the *Plan* about the lack of criteria for new hospitals in the *Plan* and that witness admitted the issue.⁷

6. The Orders to address or consider the *Plan*'s thirty minute time travel standard applicable to hospital services in its consideration of need, duplication of services or distribution and accessibility.

7. The Order fails to address or consider Roper's lack of bed need under the *Plan* in its consideration of Roper's application.

8. In determining that enough need exists in the service area to support both Trident and Roper's facilities, the Order fails to consider or address that Roper and Trident propose to use the same growth to support their applications. Similarly (and to the extent that the Court allows consideration of Summerville Medical Center's application), the Order fails to consider Roper's opposition to Summerville with regard to its position that both proposed Berkeley hospitals are feasible because they rely on redirection of system aligned patients.

9. In addressing accessibility, distribution, and service to the medically underserved, the Order fails to address or consider Mr. Baehr's unchallenged analysis that, if both hospitals

⁷ See, e.g., Shelton, Tr. p. 1091, ll. 9-18 ("Q. We've already established there are absolutely no standards or criteria for the creation of a hospital in the South Carolina Health Plan, are there? A. There are not a specific criteria for the creation of a new hospital. Q. There are no projections of need for the creation of new hospital facilities, are there? A. No....")

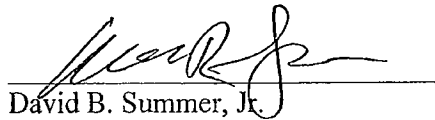
are approved, Roper's hospitals will increase access to only 940 people who are currently more than thirty minutes drive time from a hospital.

10. The Order fails to address or consider the cost containment criteria with respect to the two projects.

Conclusion

For the reasons stated, Trident respectfully requests that the Court alter or amend its Order as to address the matters misapprehended or overlooked as set forth above.

Respectfully submitted,



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October 5, 2012

CERTIFICATE OF SERVICE

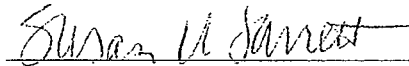
The undersigned hereby certifies that on October 5, 2012, s/he caused the foregoing
TRIDENT MEDICAL CENTER, LLC'S Motion to Alter or Amend (Reconsider) to be served
on all parties of record as follows:

Via U.S. Mail and Electronic Mail

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FILED

OCT 05 2012

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Trident Medical Center, LLC d/b/a Berkeley
Medical Center,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and Roper St. Francis
Hospital-Berkeley, Inc. d/b/a Roper St.
Francis-Berkeley,

Respondents.

Docket No.: 2009-ALJ-07-0332-CC

Trident Medical Center, LLC d/b/a Berkeley
Medical Center,

Petitioner,

vs.

South Carolina Department of Health and
Environmental Control and Roper St. Francis-
Berkeley, Inc. d/b/a Roper St. Francis-
Berkeley,

Respondents.

Docket No.: 2009-ALJ-07-0333-CC

CareAlliance Health Services and Roper St.
Francis-Berkeley,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Trident Medical
Center, LLC d/b/a Berkeley Medical Center,

Respondents.

Docket No.: 2009-ALJ-07-0336-CC

**CAREALLIANCE HEALTH SERVICES AND ROPER ST. FRANCIS-BERKELEY'S
MEMORANDUM IN OPPOSITION TO MOTION TO ALTER OR AMEND**

Respondent/Petitioners CareAlliance Health Services and Roper St. Francis-Berkeley (collectively “Roper St. Francis”) hereby respectfully submit this Memorandum in Opposition to the Motion to Alter or Amend (Reconsider) filed by the Petitioner/Respondent Trident Medical Center, LLC (“Trident”) on October 5, 2012.

Trident’s Motion alleges that the Court’s Final Order entered September 26, 2012, is not supported by substantial evidence and/or is affected by an error of law, and that certain inconsistencies and errors are contained in the Final Order. Ultimately, however, Trident simply restates those same arguments made throughout these proceedings and at trial that this Court thoroughly considered and rejected in reaching its reasoned decision.

Rule 29(D) of the Rules of Procedure for the Administrative Law Court allows a party to move for reconsideration of a final decision of this Court “subject to the grounds for relief set forth in Rule 59, SCRCF.” “A Rule 59(e) motion is required to preserve issues that have not been ruled upon by the trial court.” *Walsh v. Woods*, 371 S.C. 319, 325, 638 S.E.2d 85, 88 (Ct. App. 2006). Conversely, a Rule 59(e) motion is not a vehicle to reassert arguments that the Court has previously considered and rejected. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (“Post-trial motions are not necessary to preserve issues that have been ruled upon at trial; they are used to preserve those that have been raised to the trial court but not yet ruled upon by it.”); *see also* 11 Wright & Miller § 2810.1 (“The rule 59(e) motion may not be used to relitigate old matters”). In other words, a motion for reconsideration is not a mechanism for rehashing arguments previously considered or to raise new contentions which could have been raised before. *See Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990). It is “an extraordinary remedy which should be used sparingly.” 11 Wright & Miller § 2810.1 at 124 (2d ed. 1995).

Under the federal counterpart, the courts have limited the use of a Rule 59(e) motion to four basic grounds for relief: (1) where the motion is necessary to correct manifest errors of law or fact upon which the judgment is based; (2) where newly discovered or previously unavailable evidence comes to light after the judgment; (3) where the motion is necessary to prevent manifest injustice to the moving party; or (4) where there is an intervening change in the controlling law. Wright & Miller, *supra* at 124-27. None of these situations apply to the September 26, 2012, Final Order in this case.

Rather, Trident is merely reasserting the identical arguments asserted at the trial conducted on January 30 to February 16, 2012, which as fully set forth in the 52-page Final Order, consisting of 94 findings of fact and 39 conclusions of law, were fully considered and ultimately rejected in favor of the findings and conclusions drawn therein. It is important to note that nowhere in its 14 page Motion does Trident show that the citations to the Record do not support the Court's findings or conclusions. Trident's Motion should be denied because it does nothing more than show disagreement with the Court's decision. Roper St. Francis will address Trident's contentions in the order presented.

Bed Transfer Provision

As to the bed transfer provision challenge, Trident rehashes the same arguments contained in its Motion for Summary Judgment filed December 9, 2011, its oral Motion for Summary Judgment made at trial on February 3, 2012, and arguments both submitted and elicited through trial testimony. Trident latches onto a single statement contained in the introduction of the Order that the bed transfer provision "appears" to anticipate an existing facility to then attack the findings and conclusions thoroughly set forth and supported with abundant factual evidence in the Final Order. To do so however completely ignores the lengthy

analysis of the Court including its finding that “[t]he word ‘existing’ or a similar iteration is not contained in the language of the bed transfer provision. Therefore, I find that the **plain language** of the Plan **does not require** that the facility receiving the transfer of beds be an existing facility.” Finding of Fact #60 (emphasis added). There is nothing inconsistent or illogical with a general statement that the State Health Plan “appears” to contemplate an existing facility followed by well developed and supported findings and conclusions that it does not. As thoroughly argued during the 14 days of trial and supported by numerous exhibits, the Court’s conclusion is well-supported by the record and is in no way affected by any errors of law.

Trident’s parsing of the *Monroe v. Livingston* decision is additionally without merit. It is clear from the Final Order that Trident’s argument that the State Health Plan prohibits the transfer of beds to construct a hospital was rejected by the Court. It is obvious through numerous findings and conclusions in the Final Order that the Department’s decision was not a patently erroneous application of the State Health Plan. Therefore, the Court’s decision is consistent with *Monroe*.

Competing Applicants

As to the challenge of the Court’s decision finding the applications are not competing, Trident simply disagrees with the Court’s conclusion but offers no other basis on which reconsideration is warranted. Trident makes assumptions regarding the Court’s findings, *e.g.* asserting the Court is using a service area that is “not a legally appropriate service area,” yet otherwise has no recognized ground on which to assert a reversal of the decision. Trident parses words and sentences within the various findings and conclusions while ignoring the ultimate holdings, including, for example, that the Final Order specifically acknowledges that the applicable service area for the decisions under review is a three-county service area. *See* Finding

of Fact #26. The fact that the Court goes on to consider *facts* relevant to a more particular geographic area does not render the analysis an error of law. See *Spartanburg Reg'l Med. Ctr. v. Oncology and Hematology Assoc. of S.C.*, 387 S.C. 79, 88-89, 690 S.E.2d 783, 788 (2010) (finding decision of Administrative Law Court that applications were not competing was supported by substantial evidence in the record including findings considering population needs within isolated areas of a multi-county service area). The Supreme Court held in *Spartanburg* that it is an analysis of facts that support the decision and in that case, as here, there were abundant facts in the record to support the ALC's finding that the approval of both applications would not exceed the need for services and therefore the applications were not competing. *Id.* at 91, 690 S.E.2d at 789. Therefore, despite Trident's unhappiness with the conclusion, the Court's decision is not improper or otherwise in need of reconsideration.

Challenge to Trident's Application

Trident's claim that Roper St. Francis failed to preserve its challenge to the Trident application was raised and rejected by the Court. Trident's Motion reasserts the same arguments from its oral Motion for Summary Judgment made at trial on February 3, 2012, which as earlier stated was fully argued and denied by the Court. Trident offers no other basis to support reconsidering or altering the reasoned decision made at trial and included in the Final Order.

Financial Feasibility/Adverse Impact

Trident's arguments as to the financial feasibility and adverse impact findings and conclusions indicate nothing more than the disagreement with the evidence submitted by Roper St. Francis and the Department, and as well as elicited from its own witnesses and documents through cross-examination. The Court relied on the facts to reach its findings and conclusions that both hospitals are financial feasible if both are built. The facts are clearly identified and

cited in the Final Order. While Mr. Baehr's ultimate opinion may be different from the Court's, the Court used factual evidence, rejected Mr. Baehr's conclusion, and rightfully concluded Trident's fears are exaggerated and not supported by the substantial evidence in the record. Accordingly, nothing in the findings or conclusions require reconsideration regardless of Trident's discontent therewith.

Accessibility/Distribution

As to accessibility and distribution, Trident again focuses on word play as opposed to the substantial evidence in the record as fully considered and relied upon in the Final Order. Trident argues that "convenience" is insufficient or somehow inappropriate for consideration by the Court as to the accessibility of services; however, its own application focused on the increased convenience its proposed hospital would give residents of Berkeley County. Trident cannot dispute and in fact acknowledged throughout the trial that a substantial portion of Berkeley County's residents travel a great distance to obtain care from Roper St. Francis on the Charleston peninsula. The Court has the discretion to consider the vast improvement in access to care for this substantial portion of the population in the proposed service area.

Miscellaneous

Finally, Trident asserts in its Motion that the Court failed to address certain issues in ten numbered paragraphs beginning at page 11 of its Motion, which Roper St. Francis will address in turn.

As to the Department's analysis, Trident is simply wrong. The Department conducted a thorough review and analyzed the applications under the applicable section of the applicable State Health Plan. Therefore, Trident's argument lacks merit.

Trident takes issue with the inclusion of findings related to Summerville Medical

Center's application to add 30 beds to the service area. Though arguing in this Motion that the matter is pending in the Administrative Law Court in another proceeding and not before this Court for consideration or determination, Trident had no problem including those additional requested beds in its market analyses presented to the Court in this proceeding as justification that it could have its 80 additional beds but that Roper St. Francis should not be permitted to move 50 of its existing beds. Trident's argument requires no further consideration by this Court.

As to Mr. Gallati's testimony, the testimony is preserved in the record and stands for itself. While Trident may be unhappy with the effect of that testimony on the decision of the Court, it remains his testimony.

As to the adverse impact analysis provided by Mr. Baehr to the Department prior to the decision, the testimony of the witnesses and dates of the materials submitted clearly support the Court's findings on the issue. The Order does not attribute any "error" to Trident for the late submissions or their complicated and incomprehensible format, the decision simply holds that the late timing of the delivery given the length of time during the review indicates the issue of adverse impact was not as heavily argued by Trident before the Department.

Regarding Trident's failure to present the issue of the lack of standards to establish new hospitals to the Department prior to its decision, the reference to the trial testimony of Mr. Shelton does not alter or otherwise establish the inaccuracy of this Court's conclusion. Trident's long-standing position that Roper St. Francis did not comply with the bed transfer provision, thoroughly argued to the Department and this Court, is separate and distinct from the challenge to the Plan itself and as such the Court's conclusions are correct.

As to the purported drive time standard, it is Trident's position that such a "standard" exists in the Plan, but in fact there is no such "standard" in the Plan nor is a drive time standard

contained in the Project Review Criteria. To the extent that the Court considered testimony relating to the distances between the existing and proposed facilities, there was no testimony or evidence submitted that with the approval of both applications will result in a majority of residents in the Tri-County Service Area *not* being located within thirty minutes travel time, thus the applicability of any drive time consideration is not called into question.

Moreover, Trident again raises the contention that Roper St. Francis' lack of bed need under the *State Health Plan* requires consideration by the Court. The Court is well-aware and the overwhelming testimony and evidence adduced at trial was that because Roper St. Francis is transferring existing beds, and therefore having no impact on the bed inventory, the presence or lack of a bed need under the bed need methodology is irrelevant to the questions before the Court. *See* Finding of Fact #46.

To the extent Roper St. Francis can understand the challenge to the conclusions about the population, the record is replete with testimony, documents, and demonstrative exhibits establishing the historical, current, and projected growth in population showing the ability of the service area to support the addition and relocation of 100 hospital beds into the confines of Berkeley County.

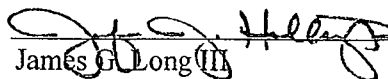
Regarding the alleged lack of challenge to a particular conclusion of Mr. Baehr, the Court is not required to make a finding as to *each and every* statement or position made by a party, expert or witness. The Court clearly considered the issues of accessibility and medically underserved groups, as well as distribution of services and drive times. The lack of a specific rebuttal to one of many opinions and positions taken by Mr. Baehr does not render the Final Order deficient or otherwise require reconsideration.

Finally, Trident challenges the failure of the Final Order to address the cost containment criteria with respect to the two projects, found at 24A S.C. Code Ann. Regs. § 61-15.802(16). The Final Order specifically concludes on page 52 that “[a]s to the remaining Project Review Criteria, no other criteria were raised as issues in this case and therefore neither party established that either applicant failed to comply with any other Project Review Criteria.” *See Conclusion of Law #38*. Thus, the Final Order’s failure to specifically address cost containment is a result of neither party presenting evidence to support a challenge to the Department’s conclusions that the applications satisfied the Project Review Criteria.

Ultimately, the issue for the Court is whether the findings and conclusions contained in its Final Order are supported by substantial evidence in the record and comport with the applicable rules and statutes. The Court need not have addressed every argument asserted by Trident or ruled on every nuanced question submitted by Trident. Instead, the Court need only have set forth factual findings “sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings.” *Spartanburg* at 91, 690 S.E.2d at 789 (*citing Abel Communications, Inc. v. S.C. Pub. Serv. Comm’n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986)). This Court’s Final Order exceeds the expectations that any reviewing court may have for supporting its decisions with well-reasoned findings tied directly to the substantial evidence available to the Court.

CONCLUSION

For the reasons set forth herein, Roper St. Francis respectfully requests that this Court deny the Motion to Alter or Amend (Reconsider) and for such other and further relief as the Court deems just and proper.

 _____

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October 19, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

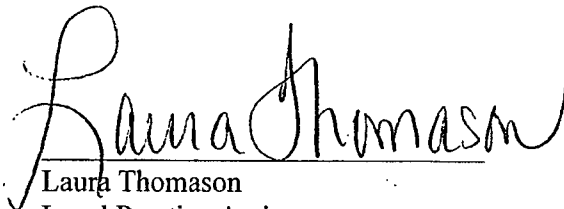
This is to certify that a copy of the foregoing **Respondents/Petitioners CareAlliance Health Services and Roper St. Francis Hospital Berkeley's Memorandum in Opposition to Motion to Alter or Amend (Reconsider)** has been served upon the following counsel of record, addressed as shown below this 19th day of October, 2012.

VIA HAND DELIVERY

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A handwritten signature in black ink that reads "Laura Thomason". The signature is written in a cursive, flowing style. The first name "Laura" is written with a large, looped capital "L". The last name "Thomason" is written with a capital "T" and a trailing flourish.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Trident Medical Center, LLC,) Docket No.:
d/b/a Berkeley Medical Center,) 09-ALJ-07-0332-CC

Petitioner,

v.

South Carolina Department of
Health and Environmental
Control and Roper St. Francis
Hospital - Berkeley, Inc.,
d/b/a Roper St. Francis
Hospital - Berkeley,

Respondents.

**ADMINISTRATIVE
HEARING**

Trident Medical Center, LLC,) Docket No.:
d/b/a Berkeley Medical Center,) 09-ALJ-07-0333-CC

Petitioner,

v.

South Carolina Department of
Health and Environmental
Control,

Respondent.

CareAlliance Health Services) Docket No.:
and Roper St. Francis) 09-ALJ-07-0336-cc
Hospital - Berkeley,

Petitioners,

v.

South Carolina Department of
Health and Environmental
Control and Trident Medical
Center, LLC d/b/a Berkeley
Medical Center,

Respondents.

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RECORD 000527

ADMINISTRATIVE HEARING

The administrative hearing before the Honorable John D. McLeod was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on January 30th and 31st, February 1st, 2nd and 3rd, February 6th, 7th, 8th, 9th and 10th, and February 13th, 14th, 15th and 16th, 2012, before Andrea R. Taylor, Court Reporter and Notary Public in and for the State of South Carolina, Alexandra Patrick, Court Reporter and Notary Public in and for the State of South Carolina, and Christine A. Cortright, Court Reporter and Notary Public for the State of South Carolina.

DATES/TIMES:

MONDAY, JANUARY 30, 2012
10:00 a.m. - 4:54 p.m.

TUESDAY, JANUARY 31, 2012
9:34 a.m. - 5:47 p.m.

WEDNESDAY, FEBRUARY 1, 2012
9:38 a.m. - 5:26 p.m.

THURSDAY, FEBRUARY 2, 2012
9:29 a.m. - 5:00 p.m.

FRIDAY, FEBRUARY 3, 2012
9:30 a.m. - 4:11 p.m.

MONDAY, FEBRUARY 6, 2012
1:01 p.m. - 5:31 p.m.

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RECORD 000528

TUESDAY, FEBRUARY 7, 2012
9:31 a.m. - 5:36 p.m.

WEDNESDAY, FEBRUARY 8, 2012
9:30 a.m. - 5:58 p.m.

THURSDAY, FEBRUARY 9, 2012
10:00 a.m. - 5:30 p.m.

FRIDAY, FEBRUARY 10, 2012
9:30 a.m. - 12:25 p.m.

MONDAY, FEBRUARY 13, 2012
9:33 a.m. - 5:35 p.m.

TUESDAY, FEBRUARY 14, 2012
9:29 a.m. - 6:00 p.m.

WEDNESDAY, FEBRUARY 15, 2012
10:00 a.m. - 7:40 p.m.

THURSDAY, FEBRUARY 16, 2012
11:00 a.m. - 7:00 p.m.

APPEARANCES:

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RECORD 000529

INDEX

(The index for this hearing is located in a separate document.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.

DAY 1 - MONDAY, JANUARY 30, 2012

THE COURT: My name is John McLeod. My law clerk is Anthony Goldman and our court reporter is Ms. Andie Taylor. This is document 09-ALJ-07-0332-CC and it is a consolidation of that original docket number, together with docket numbers 0333 and 0336. You have all that already?

COURT REPORTER: Yes, sir.

THE COURT: Good morning, lawyers.

MR. THOMAS: Good morning, Your Honor.

MR. LONG: Good morning, Your Honor.

THE COURT: Keep your seat. Thank you. We have some preliminary matters to take up, I think, that we've discussed about deposition designations, and I would like to move to that now. Do you want that on the record?

MR. THOMAS: Yes, Your Honor.

MR. LONG: Your Honor, I do think it needs to go on the record. I just want to point out to the Court, though, I got handed a seven-page memorandum with his responses to our counters and objections. I hadn't even read it. I mean, there's no way I've got time at five to 10:00 when we're supposed to start the trial at 10:00 to read and assess this. So I'm at a

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RECORD 000531

1 huge disadvantage talking about this today if
2 he's going to go through all this document, so.

3 **THE COURT:** Well, we can be flexible, I think, if
4 that -- is that right? You just handed him a
5 memorandum, Mr. Thomas?

6 **MR. THOMAS:** Yes, Your Honor. I got their, I guess,
7 counter-designations late Thursday, and then --
8 but really why this is "seven-page document,"
9 Your Honor, is there's some charts in here.
10 And the only thing they describe is our
11 argument against their objection to our
12 testimony, which is basically what we would be
13 doing anyway. So they've laid out an
14 objection. We've actually just written out the
15 reason why we don't think the objection is
16 valid. And that's what we'd be doing here
17 anyway.

18 **THE COURT:** Well, let me ask this. Can I ask it of
19 both of you, is there any reason why we can't
20 move forward and then allocate some time later
21 in the week to this like was originally
22 suggested? In other words, is it -- is there
23 any need immediately to have this ironed it?
24 Are any of these --

25 **MR. THOMAS:** I guess just with the reservation, Your

1 Honor, that if for some reason that, you know,
2 some of these objections are upheld, we
3 actually may need to call some other witnesses
4 up here. And as long as we can, you know, the
5 other side would be willing to accept trial
6 subpoenas for those witnesses then, you know,
7 we'd agree to go Wednesday morning if we had to
8 do that. And Mr. Long and I have actually kind
9 of discussed the Wednesday morning time since
10 the Court's got to break early that day for,
11 you know, for your matter.

12 **THE COURT:** Right. Well, I had wanted to get it out
13 of the way, but given this late presentation of
14 whatever you've given Mr. Long, let's set it
15 for Wednesday morning.

16 **MR. THOMAS:** Okay.

17 **THE COURT:** And do the best we can with it then.
18 All right. I have ruled on your motions. And
19 in lieu of doing written orders, I'm going to
20 read my decisions into the record. I ask that
21 you gentlemen tabulate these and make sure I
22 haven't overlooked anything. First of all as
23 to Trident's Motion for Summary Judgment,
24 denied on the ground that per the inquiry into
25 the facts as desirable to clarify the

1 application of the law. As to Roper's Motion
2 for a Partial Summary Judgment, which was a
3 two-part motion, was granted, and Mr. Long has
4 prepared an order at my request, which I will
5 look at and read in detail before I sign. But
6 essentially, I have granted the Motion for
7 Partial Summary Judgment to the extent that
8 only the Department can choose between
9 competing initial applications for a
10 certificate of need; and also the second part
11 of the motion that Trident bears the burden of
12 proof to show that they are, in fact -- that
13 the certificates of need are, in fact,
14 competing. As to Roper's Motion in Limine, and
15 for those of you in the audience that don't
16 understand, that means motion to exclude. That
17 motion is denied because it sought to exclude
18 testimony essentially comparing the two
19 applicants. And I found that it might be
20 helpful in determining whether or not the two
21 certificates of needs are competing. And so I
22 denied Roper's motion for that. Then as to the
23 Motions to Exclude Documentary Evidence, I'm
24 going to admit the exhibit designated Roper
25 Berkeley 002560 in full. My initial email

1 indicated that I was going to redact the
2 portion of it, but since it is offered, as I
3 understand the argument, only not to prove the
4 truth of the content, I'm going to admit the
5 whole thing. The Roper bed need calculations
6 and maps will be admitted. And I deny the
7 motion in respect to the parent corporations
8 10K, that is, the parent corporation of Trident
9 form 10K will not be admitted. It will be
10 based solely on the petition of Trident's
11 financial data. Does that cover everything?

12 **MR. THOMAS:** I believe so, Your Honor.

13 **MR. LONG:** I believe so, Your Honor. Your Honor,
14 you also dealt with Mr. West, our motion to
15 exclude him --

16 **THE COURT:** I put that on the record the last time.

17 **MR. LONG:** Your did, Your Honor.

18 **THE COURT:** All right. Are there any other
19 preliminary matters before we go to the opening
20 statements? Very well. We agreed, I think, at
21 30 minutes to the three of you. Commence, Mr.
22 Thomas.

23 **OPENING STATEMENT - BY MR. THOMAS:**

24 **MR. THOMAS:** May it please the Court, Your Honor.
25 Your Honor, today in gallery we've got a lot of

1 without objection.

2 **THE COURT:** I understand.

3 **MR. LONG:** Thank you.

4 **THE COURT:** Thank you. Mr. Thomas?

5 **MR. THOMAS:** At this time, Trident will call its
6 first witness, Mr. Jim Rardin, to the stand.

7 **THE COURT:** Come up and be sworn, please, sir.

8 **JAMES P. RARDIN,** being duly sworn, testifies as
9 follows:

10 **MR. LONG:** Your Honor, would you want your law clerk
11 or yourself to have a list of our exhibits?
12 The court reporter has one to kind of track
13 these.

14 **THE COURT:** It would be helpful, yes, sir.

15 **MR. LONG:** Yeah. Let me give you one. This is just
16 a list of our exhibits with a place you can
17 mark.

18 **THE COURT:** All of these have been stipulated to;
19 have they not?

20 **MR. LONG:** No, Your Honor. These are -- these are
21 the exhibits, these are all of the exhibits.
22 This is the master list that has everything on
23 it. I think the ones that we knew we wanted to
24 object to, we raised with you. And then most
25 of the rest of these will probably come in

1 through a witness, they'll be mentioned. And
2 I think we may still have the ones, the HCA
3 10K's on the list. But I understand Your
4 Honor's ruling on that. Our idea I think, Your
5 Honor, is that if the exhibit is not mentioned
6 in the Court, it probably would not be
7 admitted. So that will hopefully restrict the
8 record.

9 **MR. THOMAS:** Your Honor, just indulge the Court
10 here.

11 **THE COURT:** Take your time.

12 **MR. THOMAS:** All right. Sorry about that, Your
13 Honor.

14 **MR. RARDIN - DIRECT EXAMINATION BY MR. THOMAS:**

15 Q: Mr. Rardin, how are you today?

16 A: Fine. Thank you.

17 Q: Just tell the Court a little about yourself.
18 Where did you grow up?

19 A: I grew up in Point Pleasant, West Virginia.

20 Q: Okay. And where did you go to high school?

21 A: Point Pleasant High School, small town about
22 4,000 people.

23 Q: Okay. Where did you go to college?

24 A: I went to Marshall University, undergraduate.
25 1981, I graduated there with a business

1 administration degree. And in 1983, I
2 graduated from West Virginia University with a
3 masters of science in industrial relations.

4 Q: Okay. Tell the court briefly about your
5 family, if you would.

6 A: I'm married and have a 19-year-old daughter at
7 the College of Charleston. I live in
8 Charleston, South Carolina.

9 Q: Would you take the Judge a little bit through
10 your employment history.

11 A: Yes. When I graduated from West Virginia, I
12 went to work for the Department of Labor; then
13 moved to Charlotte area, worked for Mercy
14 Hospitals there; then transferred to
15 Jacksonville, Florida, where the surgery center
16 company that I was with was purchased by
17 Medical Care America; then ultimately, Columbia
18 HCA and moved to Charleston in 1995.

19 Q: Okay. Why don't you tell the Judge what you've
20 been doing in Charleston since 1995.

21 A: Originally, I was with the surgery division
22 here in the Charleston market, covered all of
23 South Carolina, North Carolina, and parts of
24 Georgia with their surgery centers. And in
25 1999, I became COO of Trident Medical Center.

1 And in 2005, had a market job and then
2 ultimately moved to the division office in
3 2009.

4 Q: Okay. And when you say market job, what do you
5 mean by that?

6 A: Well, it was overseeing all the assets HCA had
7 in South Carolina at the time.

8 Q: Okay. And what's your -- what's your title
9 now, Mr. Rardin?

10 A: It's vice president of development.

11 Q: Okay. And what does the vice president of
12 development do?

13 A: It assists our facilities in our division with
14 their strategic plans, development activities,
15 working with them on their market share, any
16 new equipment that they would like to purchase;
17 and then also staying abreast, again, with the
18 market share activities, knowing what our
19 competitors are doing; and also staying abreast
20 of Health Plan, the State Health Plan changes
21 in South Carolina and Florida.

22 Q: Okay. Kind of generally could you tell your --
23 tell the Court a little bit about your
24 experience in dealing with a certificate of
25 need application.

1 A: Yes. While I was the COO of Trident, we had
2 several CONS with equipment changes for CT
3 scanners, MRIs, anything over 600,000 that
4 would trigger the certificate of need
5 application. Also participate in a large
6 expansion at Trident with a \$60 million
7 expansion.

8 Q: Okay. And you had a little something to do
9 with this CON application --

10 A: Yes, sir.

11 Q: -- as well, correct?

12 A: Yes, sir.

13 Q: Okay. We'll talk a little bit about the
14 history, Trident's history in this area and how
15 it developed. Are you familiar with how
16 Trident Health System developed in the service
17 area starting back in the 1970s?

18 A: Yes, sir, somewhat. I know that HCA was asked
19 to come to town, I believe, where Dorchester
20 and Berkeley County had facilities.

21 **THE COURT:** Excuse me just a second. Swap seats
22 with me so I can see the witness. We've got
23 this fancy new courtroom and some of the
24 equipment blocks my view. So I want to be able
25 to look the witness in the eye.

1 A: I believe it was in 1972 the HCA was in a
2 position to come to the market in the
3 Charleston area where the county commission, I
4 believe, at Dorchester and Berkeley Counties
5 were going to close the facilities asked HCA to
6 come in and submit an application for a
7 certificate of need. And at the time, they
8 did. It was a 200-bed facility that was
9 approved prior -- I think it was '72 or '73.

10 Q: Are you familiar with that original 1972 CON
11 application, Mr. Rardin?

12 A: Somewhat. I have seen some of that
13 application, yes.

14 Q: Okay.

15 MR. THOMAS: I'd like to call up Joint Exhibit 10 on
16 the screen.

17 Q: Mr. Rardin, you'll let me know if you can't --
18 if it's hard to read on the screen and I can
19 get you an actual copy of the exhibit.

20 THE COURT: Hold on a minute, Mr. Thomas.

21 MR. THOMAS: Yes, sir.

22 THE COURT: I can't see that. I need to get back
23 over here.

24 MR. RARDIN: You want me to go over there?

25 THE COURT: I think it's more important that the

1 court reporter get you accurately. Is there
2 any way you could move that screen or move that
3 screen? Pull it back. Back towards you.
4 That's better right there.

5 MR. THOMAS: Judge, I've got a paper copy if you
6 ever need one as well.

7 THE COURT: Thank you.

8 MR. THOMAS: This is --

9 THE COURT: Well, it's too indistinct on the screen
10 here. I can't tell you what the problem is.
11 So I'd rather have the paper copy.

12 MR. THOMAS: Yes, sir.

13 Q: Mr. Rardin, we're not going to through this
14 document in detail. But just for the record,
15 what is Joint Exhibit 10?

16 A: It is the Certificate of Need application for
17 the Trident facility.

18 Q: Okay. The one that was filed in 1972?

19 A: Yes, sir.

20 Q: Okay. Would you turn, if you would, to down at
21 the bottom, it'll say, Trident -- it's a Bates
22 number, Trident 10227, should be the next
23 page.

24 A: Are you going to give me a book?

25 Q: Here you go.

1 **MR. LONG:** Your Honor, just for the Court, we have
2 all these exhibits in paper form, and we can
3 give you -- they're all in nice notebooks.
4 It's a lot of notebooks. So if Your Honor
5 would like to have some of the notebooks as
6 opposed to looking at the screen, we can always
7 make that --

8 **THE COURT:** For the time being, I'm going to have to
9 rely on the notebooks. I'm going to get the IT
10 man down here over lunch and see if he can't
11 clear this screen up for me.

12 **MR. LONG:** I think part of it -- this document is
13 probably one of the worst documents that you'll
14 look at --

15 **MR. THOMAS:** Yeah, it's an old one.

16 **MR. LONG:** -- because it's old, but I just want to -
17 - we'll try to get them little more organized
18 for you at lunch, too.

19 **Q:** Mr. Rardin, the second page here of the
20 original CON application for the Trident
21 Medical Center, could you read into the record
22 paragraph ten for me.

23 **A:** Yes, sir. "This proposal is for a 200-bed
24 regional hospital facility to serve Berkeley,
25 Dorchester, and the northern part of Charleston

1 County. Existing hospitals in Berkeley and
2 Dorchester County are to be phased out as
3 general acute care hospitals."

4 Q: Is it your understanding that the hospitals
5 were phased out?

6 A: Yes, sir.

7 Q: Berkeley and Dorchester?

8 A: Yes, sir.

9 Q: Okay. If you would turn over, and you'll see
10 up in the right-hand corner Joint Exhibit 10,
11 page four of that exhibit. The Bates is
12 Trident 10229 for the record. Okay. And what
13 was the cost of this project back in 1972?

14 A: Total project cost \$9,165,000.

15 Q: Okay. And was this -- was this allocation for
16 a 200-bed hospital?

17 A: Yes, sir. It was 157 med/surg, 20 maternity,
18 15 pediatric, four CCUs and four ICUs.

19 Q: And who signed the application back then?

20 A: Dr. Tommy Frist.

21 Q: Okay. If you would turn over to Trident 10235
22 for me. And that's going to be page ten of
23 your exhibit.

24 A: 235?

25 Q: Yeah, Trident 10235. Let me know when you get

1 -- if you look up in the top right-hand corner
2 you'll see a number.

3 A: I'm looking on the Bates number, right, at the
4 bottom? You're going off of these numbers?

5 Q: All right. There's a second paragraph there on
6 the page in the original CON application.
7 Could you read that into the record for me.

8 A: Yes, sir. "Medical facilities in Berkeley and
9 Dorchester Counties. Berkeley and Dorchester
10 Counties have one hospital each. The Berkeley
11 facility is licensed for 60 beds, but has
12 recently operated only 37. The Dorchester
13 hospital is licensed for 78 beds and operates
14 almost all of these. Both facilities are
15 rundown and in need of replacement and major
16 renovations. A recent study by the Dorchester
17 County Hospital supports this, and the Berkeley
18 residents are already exploring other uses of
19 that facility should a regional hospital be
20 developed nearby."

21 Q: Okay. And is that your understanding of what
22 occurred back in 1972?

23 A: Yes, sir.

24 Q: Okay. If you would turn over, and if you want
25 to look at the Bates page number at the bottom

1 right-hand corner. It's Trident 10246.

2 A: Okay.

3 Q: Okay. And so there's reference to a study
4 committee here on the bottom paragraph that
5 starts with "based." And I'd like you to read
6 that and go on over to the next page.

7 A: "Based on an exhaustive study conducted by the
8 North Charleston Hospital Committee, the
9 committee concluded that a regional healthcare
10 facility to serve Berkeley, Dorchester, and
11 northern part of Charleston County is
12 feasible."

13 Q: Okay. And is Trident still considered a
14 regional healthcare facility?

15 A: Yes, sir.

16 Q: And what counties and areas of the Tri-County
17 market does Trident serve today, Mr. Rardin?

18 A: It hasn't changed. It's the North Charleston,
19 Berkeley, and Dorchester Counties.

20 Q: Okay. And just for the record, turn over to
21 Trident 104104 for me.

22 **THE COURT:** Before we leave this, forgive me for
23 interrupting you. But --

24 **MR. THOMAS:** Yes, sir.

25 **THE COURT:** -- what period of time does this

1 exhaustive study cover?

2 **MR. THOMAS:** Well, if we -- there is reference to
3 the study in the application, Your Honor. It's
4 about 15 pages, or maybe even longer than that.
5 And I --

6 **THE COURT:** So it can be found within the exhibits;
7 is that right?

8 **MR. THOMAS:** Yes, sir. Yes, sir.

9 **THE COURT:** All right. I just didn't see it here.
10 Proceed.

11 **MR. THOMAS:** No problem.

12 **Q:** And sorry. Did you -- Trident 104104, Mr.
13 Rardin?

14 **A:** Yes, sir.

15 **Q:** Okay. And this document here, just to move us
16 along, is a document from the South Carolina
17 State Board of Health to the Office of
18 Comprehensive Health Planning dated July 23rd,
19 1973?

20 **A:** Yes.

21 **Q:** Okay. And would you read -- what's the date
22 there that the CON was issued for the project?

23 **A:** Certificate of Need was issued for this project
24 on December 22, 1972.

25 **Q:** Okay. Now where was this original 200-bed

1 project located?

2 A: Currently where it sits today.

3 Q: Okay. And what's your understanding as to how
4 far Trident Medical Center today is from the
5 Berkeley County line?

6 A: It's less than two miles.

7 Q: Okay. How about Summerville Medical Center;
8 how far is that from Berkeley County line?

9 A: I think -- I want to say around seven or eight
10 miles.

11 Q: Okay. And are you generally familiar with the
12 development in your position of Trident Health
13 System over time from 1972 forward?

14 A: Yes. I've seen some timelines and obviously
15 aware of what happened from '99 till today with
16 Trident pretty much.

17 Q: Okay.

18 MR. THOMAS: I'd like to put in just a demonstrative
19 exhibit if I could up on the screen. Let me
20 know if you can't read that, Your Honor. I'll
21 get you a copy.

22 Q: Now, Mr. Rardin, do you recognize this
23 timeline?

24 A: Well, yes.

25 Q: Okay. Could you -- could you take the Court

1 generally through from '75 to 2010, just the --

2 A: Just the highlights?

3 Q: Yeah, the highlights and the expansion that's
4 occurred at Trident Medical Center and Trident
5 Health Systems over time.

6 A: Yes.

7 **MR. LONG:** Your Honor, Mr. Thomas did reference this
8 as a demonstrative exhibit. So I don't agree
9 to its admission as an exhibit, and there's
10 been no foundation laid for it. But --

11 Q: Are you aware of these dates, Mr. Rardin?

12 **THE COURT:** Wait. Let me understand and rule
13 because I was distracted for just a moment.
14 You did say that it was demonstrative, and I
15 assume that you were just going to refer to it.
16 What's your objection, Mr. Long?

17 **MR. LONG:** I just want to make sure that it was
18 clear that it was demonstrative and not being
19 admitted as an exhibit. Your Honor, I will --
20 I will withdraw my objection at the moment I
21 think for the first couple of questions. But
22 I just note there's no foundation laid on the
23 document. There's nowhere where any of this
24 information --

25 **THE COURT:** Thank you. Proceed using it as a

1 demonstrative exhibit.

2 Q: Mr. Rardin, what's your understanding of how
3 this information was collected that appears on
4 the demonstrative exhibit?

5 A: These -- well, these highlights here on this
6 document would have come from certificate of
7 need applications.

8 Q: These are the certificate of need applications
9 that would be in the possession of Trident
10 Medical Center?

11 A: Yes, sir.

12 Q: Okay. And at this time would you just quickly
13 take the Court through, Your Honor, the --
14 excuse me, Mr. Rardin, the major dates on the
15 exhibit and what occurred.

16 A: Okay. In 1975, the hospital opened with 200
17 beds. 1983, they added two additional floors
18 to go to a total of 251 beds. At that time in
19 1983, there was a small outpatient facility in
20 Moncks Corner that did diagnostic and rehab.
21 There was a 20-bed addition in 1988 for
22 Trident. Summerville opened up as a
23 freestanding emergency department and
24 outpatient department in 1989. In '93, they
25 added acute care beds of 80 at Summerville.

1 Trident added 25 TCU beds in 1996. In '99,
2 Moncks Corner Medical Center opened, which is
3 the freestanding ED that sits there today. In
4 2000, there was a \$30 million emergency
5 department expansion of Trident. In 2002,
6 there was a \$60 million renovation which added
7 additional operating rooms and renovation of
8 the whole facility at Trident. There was an
9 expansion in Summerville in 2005 with the
10 emergency department; another conversion of
11 acute care beds which made Trident 296. And
12 then in 2008, the application for the Berkeley
13 Medical Center 50-bed hospital with \$110
14 million, and Summerville goes to 94 beds in
15 2009. And then Trident applied for
16 Summerville, \$26 million for the 30 beds at
17 Summerville.

18 Q: And is this everything that's occurred at
19 Trident Health Systems over this basically 35,
20 37 year period?

21 A: No, sir. This doesn't include renovation costs
22 or additional, I will say, smaller items, but
23 clearly cost a lot of money whether it's linear
24 accelerators or new cath labs which are, you
25 know, adds up to tens of millions of dollars.

1 Q: Thank you, Mr. Rardin. Can you -- can you just
2 basically tell the Court and generally, Mr.
3 Gallati is probably going to get into this
4 more, but about what Trident Health Systems
5 offer today at its -- at its hospitals and
6 various facilities.

7 A: Trident opens open heart surgery, neurosurgery,
8 obviously emergency rooms, cath labs, general
9 medicine. The full tertiary type facility with
10 296 beds. Summerville is a 94-bed facility,
11 which is more of a tertiary type. So it
12 doesn't do open heart or neurosurgery, but does
13 OB and orthopedics, general surgery. It has
14 its ICU, emergency department.

15 Q: And, you know, that's an interesting concept.
16 The idea of tertiary and non-tertiary, can you
17 -- what's the Berkeley Medical Center going to
18 be?

19 A: It would be non-tertiary.

20 Q: So they're not going to be doing open heart
21 surgery or neurosurgery there?

22 A: Correct.

23 Q: Okay. As a business development officer in
24 terms of the geography of the area and the
25 region, how do you define the mission of

1 Trident Medical Center?

2 A: I think that the mission for Trident has been
3 put in place since 1972 when the Certificate of
4 Need was awarded, was to position it there in
5 the North Charleston market but to continue to
6 serve the Berkeley and Dorchester County areas.

7 Q: As part of your job, do you need to be familiar
8 with the geographic market in which Trident
9 operates?

10 A: Yes, sir.

11 Q: Okay. Does that include understanding where
12 the population centers are?

13 A: Yes.

14 Q: What is your understanding of where the
15 majority of the Berkeley County population is
16 congregated?

17 A: It's predominantly down in the Goose Creek
18 market, the Goose Creek area.

19 Q: And what is your understanding of where -- now,
20 in terms of Goose Creek area, is that in
21 southern Berkeley County?

22 A: That is in southern Berkeley County, yes.

23 Q: Is there -- is there population in the area of
24 -- it's the Daniel Island portion of Berkeley
25 County?

1 A: I'm sorry. Could you repeat that?

2 Q: You know, is there a population kind of center
3 also in Daniel Island?

4 A: There are. There is some population on Daniel
5 Island, yes, but it's nowhere near the Goose
6 Creek size.

7 Q: It's your understanding that the population on
8 Daniel Island is going to be served by either
9 of these two hospitals?

10 A: I do not believe it will be, no.

11 Q: Okay. What is your understanding of the
12 current access people in Goose Creek and
13 southern Berkeley County have to hospital
14 services?

15 A: Well, the Goose Creek market area is very close
16 to the Trident Hospital, the 296 large
17 facility, seven or eight miles from the center
18 of Goose Creek down to Trident. And then you
19 have the Dorchester facility which is -- and I
20 guess I'm speaking to the upper end of Goose
21 Creek area, is maybe ten miles. So there's
22 over 300 beds available to those citizens of
23 Goose Creek.

24 Q: Okay. Maybe we can put this in kind of a map
25 perspective for the judge. If you'd go to

1 Petitioner 232 for me. Are you familiar --
2 there are five maps in this exhibit. And the
3 satellite aerial photographs from Google, Your
4 Honor, and a place, the hospital location. Are
5 you familiar with these maps, Mr. Rardin?

6 A: Yes, sir.

7 Q: Are Google aerial satellite maps something you
8 would look in your position as the business
9 development officer?

10 A: I do. Yes, I do.

11 Q: Why would you do that?

12 A: Well, just to search out different land mass,
13 look for population activity. It was pretty
14 convenient when looking at Jacksonville for
15 sure, the market down there, yes.

16 Q: Okay. And you've reviewed these maps?

17 A: Yes, sir.

18 Q: Okay. Do the locations on each of these pages
19 of the -- well, first of all what does the --
20 what does the "H" represent?

21 A: The blue H's -- well, the bottom two H's
22 represent Trident and Summerville. The top
23 blue H by Moncks Corner is the proposed
24 Berkeley Medical Center. And the red H is the
25 Roper Berkeley proposed hospital.

1 Q: Okay. And in terms of the red H, where -- you
2 know, what is that area known as?

3 A: Goose Creek.

4 Q: Okay. Is it -- where the two roads come
5 together, is it called Carnes Crossing?

6 A: Yes, sir.

7 Q: Or Crossroads?

8 A: Yeah, Carnes Crossroads.

9 Q: Okay. Do the locations of the proposed
10 hospitals and the existing hospitals look
11 correct and accurate to you on this map?

12 A: Yes, sir.

13 Q: Okay. Where is the population congregated on
14 this map based on your knowledge of the market
15 in the area?

16 A: It's in and around the Trident facility. It's
17 below the red H where the 176 and close to
18 where the Summerville E is, and then down in
19 the Ladson area.

20 Q: Okay. How about the area that Berkeley Medical
21 Center will serve in Moncks Corner? Where is
22 the population kind of congregated in that
23 area?

24 A: It's predominantly in Moncks Corner. But there
25 are -- there's clearly population in the

1 Bonneau/Cross area, St. Stephen that will
2 service this hospital.

3 Q: Does the population extend down from Moncks
4 Corner along 52 and 17A?

5 A: Yes, sir. There's some population there.

6 Q: Okay. Is that population you understand that
7 Berkeley Medical Center would try to serve?

8 A: Yes.

9 Q: Okay. If you'd turn I guess to Baehr 1910.

10 A: Which book is that in?

11 Q: It's in that same exhibit that you're in.
12 Well, I'm sorry.

13 MR. THOMAS: Sara, would you go to that and you can
14 just look at the screen. And you don't need a
15 paper copy unless you want it.

16 Q: What does -- and this is just another map
17 aerial satellite Google. What does this show?

18 A: The red arrows are -- were not originally on
19 our maps, right?

20 MS. TYER:: It's in the computer system.

21 Q: No. I think that's just part of the computer.
22 So nothing -- no significance there.

23 A: Okay. Well, again, it shows the Trident and
24 Summerville hospital locations and the Roper
25 Berkeley proposed location, Summerville market

1 and the population density.

2 Q: So it's just basically a closeup of the map
3 we're looking at?

4 A: Yes, sir.

5 Q: Okay. In terms of the -- kind of the area, I
6 don't know if this would be easier for you
7 because it is a blowup, but what neighborhoods
8 in Berkeley County does Trident Medical Center
9 serve?

10 A: I don't know if I particularly know the
11 neighborhoods.

12 Q: Well, if you can indicate by the boundaries of
13 the roads.

14 A: Well, it would be the 26 West -- West -- I'm
15 sorry, east of 26, the College Park area is a
16 large market for Trident, the Ladson market,
17 and the Goose Creek market.

18 Q: Okay. And where is Goose Creek? Can you --
19 can you kind of give us an idea there?

20 A: Goose Creek is to right of the edge of Trident,
21 but it's all annexed. The city has, I
22 understand, annexed up to the proposed site.
23 So it's all of that going left of the H and
24 back down a little bit towards the Trident
25 market.

1 Q: And what's your understanding about the general
2 distance between Goose Creek and Trident
3 Medical Center?

4 A: Oh, it's just a couple miles to be within the
5 city limits.

6 Q: Okay. Do you know what the distance is from
7 Trident Medical Center to Roper St. Francis'
8 proposed site there? See the H?

9 A: I'm sorry. Say again.

10 Q: The distances between Roper St. Francis'
11 proposed location and the existing Trident
12 Medical Center?

13 A: Yes. I believe approximately, and I'm speaking
14 approximately, it's seven or eight miles to the
15 Trident and just a little -- little over 11, I
16 believe, to the Summerville facility.

17 Q: Okay. And have you driven from Trident Medical
18 Center to Roper St. Francis before?

19 A: The proposed site?

20 Q: Yeah.

21 A: Yes, sir.

22 Q: Do you recall how long it took you?

23 A: Oh, 15, less than 15 minutes or so.

24 Q: Okay. Go to Petitioner 18. Are you familiar
25 with this map?

1 A: Yes, sir.

2 Q: Okay. Do the locations of the existing
3 providers look accurate to you?

4 A: Three and four existing and one and two are
5 proposed, yes.

6 Q: Okay. And in terms of the -- this map from the
7 SC Highways, does it reference kind of a
8 densely -- more densely populated areas?

9 A: Yeah. At the bottom, the yellow shows the
10 density.

11 Q: Okay. And is -- or East Coop -- excuse me. Is
12 Trident Medical Center and Summerville Medical
13 Center in those densely populated areas?

14 A: Yes, they are.

15 Q: Okay. Now, in terms of the proposed Berkeley
16 Medical Center in Moncks Corner, which towns,
17 Mr. Rardin, based on your knowledge of the
18 market would you feel would have improved
19 access if the hospital is built?

20 A: Well, you're going to have some additional
21 access from coming up 52. But clearly around
22 the lake with Bonneau, Russellville, Pineville,
23 Cross, St. Stephen, possibly Jamestown as well.
24 So there's going to really improve the access
25 for those folks up in that area.

1 Q: Okay. How long -- I mean, do you have any idea
2 how long it take folks from St. Stephen? I'm
3 not asking you to make it exact, but how long
4 it takes them to get to the hospital today?

5 A: Forty-five minutes to an hour.

6 Q: Well, let me ask you this. Do you think just
7 looking at this map and knowing how you know
8 the market, will the residents of Ladson have
9 improved access with the addition of Roper St.
10 Francis Berkeley?

11 A: No, sir.

12 Q: Why not?

13 A: Those services are already available very close
14 with Trident and Summerville locations.

15 Q: Okay. How about -- how about the residents of
16 Summerville? Would they have improved access
17 with the addition of Roper St. Francis
18 Berkeley?

19 A: No, sir.

20 Q: Why not?

21 A: Those services are provided, the same type of
22 facility, very similar that Roper's proposing,
23 those -- all those services are available at
24 Summerville Medical Center today.

25 Q: And how about Goose Creek and North Charleston?

1 A: No, sir. Same -- same thing.

2 Q: Okay. Why did Trident choose the location of
3 Moncks Corner for its proposed hospital?

4 A: Well, with regards to the Health Plan, the 30
5 minute travel time made sense within the
6 application. There's folks there that don't
7 have those services. We have an existing
8 facility there today and that -- that made the
9 most sense to put the proposed facility there.

10 Q: Okay. Did Trident ever consider any other
11 locations, Mr. Rardin?

12 A: It did.

13 Q: For a new hospital?

14 A: We did. We had purchased 20 acres up in Cane
15 Bay, which is I believe just a little north
16 west of the proposed Roper site, with -- bought
17 I think a year earlier with plans of outpatient
18 potential. But when we -- when we drew back
19 and considered the sites, we still felt that
20 the Moncks Corner site was best. The folks up
21 in the Cane Bay market are very close to
22 services provided by Trident Summerville today.

23 Q: Okay. Would you --

24 **MR. THOMAS:** Sara, would you go back to Petitioner
25 232 and go to page four. And, Your Honor,

1 you're hearing about Cane Bay. I'm just going
2 to try to show it to you on this map here if I
3 can, or have Mr. Rardin tell you where it would
4 be.

5 Q: Can you generally indicate for the judge where
6 Cane Bay is in the market?

7 A: Yes, sir. If you took -- go up 176.

8 Q: From the red H?

9 A: From the red H up 76, it's fairly close to
10 probably where -- in between the two 176s are.

11 Q: Okay. Was Cane Bay originally purchased to be
12 a -- to act as a hospital site?

13 A: No, it wasn't. It was -- it was going to be
14 outpatient. That was discussed very early on.
15 But there was consideration as the market
16 looked like it was going to mature and the
17 rooftops were going to come in. But there was
18 some conversation about it. But it was not --
19 it was clearly outpatient.

20 Q: When you say rooftops are going to come in,
21 what do you mean by that?

22 A: Well, just population explosion that was
23 being, you know, proposed by dozens of builders
24 and developers and just really didn't pan out
25 at that time. So we still have the property

1 today.

2 Q: Okay. Well, and has the development that was
3 referenced, I guess, that you just referenced
4 back in 2008, the proposed development, has it
5 occurred in that area?

6 A: There's been a little growth in the Cane Bay
7 market. But there's a high school there, but
8 it's not clearly done what the expectations
9 were when the boom was supposed to come. And
10 the same way with Carnes Crossroads today.

11 Q: And when you say the boom, are you talking
12 about the real estate boom?

13 A: Yes, sir.

14 Q: Okay. What happened to that boom back in 2008?

15 A: It kind of hit the bottom and nothing's
16 happening in the majority of those areas that
17 were supposed to explode.

18 Q: Now would a location in Cane Bay, would that
19 have afforded improved access to the towns
20 around Lake Moultrie and eastern Berkeley
21 County?

22 A: No, sir, I don't believe so.

23 Q: Now, just for the record, is Trident Medical
24 Center located in Berkeley County, Mr. Rardin?

25 A: No, it's not. It's probably less than two

1 miles, though, to the Berkeley line.

2 Q: Do you feel as business development officer
3 this market that Berkeley County has a
4 hospital?

5 A: I'm sorry?

6 Q: Do you feel that Berkeley County has a
7 hospital?

8 A: I do. I do. That's what Trident was
9 positioned there for, and I think it continues
10 to serve that population very well.

11 Q: Mr. Rardin, I'm going to get just slightly a
12 little technical here. Now, as part of your
13 job, is it important to be familiar with
14 utilization on a zip code level basis?

15 A: For market share, yes, sir.

16 Q: Okay. Do you review that type of data from
17 time to time?

18 A: Yes, sir.

19 Q: How do you -- how do you get a hold of that
20 data?

21 A: We typically contact our decision support
22 personnel, which is a group of individuals that
23 pull data down accessible from the state, and
24 they massage it and it comes back to us as we
25 see what our market share data looks like

1 within our market compared to our competitors.

2 Q: Okay. Go to Respondent's 74 for me. And Jim,
3 if you -- if you can't read that, it'll be in
4 tab 74, I believe, in this notebook.

5 A: Okay.

6 MR. THOMAS: One second, Your Honor.

7 A: Okay.

8 Q: All right. Have you seen this, I guess --
9 Berkeley County zip code map before?

10 A: Yes, sir.

11 Q: Okay. But you didn't create it, did you?

12 A: No, sir.

13 Q: And in terms of the zip codes areas, is that
14 your understanding of what the zip code areas
15 are in Berkeley County based on the lines?

16 A: Yes, sir. I would say that's correct.

17 Q: Okay. And do the proposed location at the
18 hospital sites, I guess we've got the Trident,
19 Moncks Corner and the Roper St. Francis site
20 look correct?

21 A: Yes.

22 Q: Okay. In terms of the zip codes, where is
23 Carnes Crossroads? Which the Roper St. Francis
24 site here, where is it located in terms of the
25 zip codes on the map?

1 A: It's splitting the Moncks Corner 29461 and the
2 Summerville 29483.

3 Q: Okay. Now, can you tell me just in -- just so
4 Judge McLeod has a feel for this, whereabouts
5 Trident Medical Center would be on this map, on
6 the zip code map?

7 A: In the 29406, which would be if you see Ladson,
8 Your Honor, it's to the right of that.

9 MR. THOMAS: Would you highlight that for me, Sara.

10 THE COURT: I cannot see it on this fuzzy copy here.

11 MR. THOMAS: Yeah, okay. Can you see it here, Your
12 Honor?

13 THE COURT: I see the yellow dot.

14 MR. THOMAS: Yeah. So this will be -- I think Mr.
15 Rardin referred to that as the 29406.

16 THE COURT: Yes, sir, I see.

17 MR. THOMAS: Okay.

18 Q: Mr. Rardin, is it your understanding here the
19 highlighted 29406, is that generally about
20 where Trident Medical Center is located?

21 A: Yes.

22 Q: Okay. And I think you mentioned earlier, did
23 you say that the area where Roper St. Francis'
24 proposed project is is actually in the Goose
25 Creek city limit?

- 1 A: Yes, sir.
- 2 Q: Okay. Now, how proximate, Mr. Rardin, is Roper
- 3 St. Francis' site to the Ladson zip code, which
- 4 I believe is 29456?
- 5 A: It's very close.
- 6 Q: And would it be less than five miles?
- 7 A: Yes, sir.
- 8 Q: Okay. How about the 29 -- the other
- 9 Summerville zip code, which is 29485? How
- 10 close is it to that zip code, Roper's proposed
- 11 site?
- 12 A: From the county line or --
- 13 Q: Basically, the zip code line.
- 14 A: Oh, it's ten, eleven miles maybe.
- 15 Q: Okay. And did you review -- you reviewed Roper
- 16 St. Francis' CON application, Your Honor -- I
- 17 mean Mr. Rardin --
- 18 A: Yes.
- 19 Q: -- when it was filed?
- 20 A: Yes, sir.
- 21 Q: Okay. And do you recall a reference to a
- 22 seven-mile radius from its proposed location?
- 23 A: I do.
- 24 Q: Okay. Do you know if Roper St. Francis' seven-
- 25 mile radius referenced in that application, do

1 you know whether it extends into the
2 Summerville, Ladson, Moncks Corner?

3 A: It's very -- it encompasses a lot. It's very
4 close to where the Summerville hospital would
5 be. And it actually does, I believe, encroach
6 into the North Charleston Trident Hospital
7 site.

8 Q: So Trident is actually within that seven mile
9 --

10 A: I believe they are, yes.

11 Q: All right. Based on this map here, do you know
12 where Trident Health Systems gets the majority
13 of its discharges?

14 A: Well, we have a large market share, probably 50
15 percent or better from the Goose Creek, Ladson,
16 Summerville, Moncks Corner market.

17 Q: Okay.

18 **THE COURT:** For the record, define discharges. I'm
19 familiar with it from past history but --

20 **MR. THOMAS:** Yes, sir.

21 Q: Would you define what --

22 A: Those would be a -- patients that get admitted
23 into the hospital, spend the night, and then
24 get discharged. And the state collects that
25 data and we get to see the market share from

1 that.

2 **THE COURT:** Thank you.

3 Q: Go to Petitioner 230 for me. Mr. Rardin, as
4 part of your job, is it important to know, keep
5 up with the number of discharges from your
6 hospitals?

7 A: Yes, sir.

8 Q: And are you generally familiar with the
9 utilization of those hospitals?

10 A: Somewhat, yes.

11 Q: Do you have access to data, zip code data that
12 actually showed the number of discharges from
13 various zip codes?

14 A: Yes, sir. Inpatient discharges, yes.

15 Q: Okay. If you look at Petitioner's Exhibit 230,
16 it's a two-page document. Are you familiar
17 with this chart?

18 A: Yes, sir.

19 Q: Okay. Just for the record does, it summarize
20 Trident data pulled from DSS?

21 A: Yes.

22 Q: Okay. And are those -- source of those
23 documents, is that Petitioner's 206, 207, and
24 Petitioner 38?

25 A: That's correct.

1 Q: Okay. Now, could you just generally take the
2 Court through this document.

3 A: Yes. It's the Trident Health System, which
4 includes the Trident and Summerville inpatient
5 utilization, and it shows the --

6 **THE COURT:** That's for 2010, correct?

7 A: Yes, sir. It shows the total utilization of
8 23,687 and how that's made up between Trident
9 and Summerville.

10 Q: And that's the total discharges, right?

11 A: That's correct. Total discharges. Then it
12 breaks down the 1551 and the 6499 as what comes
13 out of Berkeley County into those two
14 facilities. And it gives you percent of the
15 total out of each facility for a grand total
16 out of Berkeley County of 34 percent of
17 inpatient utilization.

18 Q: Now, that 34 percent, that's not what your
19 market share is in Berkeley County, is it?

20 A: No, sir.

21 Q: Okay. All right. Continue. I'm sorry.

22 A: As you move on down, then it breaks it out by
23 zip code with the Summerville zip code, then
24 the Trident Medical Center zip codes. And it
25 gives you the -- what those percentages are for

1 the total of those zip codes.

2 Q: What are the highlighted area?

3 A: Those highlighted areas are within that seven-
4 mile radius of the Roper facility, proposed
5 facility.

6 Q: Okay. So what percentage do you -- of patients
7 do you get from the seven-mile radius? Well
8 the --

9 A: For Summerville about 66 percent and for
10 Trident, 64 percent.

11 Q: Okay. Of the total discharges?

12 A: Yes, sir.

13 Q: Okay. Would turn to the next page of this
14 exhibit.

15 A: This is our market share for the Berkeley --
16 for Trident Health System again, Trident and
17 Summerville Medical Center. And this is the
18 market share of overall discharges within the
19 market. And you can say it's a staying pretty
20 consistently at a level of a low 50s.

21 Q: 2010, close to 55 percent?

22 A: Yes, sir.

23 Q: Okay. Is Trident the market share leader in
24 Berkeley County?

25 A: Yes, they are.

1 Q: Okay. In terms of those zip codes, I think we
2 were looking at Petitioner 230.

3 MR. THOMAS: If you go back one page, Sara. All
4 right.

5 Q: Summerville, Ladson, Goose Creek and Moncks
6 Corner. Do you have any idea of what the
7 market share is in those specific zip codes?

8 A: For Summerville and Trident?

9 Q: Yes.

10 A: Yeah. They're well into probably 50 percent
11 range.

12 MR. THOMAS: Put up Petitioner's 233 for me.

13 Q: Okay. We put up what's marked as Petitioner
14 233. Is this more data from Trident's decision
15 support?

16 A: Yes.

17 Q: Okay.

18 MR. THOMAS: Source of it is Petitioner's 54 for the
19 record, Your Honor. And also the population
20 data was pulled from the Joint Exhibit 1, which
21 is Trident's DHEC record.

22 Q: Could you just briefly take the Court through
23 this --

24 THE COURT: Excuse me one second.

25 MR. THOMAS: Yes.

1 THE COURT: You said it was Petitioner's 54?

2 MR. THOMAS: Yes, sir.

3 THE COURT: What I'm looking at does not have any
4 designation on it, 54 in it.

5 MR. THOMAS: Oh. Right here, Your Honor, I know
6 it's kind of small.

7 THE COURT: Excuse me. I see. I thought that was
8 part of the map.

9 MR. THOMAS: Oh, no, sir.

10 Q: And could you -- could you briefly take the
11 Court through this chart, Mr. Rardin. Just
12 kind of explain what it means.

13 A: Yeah. This is the 2010 market share, non-
14 tertiary share utilization for the first group,
15 Your Honor, of zip codes, which is based out of
16 2008 zip code population. And you see
17 Trident's Health Systems market share of out of
18 Goose Creek, Ladson, Moncks Corner,
19 Summerville, all above the 50 percent range, as
20 high as 69 percent in Summerville. You see the
21 Medical University in the high teens to low 20s
22 across that area. Then you see Roper St.
23 Francis with 12 percent of the Summerville
24 market, but mid-teens, Goose Creek and Ladson.
25 But a 26 percent in Moncks Corner. And it kind

1 of -- kind of similar the same way with the
2 tertiary numbers below that.

3 Q: And what's your understanding of why the Moncks
4 Corner market share for Roper is so much higher
5 than some of these other zip codes?

6 A: I would -- I would say that because of their
7 emergency department and outpatient center that
8 they have there, that the patients that go
9 there that need to be admitted would be
10 admitted to Roper Downtown, possibly St.
11 Francis. But I'm not sure that they're in the
12 same bucket with Roper. But they're getting --
13 because of their emergency department.

14 Q: Okay. And will Roper St. Francis, obviously
15 with -- they're building a hospital in Carnes
16 Crossroads, would they have an emergency
17 department there?

18 A: Yes, sir.

19 Q: In terms of the market and Trident's market
20 share in these areas, where is Roper St.
21 Francis Berkeley positioning itself in terms of
22 Trident's market?

23 A: They're in their -- what Trident would consider
24 to be their primary service area, which is a
25 set of zip codes that the majority of their

1 patients come from. And they're positioning
2 right in the middle of that.

3 Q: Based on your experience, why do you think
4 Roper St. Francis is attempting to do that?

5 A: I think they're --

6 MR. LONG: Objection, Your Honor. He can't answer
7 the question the way that was phrased. He's
8 calling for an opinion. He's asking what Roper
9 St. Francis did.

10 THE COURT: Sustained.

11 MR. THOMAS: Okay.

12 Q: Based on your experience as a vice president of
13 business development, what's your explanation
14 that you would give your superiors if asked why
15 Roper is attempting to locate in this
16 particular area of Carnes Crossroads?

17 A: They want to have a greater market share than
18 they have today. They want to grow their
19 market share.

20 Q: You mentioned Roper St. Francis' emergency
21 department in Moncks Corner. What would be the
22 closest hospital to that emergency department,
23 existing hospital?

24 A: It'd be Trident Medical Center.

25 Q: And does Trident Medical Center get the benefit

1 of a lot of transfers being so close to Roper's
2 ED?

3 A: No, sir.

4 Q: Where do you understand those transfers go?

5 A: They get trucked down to downtown or to St.
6 Francis.

7 Q: Okay. Now, is maintaining the market share
8 that we've just discussed and some of these zip
9 codes in Berkeley County, is that important to
10 Trident?

11 A: Yes, it is.

12 Q: Why?

13 A: Well, we need to continue to have strong market
14 growth, stay within our current perimeters of
15 market share so we can continue to reinvest in
16 the facilities we have, like the timeline I
17 went over earlier to be able to reinvest
18 dollars, bring modernized equipment,
19 renovations to the population that Trident
20 Summerville is serving.

21 Q: And in terms of medical equipment, is that
22 inexpensive?

23 A: No, sir.

24 Q: Let's talk a little bit about the decision to
25 build in Moncks Corner and --

1 THE COURT: Excuse me just one minute.

2 MR. THOMAS: Yes, sir.

3 THE COURT: Before we leave that, this last exhibit
4 that you were calling Petitioner's 54 --

5 MR. THOMAS: Oh, I'm sorry, Your Honor. Petitioner
6 233.

7 THE COURT: 233, I think for the record.

8 MR. THOMAS: Yes, sir, thank you. Referencing the
9 source documents in there. Thank you, I
10 appreciate that.

11 MR. LONG: I have that as 230.

12 MR. THOMAS: This one is 230. Were you talking
13 about this one on the screen?

14 THE COURT: That's the one. You were calling it 54,
15 and I'm looking at the top -- well, actually on
16 my screen the bottom right, and it says
17 Petitioner's Exhibit 233.

18 MR. THOMAS: Yes.

19 THE COURT: Let's call it that.

20 MR. THOMAS: Yes, sir.

21 Q: Mr. Rardin, when was the decision made to apply
22 for a CON application to establish a 50-bed
23 hospital in Moncks Corner, South Carolina?

24 A: It was May of 2008.

25 Q: Okay. And at that time, did Trident have a bed

1 need in the applicable 2004-2005 State Health
2 Plan?

3 A: Yes, sir. They did show a positive need for
4 the beds. And I believe it was 17.

5 Q: Okay. Can you explain to the Court why the
6 decision was made to apply for a CON
7 application to build in Moncks Corner in 2008?

8 A: Well, we had obviously seen by that time
9 Roper's acquisition of the 66 acres in
10 Trident's primary service area. I think there
11 was even publications about they would being to
12 build or, you know, look to build a hospital
13 there. We had seen some activity of seeing
14 moving the surgery center from Moncks Corner,
15 their surgery center from Moncks Corner down to
16 that location with the medical office building.
17 So it was pretty evident with the 66 acres they
18 would be attempting to file for a certificate
19 of need.

20 Q: When was your understanding of when they might
21 file for that certificate of need?

22 A: The articles were in the paper. They had a
23 timeline depending on how many houses were
24 being built in Carnes Crossroads up to a set
25 time, a definitive time. So from -- they had

1 a gap of 2012, if X amount of houses were there
2 up to 2015 was the latter they could file, was
3 my understanding of that article.

4 **MR. THOMAS:** Okay. Let's pull up Petitioner's 189,
5 if you would. This one hopefully is not too
6 grainy, Your Honor, but -- oh, yeah. Let's see
7 here. I don't think you'll be able to read
8 that, Your Honor.

9 **MR. LONG:** Your Honor, we would object to the
10 article coming in for the truth of the matter
11 asserted. I believe the way the questions are
12 phrased it's going to be to show knowledge on
13 behalf of Mr. Rardin. And so under that
14 circumstance, I think it can come in for that
15 limited purpose, provided that he's going to
16 testify that he's seen this article.

17 **MR. THOMAS:** Yeah.

18 **THE COURT:** Noted. Thank you.

19 **MR. THOMAS:** And Mr. Long is correct.

20 Q: Mr. Rardin, have you -- do you actually recall
21 seeing this article?

22 A: Yes.

23 Q: Okay. What's the date of the article?

24 A: Monday, February 18th, 2008.

25 Q: Okay. And this is, for the record,

1 Petitioner's 189, Trident 2820. And you were
2 referencing some timelines earlier. And if
3 you'd go down to, I guess, it looks like
4 paragraph six here. It starts with "for
5 instance." Pull that up.

6 A: Yes.

7 Q: Would you read that into the record.

8 A: "For instance, Roper must seek approval within
9 six months to transfer its Moncks Corner
10 ambulatory surgery center to an eight-acre
11 parcel fronting Highway 17A to start
12 construction on that property within a year,
13 assuming it gets state's blessing."

14 Q: Okay. Now, it says, Roper must seek approval
15 within six -- was that referring to the land
16 deal that it had?

17 A: No. That's the surgery -- that would be a
18 certificate of need.

19 Q: No. I'm sorry. But where did the provision
20 come from? What's your understanding, the
21 actual contract of sale?

22 A: Yes.

23 Q: Okay.

24 A: It would be the negotiations that were taking
25 place between Roper and the developer.

1 Q: Okay. Would you just read into the record the
2 next paragraph starting with "also."

3 A: Also, Roper must file the necessary documents
4 to build an acute care hospital on its own
5 property by December 31st, 2015 -- 2015. That
6 deadline could get pushed up to mid 2013 if
7 Carnes Crossroads Associates can complete -- is
8 it -- I don't know if that's 1700 or 1200.

9 Q: Seventeen.

10 A: 1700 residential units by the close of 2012,
11 according to the deed.

12 Q: Okay. So I know you didn't see the deed or
13 contract of sale at the time, but did this form
14 your understanding of the timeline then, what
15 Roper is going to do at Carnes Crossroads?

16 A: I'm sorry?

17 Q: Did this article that you referenced provide
18 you with information of what you thought
19 Roper's --

20 A: Yes.

21 Q: -- timeline was?

22 A: Yes, it did.

23 Q: Okay. Did you see any other articles in or
24 around this time in the spring of '08 about
25 Carnes Crossroads?

1 A: I believe there were some out there. I don't
2 exactly recall what they were. But it was
3 mentioning what Roper was looking to do up in
4 the Goose Creek market.

5 Q: Okay. Do you have occasion to drive by Carnes
6 Crossroads in your job capacity?

7 A: I have, I did, and actually drove this weekend.

8 Q: Okay. How many residential units are in Carnes
9 Crossroads today in 2012?

10 A: I did not see any houses in the -- in the
11 Carnes Crossroad development.

12 Q: Okay. Are you familiar with the area known as
13 Parks at Berkeley?

14 A: I know approximately where the land is, yes,
15 sir.

16 Q: Do you know, and if you don't, that's fine.
17 But do you know if any houses have come out --

18 A: I do not know if there are any houses there or
19 not. No, sir.

20 Q: Okay. In terms of the State Health Plan in
21 2008, what was going on with the State Health
22 Plan, the draft State Health Plan?

23 A: They drafted the new Health Plan, and we had
24 seen some comments within the Health Plan where
25 they were going to consider possibly the

1 redistributions of service areas, which the --
2 in today's Health Plan, Charleston, Berkeley,
3 and Dorchester Counties make up that service
4 area where the Roper facilities, the Medical
5 University and the Trident System sits today.
6 There were some comments was what we were told,
7 was to look at breaking out --

8 **MR. LONG:** Your Honor, I'm going to have to object.
9 I mean, he obviously hasn't read the comments.
10 He said he was told that there were some
11 comments in the State Health Plan. So
12 objection.

13 **THE COURT:** Sustained.

14 **Q:** Okay. Well, in terms of the State Health Plan,
15 is it your job to read the comments to the
16 State Health Plan?

17 **A:** I do read some of them, yes.

18 **Q:** Do you recall if you read them in this
19 instance?

20 **A:** I do not.

21 **Q:** Okay. Do you have people report to you about
22 comments that would be in the State Health Plan
23 such as --

24 **A:** I do have people that will give me their
25 comments on the State Health Plan, yes.

1 Q: Okay. And do you recall what those comments
2 were at this time?

3 A: That there could be --

4 MR. LONG: Your Honor, objection. He'd have to lay
5 a little more foundation as to who would have
6 told him and what their role was and how he
7 knows they would have seen it.

8 Q: Would attorneys have told you this?

9 THE COURT: Sustained.

10 Q: Who would have -- never mind.

11 A: It was -- it was probably someone from my --
12 our attorney's office, Parker Poe.

13 Q: Okay. That's fine. In terms of the State
14 Health Plan, if Berkeley County were to be its
15 own service area, what do you understand that
16 would do to bed need planning in the Tri-County
17 area?

18 A: Well, it would show a huge bed need for the
19 Berkeley County if you carve it out by itself
20 and didn't count the -- all the beds within the
21 Tri-County because Trident is so close to the
22 Berkeley County line and serving where the
23 majority of that population resides today in
24 southern Berkeley County.

25 Q: Okay. Now, in terms of the timeline you had

1 seen, did you feel that Trident would be the
2 first to apply for a new hospital in Berkeley
3 County?

4 A: Yes, sir, according to what we saw in the
5 papers.

6 Q: Well, and why was that important?

7 A: Well, we felt like if our application was
8 first, it would meet several of -- the 30
9 minute drive time that DHEC would give it
10 better consideration.

11 Q: Was there somewhat of a sense of urgency with
12 respect to filing in Moncks Corner?

13 A: I thin -- yes, I do think there was.

14 Q: And why was that?

15 A: Well, we knew what Roper's timeline was but
16 still, we wanted to be the first certificate of
17 need application filed.

18 Q: What was happening in kind of Mount Pleasant
19 area? What had just happened in the Mount
20 Pleasant area in 2008?

21 A: Well, the state had granted East Cooper a new
22 facility with an additional 40 beds, which
23 increased it, I believe, to 140, and had
24 granted Roper St. Francis the 85-bed facility
25 seven to ten miles apart, I think, from each

1 other. And we really didn't want to have that
2 position in the Berkeley County market county
3 being where Trident Summerville was located and
4 where we were going to put Moncks Corner.

5 Q: What's your understanding in terms of
6 utilization in East Cooper as of 2010?

7 A: On occasion I --

8 MR. LONG: Your Honor, he's got to lay a foundation
9 --

10 MR. THOMAS: I can do that.

11 Q: Mr. Rardin, do you --

12 THE COURT: Sustained.

13 Q: Mr. Rardin, do you have the opportunity to
14 review JAR applications?

15 A: Joint Annual Reports, I do on occasion look at
16 Joint Annual Reports from the hospital.

17 Q: And in terms, you know, what do Joint Annual
18 Reports, are these the reports that go to the
19 State of South Carolina?

20 A: Yes, sir.

21 Q: And what do they contain?

22 A: They contain various volume counts from the
23 hospitals. They report births, open hearts,
24 cath lab procedures, admissions, discharges, ER
25 visits.

1 Q: Do you recall seeing the 2010 discharge data in
2 East Cooper Regional Medical Center JAR?

3 A: Yes, I do.

4 Q: Do you recall about what their inpatient
5 occupancy was at the end of 2010?

6 A: It was in the low to mid 30 percent.

7 Q: Explain to the judge what that means in terms
8 of the number of inpatient beds.

9 A: Well, in relationship to the beds, it was 140
10 beds. And they were -- were in that percentage
11 range, only about 30 or 30 s0 percent occupancy
12 range would be for East Cooper. It would be
13 around about 30 something percent.

14 Q: So that would be about 40 of those beds full?

15 A: Yes, sir.

16 Q: Okay. What is in Moncks Corner, and I think
17 you mentioned it earlier, now in terms of
18 Trident facilities?

19 A: There is a freestanding emergency department,
20 along with some mammography, laboratory, and
21 physician office space.

22 Q: Okay. And where is Berkeley Medical Center
23 going to be located with respect to those
24 current Trident Medical Center operations?

25 A: On the 21 acres adjacent to it.

1 Q: Okay. When you say adjacent to it, is it right
2 next to it?

3 A: It's right next to it.

4 Q: Will the emergency department operating in
5 Moncks Corner now continue to operate as a
6 standalone ED?

7 A: No. The new -- the current emergency room will
8 be shifted to the new hospital, and that
9 particular medical office building will be
10 turned into space for physician offices.

11 Q: Okay. I want to go back to something. Who
12 made the actual decision to apply for the CON
13 application, the Berkeley Medical Center
14 application in Moncks Corner?

15 A: Myself; the CEO at the time, Terry Gunn; and
16 Chuck Hall.

17 Q: Okay. And prior to making that decision, did
18 you do -- did anybody do like a business case
19 narrative for the CON application or the
20 project?

21 A: No, sir.

22 Q: Okay. And why not?

23 A: Well, we wanted to get to the state fairly
24 quickly and Mr. Hall knew where we wanted to be
25 and he liked the location, and he's the

1 approval of that and we used the CON for that.

2 Q: And for the record, who is Mr. Hall again?

3 A: He is the national group president for HCA. He
4 oversees, I'm guessing here, 80 to 100
5 hospitals across the country.

6 Q: Okay.

7 A: And which happens to -- South Carolina is part
8 of his market.

9 Q: Was Mr. Hall familiar with this area?

10 A: Yes.

11 Q: Okay. Did you go around or travel around with
12 Mr. Hall and show him the Cane Bay site and the
13 Moncks Corner site?

14 A: Yes, we did.

15 Q: Did he like the Cane Bay site?

16 A: No, he didn't really. He preferred the Moncks
17 Corner site. He actually used the rooftop
18 comment.

19 Q: Mr. Rardin, what is your understanding of what
20 unnecessary duplication of services means in
21 terms of health planning?

22 A: Well, it would mean that if the services are
23 already provided within a range of what the
24 Health Plan is talking about, there would be no
25 need to duplicate those within the same area.

1 Q: Okay. And what's your understanding of what
2 occurs when an unnecessary duplication of
3 services occurs in a market?

4 A: I'm sorry?

5 Q: What's your understanding of what results from
6 an unnecessary duplication?

7 A: It would increase costs.

8 Q: Okay. Costs to who?

9 A: Cost to the patient.

10 **MR. THOMAS:** Your Honor, I see it's 12:40 now. We
11 can keep going. I'm at kind of a natural
12 stopping point, probably say somewhere between
13 halfway through. If we wanted to break for
14 lunch, it would be a natural stop for me, but
15 it's up to the Court.

16 **THE COURT:** I think that would be a good idea. Come
17 back at two o'clock.

18 **MR. THOMAS:** Yes, Your Honor.

19 **THE COURT:** Is that agreeable with everybody? Mr.
20 Long?

21 **MR. LONG:** That's fine, Your Honor.

22 **MS. BIGGERS:** Yes, Your Honor.

23 **MR. THOMAS:** Thank you.

24 **THE COURT:** All right. We'll be in recess until two
25 o'clock.

(Break from 12:41 p.m. until 2:00 p.m.)

1
2 THE COURT: Back on the record, please.

3 Q: All right. Mr. Rardin, I think we've
4 established the decision was made in May of
5 2008 for Trident to apply for the CON; is that
6 right?

7 A: Yes, sir.

8 Q: Okay. Now, tell me about the actual CON
9 application. Who was in charge of getting that
10 document prepared and submitted to the state?

11 A: I was.

12 Q: And tell me just kind of generally what you did
13 kind of in that process to get it started.

14 A: Once we made the decision, we obviously
15 contacted our attorneys, Parker Poe, who
16 suggested an expert, Baehr and Associates, to
17 assist with the app -- certain pieces of the
18 application.

19 Q: And is that the, kind of the B11, or the need
20 analysis?

21 A: Yes, sir.

22 Q: Okay. Why couldn't you do the health planning
23 analysis?

24 A: Well, I'm not an expert in health planning.

25 Q: Who did Trident use for the financial

1 projections in the project?

2 A: We used Steve Woodford.

3 Q: And who is Mr. Woodford?

4 A: Mr. Woodford is a -- he used to work for HCA,
5 or Trident Health System. He was a CFO there.
6 He was also a CFO in the division office in
7 Charleston. I had a lot of confidence in his
8 ability to perform the financials.

9 Q: Okay. And there's, of course, in any CON
10 application is a substantial architectural
11 piece. And who did that portion of the
12 application?

13 A: We used our corporate design and construction
14 out of Nashville.

15 Q: Okay. Now, let me get the notebook, the Joint
16 Exhibit 1 notebook, if you would.

17 MR. THOMAS: Your Honor, I believe you may have
18 Joint Exhibit 1 as well already up here. I may
19 be wrong about that. I think we're using the
20 official DHEC record. All right, Your Honor.
21 This looks like what DHEC has provided in Joint
22 Exhibit 1, which is the Trident DHEC record.

23 THE COURT: Bates stamped consecutively throughout?

24 MR. THOMAS: Yes, sir.

25 Q: Mr. Rardin, would you turn to page one of your

1 document there.

2 A: Yes.

3 Q: Is this the CON application for Trident Medical
4 Center that was submitted back in, it looks
5 like August 13, 2008?

6 A: Yes.

7 Q: Okay. And if you'd turn over to page three of
8 the DHEC record.

9 A: Yes.

10 Q: You signed this application on behalf --

11 A: I did.

12 Q: And did you review it?

13 A: I did.

14 Q: And did you draft this document?

15 A: I did not draft this document. I helped
16 oversee it and connect the appropriate people
17 to put the information in the application.

18 Q: Okay. If you'd turn to page six for me in the
19 DHEC record. And just what is the overall --
20 the total project cost here?

21 A: A hundred and fifteen million dollars.

22 Q: Okay. And square footage of the facility?

23 A: Just a little over 145,000 square feet.

24 Q: Okay. And if you would turn to page nine of
25 the DHEC record for me. Does this page list

1 some of the services that are going to be
2 offered there?

3 A: It does.

4 Q: Okay. And could you basically take the judge
5 through those services.

6 A: Well, it'll have the medical services beds,
7 intensive care beds, nursery services,
8 obviously emergency department, various
9 specialities, including general surgery, GI,
10 OB, orthopedics, plastics, urology, medical
11 imaging.

12 MR. THOMAS: Okay. Your Honor, we'll get a copy of
13 that for you to read a little better.

14 Q: Okay. And on the, kind of top of the page here
15 near the top, the need for the hospital does
16 this pretty must just summarize that the State
17 Health Plan showed a bed need at the time for
18 Trident Medical Center?

19 A: Yes.

20 Q: And what did they decide the best distribution
21 of the resources would be for those beds?

22 A: Trident?

23 Q: Yeah.

24 A: To move those 17 beds up to the Moncks Corner
25 market where we are allowed to build 50 under

1 the Health Plan.

2 Q: Okay. Is that -- that's what the application
3 is for, 50, right?

4 A: Yes.

5 Q: Okay. If you would turn to page 13 for me.
6 Does this page, does it set forth where things
7 are within the facility?

8 A: Yes.

9 Q: Okay. And the third floor is going to house
10 the ICU beds and acute care beds?

11 A: That's correct.

12 Q: If you would flip to page 22 of the DHEC record
13 for me. Do you recognize this chart?

14 A: Yes, sir.

15 Q: Okay. Could you explain to the judge what the
16 chart on the 22nd page of the DHEC record
17 means.

18 A: It shows the way patients from Berkeley County
19 get admitted to the Trident Health System via
20 Trident or Summerville. You can see the
21 majority are through a physician, self-admit
22 physician, emergency department is obviously is
23 a huge draw for admissions.

24 Q: And you expect that this type of admission
25 source would also hold true for the Berkeley

1 Medical Center?

2 A: Yes, sir.

3 Q: And that, when I say hold true, most of them
4 are going to come through the ED or from a
5 physician referral?

6 A: That's correct.

7 Q: Okay. If you turn to the DHEC record page 23
8 for me. Are you there? Okay. And what is this
9 -- what is B11? What do you understand that to
10 be?

11 A: It's the need section to determine how the
12 need, the unmet need would be, the projected
13 utilization of the proposed facility.

14 Q: Okay. And who drafted this section?

15 A: Baehr and Associates.

16 Q: Okay. And what is Mr. Baehr? What is do you
17 understand him to be?

18 A: I understand him to be an expert in needs
19 analysis and unmet need for healthcare.

20 Q: What about finances?

21 A: And finances, yeah.

22 Q: Even though I know you didn't draft this, we'll
23 take the Court through it at a higher level
24 just for the record. If you'd go to page 24
25 for me in the DHEC record.

1 A: Okay.

2 Q: Okay. Now, on page 24, what do you understand
3 the target population for this project to be as
4 set out in the CON application?

5 A: It's the zip codes and the northern Berkeley
6 County, around the lake and also as well as
7 29483, which is Dorchester County. But it does
8 split into Berkeley.

9 Q: Okay. So this 29483 has got a Dorchester side
10 and a Berkeley side, correct?

11 A: Yes, sir.

12 Q: And the other area that I guess is probably a
13 larger zip code is also, is that 29461 in
14 Moncks Corner?

15 A: Oh, I'm sorry. Yes, that's correct.

16 Q: Okay. Now, on pages 25 through 29, these
17 population projections, were these the ones --
18 were these developed by you?

19 A: No, sir.

20 Q: Okay. Who did these?

21 A: Mr. Baehr.

22 Q: Okay. And if you'd turn to page 29 for me. In
23 terms of the projections in 2008, you'll see a
24 Table E up there by age and zip code. Did the
25 population projections appear to be reasonable

1 to you that were done by Mr. Baehr and his
2 associate?

3 A: Yes, sir.

4 Q: Now, who developed the projections about the
5 Trident Health System utilization that can be
6 found on page 30 through 34 of the DHEC record?

7 A: It would've been, I believe, Mr. Woodford and
8 Mr. -- with information to Mr. Baehr. That's
9 30?

10 Q: Yeah. Just page 30, the population. Mr.
11 Woodford did the financials. So pages 30 of
12 the DHEC to page 34.

13 A: Oh, I'm on the wrong page. I'm sorry.

14 Q: All right.

15 A: This would have been Mr. Baehr.

16 Q: And did you review his work?

17 A: I looked at it. Yes, sir.

18 Q: Okay. But this isn't the kind of technical
19 analysis you would normally do?

20 A: No.

21 Q: Okay. On page 34, if you'd turn to the chart
22 there on page 34. I think it's -- it says, for
23 cash Trident Health Systems Utilization,
24 starting in 2012 through 2016; do you see that?

25 A: Yes.

1 Q: What does this chart show will be available in
2 terms of an average number of new patients per
3 day at Trident Health Systems in the year 2016?

4 A: Okay. That would be the bottom line, the
5 incremental average daily census, which is a
6 little over 42 patients.

7 Q: Okay. And in terms of -- I see on this page,
8 too, that there is a chart here at the bottom
9 of the page. What do you understand that chart
10 to be?

11 A: Those types of patients would not be admitted
12 at the Berkeley Medical Center.

13 Q: So these are the DRGs that were -- well, the
14 type of procedures and patients that won't
15 likely be seen at Berkeley Medical Center; is
16 that right?

17 A: Yes.

18 Q: So these are -- another way to put this and
19 move this along would be tertiary kind of
20 services?

21 A: Yes.

22 Q: Open heart surgery? Okay. Now, if you'd turn
23 to page DHEC record 35. Tell me, are you
24 there?

25 A: Yes.

1 Q: Okay. And it's a similar chart. But just for
2 the Court's edification, again, Forecast
3 Trident Health Systems Utilization is what's
4 available in the market in 2016 on an
5 incremental basis for the non-tertiary, non-
6 specialty patient days in 2016?

7 A: 36.6.

8 Q: Okay. Now, if you'd turn to the next page,
9 please, page DHEC record 36. What's this chart
10 represents?

11 A: It's the internal market share reallocation for
12 Trident Health Systems.

13 Q: Okay. I'm talking about -- are you on DHEC
14 record 36? There's a chart there that says
15 Forecast Berkeley Medical Center Utilization.
16 Do you see that? Am I on the wrong page here?

17 A: No, I see it. I'm sorry, yes.

18 Q: Okay. And what does this chart represent in
19 terms of the ADC --

20 **MR. LONG:** Your Honor, I've got to object here. I
21 mean, he's testifying. If the witness can
22 testify about the application, he should ask
23 him and let him testify. If he can't, then
24 let's wait for Mr. Baehr. I mean, I don't --

25 **MR. THOMAS:** I'm trying to move things along, Your

Honor, just so we have --

THE COURT: Well, the objection has been made and it is leading. So just be more circumspect of your manner of questioning.

MR. THOMAS: Certainly, Your Honor.

Q: All right. What is the ADC in the year 2016, Mr. Baehr, for Berkeley Medical Center?

A: 34.6.

Q: Okay. And is that the expected number of patients?

A: That's the average daily census, yes.

Q: Okay. And just for the judge's knowledge, what does average daily census mean? He may know that, but --

A: It's the average number of patients within the hospital at that time.

Q: On any given day?

A: On any given day.

Q: Okay.

THE COURT: One quick question. What does tertiary mean in this context?

A: Well, this would be non-tertiary type for the Berkeley Medical Center. Tertiary would be an open heart type patient, more acute care.

Q: Now, Mr. Rardin, in terms of the analysis that

1 Mr. Baehr did, did Trident factor any market
2 share growth into the bed need analysis?

3 A: It did not.

4 Q: Okay. And what's your understanding for that
5 -- about why it did not?

6 A: My understanding is that because there is a
7 current emergency department in the Moncks
8 Corner area, our emergency department, where we
9 would put this facility these patients were
10 already -- already coming there. And if they
11 were coming there, then they would be sent down
12 to Trident if they were a tertiary type patient
13 or kept up in the Berkeley market -- the
14 Berkeley hospital if they were not.

15 Q: Okay. And what's Trident market share in
16 Berkeley County? Remind the judge of that.

17 A: It's over 50 percent.

18 Q: And are there any other providers kind of in
19 the Moncks Corner area right now?

20 A: There's the Roper Berkeley emergency department
21 has a surgery center as well.

22 Q: Okay. And in terms of -- I think you've
23 already mentioned this. But where -- the
24 freestanding ED that's there now, is that going
25 to be opened or closed if the hospital opens

1 up?

2 A: Trident's will be closed and moved into the
3 hospital.

4 Q: Okay. Now, this application, submitted in
5 August of 2008, it had assumed that any other
6 hospitals were going to be applied for in
7 Berkeley County?

8 A: No, it did not.

9 Q: And if you turn over to the DHEC record, page
10 38. It's under the outpatient there. Did you
11 review Mr. Baehr's work with respect to the
12 outpatient utilization forecast?

13 A: Yes.

14 Q: Okay.

15 A: Yes.

16 Q: And you find them to be reasonable?

17 A: I did find it to be reasonable.

18 Q: Okay. Now turn to page 41 for me of the DHEC
19 record. And forgive me if I've asked you this,
20 but how far will the Berkeley Medical Center be
21 in terms of miles from the Trident Medical
22 Center?

23 A: Approximately 21 miles.

24 Q: Okay. And --

25 **THE COURT:** Make that a little clearer for the

1 record. You're talking about the existing
2 Trident?

3 MR. THOMAS: Yes, sir. The existing Trident.

4 THE COURT: And then the new Trident Berkeley
5 Hospital?

6 MR. THOMAS: Yes.

7 Q: How far is Berkeley Medical Center in Moncks
8 Corner from Trident Medical Center; what's your
9 understanding?

10 A: Approximately 21 miles.

11 Q: And to your knowledge, does Trident show them
12 bed need in the State Health Plan?

13 A: Yes, it does.

14 Q: For the project? Okay. And in terms of
15 access, what is Berkeley Medical Center doing
16 in terms of patient access?

17 A: Well, it provide accessibility to the
18 population up and around the lake that we spoke
19 about before, giving them a shorter drive time
20 to healthcare services.

21 Q: And you're -- as you reviewed this, did you
22 think that this project was -- would have been
23 seen by the state as an unnecessary duplication
24 of services?

25 A: No, I didn't think it would be a duplication of

1 service. No.

2 Q: Does Trident's project result in any adverse
3 impact to existing providers?

4 A: No.

5 Q: Was there significant community support for the
6 project?

7 A: Yes, there was.

8 Q: Okay.

9 MR. THOMAS: And Your Honor, there are many volumes
10 that Ms. Biggers printed up for us over here of
11 literally hundreds and hundreds of community
12 support letters. They're in the record, but I
13 didn't want to kind of create like a mini
14 fortress on your desk if we're actually able to
15 roll them all out there.

16 Q: How about medical staff support?

17 A: There is medical staff support from the
18 physicians at the Trident campus and in our
19 hospital based physicians, like emergency room,
20 radiologists and such.

21 Q: Okay. Can you speak up just a little bit? I
22 want to make sure Judge McLeod hears you.

23 THE COURT: I can hear him just fine. Thank you.

24 MR. THOMAS: Okay. It might be my ears.

25 Q: In terms of the facility that is in Moncks

1 Corner now, you've referred to the ED and the
2 outpatient center. What is that facility, is
3 that operated under a license?

4 A: Trident's license.

5 Q: Trident hospital's license?

6 A: Yes, it is.

7 Q: Okay. In terms of the -- if you'd turn to page
8 44 in your application for me. And I think --
9 what is this next section here? I think it
10 spans about 129 pages.

11 A: That's the backup for the B11 information that
12 Mr. Baehr provided.

13 Q: Okay. So this is kind of just the raw data?

14 A: Yeah.

15 Q: And if you'd go to page 129 of the DHEC record
16 for me. Now, did Trident consider alternatives
17 to this project?

18 A: They did.

19 Q: Okay. And in terms of the alternatives
20 provided, I guess one was adding 50 beds -- or
21 excuse me, adding beds at the Trident campus.
22 It says here, it says it was rejected. What's
23 your understanding of why that was rejected?

24 A: Well, Trident wanted to continue the mission
25 and go back to Berkeley County and build a

1 facility, a hospital that would affect a higher
2 population of patients in and around the lake
3 and those people that needed the healthcare
4 services.

5 Q: Okay. And then it goes with saying, the one
6 that was actually chosen was at the Berkeley
7 Medical Center location, correct?

8 A: The Moncks Corner site.

9 Q: Moncks Corner site. All right. And if you
10 turn the page there to page 131, or excuse me,
11 DHEC record -- yeah, 131. And not to belabor
12 this, but in terms of this project, does it
13 alleviate access issues?

14 A: Yes, it does.

15 Q: Okay. Can you explain how?

16 A: Again, the patients that are around the lake in
17 that area of Berkeley County have excessive
18 drive times down to the Trident and Summerville
19 area. And this particular facility would
20 alleviate that drive time.

21 Q: Okay. Now, does anyone in Goose Creek area,
22 Mr. Rardin, that you're aware of, or in
23 southern Berkeley County have serious problems
24 such as accessibility in obtaining care?

25 A: No, sir.

1 Q: If you'd turn to page 142 of the DHEC record
2 for me. This is a section of the application
3 that asks about staffing. When Trident builds
4 Berkeley Medical Center, will it be able to
5 staff the facility?

6 A: Yes. It will be able to staff the facility
7 with only one hospital in Berkeley County, yes.

8 Q: All right. If Roper is built to the south, do
9 you see any problems with staffing?

10 MR. LONG: Objection, Your Honor. He has no ability
11 to testify to that.

12 THE COURT: What do you say, Mr. Thomas?

13 MR. THOMAS: Well, I say that he does. He's the,
14 you know, business development officer for the
15 division that oversees this hospital and he
16 knows this market very well, and I think he's
17 completely qualified to testify to staffing.
18 His background is COO of the hospital, Trident
19 Medical Center.

20 THE COURT: Yes. Thank You. But I disagree.
21 Objection sustained.

22 MR. THOMAS: Okay. Well, we'll get Mr. Gallati to
23 talk about that.

24 Q: What's the previous experience of the
25 applicant, of Trident Medical Center, Mr.

1 Rardin?

2 A: Well, speaking of Trident Health System?

3 Q: Yes.

4 A: Well, it's been in the market there well over
5 35 plus years in the North Charleston area,
6 which obviously we spoke about earlier had the
7 two facilities to close with Dorchester and
8 Berkeley County to position Trident Health
9 System to serve those counties, along with
10 North Charleston.

11 Q: Okay. Let me -- I do want to go back to
12 staffing and just ask you a general question,
13 not about staffing itself. But when the
14 application was drafted, was it draft -- and
15 staffing was considered, was it considered --
16 was it considered that two hospital
17 applications would be competing for each other?

18 A: No.

19 Q: Okay. Now, you would go --

20 **MR. THOMAS:** Now we're going to take a big jump
21 here, Your Honor, to page -- the DHEC record
22 page 641.

23 Q: And before I get into this particular page
24 here, Mr. Rardin, in terms of, I guess, did
25 Trident receive any request for additional

1 information from the Department?

2 A: Yes, we did.

3 Q: Who would have responded to those?

4 A: I would have sent those requests to our
5 counsel. They would have gotten with our
6 experts to draft the comments back.

7 Q: Okay. Now, looking at page 641 of the DHEC
8 record, can you tell the Court what this
9 document is?

10 A: Yes. It's required within the CON application,
11 the proof of funding. And this is from our
12 finance department in Nashville describing how
13 the funding will be used for the Berkeley
14 Medical Center.

15 Q: Would you anticipate any difficulties financing
16 the project in the event it's the only project
17 approved?

18 A: No, I would not.

19 Q: Now, would you expect the financing to occur if
20 both projects are approved?

21 A: Yes.

22 Q: If both projects are approved you would think
23 that the -- that HCA would finance the project?

24 A: I do not think that they would finance the
25 project if both hospitals are approved.

1 Q: And on six -- if you turn over to 642. Can you
2 tell the Court what this letter is?

3 A: Yeah. This is a letter that's also required
4 within the application, Ronnie Midgett was the
5 controller at the at Trident, and he verifies
6 the assumption and calculation for the
7 financial projections.

8 Q: And did -- who was the CFO at the time the
9 application was drafted?

10 A: A gentleman by the name of Karl Gorrell.

11 Q: And where is he today?

12 A: He is in Augusta, Georgia, at a hospital there.

13 Q: All right. And did he participate in the
14 development of the financial statements?

15 A: He assisted Ronnie and looked over as well the
16 financial.

17 Q: Okay. Now, did you participate in the
18 assumptions or developing the model for the
19 financial statement?

20 A: No, sir.

21 Q: Okay. Is that something you left to the CFO,
22 the comptroller, and Mr. Woodford?

23 A: I did.

24 Q: And did you trust the work they did based on
25 their experience?

1 A: Absolutely.

2 Q: Okay. And we won't dig real deep in these. I
3 know Mr. Baehr is going to testify on that.
4 But if you'd just turn to 644 for me of the
5 DHEC record and just tell -- in terms of the
6 financial statement here and tell the Court,
7 you know, what the project shows in terms of
8 the incremental pro forma.

9 A: Yeah.

10 MR. LONG: Objection, Your Honor. He just said he
11 didn't have anything to do with it. He's not
12 the witness to talk about this.

13 MR. THOMAS: I think he can just state -- I mean he
14 -- well, let me set up --

15 THE COURT: You're asking him to point out from the
16 tabulation here; is that --

17 MR. THOMAS: Yeah. Basically, Your Honor.

18 THE COURT: Overruled.

19 Q: First of all, let me -- and for Mr. Long's
20 benefit, would you have reviewed the financial
21 pro formas once the CON was developed?

22 A: I would have looked over them with the expert.

23 Q: Okay. And why are the financial pro formas
24 important in this project?

25 A: Well, we want to make sure that at a point and

1 time that it will cash flow, that the hospital
2 will generate income.

3 Q: Was that something you needed to report to
4 anybody after this project was -- the CON
5 application was completed?

6 A: Yes. We would need to make sure that the
7 facility was going to have a positive flow as
8 being the only hospital there.

9 Q: Okay. And just in terms of just kind of high
10 level, what did you notice in terms of pre-tax
11 net income when you got the pro formas?

12 A: Well, the first two years, which we kind of
13 expected would show a loss. But the third year
14 begins to cash flow.

15 Q: Okay. Now, turn over to page 659 for me in the
16 DHEC record. And just for the record, is this
17 one of the requests for additional information
18 that we referenced earlier?

19 A: Yes.

20 Q: And in terms of -- on page 66 -- quickly to
21 page 663. Is this the response to that request
22 for additional information?

23 A: Yes.

24 Q: Okay. And if you go to the DHEC record, page
25 674, were you kept apprised of the information

1 that was being submitted to the Department?

2 A: Yes, I was.

3 Q: There's a CC for you there, correct?

4 A: Yes.

5 Q: Okay. Now, go to the DHEC record, page 729 for
6 me.

7 A: Okay.

8 Q: Okay. What is this document?

9 A: This is a letter of support from Dr. Greenberg
10 from the Medical University in support of
11 Trident Berkeley Medical Regional Center.

12 Q: Okay. And you got that -- when did you receive
13 that letter of support, or when did the
14 Department receive that letter of support?

15 A: February 12, '09, that's the date stamp.

16 Q: Okay. And on page -- if you'd turn to page 744
17 for me.

18 A: Okay.

19 Q: And what is this document?

20 A: This is the same letter of support, but from
21 East Cooper Regional Medical Center CEO.

22 Q: Other than East Cooper Regional Medical Center
23 and the Medical University of South Carolina,
24 are there any other non-federal hospitals in
25 the Tri-County service area that are not

1 affiliated with Roper?

2 A: No.

3 Q: Now, Mr. Rardin, when do you understand that
4 Roper applied to build this CON application in
5 Berkeley County?

6 A: Late fall of '08.

7 Q: Okay. When do you recall actually finding out
8 that Roper was going to apply for a CON
9 application in Berkeley County?

10 A: I think there was some articles prior to that.
11 I don't actually recall.

12 Q: Okay. And do you recall at the time, had Roper
13 started building in Mount Pleasant yet?

14 A: That was fall of '08?

15 Q: Yes.

16 A: I believe they were clearing land. I think so,
17 yes.

18 Q: For that new 85-bed --

19 A: Eighty-five bed facility in Mount Pleasant.

20 Q: When you first learned of Roper's announcement
21 to build a hospital in Berkeley County, were
22 you aware of any other plans for Carnes
23 Crossroads at that time other than the ones
24 that you have reference earlier to relocation
25 of the --

1 A: I was not. You're talking about the surgery
2 center?

3 Q: Yes.

4 A: That's what we were aware of at the time. We
5 knew then once Roper was coming out of the
6 ground in Mount Pleasant, I believe there was
7 conversations -- their applications about
8 filings, to file the application for another
9 100 plus million dollar facility in Berkeley
10 County.

11 Q: Were you surprised by that?

12 A: I was. I was a little bit.

13 Q: Why?

14 A: Well, just from a timing standpoint, the timing
15 standpoint, the efforts, the manpower it takes
16 to bring a facility up -- up to running speed
17 and they were having still do that in Mount
18 Pleasant.

19 Q: Okay. And in terms of the Roper St. Francis
20 Berkeley, did you review their CON application?
21 Roper St. Francis Berkeley's?

22 A: Yes, I did.

23 Q: What's your understanding of what they have and
24 what they're offering in terms of healthcare
25 services at that location that is not offered

1 already at Trident or Summerville Medical
2 Centers?

3 A: There's not any services that are being offered
4 at Roper Berkeley Carnes Crossroad location
5 that's not already offered at Trident or
6 Summerville.

7 Q: When Roper applied to build in Berkeley County,
8 what's your understanding that the State Health
9 Plan showed their bed need was?

10 A: They did not have a bed need at the time.

11 **THE COURT:** Excuse me. Just so the record will be
12 clear, somebody reading the record, when you
13 refer to Trident, they might think Trident in
14 Moncks Corner or Trident down the road. Could
15 we have some way to distinguish the two?

16 Q: And maybe you can refer to the facility in
17 Trident now as Moncks Corner Medical Center.

18 A: Okay.

19 **MR. THOMAS:** Good point, Your Honor.

20 Q: In terms of -- what's your understanding of
21 what's located in Carnes Crossroads today?

22 A: That there is -- as far as the housing industry
23 goes, there's nothing going on in the Carnes
24 Crossroads development at this time.

25 Q: How about in terms of medical facilities?

1 A: None that I'm aware of.

2 Q: Do you recall at the project review -- did you
3 attend the project review --

4 A: I did.

5 Q: -- meeting for Berkeley Medical Center and
6 Roper St. Francis Berkeley?

7 A: Yes, sir.

8 Q: Okay. Do you recall what -- let me strike
9 that. In terms of Roper's proposed hospital
10 location, is that in the southern portion of
11 the Moncks Corner zip code?

12 A: Yes, it is.

13 Q: Okay. In your estimation, knowledge in
14 marketing, do you think that will affect
15 Berkeley Medical Center's ability to get
16 patients from that area?

17 A: I do. I think that it will affect them.
18 They're only, let's say, close to 11 or 12
19 miles apart from each other.

20 Q: And is Roper St. Francis -- excuse me. Has
21 Berkeley Medical Center projected it will get
22 patients from that zip code?

23 A: Yes.

24 Q: And that's not just from the northern section
25 of that zip code, is it?

1 A: No. It's a little bit from the south, too.

2 Q: Okay. And what about 29483?

3 A: Yes. 29483 as well.

4 Q: Okay. What is your understanding based on your
5 knowledge of the market and what you're seeing
6 in terms of the employment practices at Roper,
7 physician employment practices?

8 A: They have a very aggressive employment strategy
9 with physicians throughout the market.

10 Q: Do you think that that could be a factor for
11 Berkeley Medical Center?

12 MR. LONG: Your Honor, move to strike that. Your
13 Honor, objection. I move to strike that. He
14 just gave a blatant opinion with no foundation.
15 He's not qualified to answer the question.

16 THE COURT: Ask the question again. Let me hear his
17 response.

18 MR. THOMAS: Okay. Well, let me just lay a
19 foundation.

20 Q: Now, I'm going to go back because I did lay the
21 foundation earlier. What do you do as the
22 director of business development?

23 A: I help oversee the market with each facility.
24 In those markets, I understand what the
25 competition is doing from expansion and those

1 things.

2 Q: Okay. And what have -- and have you analyzed
3 what the competition has been doing in the Tri-
4 County market with respect to physician
5 employment practices?

6 A: I do see that either right on the internet from
7 Roper's internet site or in the newspaper. I
8 do see the acquisitions they've made.

9 Q: Okay. And based on your perception in the job
10 duty that you have, what have you seen occur in
11 the market? What has Roper been doing in terms
12 of physician employment practices?

13 MR. LONG: Objection, Your Honor. He's asking him
14 for an opinion and it's clearly on hearsay.

15 THE COURT: Ask what he's seen. I'm going to
16 overrule your objection.

17 MR. LONG: Okay.

18 Q: Go ahead.

19 A: I'm sorry?

20 Q: The question I just asked, what have you
21 perceived in your role as the business
22 development director --

23 A: They are very aggressive in the employee
24 strategies with physicians throughout the
25 market. Over in Mount Pleasant, as their

1 hospital was beginning to open, they had a
2 quite of few acquisitions there. And I think
3 we probably had similar type movement in the
4 north area in the Berkeley County, North
5 Charleston market.

6 Q: Okay. Do you recall if Roper St. Francis in
7 their CON application actually considered
8 Trident's project?

9 A: To my knowledge, it did not.

10 Q: How far, and you may have referenced this
11 earlier, is Summerville Medical Center away
12 from Roper St. Francis Berkeley, Mr. Rardin?

13 A: I think I said earlier around 12, 11 or 12
14 miles.

15 Q: And did Summerville Medical Center submit a CON
16 application for 30 beds in 2010?

17 A: Yes, it did.

18 Q: Did it have a State Health Plan bed need for
19 those beds?

20 A: It did have a bed need.

21 Q: Is it your understanding Roper's challenging
22 that CON application?

23 A: Yes, it is.

24 Q: Have you seen or been privy to an analysis that
25 sets forth the adverse impact on Trident Health

1 Systems of the Roper St. Francis Berkeley
2 project?

3 A: Yes.

4 Q: And who prepared that impact, that analysis?

5 A: Our expert, Mr. Baehr.

6 Q: Did you find it to be significant?

7 A: It was significant.

8 Q: Can you tell the Court what, and just in terms
9 of numbers, what the adverse impact analysis
10 that you saw showed?

11 A: It was a substantial -- this was if both
12 hospitals are built?

13 Q: This is the impact on Trident.

14 A: Oh, the impact on Trident with Roper Berkeley?

15 Q: Yes.

16 A: If I recall, it was in the millions of dollars
17 of range that Berkeley -- Roper Berkeley is
18 built.

19 Q: Okay. What do you recall, and that brings up
20 a good point. In terms of Mr. Baehr's analysis
21 at project review, do you recall what it showed
22 -- his analysis showed if two hospitals were to
23 be built in Berkeley County?

24 A: They would both have substantial losses for
25 years.

1 Q: Okay. Now, if you'll briefly -- let's see
2 here. Could you turn to, and maybe we can put
3 this on the screen so we won't have to get out
4 all these notebooks. But the Roper St. Francis
5 DHEC record, it will be Joint Exhibit 2. And
6 if you go to page 25, if you would, sir. Mr.
7 Rardin, you said you reviewed the Roper St.
8 Francis CON application?

9 A: Yes.

10 Q: Can you read the second bullet point on this
11 page, which is in the need section.

12 A: "Market share capture for the non-aligned Roper
13 St. Francis patient pool expected to be ten
14 percent by 2015, the third year of operation."

15 Q: Okay. Now who is the -- what health system has
16 the largest market share in the area?

17 A: Trident Health System.

18 Q: Would you go down to the, I think it's the
19 fourth -- the fourth bullet point. Let's see
20 here. Yeah. Read the fourth bullet point for
21 me if you would.

22 A: "Total Roper St. Francis Hospital - Berkeley
23 discharges are then forecast by applying a ten
24 percent in-migration factor assuming that 90
25 percent of the total volume would originate

1 from Berkeley County and ten percent of the
2 total volume would originate from outside the
3 county."

4 Q: What is the closest county to Roper St.
5 Francis' site that's not Berkeley County?

6 A: Charleston County.

7 Q: Is there another one?

8 A: Dorchester County.

9 Q: And which health system has the highest market
10 share in Dorchester County?

11 A: I'm sorry. Could you repeat that?

12 Q: Which health system has the highest market
13 share in Dorchester County?

14 A: Trident Health System.

15 Q: Now, and do you know what the market share is
16 for Dorchester for Trident Health Systems
17 generally?

18 A: It's in the low 60 percent.

19 Q: So if we accepted these numbers here, would
20 this mean that from an in-migration standpoint
21 that would be -- the capture would be ten
22 percent of Trident's 60 percent?

23 A: Yes.

24 Q: Okay. Now, I guess you got the decision that
25 both applications would be approved in what, is

1 it June of '09?

2 A: That's correct.

3 Q: Okay. Now, were you surprised that -- by that
4 decision?

5 A: I was surprised by that decision.

6 Q: Why is that?

7 A: I felt like DHEC, looking at the Health Plan
8 and the facility receiving, I was not in
9 agreement.

10 Q: Okay. Any other reasons?

11 A: Well, it was going to put a new hospital in
12 Berkeley County that duplication services I
13 felt was in the realm of that as well.

14 Q: Okay. And so what -- what did Trident Health
15 Systems do after that?

16 A: It appealed.

17 Q: Who made the decision to appeal it?

18 A: Myself, Mr. Gallati, and Mr. Thomas, the
19 division president.

20 Q: Okay. Mr. Rardin, I'm trying to wrap things up
21 here, but could you explain to Judge McLeod and
22 this Court why it is important that the
23 Berkeley Medical Center to be at Moncks Corner.

24 A: Well, it improves access to a percentage of the
25 population today that has a difficult time

1 accessing inpatient care. It follows the
2 mission that Trident Health System was charged
3 to do many, many years ago.

4 Q: And did you find Mr. Baehr's adverse impact
5 analysis and his analysis regarding what would
6 occur if two hospitals were both approved
7 reasonable?

8 A: Yes, I did find it reasonable.

9 Q: Is that something that you're willing to reject
10 simply because the state says that you should
11 be approved?

12 A: No.

13 Q: Okay. In the event both of these applications
14 are ultimately approved, will Trident build its
15 hospital in Moncks Corner?

16 A: It will not.

17 Q: And why not?

18 A: Financially the -- the investment will not make
19 the return that is necessary to continue to
20 grow the market there, and it will affect our
21 abilities to grow into the Charleston market
22 with Trident.

23 Q: That's all the questions I have for you, Mr.
24 Rardin. I'm sure Mr. Long has a few.

25 **THE COURT:** Cross-examination, Mr. Long.

1 MR. LONG: Thank you, Your Honor. We need one
2 second.

3 MR. RARDIN - CROSS EXAMINATION BY MR. LONG:

4 Q: Mr. Rardin, you have -- you've been at Trident
5 -- you've been in Charleston now since 1995,
6 right?

7 A: Yes, sir.

8 Q: And actually out of all the management team
9 currently at Trident Health System, you've got
10 the most tenure, right?

11 A: Right.

12 Q: The CFO is new? The CEO at Summerville is new?
13 You've got the most tenure, right?

14 A: In the Charleston market, that's correct. I
15 work in the division office now.

16 Q: Right. But of the people that are in
17 Charleston overseeing the Charleston, South
18 Carolina, area, you've got the most tenure in
19 the office, right?

20 A: Well, just to clarify that. I'm not in the
21 office at Tri. -- I'm not located at Trident.
22 I'm located at -- on Daniel Island at the
23 division office, which has oversight more than
24 just Trident.

25 Q: All right. Well, let's talk about that.

1 You're in the division office. So the division
2 office for HCA includes Jacksonville, Myrtle
3 Beach, Walterboro and Charleston, right?

4 A: And Orange Park, which is across the river the
5 Jacksonville.

6 Q: Right.

7 A: Yes, sir.

8 Q: Okay. But you've been in South Carolina
9 working with the Trident Health System since
10 about 1995, right?

11 A: Yes, sir.

12 Q: And since then you've seen a tremendous amount
13 of growth in the Charleston, Berkeley, and
14 Dorchester area, right? You see these
15 population numbers that we've got that we
16 showed during the opening, right?

17 A: That's what on my screen.

18 Q: It's on the screen?

19 A: Yes, sir.

20 Q: And so just since you've been there in 1990,
21 they've added 50,000 people in Berkeley County,
22 right?

23 A: Yes, sir.

24 Q: And Dorchester has exploded in growth, right,
25 from 83,000 to 136,000 in the 2010 census,

1 right?

2 A: Yes, sir.

3 Q: Charleston is growing too, right?

4 A: Yes.

5 Q: And the funny thing about Charleston, you can't
6 grow east, can you?

7 A: No, sir.

8 Q: There's a big Atlantic Ocean that stop -- that
9 directs where you're going to grow, right?

10 A: Yes, sir.

11 Q: And so actually the growth in Charleston County
12 has been to the North, hasn't it?

13 A: Yes.

14 Q: It's been Mount Pleasant and it's been North
15 Charleston; that's where the growth is, right?

16 A: Yes.

17 Q: Where your facility is located, North
18 Charleston?

19 A: Yes, sir.

20 Q: Trident Medical Center. And the towns in these
21 areas have grown dramatically, haven't they?

22 A: They have grown, yes.

23 Q: Now, when you got to -- when you got to South
24 Carolina, the facility at Summerville had
25 already been opened, right?

1 A: Yes, it had.

2 Q: In Dorchester County. And then y'all made the
3 decision to go to Moncks Corner with the
4 facility -- with your ED and work there, right?

5 A: That's correct.

6 Q: Let me show you just in the last ten years, we
7 look at Respondent's 76. This right here shows
8 you the population in 2010, right? Pink, it
9 means more people -- is where more people are
10 living with a population greater than 39,000.
11 Orange is 26 to 38,900, right? This is 2000.

12 A: Yes, sir.

13 Q: And then look at 2010. A lot more pink in
14 there; a lot more orange, right?

15 A: There is more, yes.

16 Q: In areas right around where your facility
17 serve; isn't that correct?

18 A: Yes, sir.

19 Q: Now, ever since you've been at Trident Health
20 System, Roper has been a significant -- Roper
21 St. Francis has been a significant player in
22 the Berkeley County market, right?

23 A: They have market share there, yes, sir.

24 Q: Yeah. They have a sizeable market share,
25 right?

1 A: They have 26 percent.

2 Q: I think it's around 23. But that's almost a
3 quarter of the patients, right?

4 A: Yes.

5 Q: They also have an emergency department facility
6 in Moncks Corner, right?

7 A: Yes, sir.

8 Q: And Trident has a emergency department facility
9 in Moncks Corner, right?

10 A: Yes.

11 Q: So there are two emergency departments in
12 Moncks Corner right now, aren't they?

13 A: Yes, sir.

14 Q: But actually the Roper St. Francis -- the Roper
15 St. Francis facility is older than the Trident
16 Health System facility, isn't it?

17 A: Yes, it is.

18 Q: Okay. Let me show you Respondent's Number 91.
19 Okay. We can blow that up a little bit on the
20 top there. This might show up a little better.
21 Okay. This is the actual market share numbers
22 for Berkeley County for all of the providers,
23 right?

24 **THE COURT:** Mr. Rardin, is your terminal as fuzzy as
25 mine?

1 MR. LONG: Let's try just the top part if we can.

2 THE COURT: Yeah, let's expand it and do it a little
3 bit at the time.

4 MR. LONG: Yeah, do it one at a time. Okay.

5 Q: Now, this is the market share of HCA's
6 hospitals. It's the -- it's 50, almost 54
7 percent, right?

8 A: Yes, sir. 53.9 percent.

9 Q: And all the other hospitals, basically 46
10 percent, right?

11 A: Aggregately, you're talking about the Med U and
12 Roper?

13 Q: Right. You've got MUSC. You've got Roper St.
14 Francis hospitals, then a little bit to East
15 Cooper, too, right?

16 A: Yes.

17 Q: So that means -- and these market share numbers
18 which are 2010 numbers, right?

19 A: They took the date at the top, but I think
20 you're correct.

21 Q: All right. Forty-six percent of the people who
22 live in Berkeley County travel past Trident,
23 which is our Summerville, and go to other
24 providers, either the Medical University of
25 South Carolina, Roper St. Francis, or East

1 Cooper, right?

2 A: That's what --

3 Q: Forty-six percent of the people make that
4 choice. Now, market share is important to you
5 in your position in business development,
6 right?

7 A: Yes.

8 Q: And hospitals in the ideal world want to grow
9 their market share, right?

10 A: Yes.

11 Q: And they certainly want to maintain it, right?

12 A: Yes, sir.

13 Q: Because if your market share is declining,
14 that's not a good thing for a hospital, right?

15 A: Correct.

16 Q: Let's look at Respondent's 116. Now, this is
17 an email that came out that's dated -- blow it
18 up here for a second -- April of '08, so this
19 would have been about the same time that a lot
20 of these decisions were being made regarding
21 these hospitals, right?

22 A: Uh-huh (affirmative response).

23 Q: And this is -- this is with Karl Gorrell, who's
24 the CFO. That's your email address, right?

25 A: Yes.

1 Q: And you're sending this out with the market
2 share numbers for the first quarter of '07.
3 And your response to that is, this is ugly,
4 right?

5 A: Yes, it is.

6 Q: All right. Turn to the second page. And the
7 reason is is because when you look on that far
8 right column on the far end, you've got your
9 main zip codes here.

10 MR. LONG: Can you just move it over to the --

11 Q: And there's a lot of downs, right?

12 A: Yes.

13 Q: And this is tracking your market share going
14 back to 2002, right?

15 A: Yes, it is.

16 Q: So what this chart is showing is that in a
17 number of zip codes, Trident Health System's
18 market is declining over this five year period
19 of time, right? Is that correct?

20 A: Yes.

21 Q: Now, let's look at Respondent's Number 27. In
22 2007, you knew -- 27. You knew that Roper St.
23 Francis had bought 66 acres at Carnes
24 Crossroads, right?

25 A: That's --

1 Q: This is the actual press release --

2 A: Yes.

3 Q: -- the article in the paper dated September
4 '07, right?

5 A: Yes, sir.

6 Q: And you saw this, right?

7 A: Yes.

8 Q: And so you knew in September of '07 that they'd
9 bought 66 acres; and you also knew, being the
10 vice president of business development, that
11 you don't buy 66 acres to put a medical office
12 building, do you?

13 A: That's correct.

14 Q: You buy 66 acres to build a hospital, right?

15 A: Or a large medical complex, yes, sir.

16 Q: You actually don't even have to have 66 acres
17 to build a hospital. You've got -- Trident
18 Health Systems would put a hospital on 20
19 acres, right?

20 A: You can. Yes.

21 Q: Yeah. You can. Okay. So you've known since
22 '07 that Roper St. Francis was coming to
23 Berkeley with a hospital, right?

24 A: Well, that was what we were reading through
25 this particular article, yes.

1 Q: Okay. Now, let's go back and talk about your
2 history with Trident. In 1999, you actually
3 came to Charleston in '95, right?

4 A: Yes.

5 Q: Before that you'd never lived in South
6 Carolina, right?

7 A: Fort Mill.

8 Q: Well, Fort Mill. I'm sorry. First time at the
9 coast though in '95?

10 A: Yes, sir.

11 Q: Okay. In 1999, you got a promotion because you
12 became the chief operating officer or the COO
13 at Trident Medical Center, right?

14 A: Yes.

15 Q: Before that you'd been mostly focused on
16 outpatient services, right?

17 A: Yes, sir.

18 Q: Been working in surgery centers, outpatient
19 surgery centers primarily, right?

20 A: Day surgery centers, yes, sir.

21 Q: That had been your career pretty much leading
22 up to this time with Trident and other
23 employers, right?

24 A: Yes, sir.

25 Q: Okay. And so you knew at that time -- so at

1 the same time you became the COO, Trident
2 Health System made a significant commitment to
3 Moncks Corner, right? Same year? Isn't that
4 what you showed me on the timeline earlier?

5 A: Yeah, that's the year they opened up Moncks
6 Corner emergency department.

7 Q: Right. You added an emergency department in
8 Moncks Corner in 1999, you did some
9 renovations, okay, and at the same time that
10 you did that, you put an option on 20 acres
11 next to or nearby to the emergency department,
12 right?

13 A: Yes, sir.

14 Q: All right. And let's look at that document.
15 That's Respondent's 125. Let's look at the
16 date of that right there at the top. August
17 23rd, 1999, right --

18 A: Yes.

19 Q: -- is the time of the option. And this is an
20 option on the land where actually the proposed
21 hospital would be today, right?

22 A: Yes.

23 Q: Okay. If we could turn over to -- about the
24 next page 10069. Is that it? All right. Can
25 you just blow up those numbers there, paragraph

1 six. This was the amount of money for the
2 seven year option that Trident Health System
3 obligated itself to pay just to hold that land
4 so that nobody else could have it, right?

5 A: Yes.

6 Q: And it's like 20 acres, right?

7 A: Twenty-one acres.

8 Q: And it was a large enough tract of land to put
9 a hospital on?

10 A: Correct.

11 Q: And that's one of the reasons you wanted to tie
12 it up, right, was for future use?

13 A: Yes.

14 Q: Maybe even build a hospital, right?

15 A: Yes, sir.

16 Q: And so every year Trident Health System paid
17 first year 32,500; seventh year 47,500 to the
18 owner of the land, just so he wouldn't sell it
19 to somebody else, right?

20 A: Yes.

21 Q: And you had a price on there where you could
22 buy the land from him for about a million
23 dollars, right?

24 A: Right. Mr. Long I --

25 Q: You want me to show you?

1 A: Yeah. Well, I don't recall the number, but --

2 Q: It had little bit of an escalator in it based
3 on the inflation rate, but we hadn't had a
4 whole lot of inflation in the last ten years,
5 so really you would have been able to buy it --

6 MR. THOMAS: Object to the form, Your Honor. He's
7 testifying about economic inflation and
8 everything, so I just don't want that type of
9 stuff in the record.

10 MR. LONG: Well let's --

11 THE COURT: He's correct. But it's harmless. But
12 I'll sustain the objection.

13 Q: The purchase price on the option is a million
14 dollars, right?

15 A: Yes.

16 Q: And it has a little provision in there that it
17 could increase based on the consumer price
18 index? You see that about halfway down?

19 A: Yes, sir.

20 Q: But that consumer price index would not have
21 increased that million dollar price very much,
22 would it?

23 A: I couldn't say for sure, but probably not.

24 Q: Okay. Now, in 2007, at the end of the option,
25 you -- Trident Health System allowed the option

1 to lapse, right?

2 A: Yes, we did.

3 Q: And one of the reasons that you allowed the
4 option to lapse is in the interim between '99
5 and 2007, you had a new CEO, right? A man
6 named Terry Gunn, right? Because he came about
7 '05. Isn't that right? Maybe a little before?

8 A: I think it was '05.

9 Q: '05, '04, somewhere around there, right?

10 A: I'm not sure.

11 Q: After '99?

12 A: Yeah.

13 Q: And before the option lapsed, Terry Gunn became
14 the CEO for Trident Health System?

15 A: Yes.

16 Q: And he was and ultimately became the division
17 head for all of South Carolina, right?

18 A: Yeah, we refer to that as a market.

19 Q: A market. Excuse me. Correct. All right.
20 Now, but you really weren't concerned about him
21 dropping that option because you knew the guy
22 who owned the land and you felt like he would
23 never sell it without giving you a chance to
24 buy it, right?

25 A: Yes, sir.

1 Q: So you really weren't that worried about it,
2 even though he wasn't getting the money from
3 the option anymore, you still felt like you had
4 that land if you needed it, right?

5 A: We felt like we had a very good working
6 relationship with the owners of the property.
7 Yes.

8 Q: Now, in 2005, Terry Gunn and the management
9 team decided to purchase 20 acres of land, 20
10 acres again, purchase it at Cane Bay, right?

11 A: Yes.

12 Q: Cane Bay is in Goose Creek area. It's about a
13 mile or two, a couple miles from Carnes
14 Crossroads, right?

15 A: Yes.

16 Q: And there's a big high school there now, right,
17 Cane Bay High School?

18 A: There is a high school there, yes, sir.

19 Q: And there's a lot of development -- the
20 developers are proposing there's going to be a
21 lot of development in that area of Berkeley
22 County, right

23 A: Yeah. Proposed, yeah.

24 Q: They got the land there; they want to build the
25 houses, right?

1 A: Yes.

2 Q: And that high school is open and it's got 1500
3 students?

4 A: I don't know the approximate.

5 Q: It's a 3A high school, isn't it?

6 A: Yeah.

7 Q: And it's a brand new school? It's just a few
8 years old, right?

9 A: Yes.

10 Q: All right. And so -- but this land that you
11 bought at Cane Bay was -- the original idea was
12 that you would have outpatient services there,
13 right?

14 A: Yes, sir.

15 Q: You weren't going to build a hospital. Is that
16 your testimony?

17 A: We -- when the original discussions were about
18 the acquisition of the acreage at Cane Bay,
19 Terry and then his development people were
20 speaking about outpatient services at Cane Bay.

21 Q: Okay. All right. But before you purchased
22 that land, a business case narrative was
23 prepared to get approval to buy the land,
24 right? Let's look at Trident Exhibit 201. You
25 want to flip through that. You're familiar

1 with this document?

2 A: I'm familiar with that document, yes.

3 Q: Okay. And what this is, some people refer to
4 it as a white paper or a business case
5 narrative, right?

6 A: Yes.

7 Q: And basically what the white paper does is it
8 makes volume assumptions, runs some financials;
9 is that correct?

10 A: I don't know if there's financials in that
11 document or not. I don't recall. I know
12 there's description of services, the type of
13 services spelled out, CTs, MRs, future plans.
14 Mr. Long, I don't know if there were financials
15 tied to it or not.

16 Q: And there's a narrative in here, if you look at
17 some of the other pages, to explain what y'all
18 want to do, like you just said, with regards to
19 the services, correct?

20 A: Yes, sir.

21 Q: And it also talks about the return on
22 investment. Either it calculates it or it
23 talks about why there could be a return on
24 investment, right?

25 A: Again, I'd have to -- I don't -- I don't

1 remember seeing that in there. We could flip
2 through it, but I don't remember that there's
3 an ROI tied to the property.

4 Q: Let's look at page 722 of the document at the
5 bottom. There's a sentence there in regards to
6 the division section, isn't it? It describes
7 -- it describes Trident Medical Center as a
8 hospital without a community. That's a phrase
9 that sometimes people would use in the
10 organization, wasn't it, that Trident was a
11 hospital without a community?

12 A: I heard Mr. Gunn say that in his -- maybe it
13 was Heyward as well.

14 Q: Okay. And let's look at Respondent's 127. And
15 Respondent's 127 is the actual deed for the
16 purchase of the land and y'all paid \$2.3
17 million to buy the land, right, at Cane Bay?

18 THE COURT: Excuse me a second. That didn't look
19 like a deed to me. I don't --

20 MR. LONG: I'm sorry. You're right, Your Honor.
21 It's the -- flip the pages, there's the deed
22 part. The top part is the deed.

23 THE COURT: Yes.

24 Q: So it's \$2.3 million is what Trident paid for
25 the land at Cane Bay, right?

- 1 A: Yes.
- 2 Q: And you still own that land today, right?
- 3 A: Yes.
- 4 Q: Never sold it?
- 5 A: No, sir.
- 6 Q: Okay. Now, like we showed earlier, you looked
7 at the press release from September. Now this
8 was all back in '05, right? Late '05, early
9 '06, right? I think it was '06.
- 10 A: I remember the closing date of the Cane Bay
11 document was a December date, I believe, of
12 '05.
- 13 Q: Right.
- 14 A: I don't know if we closed in '05 on the
15 property.
- 16 Q: It was March of '06.
- 17 A: Okay.
- 18 Q: For the closing.
- 19 A: Okay.
- 20 Q: Does that sound about right to you?
- 21 A: Yes, sir.
- 22 Q: And then in '07, you learned about Roper St.
23 Francis buying the 66 acres for the hospital,
24 right?
- 25 A: Yes.

1 Q: So let's look at Respondent's 146. In January
2 of '08, you -- this is an email from you to
3 you, right?

4 A: Yes.

5 Q: All right. And what this is is, this is your
6 attempt to begin a business case narrative or
7 a white paper for the possibility of putting a
8 60-bed hospital at Cane Bay, right?

9 A: Well it was -- it was my attempt to put
10 something on paper if indeed we did choose to
11 go forward with the hospital in Cane Bay. I
12 think Terry asked me to put some stuff on
13 paper, file it away. I didn't send it to
14 anybody. I just sent it to myself and put it
15 in my own personal files.

16 Q: Right. But that's because the talk at Trident,
17 people were talking about Roper's hospital
18 application and you started looking at the
19 possibility of filing a CON application for a
20 hospital at Cane Bay in January of '08. That's
21 what this document is, it's just a first draft
22 of that, right?

23 A: Mr. Long, I wouldn't call it a draft of the CON
24 document. Again, it was my thoughts at the
25 direction of Mr. Gunn to put something on

1 paper, put it away and if we wanted to go back
2 to it, we could. But we didn't. We didn't
3 file in Moncks Corner.

4 Q: I didn't say CON document. I said business
5 case scenario. This is a draft of a business
6 case scenario or white paper. This is an
7 internal document you're preparing here, right?
8 Not something you'd send to the Department?

9 A: No, not at all, wouldn't send it to the
10 Department.

11 Q: All right. Certainly by May there were
12 conversations all during the spring and
13 certainly by May things were coming to a head
14 in regards to whether Trident was going to
15 apply for a hospital, right?

16 A: Yes.

17 Q: All right. Let's take a look at Respondent's
18 130. Now we don't know -- this is a conference
19 call that occurred on May 20th of 2008, that
20 you participated in, Mr. Gunn, lawyers, Chuck
21 Hall and -- to discuss Berkeley County hospital
22 issues, right?

23 A: Yes, sir.

24 Q: It was actually on this conference call that
25 the decision was made to build a hospital in

1 Moncks Corner, right?

2 A: Yes.

3 Q: At the time that that decision was made, there
4 was no business case narrative that had ever
5 been prepared, had there?

6 A: No.

7 Q: Nobody had ever looked at the return on
8 investment for the hospital, right?

9 A: Correct.

10 Q: And nobody had ever prepared any financials,
11 right?

12 A: Correct.

13 Q: But you did know where your market share was,
14 right?

15 A: Yes.

16 Q: You knew your market share and you knew you had
17 patients in the northern area of Berkeley
18 County, right?

19 A: Yes.

20 Q: And really you were the person who advocated to
21 go to the Moncks Corner, weren't you?

22 A: Yes, I was.

23 Q: And the reason is is because you knew that the
24 hospital would be successful there?

25 A: I still think it would be successful there if

1 it's -- yes, just one.

2 Q: That's right. Well you never said just one.

3 You knew --

4 A: I understand that. But I didn't know anybody
5 else would be filing any time soon.

6 Q: Oh, yeah, you did because Roper St. Francis had
7 66 acres at Carnes Crossroads.

8 **MR. THOMAS:** Objection.

9 Q: And you knew what that was for. So you're not
10 going to tell the Court you didn't think you
11 were going to do a hospital, did you?

12 **THE COURT:** Wait a minute, Mr. Long. That's a
13 mighty long questions and you were testifying.

14 **MR. THOMAS:** It was badgering too, Your Honor.

15 **THE COURT:** Well, it was argumentative. I
16 understand what you're getting at, but if you
17 want to prove when they learned of it, go ahead
18 and do that.

19 **MR. LONG:** Well, I think --

20 **MR. THOMAS:** He's already testified when he learned
21 of it.

22 **MR. LONG:** Yeah. I've already laid down the
23 foundation on that. He said that he didn't
24 know they were going to file the application,
25 and I said, are you sure? Because he's already

1 testified that he knew Roper St. Francis was
2 looking at doing a hospital. We can ask a few
3 follow ups. And I'll try not to be as lengthy
4 as I was on the other one.

5 Q: You knew in 2007 that Roper St. Francis was
6 going to be building a hospital in Berkeley
7 County. You just testified to that, right?

8 A: Okay. Yes. Yes.

9 Q: Okay. And then in 2008, Trident Health System
10 was looking at building a hospital in Berkeley
11 County, correct?

12 A: Yes.

13 Q: And you advocated to the group that the
14 hospital should go to Moncks Corner, not Cane
15 Bay, right?

16 A: That's correct.

17 Q: And the reason is is because -- and you
18 actually had the most knowledge of anybody on
19 the call about the market because you're the
20 one --

21 **MR. LONG:** What number is this; do you know? This
22 map?

23 Q: Let's look at this map right here, which is --

24 **MR. SUMMER:** Your Honor, is there a way that we can
25 position these maps so that counsel can see

1 them?

2 **MR. LONG:** I can try.

3 **MR. SUMMER:** I understand it's a tight squeeze here.

4 But perhaps if we can put the map over in that

5 --

6 **MR. THOMAS:** By Mr. Rardin over there.

7 **MR. SUMMER:** Because otherwise, we're blind.

8 **MR. LONG:** Can you pull up Exhibit 76 of this map?

9 We'll try that. I'm trying to kind of --

10 **THE COURT:** It's not the same. It's not the same

11 map I don't believe.

12 **MR. LONG:** No, it's not. It's in there though, Your

13 Honor. I think there's a group of them.

14 Q: Can you see that?

15 A: Barely.

16 Q: Okay.

17 **(Off the Record Discussion)**

18 Q: Now, this map, it's on the screen also. This

19 map comes from -- is taking the market share

20 projections for the Trident, Moncks Corner, the

21 Berkeley Medical Center, Moncks Corner hospital

22 by Trident and projecting where your market

23 share is going to come from. Everything in

24 pink you projected you'll have 50 percent

25 market share or better; orange is 25 percent

1 market share; yellow is 20 percent; and then
2 the green and the purple are two and one
3 percent, right?

4 A: Yes.

5 Q: Now, at the time that you had the phone call on
6 the 20th, you had no financial information at
7 all regarding the hospital? Nothing had been
8 done, right?

9 A: Correct.

10 Q: When you knew --

11 THE COURT: Twentieth of what year?

12 MR. LONG: I'm sorry?

13 THE COURT: Twentieth of what year?

14 MR. LONG: Of 2008.

15 A: May 20th, 2008.

16 Q: 2008 conference call. No financial information
17 begun. You knew that if you put a hospital here
18 in Moncks Corner, and Roper put a hospital at
19 Goose Creek that you would own the northern
20 part of Berkeley County; isn't that right?

21 A: We have a very good success rate in the
22 northern part of Berkeley County, yes.

23 Q: Exactly. And that's why you supported it
24 because you knew, let's not put three hospitals
25 real close to each. We already have two close

1 to each other, right? You've got two hospitals
2 very close to each other, right?

3 A: Correct.

4 Q: Six miles. Let's not put two hospitals close
5 to each. Let's put a hospital in the north.
6 So that even if Carnes Crossroads comes in,
7 it'll be successful because we'll own the
8 northern part of the county. That's why you
9 supported it, wasn't it?

10 A: That and the Health Plan with the 30 minute
11 drive time, I didn't think trying to put a
12 hospital at Cane Bay was going to work.

13 Q: Because it was too close to your other
14 hospitals?

15 A: Yeah. With that and it was so, you know,
16 within the 30 minute drive -- those folks would
17 have accessibility to Trident and Summerville.

18 Q: Now, in your career, you've done business
19 development, you've been the COO and you've
20 been involved in several certificates of needs,
21 correct?

22 A: Yes, sir.

23 Q: And you've also watched Trident -- watched HCA
24 or Trident buy land, not only this land at Cane
25 Bay, but also you bought some other land near

1 your Trident campus too, right, that you hold?

2 A: That's correct.

3 Q: Okay. And in everyone of those situations, the
4 practice in the business is to calculate a
5 return on investment because you want to be
6 positive that it's going to be financially
7 successful, right?

8 A: Yes.

9 Q: But in this one, you didn't even have to do
10 that because you already knew it was going to
11 be financially successful?

12 A: Well, I can't say that. I can say that we felt
13 a sense of urgency in that Mr. Hall was 100
14 percent behind having the application to go
15 into DHEC for approval. And he said we'll get
16 the letter of funding and we'll be -- file the
17 CON. And that's what we did.

18 Q: Have you ever seen HCA or Trident do a project
19 that didn't have a positive return on
20 investment

21 A: In which year? I mean --

22 Q: Any year. You ever seen it?

23 A: Please restate your question.

24 Q: Have you ever seen in your career HCA do a
25 project with a negative return on investment?

1 A: Over the course of the project?

2 Q: Where the calculation of the return on
3 investment was a negative number?

4 A: No.

5 Q: But the company went forward with it anyway;
6 you ever seen that?

7 A: I have not.

8 Q: Have not. You weren't about to let this
9 project be the first one, were you?

10 A: No, sir.

11 Q: So if you'd been worried about the return on
12 investment of the project, don't you think
13 you'd have looked at it before you made the
14 decision to go forward?

15 A: Well, I think if the CON application would have
16 came back with this huge loss over the course
17 of the project, I would have had to have had
18 another conference call and had a discussion
19 that, you know, maybe we weren't going to go
20 there.

21 Q: Two months. Now, Roper filed their application
22 for the hospital in December. Does that sound
23 right to you?

24 A: It does.

25 Q: And within two months after that, you prepared

1 these cards with little questions and facts
2 that could be given out in the community about
3 the projects, didn't you?

4 A: I didn't prepare them personally. I asked for
5 them to be prepared, yes.

6 Q: Yeah. And they were presented to you, and you
7 had them done up, right?

8 A: Yes. Once I saw the draft I asked them to --
9 the marketing department to put them together.

10 Q: And one of the questions and answers on the
11 card was why -- was can the Department approved
12 both, right?

13 A: Uh-huh (affirmative response).

14 Q: So you specifically had printed up a little
15 card to hand out to people stating your
16 position at Trident Health System that only one
17 hospital could be approved, and that was done
18 two months after Roper St. Francis'
19 application was filed, right?

20 A: I don't know the exact time frame. That sounds
21 correct.

22 Q: Okay. So you've always known every since the
23 application was filed or even before that there
24 was a possibility that the Department would
25 find these applications to be non-competing?

1 A: I didn't know that.

2 Q: Well, you were worried about it. That's why
3 you put it on the card, right?

4 A: Well, I saw what they did in Mount Pleasant and
5 I was very concerned that we would be in that
6 same position. I was concerned.

7 Q: Because when you're just moving beds around in
8 the service area, that doesn't create a
9 competing application situation, does it?

10 A: Well, I'd like to say that moving beds is one
11 thing, that is true. But putting up a brand new
12 emergency department, new operating rooms,
13 additional CT scanners, that's, to me, totally
14 different because beds -- I won't disagree that
15 we're not -- Roper is not creating more beds.
16 They're redistributing their beds. But I'll
17 say that that creating operating rooms and
18 additional emergency room capacity, CT
19 scanners, is different.

20 Q: Well, let's talk about that for your
21 application. The Berkeley Moncks Corner
22 hospital is creating operating rooms, right?

23 A: Yes.

24 Q: It's going to have a CT scanner?

25 A: Yes.

1 Q: Right. And other outpatient services, right?

2 A: That's correct.

3 Q: You're going to have -- you already have an ED
4 up there, but you're going to have a nice, new
5 shiny one, right?

6 A: I hope so.

7 Q: Now don't you -- have you ever head of the halo
8 effect as a planner?

9 A: I'm not a planner, but I have heard of the halo
10 effect.

11 Q: Well, as a business -- being a business
12 developer, you're heard about it? People talk
13 about that in the industry, right?

14 A: Uh-huh (affirmative response).

15 Q: And what it means -- well, you tell me what you
16 think it means.

17 A: Well, when you create a service, you're going
18 to create what they call the halo effect, which
19 is going to draw more business down to that
20 particular service.

21 Q: And that's what you're planning to do in
22 norther Berkeley County with your hospital in
23 Moncks Corner, right?

24 A: We didn't create more market share. We said we
25 can serve existing patients that are there

1 coming in and around like they to the ED
2 today. It's what our application to build --
3 plus the population I believe is also stated in
4 the formulas that Mr. Baehr did for us.

5 Q: Well, a large number of the admissions that
6 come to a hospital come through the emergency
7 department, right?

8 A: You're correct.

9 Q: People drive to the emergency department
10 because they need to go to the ER, and they get
11 admitted to the hospital, right?

12 A: Yes, sir.

13 Q: Do you think the people in the Moncks Corner
14 area and to the north are going to drive to
15 Roper St. Francis' 25-year-old emergency
16 department or to your brand new hospital?
17 Which one do you think they're going to drive
18 to?

19 MR. THOMAS: Object to the form, Your Honor. He
20 can't -- he doesn't know what their patients
21 are thinking.

22 MR. LONG: I'll rephrase it.

23 THE COURT: Thank you.

24 Q: Where do you expect those patients to drive to
25 as part of your project?

1 A: I don't know if I expect them to come to the
2 Trident Medical or the Roper -- the Berkeley
3 Medical Regional Center. It's their choice
4 where they go if they're in their car, or if
5 they tell EMS where they want to go. Do I
6 think there's a possibility that they might
7 come to the hospital instead of freestanding
8 ED? Absolutely.

9 Q: And if more people come, if people choose to go
10 to the hospital instead of a freestanding ED,
11 your market share in the northern area of
12 Berkeley County is going to increase, isn't it?

13 A: In Moncks Corner where the site is.

14 Q: All throughout?

15 A: I -- I -- yeah. I mean, I don't know the
16 distribution off the top of my head of the
17 patient population that is going into the two
18 EDs at Moncks Corner. I hadn't looked at that.
19 I don't know by zip code how that -- how that
20 works exactly today. I don't know.

21 Q: Well, aren't those emergency departments
22 getting patients from that area?

23 A: Well I would think so, yes.

24 Q: You don't think people down here near Trident
25 Medical Center are driving all the way up to

1 Moncks Corner to go to the emergency
2 department, do you?

3 A: I don't think so, no. I think there could be
4 some coming out of the southern part of 52
5 driving up into Moncks Corner.

6 Q: You're going to convert your existing ED into
7 a medical office building, right?

8 A: Yes, sir.

9 Q: And you're hoping to rent that out to doctors,
10 right?

11 A: Yes, sir.

12 Q: And you're hoping that those physicians will
13 use your hospital, right?

14 A: Yes.

15 Q: It's next door to it, correct?

16 A: Yes.

17 Q: And physicians are the second or first number
18 one referral source for a hospital, right?

19 A: Yes.

20 Q: So don't you think your market share in the
21 northern part of the county where those
22 physicians are going to be located is going to
23 increase when you open the hospital?

24 A: I'm sorry. Can you repeat that, Mr. Long?

25 Q: Don't you think your market share in the

1 northern part of the county where those
2 physicians are going to be located is going to
3 increase once you open the hospital?

4 A: It could increase some. But you know, the
5 formatting, the way the projections were done,
6 it was held to cost at no increase with
7 population growth.

8 Q: Well, the way the projections were done on the
9 application was that the market share wouldn't
10 change at all; isn't that correct?

11 A: Yes. That's correct.

12 Q: Okay. So you did the most conservative
13 possible analysis in the application, right?

14 A: Mr. Baehr did, yes.

15 Q: It can't be any more conservative than that,
16 right?

17 A: Yes.

18 Q: Okay. Now the reality on the ground is is it
19 that you're going to pick up patients from the
20 other providers because you've got a brand new
21 hospital up there, right?

22 A: There very well could be patients that would go
23 to an ED that has a hospital attached than just
24 to a freestanding ED.

25 Q: When you talk about access to the people in the

1 north, they have access to the emergency
2 department, right?

3 A: Two. Yes.

4 Q: Two of them actually. Okay. You're talking
5 about access to the hospital services, right?

6 A: Yes, sir.

7 Q: Okay. And the main thing about the hospital
8 services that you're talking about in regards
9 to their access is reducing their drive time;
10 isn't that right?

11 A: Yes.

12 Q: Well, don't you think Roper St. Francis'
13 hospital is going to reduce drive times for the
14 47 percent of the people that drive to the
15 peninsula?

16 A: Well, it could. I also think that some of
17 those patients that utilize or, as you say,
18 drive by Trident, that maybe they work downtown
19 and that's where their physician is. And
20 that's because you see a lot of people do that.
21 That would -- they work close by to a
22 particular their physician's office. They go
23 there if that physician is downtown. They work
24 downtown, maybe that's why they go there.

25 Q: You know most of the primary care doctors are

1 spread out among the service area, right? You
2 know where they're located, right?

3 A: What primary care doctors?

4 Q: The primary care doctors who practice in the
5 three county service area.

6 A: I couldn't tell you where they're predominantly
7 located, no.

8 Q: So you really have no idea how many people go
9 to the doc -- go to downtown hospitals because
10 they work down there, do you?

11 A: No.

12 Q: That's just total conjecture, right?

13 A: Well, I -- well, I guess you could call it
14 conjecture. I think it has some basis to it,
15 yes.

16 Q: Okay. Do you think that putting a hospital in
17 Goose Creek for -- at Roper St. Francis will
18 reduce drive times for the 47 percent of the
19 people who live in Berkeley County who go to
20 the peninsula?

21 A: If their physicians are there, yes.

22 Q: Okay. Now, Trident is a 296-bed hospital,
23 right?

24 A: Yes, sir.

25 Q: The Roper St. Francis hospital in Goose Creek

1 is going to be 50 beds, right?

2 A: Yes.

3 Q: And you've got 94 beds in Dorchester just six
4 miles away, right?

5 A: Yes, sir.

6 Q: So you've got 390 beds within six miles of each
7 other, right?

8 A: Yes, sir.

9 Q: But you think adding 50 more eight miles from
10 Trident Medical Center, I think 11 miles from
11 Summerville, is too many, right?

12 A: Well, it's a new service. It's, again, it's a
13 brand new hospital. People are going to go
14 there just as we were talking about what could
15 happen in Moncks Corner.

16 Q: Let's talk about also Trident being a tertiary
17 hospital. Let's talk about what that means a
18 little bit. Tertiary services are services
19 that were listed on that sheet there that are
20 more sophisticated services, right?

21 A: Yes, sir.

22 Q: Okay. Generally people will travel a longer
23 way to have these services because they're not
24 as common, right?

25 A: Yes.

1 Q: Okay. And generally hospitals are pretty much
2 divided into tertiary, non -- general acute
3 care hospitals, like what these would be, are
4 generally treating non-tertiary patients,
5 right?

6 A: Correct. Unless they -- I mean obviously if
7 they need to stop in the emergency room to be
8 stabilized and then shipped to a tertiary
9 facility.

10 Q: Well, if walk into a -- if you walked into
11 Summerville Medical Center or one of these new
12 hospitals that are proposed to be built and
13 you're having a heart attack, they would ship
14 you somewhere else, wouldn't they?

15 A: Yes.

16 Q: Okay. And if you were having a serious like a
17 burn, gunshot, something like that that was
18 very serious, they're going to ship you, right?

19 A: Yes.

20 Q: To a different facility?

21 A: Yes.

22 Q: To a tertiary hospital?

23 A: Correct.

24 Q: Trident Medical Center is a full tertiary
25 hospital. It offers the full range of services

1 that can be offered at a hospital, right?

2 A: For the most part. It doesn't do transplants
3 or burns.

4 Q: Right. Well --

5 A: We have an outpatient burn center with our
6 affiliation with our hospital in Augusta.

7 Q: These hospitals that are being proposed in
8 Berkeley County wouldn't treat anybody that was
9 as sick as some of tertiary services, would
10 they?

11 A: No.

12 Q: Mostly what these hospitals are going to be
13 treating is surgery, general kind of surgery,
14 right?

15 A: Yes.

16 Q: OB?

17 A: Yes.

18 Q: Babies and people who come to the ED who have
19 some sort of a medical illness that may get
20 admitted for a period of time?

21 A: Yes.

22 Q: Everything from diabetes to whatever might be
23 their problem, right?

24 A: Yes.

25 Q: Okay. These tertiary services are much more

1 lucrative than non-tertiary services, aren't
2 they? You make more money off it, don't you?

3 A: Tertiary services are very profitable. But
4 also general surgery at these non-tertiary
5 facilities are quite profitable as well.

6 Q: Okay. So obviously a large portion of Trident
7 Medical Center's patients could never possibly
8 be treated at the new hospital in Goose Creek,
9 could they, because they're not tertiary?
10 Because they are tertiary? Sorry.

11 A: I couldn't tell you exactly what the ratio or
12 percentage of tertiary to non-tertiary is at
13 Trident. I couldn't expand on that.

14 Q: Now, let's talk about hospitals. Hospitals are
15 never -- are almost rarely completely full,
16 right? It's not like a hotel, is it?

17 A: We've got some markets that are running full in
18 the last couple weeks.

19 Q: For HCA?

20 A: Well, for our division, yes, sir. But 100
21 percent of the time, no, sir.

22 Q: And generally it's not like a hotel either, you
23 can't kick everybody out at 10:00 in the
24 morning and not let anybody else in until 3:00
25 in the afternoon, can you?

1 A: No, sir.

2 Q: So you have to manage that, that's what Mr.
3 Gallati does and the other people who run the
4 hospital and you did when you were COO, right?

5 A: Yes, sir.

6 Q: Okay. So when we talk about a 50-bed hospital,
7 we're not talking about 50 patients, are we?

8 A: You could, but generally not. You could have
9 50 patients in them. You could have more than
10 50 patients.

11 Q: But generally it would be a much smaller
12 number, right?

13 A: I think so.

14 Q: Thirty, 25?

15 A: Twenty-five, 35.

16 Q: Okay. All right. No one ever since the
17 hospital application got filed internally at
18 Trident or HCA, no one ever calculated how much
19 revenue or profit that Trident Health System
20 would lose if Roper St. Francis builds their
21 hospital at Carnes Crossroads until this
22 litigation, did they?

23 A: You said internal at HCA, which that's correct.

24 Q: Nobody ever looked at it, did they?

25 A: No, sir.

1 Q: And you're not even sure today what that number
2 would be, are you?

3 A: Well, from what Mr. Baehr has shown us at, I
4 believe it was project review, those were the
5 numbers that we had discussed using him as our
6 expert.

7 Q: Were you at project review?

8 A: Yes, I was.

9 Q: Didn't Mr. Baehr talk about what the loss would
10 be if both hospitals were built? He talked
11 about the loss to Trident Moncks Corner and the
12 loss to Roper St. Francis Berkeley. He didn't
13 talk about the loss to Trident Medical Center,
14 did he?

15 A: I -- you might -- you might be correct. I
16 don't -- I don't recall.

17 Q: And you sitting here today, you do not know how
18 much money or how many patients Trident Medical
19 Center would lose if Roper St. Francis in Goose
20 Creek or in Berkeley got built, do you?

21 A: I think there is an analysis that has been done
22 by Mr. Baehr since the litigation started. But
23 I couldn't say for sure.

24 Q: I'm asking you. You don't know the number
25 personally right now, do you?

1 A: I couldn't recall off the top of my head, no,
2 sir.

3 Q: And the reason you don't know --

4 A: Millions of dollars, I would think.

5 Q: Yeah, you would think, because you don't -- you
6 don't know, right?

7 A: Exactly, I no. I don't -- I don't know
8 exactly.

9 Q: And the reason you don't know is because it's
10 not really that big a deal, is it?

11 A: Oh, it's a big deal.

12 Q: Really? You made \$92 million in 2010.

13 A: And I saw your slide this morning, Mr. Long.
14 And that number is before earnings. And I'm
15 not an accountant, but it's before earnings,
16 taxes, depreciation and interest, which was \$92
17 million. Which is the way HCA, from an
18 internal number, looks at those numbers. But
19 when you back that number out, which I think
20 Roper's numbers was at the 42 or 45 number, I
21 think Trident is somewhere close to that same
22 number.

23 Q: Okay.

24 A: Again, I'm not an accountant, but I think
25 that's pretty close.

1 Q: So you may -- so you think it's more like 45 or
2 \$50 million that you made in 2010?

3 A: On pretax income, I think that's correct.

4 Q: No, no, no. You just said after tax. Pretax
5 you made 92 million.

6 A: Yes. I'm sorry.

7 Q: Okay. Now, in November of 2010, you helped
8 participate in Summerville Medical Center's
9 application to add 30 beds to its hospital,
10 right?

11 A: I'm sorry?

12 Q: In November of 2010, would you look at Joint 9,
13 page 1. In November of 2010, Summerville
14 Medical Center applied to add 30 beds to its
15 hospital, right?

16 A: Yes, sir.

17 Q: So that would increase the bed total in
18 Dorchester County to 124, if that project was
19 ever implemented, right?

20 A: Yes, sir.

21 Q: Okay. Now let's look at page 25. And I want
22 to ask you -- you looked at this CON before it
23 went, right?

24 A: I did not go into any detail with the
25 administrative team at Summerville. The only

1 thing I really participated on this project, I
2 introduced Lou Caputo, the CEO of Summerville,
3 to a consultant. And I worked with Lou on some
4 first floor drawings. I did not look at or get
5 into any depth of the numbers or the population
6 of this application whatsoever.

7 **MR. LONG:** Give me one second, Your Honor. I think
8 we have the wrong page up.

9 **THE COURT:** Yes, sir.

10 **Q:** Look over what Trident Health System said in
11 its Summerville application in 2010 about its
12 application. Figure 1 presents the service area
13 of SMC and the other providers in the Tri-
14 County area. SMC, that's Summerville Medical
15 Center right?

16 **A:** Yes.

17 **Q:** Is well positioned to address the needs of the
18 residents in this service area, assuming that
19 sufficient bed capacity is available. This
20 project will ensure that SMC will be able to
21 accommodate growth and demand for hospital
22 services for over the next several years. You
23 agree with that, right?

24 **A:** Uh-huh (affirmative response).

25 **Q:** So you agree that there's going to be growth in

1 the demand for hospital services over the next
2 several years, right?

3 A: Yes.

4 Q: All right. Let's look at page 31 of the
5 application. And one of the things that you
6 relied on is all of the economic development
7 that's going to be in that area of the state,
8 right?

9 A: Well, again, if this is the -- is this the
10 Trident application or is this the Summerville
11 application?

12 Q: This the Summerville application in November of
13 2010.

14 A: Okay. But --

15 Q: This is what you were telling the Department in
16 November of 2010 about the service area where
17 these hospitals were proposed to be located.

18 **MR. THOMAS:** Your Honor, let me object. He kept
19 saying you. Mr. Rardin has already said what
20 his involvement is in this application. He
21 didn't draft this. Mr. Long has actually
22 called a witness in his case in chief, or is
23 going to call, the CEO of Summerville Medical
24 Center. So basically he's asking -- he just
25 had objections when I tried to ask my own

1 witness about staffing plans for the Trident
2 Health System, and that wasn't allowed. So
3 maybe the more appropriate person for this is
4 going to be the person that Mr. Long is calling
5 next week. So I'd object that there -- he's
6 already said he doesn't have knowledge of
7 what's in this application.

8 **THE COURT:** Your response?

9 **MR. LONG:** Your Honor, I'm really just laying the
10 foundation there. I think the questions -- let
11 me just ask him a couple. I'm going to ask him
12 some very direct questions.

13 **THE COURT:** Proceed, but don't get too far ahead of
14 me.

15 **MR. LONG:** Thank you.

16 **Q:** You know that Boeing is getting ready to build
17 a -- open a big, huge plant in North
18 Charleston, right?

19 **A:** Yes.

20 **Q:** And it's going to employ a lot of people,
21 right?

22 **A:** I think it's -- it's already opened.

23 **Q:** And Mead Westvaco is also doing a big project,
24 right?

25 **A:** I'm not familiar with Mead Westvaco at this

1 time, no.

2 Q: You know about the Clemson University wind
3 turbine, right?

4 A: I've heard of that.

5 Q: Okay. You know there's a big Jedburg
6 distribution facility that's coming, right?

7 A: Supposed to be coming.

8 Q: Uh-huh (affirmative response). So there's
9 economic growth in the Berkeley and the
10 Dorchester County and North Charleston area of
11 South Carolina now, isn't there?

12 A: Economic growth? There is some, yes, with
13 these projects coming online.

14 Q: Okay. Now, part of your job is to keep abreast
15 of the State Health Plan, right?

16 A: Yes, sir.

17 Q: And neither Trident Health System or HCA owns
18 the land where you propose to build the
19 hospital in Moncks Corner, right?

20 A: That's correct.

21 Q: You have an option?

22 A: Correct.

23 Q: And actually I meant to get into that. I
24 didn't get into that before. So let's pull
25 that up real quick.

1 THE COURT: Before we go too much further, Mr.
2 Thomas, did that foundation satisfy you?

3 MR. THOMAS: That's fine.

4 THE COURT: Thank you.

5 Q: The day after you had the conference call, the
6 day after you had the conference call to
7 determine that you were going to go to Moncks
8 Corner with the hospital, you contacted the guy
9 who owns the land in Moncks Corner and entered
10 into another option with him, didn't you?

11 A: Yes.

12 Q: I think that's Respondent's 126. So this is
13 August of 2008, right? You recall negotiating
14 this option with the owner?

15 A: No. I made contact with the owner and then
16 turned it over to our real estate department in
17 Nashville.

18 Q: And the option price is considerably more
19 expensive, isn't it?

20 A: I -- I --

21 Q: You can turn to the next page and see how much

22 --

23 THE COURT: Would you please, sir, highlight the
24 salient point and enlarge it because I still
25 can't see it here.

1 MR. LONG: The box.

2 THE COURT: That's better.

3 Q: So you're doing this option in six month
4 increments, right? You see that?

5 A: Yes.

6 Q: So you're paying a little over \$60,000 --
7 you're paying over \$60,000 a year, right?

8 A: Yes.

9 Q: And in the option that you did in 1999, the
10 maximum price that you paid was \$42,000, right?

11 A: Yes.

12 Q: And the price for the land is three million
13 dollars, not one million dollars, right?

14 A: Yes.

15 Q: And you had the option to buy it for 2.5, but
16 you could have bought it for 2.5 million, but
17 you chose not to do that; you chose to do the
18 option, right?

19 A: Correct.

20 Q: Okay. So you wanted to make sure you locked
21 down that land, didn't you?

22 A: Yes, sir.

23 Q: In retrospect you should have kept it, right?

24 A: Well, I -- I couldn't say one way or the other
25 if keeping the option going or purchasing at

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1 that time, I mean, we still don't have a
2 decision yet, you know, about the hospital
3 there. So --

4 Q: No, I said keeping the prior option was much
5 more favorable than the new one, wasn't it?

6 A: Unless I don't know what the document said, but
7 after the last option if you had a right to
8 readjust the price. I don't know what the
9 document read, Mr. Long.

10 Q: All right. Well, let's move on. You don't own
11 the land in Moncks Corner, but you have an
12 option. Now in your applications, which would
13 be Joint 3, page 2-7.

14 MR. THOMAS: Joint 3?

15 MR. LONG: Joint Exhibit. No, Joint 3, the State
16 Health Plan.

17 Q: This is Joint Exhibit 3, which is the 2004-2005
18 State Health Plan. Okay. If you'll turn to
19 page 2-7. Now, Trident chose to apply for its
20 hospital in Moncks Corner under Section D of
21 the Health Plan, right? Isn't that correct?
22 We'll blow that up for you right there. Is
23 that correct?

24 A: Yes, sir.

25 Q: And provision D says, should there be a need

1 shown for additional beds for a hospital then
2 an increase may be approved, nor to provide a
3 cost effective addition will require up to the
4 greater of 50 beds of the actual projected
5 number of additional beds may be approved
6 provided the hospital can document or
7 demonstrate the need for the additional beds,
8 right?

9 A: Yes.

10 Q: So you had a bed need for your facility at
11 Trident Medical Center of 17 beds, right?

12 A: Yes.

13 Q: And so you used this provision to apply to
14 build a hospital in Moncks Corner for 50 beds,
15 right?

16 A: Yes, sir.

17 Q: Where does it say in that provision that you
18 can do that?

19 A: Well, it's under the, I guess the provision
20 that there's an accepting facility.

21 Q: Huh?

22 A: Is it the facility section, or is there a
23 different section I'm not seeing?

24 Q: I don't think so.

25 A: Well, where in the Health Plan does it not

1 speak to an accepting facility such would be
2 the Trident -- or the Moncks Corner emergency
3 department?

4 Q: No. That's the transferring provision that
5 we're doing. I'm talking about the provision
6 that you were under. But the reality is, is
7 that the Department has consistently allowed
8 applicants, including Trident Medical Center,
9 to take bed need and build a satellite hospital
10 with it, right?

11 A: Yes.

12 Q: And you knew that because you keep abreast of
13 the State Health Plan, right?

14 A: Yes.

15 Q: So you knew that that language permitted you to
16 build a satellite hospital based on bed need,
17 even though it doesn't actually say it, does
18 it?

19 A: Correct.

20 **THE COURT:** What was your response?

21 A: Correct.

22 Q: Now, in the next Health Plan, the one that
23 Roper St. Francis applied under, they actually
24 put the language in there that said you could,
25 right? Do you recall that?

1 A: I don't recall off the top of my head.

2 Q: Let's look at that. Now, in the Health Plan it
3 says --

4 **MR. LONG:** Excuse me, Your Honor. I apologize. I'm
5 sorry, go to Section E. I'm sorry, Your Honor,
6 I thought I had that. Just give me a second.

7 Q: I'm sorry. Look at D. Now, what the Health
8 Plan says that if you want to add a hospital
9 for 50 additional beds, it allows for the
10 construction of an economical unit at either
11 the existing hospital site or another site if
12 you're relocating or have relocated in whole or
13 in part to that site, right? So that language
14 got added in the Health Plan after the one that
15 you've applied under, right?

16 A: Yes.

17 Q: Okay. Now, your position, I guess, is that the
18 Health Plan allows you to do what your
19 planning to do?

20 A: Yes, sir.

21 Q: All right. Let me ask you about a couple of
22 things that you testified about in your direct
23 examination. When the original Trident
24 Hospital was built, the Berkeley Hospital was
25 operating at around 37 beds right? Do you

1 remember -- do you remember that?

2 A: I remember reading that, yes, this morning.

3 Q: T- this morning, and earlier today. And it was
4 licensed for 69, I think was the number, wasn't
5 it?

6 A: Correct.

7 Q: Okay. And there are a lot more people living
8 in Berkeley County now than there were in 1972,
9 weren't they?

10 A: I can say yes.

11 Q: Okay. Now, let's look at Petitioner's -- let's
12 look at some of the maps that you looked at
13 this morning. Petitioner's 232. Okay. This
14 is one of these Google maps that you testified
15 about this morning, right?

16 A: Yes, sir.

17 Q: Okay. You don't have any idea when Google --
18 when this picture was actually taken, do you?

19 A: No, sir, I don't.

20 Q: Because these Google maps, they're always
21 dated, right?

22 A: Yes.

23 Q: Okay. And secondly, just for the record, the
24 H's that are on these maps, they're not to
25 scale, right?

1 A: No.

2 Q: As of matter of fact, if they were to scale,
3 the hospitals would be larger than the towns
4 where they're going to be located, right?

5 A: That's correct.

6 Q: Okay. Now you said -- let's look at page 30 of
7 -- I'm sorry, I've got Joint Exhibit Number 1.
8 And that question I asked you about the Google
9 maps applies to all the Google maps we looked
10 at --

11 A: Absolutely.

12 Q: -- on direct, doesn't it?

13 A: Yes.

14 Q: And the map that you looked at that had the
15 highway on it, do you remember that map that
16 had the roads on it? Do they need to pull that
17 one up?

18 A: If you'd give me some more --

19 Q: We'll come back to that after this question.

20 A: Okay.

21 Q: You testified that you thought that Berkeley
22 County had a hospital, right?

23 A: I --

24 Q: Trident?

25 A: Yes.

Q: But in your application that you filed with the Department, you clearly said that there's no acute care or long-term acute hospital licensed or approved in Berkeley County, right?

MR. THOMAS: Your Honor, I need to object to one thing because he mischaracterized the testimony. The question -- the question was and what he testified to, do the residents of Berkeley County have a hospital, not does Berkeley County have a hospital. I did not ask the question that way. So I object to the last question and the answer.

MR. LONG: Your Honor, he has the ability to clarify if he wants to. That's not a proper objection.

MR. THOMAS: It's very proper objection.

THE COURT: Well let -- I have to rule on this. But I didn't understand your objection. Will you -- was he asking a question couched in the terms of a question that you asked?

MR. THOMAS: Yes, sir. Well, what Mr. Long said is that -- he testified for the witness. He said you testified that Berkeley County does not have a hospital and -- or that Berkeley County has a hospital. That is not what Mr. Rardin

1 testified to. I asked him the question --

2 **THE COURT:** So you object to the form of the
3 question?

4 **MR. THOMAS:** No, I have objected to he
5 mischaracterized previous testimony and is
6 trying to --

7 **MR. LONG:** That would be the form.

8 **MR. THOMAS:** -- and is also trying to mischaracterize
9 the record. I mean he's trying to change the
10 record to say what he testified -- the witness
11 testified to.

12 **THE COURT:** Well, I would still say that that's to
13 the form of the question in a sense. So could
14 you rephrase that --

15 **MR. LONG:** Yes, Your Honor.

16 **THE COURT:** -- in some way and I'll sustain his
17 objection.

18 Q: Well, regardless to what your testimony was
19 earlier today, your application says that
20 there's no hospital in Berkeley County, right?

21 A: That's highlighted in yellow?

22 Q: Yes.

23 A: That's correct.

24 Q: And the reason is because there's not; isn't
25 that right?

1 A: That's correct.

2 Q: Did you testify earlier that HCA would not
3 approve the financing of the project if both
4 applications were to be approved?

5 A: Yes.

6 Q: So it's an HCA decision as to whether to build
7 the hospital or this Trident's decision?

8 A: Trident discussion between Mr. Gallati, myself,
9 and Mr. Thomas.

10 Q: So is the decision because somebody in HCA told
11 you they wouldn't use the money, or because you
12 three decided not to build it?

13 A: Well, we did discuss it and I have been
14 informed that Mr. Thomas did speak with Mr.
15 Hall and he's in agreement with that.

16 Q: So it doesn't have anything to do with their
17 ability to pay for it, right?

18 A: I wouldn't know that at my level. But I don't
19 think so, no.

20 Q: Well, there's a big difference between HCA
21 calling Trident and saying, we're not going to
22 pay the money to build it and from you calling
23 HCA and saying, we don't want to build it.
24 Don't you think those are different situations?

25 A: They are different situations, yes.

1 Q: And that was unclear from your testimony
2 earlier as to who's making the call that the
3 hospital is not going to be built in Moncks
4 Corners if the court affirms the Department?

5 A: It's Trident --

6 MR. THOMAS: Your Honor, I need to object because I
7 think, again, we've got a problem here.

8 MR. LONG: Okay. Your Honor, stop a second. He
9 just can't start --

10 THE COURT: Let him finish.

11 MR. LONG: He can't coach the witness.

12 THE COURT: Let him finish.

13 MR. THOMAS: I'm not trying to coach the witness
14 here, Your Honor. But the bottom line is there
15 are two different concepts that are talking and
16 I'm not --

17 MR. LONG: Objection, Your Honor.

18 THE COURT: I understand it perfectly. You don't
19 have to clarify it for me.

20 MR. THOMAS: Okay.

21 THE COURT: So proceed.

22 MR. LONG: Thank you.

23 A: I'm sorry. Could you rephrase the question
24 again?

25 Q: Who made the decision that you weren't going to

1 build the hospital in Moncks Corner if the
2 Department -- if the judge affirms the
3 Department? Did HCA make it or did Trident
4 make it?

5 A: Trident along with the division office, yes.

6 Q: Well, what's the division office?

7 A: That's where Mr. Gallati's boss is.

8 Q: Is it a financial decision?

9 A: Yes.

10 Q: Because HCA or Trident doesn't want to spend
11 the money or because they can't spend it?

12 A: When you look at the return on the investment,
13 Trident is not going to propose a \$115 million
14 project that's just not going to work.

15 Q: Will you propose a \$115 million project without
16 doing a return on investment?

17 A: We, as I stated earlier, the certificate of
18 need application was -- was showed the returns
19 that were appropriate for Trident to move
20 forward.

21 Q: Really? - I never saw a return on investment in
22 the CON application.

23 A: Well, I'm sorry, the financials. The
24 financials.

25 Q: Well, all the financials do is present a

1 conservative estimate of your patients and
2 whether you'll make money in the -- it'll cash
3 flow in the third year, right?

4 A: Yes, sir.

5 Q: That's not really what the return on
6 investments is, is it?

7 A: No, sir. So I do not --

8 Q: Go ahead.

9 A: I don't know if there was an ROI proposed with
10 the application or not. I do not think so.

11 Q: And when HCA or Trident makes capital
12 investments, they do both a financial pro forma
13 and a return on investment; those are separate,
14 aren't they?

15 A: Sometimes they are, sure. Yeah.

16 Q: Okay. So has there ever been a return on
17 investment done now?

18 A: Not to my knowledge, no, sir.

19 Q: But you're quite concerned that you can't build
20 a hospital because of the return on investment?

21 A: Because of our financials that we've seen from
22 our experts, it's not going to work for
23 Trident, they're not going to build the
24 hospital.

25 Q: Because they can't -- because they can't afford

1 it?

2 A: That's because they're not going to use -- have
3 -- make that business decision not to build it.

4 Q: I know. I'm asking you. Is it because they
5 can't afford it?

6 A: No, probably not.

7 Q: So they can afford it?

8 A: If they wanted to, I guess they could afford
9 it. But I don't think that HCA Trident is
10 going to invest in something that the pro forma
11 shows will not work.

12 Q: Now, when I deposed you in March of 2011, I
13 think it was, right, that decision had not been
14 made, right?

15 A: I do not think so, no, sir.

16 Q: So actually, this decision that you have
17 testified to today has been made within the
18 last -- well, certainly within the last year,
19 right?

20 A: Yes.

21 Q: Okay. By Mr. Gallati, Mr. Thomas, and
22 yourself; is that correct?

23 A: Yes, sir.

24 Q: And you would agree with me, right, that if
25 you're going to do a -- if you're going to look

1 at a project like a hospital that you really
2 wouldn't want to wait until the third year to
3 determine whether the operation is going to
4 cash flow, right?

5 A: I'm not a financial expert on the pro forma
6 side, but obviously, there's startup costs and
7 issues that go along with any business you
8 start up.

9 Q: And it takes a while to build up your patient
10 base, too, right?

11 A: Sometimes it does. Depends on your location,
12 yes, sir.

13 Q: And to change people's habits, right?

14 A: It could, yes, sir.

15 Q: And so you wouldn't expect the hospital to be
16 full the first day it opened in Moncks Corner,
17 would you?

18 A: No, sir.

19 Q: It's not like a Walmart or Best Buy, right?

20 A: Right.

21 Q: There's not a bunch of people standing out in
22 the parking lot waiting for you to open the
23 door on the first day, right?

24 A: No, sir.

25 Q: Okay.

1 MR. LONG: Your Honor, if I could have a minute?

2 THE COURT: Yes. While you're taking a minute, let
3 me -- it's about 4:00. Does anybody out there
4 need a break?

5 MR. LONG: If we could take five minutes, Your
6 Honor, I might been done and Ms. Biggers
7 probably has a couple questions.

8 THE COURT: Why don't we take about a five minute
9 break then.

10 (Break from 3:58 p.m. until 4:07 p.m.)

11 THE COURT: Are we ready, Mr. Long?

12 MR. LONG: Yes, Your Honor. Just a couple of more
13 issues, Your Honor. Pull up Petitioner 18
14 right quick.

15 Q: Your Honor -- I'm sorry, Mr. Rardin, this is
16 Petitioner 18 which you looked at earlier on
17 direct. This is another map that you looked at
18 today. This map would not have -- any of the
19 population data on this map predates the 2010
20 census, doesn't it?

21 A: No, sir.

22 Q: It does not?

23 A: I don't know the date of the -- but I don't
24 think there's any maps that have the 2010
25 census data out.

1 THE COURT: Excuse me, Mr. Long.

2 MR. LONG: Yes.

3 THE COURT: I can't make it out too well, but where
4 is the census number on this map?

5 MR. LONG: That's what I'm saying, Your Honor, it
6 doesn't -- he's got -- there's a little bit of
7 population density on there, I believe. But
8 the calculation density on this map --

9 THE COURT: I see. I see density population.

10 MR. LONG: -- has the population not --

11 Q: It's not updated for the 2010 census, right? It
12 predates it?

13 A: That's correct.

14 Q: And again also, the hospitals are larger than
15 the towns, right?

16 A: Yes, they are.

17 Q: Just for the record. All right. Let's look at
18 Respondent's Number 77. This is a summary
19 document that you've I believe seen. We've
20 certainly, we've already had one hearing on it.
21 I've also got it blown up on the big board to
22 help you if you need to. But this a timeline
23 of the events regarding the filing of the
24 applications. You've seen this document
25 before?

1 MR. THOMAS: Your Honor, I have to object to this.

2 THE COURT: Yes, sir. What's your objection?

3 MR. THOMAS: There is key data -- if he wants to use
4 this as demonstrative, that's fine. But I
5 believe there's key data that was left out of
6 this. Is this the new version?

7 MR. LONG: Yes.

8 MR. THOMAS: I apologize, judge. I withdraw.

9 THE COURT: All right.

10 Q: You've seen this as a timeline of different
11 events that have occurred starting with the
12 negotiations of the Carnes Crossroads land, all
13 the way up until the filing of the
14 applications, right? Can you see that on the
15 screen, look at it on the board?

16 A: I can see this, yes, sir.

17 THE COURT: You have it, Mr. Thomas? You have it up

18 --

19 MR. THOMAS: Yes. Yes.

20 Q: We've been through most of these documents
21 already to support this, right? This is an
22 accurate description of what occurred prior to
23 the filings of the applications, right?

24 A: Yes, sir.

25 Q: Okay. And you testified about a letter that

1 Trident received from the Medical University of
2 South Carolina in support of the project,
3 right?

4 A: Yes.

5 Q: And that letter was received in January 2000 --
6 page 729 of Joint Exhibit 1. This is a support
7 letter from the Medical University you
8 testified about earlier, right?

9 A: Yes.

10 Q: The date of the letter is January 21st, 2009,
11 right?

12 A: Yes, sir.

13 Q: About six months after you filed the
14 application, right?

15 A: Yes, sir.

16 Q: Do you recall in 2008 that Trident and the
17 Medical University of South Carolina were in a
18 dispute over a CT scanner that the Medical
19 University wanted to build in -- near Trident's
20 campus, right? You recall that?

21 A: Yes, sir.

22 Q: And you actually wrote a letter to the
23 Department in the summer of '08 outlining all
24 of the reasons why you thought that CT scanner
25 CON should be denied, right?

1 A: I don't recall that, but if you have it there,
2 I did.

3 Q: Refresh your memory if I can.

4 A: Sure.

5 Q: Does that refresh your memory?

6 A: Yes.

7 Q: It's actually a seven-page letter -- six-page
8 letter that you wrote to the Department
9 opposing their application, right?

10 A: Yes, sir.

11 Q: And that was done in July of 2008, about six
12 months earlier, right?

13 A: You said the -- Dr. Greenberg's letter was
14 February?

15 Q: January.

16 A: January, yes, sir.

17 Q: Okay. And Trident was gearing up to oppose
18 that CON, weren't you?

19 A: That's -- that's correct.

20 Q: You just don't write a letter just for any
21 little project, right?

22 A: No, sir.

23 Q: Okay. And then in October, if you look at the
24 last three pages, October 24, 2008, that's the
25 Department's decision letter regarding the CT

1 scanner where the Department approved the CON
2 application, right?

3 A: Yes, sir.

4 Q: Do you recall when that occurred?

5 A: I remember the approval, yes.

6 Q: Okay. And so when the approval comes from the
7 Department, Trident has a decision to make; you
8 can appeal the Department's decision or you can
9 just let it go, right?

10 A: Yes.

11 Q: And Trident decided to let it go, right?

12 A: Yes.

13 Q: And lo and behold, two or three months later,
14 Mr. Greenberg's letter showed up at the
15 Department, right?

16 A: Showed up at the Department, yes.

17 Q: And those events are related, aren't they?

18 A: Not to my knowledge, they are not related.

19 Q: Okay.

20 **MR. LONG:** Your Honor, I'd move to introduce this as
21 Respondent's 159.

22 **MR. THOMAS:** Your Honor, I just got the exhibit
23 today, but you know, I don't really have a
24 problem.

25 **THE COURT:** Without objection, what is it marked?

1 MR. LONG: Respondent 159.

2 THE COURT: Respondent's 159 admitted into evidence
3 without objection.

4 MR. LONG: Your Honor, that's all the questions I
5 have. Thank you, Mr. Rardin.

6 THE COURT: Ms. Biggers?

7 MS. BIGGERS: Your Honor, I don't have any questions
8 for this witness.

9 THE COURT: Thank you. Redirect, Mr. Thomas?

10 MR. THOMAS: Well, I've got some redirect, Your
11 Honor.

12 MR. SUMMER: Your Honor, I'm a little uncomfortable
13 with this notion that if we mention something
14 and no objection to it, it's deemed to be
15 admitted. Do we mind if Mr. Thomas simply
16 reads through a list of exhibits that he's
17 referred to and move them in all at one time?

18 MR. THOMAS: Your Honor, I mean, I think the way
19 we're doing it every day our legal assistants
20 are going to go through their lists. Everybody
21 -- our staffs have master lists going, plus the
22 court reporter's got a list. We'll be able to
23 keep it straight.

24 MR. SUMMER: I guess my concern is that this witness
25 will be released, other witnesses will be

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1 released. We ought to at least at the end of
2 each day confer and make sure that we're in
3 agreement on what's in and what's not in
4 because without a formal motion or a formal
5 introduction and a ruling from Your Honor, I
6 don't want to be at the end of this case and
7 have disputes about whether or not half a dozen
8 things are really in evidence or not. And
9 that's my concern. So counsel, do you have a
10 problem if we basically do a reconciliation at
11 the end of each day?

12 **MR. LONG:** No. I think our staffs are kind of
13 planning to do that. I think --

14 **THE COURT:** Are you going to do that on the record
15 or are you going to do it and put it in at the
16 commencement of the next session?

17 **MR. SUMMER:** We can do it the next morning. I think
18 we should have a recitation in the morning of
19 what's in and what's not if that's all right
20 with Your Honor.

21 **THE COURT:** That's fine.

22 **MR. RARDIN - REDIRECT EXAMINATION BY MR. THOMAS:**

23 Q: Mr. Rardin, Mr. Long asked you a lot of
24 questions about the growth in this area and
25 showed you a lot of population statistics and

1 maps. But Trident is not the same 200-bed
2 hospital it was back in 1972, is it?

3 A: No, sir. It's 296 beds today.

4 Q: And there's another hospital where?

5 A: In Summerville, 94 beds.

6 Q: Okay. And let's go to the Joint Exhibit 3 if
7 we could, and this is the 2004-2005 State
8 Health Plan.

9 **MR. THOMAS:** If you'd go to II-7 for me, Sara. Keep
10 going. Okay. All right.

11 Q: Can you see -- can you read that okay, Mr.
12 Rardin?

13 A: I think so.

14 Q: Okay. Now, right here on this page, does this
15 set out the methodology for calculating bed
16 need?

17 A: Yes, sir.

18 Q: Okay. And Section A there, could you read that
19 into the record.

20 A: Section A?

21 Q: Yeah. A, right underneath that.

22 **THE COURT:** Highlight that, please.

23 **MR. THOMAS:** Yeah, if you could highlight that,
24 Sara.

25 **THE COURT:** I really meant to enlarge it rather than

1 highlight it.

2 MR. THOMAS: That's funny, we do that all the time.

3 Okay. Maybe you can read that. There you go.

4 THE COURT: Thank you.

5 A: The calculation of bed need are made for
6 individual facilities.

7 Q: Okay. And the bed need, if you would turn to,
8 let's see here. Well, not turn to.

9 MR. THOMAS: Go down and enlarge Section B for me
10 if you could, B1. Okay.

11 Q: I'd like for you to read that into the record
12 if you would, Mr. Rardin.

13 A: "By the current facility use rate by age cohort
14 by projected population of age cohort in
15 thousands, divide by 365 to obtain a projected
16 average date of census by age cohort."

17 Q: Okay. Is that under -- is that your
18 understanding of how bed need is projected in
19 the state of South Carolina?

20 A: Yes.

21 Q: Okay. So the -- all that population that Mr.
22 Long was talking about earlier, that's actually
23 factored into the bed need calculation, isn't
24 it?

25 A: Yes, it is.

1 Q: Okay.

2 MR. THOMAS: Sara, if you would go to 217 for me of
3 the State of Health Plan and right size that.
4 Okay. And just for Roper Hospital. Okay.

5 Q: And here is Roper Hospital's bed need. What
6 does it say their bed need is in 2004 of their
7 projected bed need is in 2010 based on
8 population growth?

9 A: Negative 11.

10 MR. THOMAS: Okay. And would you go up to -- up the
11 page to Trident Medical Center?

12 Q: What's 2010 bed need pop -- bed need based on
13 the population projections in 2010 for Trident?

14 A: Forty-two.

15 Q: Okay. So despite all the population growth,
16 Roper doesn't have a bed need, does it?

17 A: No, sir.

18 MR. THOMAS: Sara, I'd like to go to the -- before
19 we get out of this.

20 THE COURT: Excuse me. That was 2004-5?

21 MR. THOMAS: 2004-2005 State Health Plan.

22 Q: And Mr. Rardin, Mr. Long asked you about, I
23 believe Section D on page II-7, if we could go
24 to that.

25 MR. THOMAS: Sorry Your Honor. Okay. And if you

1 would enlarge that for the Court and Mr.
2 Rardin.

3 Q: All right. Is this the section that Trident
4 Medical Center applied for for the Berkeley
5 Medical Center?

6 A: Yes.

7 Q: Okay. Now, is there a licensed hospital
8 facility in Moncks Corner?

9 A: Yes.

10 Q: What is that?

11 A: Moncks Corner emergency department.

12 Q: Okay. And is that a location where the beds
13 are going to be at right next door?

14 A: Yes.

15 Q: That licensed facility?

16 A: Yes.

17 Q: Okay. And is that going to be a cost effective
18 way of adding beds to that area of the service
19 -- to Moncks Corner?

20 A: Yes.

21 Q: Okay. And did Trident Medical Center provide
22 the hospital with the -- with the understanding
23 that only one would be approved that could
24 document and demonstrate the need for the
25 additional beds at that location?

1 A: Yes.

2 Q: Okay.

3 THE COURT: Hold on. Let me ask this question.

4 MR. THOMAS: Yes, sir.

5 THE COURT: Back during your cross examination, I
6 believe you referred to Section D in a
7 different Health Plan. Which Health Plan was
8 that, the current one? The wording has been
9 amplified at some point.

10 A: No, there was the 04-05, which this is.

11 MR. THOMAS: Mr. Long bought up the section in the
12 2008-2009 Health Plan as well, Your Honor.

13 THE COURT: All right. That's been changed from
14 what we see here on the screen before us?

15 MR. THOMAS: Yes, sir, that's correct. Okay. Sara,
16 if you could -- and Your Honor, just for the
17 record, and I can get this with Mr. Rardin.

18 Q: Trident's CON application was filed under what
19 State Health Plan?

20 A: The '04-'05.

21 Q: Okay. And Roper's CON application was filed
22 under what State Health Plan?

23 A: Calling out, '07-'08.

24 Q: How about the '08-'09?

25 A: '08-'09.

1 Q: Okay.

2 MR. THOMAS: Sara, would you please go to Joint
3 Exhibit 4. Okay.

4 Q: Mr. Rardin, are you familiar with the 2008-2009
5 State Health Plan?

6 A: Yes, sir, I've seen it and read it.

7 Q: Okay. Again, back to the notion of all the
8 population growth in the Tri-County service
9 area, do you understand that the bed need
10 projections in the 2008-2009?

11 MR. THOMAS: Go to II-7 again for me, State Health
12 Plan. Okay. And would you enlarge basically A
13 and all of B. All right.

14 Q: That the bed need projections based on the
15 calculations, they're still for individual
16 hospitals, correct?

17 A: Yes, sir.

18 Q: Okay. And in terms of B-1, the bed need
19 projections are still taking into account all
20 of the population growth in an area, correct?

21 A: Yes.

22 MR. THOMAS: Sara, if you would turn to II -- hold
23 on. Bear with me. Try to find the bed need
24 for -- I think you're in the right place if we
25 can turn this. There -- there you go. Okay.

1 Perfect.

2 Q: All right. Mr. Rardin --

3 MR. THOMAS: And Sara, if you could kind of enlarge
4 the top half of the page so we can get it all
5 in there. Okay.

6 Q: Now, Mr. Rardin, what does -- with all the
7 population, is it your understanding the
8 population was factored in here for the fiscal
9 year 2013 hospital bed need projection?

10 A: Yes.

11 Q: Okay. And what's the bed need for Roper
12 Hospital or Roper St. Francis Mount Pleasant?

13 A: A negative six beds.

14 Q: Okay. How about for Bon Secours?

15 A: A negative 17 beds.

16 Q: And while we're at it, what's East Cooper
17 Regional Medical Center?

18 A: Negative 40.

19 Q: Okay. And that means they have too many beds,
20 correct?

21 A: Yes.

22 Q: Okay. And this is all during this time of
23 explosive growth; is that right?

24 A: That's correct.

25 THE COURT: What is the page number that you were

1 referring to on this?

2 **MR. THOMAS:** Yeah. It's Roman Numeral II-19, Joint
3 Exhibit 4, Your Honor.

4 **THE COURT:** Thank you.

5 **Q:** So despite all the growth in the service area
6 that's taken place in the last half decade,
7 seven years, Roper doesn't have a bed need, do
8 they, Mr. Rardin?

9 **A:** No, sir.

10 **Q:** Okay. Now, Mr. Long made an interesting
11 statement in your testimony. He talked about
12 46 percent of all the patients travel right
13 past Trident to go to other hospitals downtown,
14 correct? You remember that?

15 **A:** Yes.

16 **Q:** How about the transfers from the Roper ED? Is
17 it your understanding that those patients
18 willingly travel right by Trident Medical
19 Center?

20 **A:** Well, they're probably in an ambulance being
21 taken to Roper.

22 **Q:** Okay. And patients who see physicians who
23 refer to Roper facilities, that's a willing,
24 necessarily just willingly driving by?

25 **A:** I think most patients will go where their

1 physician directs them.

2 Q: Okay. Now, Mr. Long asked you several
3 questions about when you knew a hospital was
4 going to be built by Roper St. Francis,
5 correct?

6 A: Yes.

7 Q: Okay. Now, and just so the record is clear on
8 this. The only dates --

9 MR. THOMAS: And if you want to pull up Petitioner
10 189 again.

11 Q: And correct me if I'm wrong, but the only dates
12 that you were aware of regarding the --
13 regarding when Roper was going to apply was the
14 earlier -- and this is to apply, correct, the
15 earlier of 20 -- December 31st, 2012, and by no
16 later than December 31st, 2015; is that
17 correct?

18 A: That's the article, yes.

19 Q: Okay. So did you think and when you applied --
20 when Trident applied in August of 2008 that
21 Roper was just going to automatically submit a
22 CON application?

23 A: No.

24 Q: Because that would be several years, what, five
25 to seven years different than what you had

1 actually seen in a newspaper article; is that
2 right?

3 A: Yes, sir.

4 Q: Okay. Now, I believe this says the deadline
5 could get pushed up to mid 2013. And I
6 understand, I'm not offering this for the truth
7 of the matter asserted.

8 MR. LONG: Well, he absolutely is. He's reading
9 from the article and asking him to agree with
10 it.

11 MR. THOMAS: No, I'm asking him --

12 MR. LONG: He is doing it --

13 THE COURT: Let's see what the question is.

14 MR. THOMAS: Yeah.

15 THE COURT: Let's see what the question is.

16 Q: But in terms of --

17 MR. THOMAS: I've got it, Your Honor. How about
18 this?

19 Q: If these timelines have any basis in reality,
20 Mr. Rardin, okay, and based on this statement,
21 Carnes Crossroads Associates can complete 1,700
22 residential units by the close of 2012, okay,
23 at this time, is it your understanding that
24 Roper St. Francis would have to apply for a
25 hospital?

1 MR. LONG: Same thing, Your Honor. He's asking him
2 actually to speculate because he's saying well,
3 if the article were true, what would you think?

4 MR. THOMAS: Based on this article, that's the only
5 knowledge he had.

6 THE COURT: I'm going to overrule the objection. I
7 think it's saying if it -- if you believed it
8 to be true, which is an acceptable way of
9 couching that question.

10 MR. THOMAS: Right.

11 Q: And Mr. Rardin, if you believe this to be true,
12 would Roper, even under this timeline, have any
13 obligation to apply for a hospital today?

14 A: They really wouldn't have to file until there
15 was 1,700 homes mid 2013 or probably be pushed
16 to 2015 before they would file.

17 Q: Now, when you file for a CON application for a
18 new hospital, typically, and let's just say
19 everything went smoothly and you got the CON
20 application approved in three or four months,
21 when would a new hospital really open its doors
22 based on that CON application?

23 A: If the CON was -- if they filed it in 2015
24 December, and the Department approved it in six
25 months, by the time construction drawings and

1 permits are pulled, two to three year window
2 could be close to 2019, 2020.

3 Q: Far as you know, this hospital may not have
4 even been built until 2020; is that right?

5 A: Correct.

6 Q: When I say this hospital, Roper St. Francis
7 Berkeley; is that right?

8 A: That's the way the article -- yes.

9 Q: And that would have been 12 years after Trident
10 submitted a CON application, correct?

11 A: Yes, sir.

12 Q: Okay. Now, Mr. Long asked you a lot of
13 questions about Cane Bay. If a hospital, and
14 I think the easiest way to deal with this is to
15 ask you this question? If a hospital is going
16 to be built in Berkeley County and Trident
17 Medical Center is going to build one, where is
18 it going to go?

19 A: It's going to Moncks Corner.

20 Q: Okay.

21 **MR. THOMAS:** Go to Respondent 130 if I could. Could
22 you pull up 130? Is that the business case
23 narrative? No, that's not it. That's okay.
24 How about Exhibit 76, is that -- I think it's
25 Roper Berkeley 4714.

1 THE COURT: Yeah.

2 MR. THOMAS: Yeah go to 4714. All right. I don't
3 think this has got the right -- I think the
4 colors are faded here; is that correct, Jimmy?
5 Is that --

6 MR. LONG: That's not -- that's --

7 MR. THOMAS: That's 4714, but I think the colors are
8 -- for some reason didn't translate well into
9 the -- can I use your board?

10 MR. LONG: Sure.

11 Q: Mr. Rardin, Mr. Long showed you this graphic,
12 Trident Projected Inpatient Market Share
13 Captured by Zip Code per Trident CON, correct?

14 A: Yes.

15 Q: Now, when these projected inpatient market
16 share captures, so to speak, were formulated
17 and calculated, that assumed there was going to
18 be one hospital in Berkeley County or two
19 hospitals in Berkeley County?

20 A: One hospital.

21 Q: Thank you. If two hospitals are built, what do
22 you think that's going to do to Trident's
23 market share in Berkeley County?

24 A: Trident will lose market share from the
25 Berkeley County Hospital.

1 Q: Will it be significant, in your opinion?

2 A: Yes.

3 Q: In terms also --

4 MR. THOMAS: Bear with me, Your Honor.

5 Q: Now, you were asked questions about more of
6 this idea that Trident wasn't going to gain any
7 market share. What in terms of the physicians,
8 the practices that you've seen in East Cooper,
9 what's your -- what's your knowledge of where
10 the physician practices are located?

11 MR. LONG: Your Honor, I didn't ask him questions
12 about physicians practices with him.

13 MR. THOMAS: Well what he did ask about is, you
14 know, we were going to pick up a lot of market
15 share. And there were reasons why we're not
16 going to pick up market share. And I'm trying
17 to get there with this witness, Your Honor.

18 THE COURT: Wasn't the testimony though about the
19 physicians' offices being located in what will
20 be the vacated emergency department?

21 MR. LONG: I did ask one question that you would put
22 physicians in that building. I didn't -- but
23 I really kind of stayed away from physician
24 practices. I'm fine with that. I just think
25 -- I don't really want to -- I'm not proposing

1 a recross. But if you're not going to do
2 recross you've got to hold the line I think on
3 redirect.

4 **MR. THOMAS:** I think I've got a different way to get
5 at this, Your Honor, that Mr. Long --

6 **Q:** Mr. Long asked you about the halo effect; do
7 you recall that?

8 **A:** Yes.

9 **Q:** Okay. And you said that halo effect was a way
10 that -- that patients would want to come to a
11 new shiny hospital; do you recall that?

12 **A:** Uh-huh (affirmative response).

13 **Q:** Okay. Did East Cooper -- and is it your
14 understanding that East Cooper Regional Medical
15 Center gained patients from a halo effect when
16 it built its new \$150 million hospital?

17 **MR. LONG:** Objection, Your Honor. He can't know
18 that.

19 **MR. THOMAS:** He asked him. He speculated on --

20 **MR. LONG:** He's not an expert. He doesn't work for
21 East Cooper.

22 **MR. THOMAS:** Your Honor --

23 **THE COURT:** Well, if he knows, he can answer the
24 question.

25 **MR. THOMAS:** That's right.

1 THE COURT: If he doesn't know, he can't answer the
2 question.

3 Q: Is it your understanding that East Cooper
4 Regional Medical Center experienced a halo
5 effect when it opened up its brand new \$150
6 million hospital facility in Mount Pleasant?

7 THE COURT: Just one moment. Isn't East Cooper a
8 Trident facility?

9 MR. THOMAS: No. No, it is not.

10 THE COURT: Okay.

11 A: I've seen their JARs --

12 Q: Let him answer the question.

13 A: And I did not see a growth that I would think
14 would be what I would consider a halo affect.

15 Q: Okay. And in fact --

16 THE COURT: Wait a minute. We have an objection.
17 That seems an innocuous answer. Are you
18 willing to let that stand, Mr. Long?

19 MR. LONG: He laid his foundation, Your Honor. He
20 said he saw the JAR. So I withdraw my
21 objection.

22 THE COURT: Thank you.

23 Q: In terms of a halo effect, are there ways that
24 a competitor can blunt a halo effect, Mr.
25 Rardin?

1 A: With the competition of something close by, I
2 would assume that would stop somewhat of a halo
3 effect if they were doing the same thing.

4 Q: Okay. One way to blunt a halo effect would be
5 to acquire a physician, with a competitor
6 acquiring a physician practice?

7 MR. LONG: Objection, Your Honor. Misleading. Plus
8 he's going in an area I didn't go.

9 THE COURT: I do agree with that. I think --

10 MR. THOMAS: I guess I'm confused, Your Honor,
11 because he talked about halo effect and that it
12 would have a halo effect. And what I'm trying
13 to establish is that there is not a general
14 halo effect in healthcare. That's a myth. All
15 right. And there are several different ways
16 that competitors can come in --

17 MR. LONG: Your Honor --

18 MR. THOMAS: -- and make sure the halo effect does
19 not --

20 THE COURT: Wait a minute. One at a time.

21 MR. LONG: The reason I objected, Your Honor --

22 THE COURT: Yes.

23 MR. LONG: -- is because he's coaching the witness
24 because he's telling him what to say. The
25 witness testified there was a halo effect. I

1 mean that's the thing.

2 **THE COURT:** Well we have to go back further than
3 that. I think you've got to confine your
4 questions about the halo effect to the context
5 that Mr. Long asked the question in. Now I
6 can't tell you from memory specifically what
7 that is.

8 **MR. THOMAS:** Right.

9 **THE COURT:** But it seems it's not as broad as you're
10 trying to take advantage of here.

11 **MR. THOMAS:** His context was, if you build a new
12 hospital --

13 **MR. LONG:** Your Honor, it's not fair for him to --

14 **MR. THOMAS:** Well let's have a sidebar.

15 **MR. LONG:** -- make speaking arguments in front of
16 the witness.

17 **THE COURT:** I'm going to tell y'all this right now.
18 Don't talk over each other. I need to hear one
19 of you at the time.

20 **MR. THOMAS:** Okay. Your Honor, I'm happy to do a
21 sidebar so Mr. Rardin can't hear anything that
22 he just actually testified to. He's the one
23 who said, well, a competitor can do something.
24 And that's all I said. And I'm willing to have
25 a sidebar. But this important. Mr. Long again

1 has insinuated through this witness that there
2 would be a halo effect. And I'm just saying,
3 well, is that an absolute thing. And I think
4 Mr. Rardin can testify about that.

5 **THE COURT:** Well expressed in that manner, I'm going
6 to overrule the objection and allow you to
7 proceed.

8 **MR. THOMAS:** Thanks, Your Honor.

9 **THE COURT:** That's my ruling.

10 Q: All right. Mr. Rardin, so are there things
11 that competitors can do that would blunt the
12 halo effect?

13 A: In what -- in regards to having a new facility
14 in the market?

15 Q: Sure.

16 A: They obviously -- if they received a facility
17 in the market. Add additional space to --
18 we're speaking about the Moncks Corner site,
19 expand ED maybe.

20 Q: So if Roper St. Francis expanded it's ED,
21 that's one way to blunt the halo effect?

22 A: It might.

23 Q: Okay. What about if Roper added physician
24 practices to --

25 **MR. LONG:** Objection.

1 THE COURT: There's an objection. Let me hear it,
2 please, sir.

3 MR. LONG: He's leading.

4 THE COURT: And what's your response to that?

5 MR. THOMAS: I'm asking him a question of whether he
6 would know that that would have an ability to
7 blunt the halo effect.

8 THE COURT: Well, I'm going to overrule that.

9 Q: The addition of physicians result in the
10 potential of blunting a halo effect in a
11 market?

12 A: Acquisition of physicians could, yes.

13 Q: Are you aware if Roper has ever actually
14 purchased a practice that was once loyal to
15 another hospital?

16 MR. LONG: Your Honor, I didn't go into that.

17 MR. THOMAS: We're going to be here a long time.

18 MR. LONG: I didn't go into that on my cross.

19 MR. THOMAS: It's another thing for the halo effect,
20 Your Honor.

21 THE COURT: Well I'm going to sustain that. I think
22 that's pretty far afield.

23 MR. THOMAS: All right. Okay. Let's go to Joint
24 Exhibit 1. Go to page 900 for me.

25 Q: Mr. Long asked you a series of questions about

1 adverse impact; do you recall that?

2 A: Yes.

3 Q: On page 900, okay, this is a letter from
4 Richard Baehr Associates, correct?

5 A: Yes.

6 Q: Do you recall seeing this letter that was
7 submitted to the Department following the
8 project committee meeting?

9 A: Yes.

10 Q: Okay. Would you turn to the DHEC record 902,
11 and if you're not in it then Sara could put it
12 up there for you.

13 A: Okay.

14 Q: Now, Mr. Long had asked you had you ever seen
15 any numbers based on lost volume or a monetary
16 range of adverse impact, correct?

17 A: Yes.

18 Q: Okay. Does this refresh your memory that you
19 had seen numbers?

20 A: Yes, this is --

21 Q: If you'd look under paragraph two, approval of
22 the Roper St. Francis Berkeley would cause
23 substantial adverse impact on the Trident
24 Health System.

25 MR. THOMAS: Sara, would you blow up the paragraph

1 directly underneath that? No, no. That one.

2 Q: Okay. I'd like you to read this into the record
3 if you would, Mr. Rardin. If you can see it.

4 A: "The above projected volume loss of 7,340
5 patients. The first three years will result in
6 an adverse financial impact on the Trident
7 Health System ranging from seven million in
8 2013 to double that level 14,215,000. The
9 adverse financial impact averages over 11
10 million a year for the period 2013 and 2015 and
11 totals over 33 million for a three year
12 period.

13 Q: Okay. Do you recall that adverse impact
14 analysis that was done on the -- for the
15 benefit of Trident Health Systems regarding
16 Roper St. Francis --

17 A: I do not, yes, I remember that.

18 **THE COURT:** And this is your expert's pronouncement;
19 is that correct?

20 **MR. THOMAS:** Yes, that was submitted to the
21 Department back in 2009, Your Honor.

22 Q: Okay. Now, if you would in the same DHEC
23 record, I think Mr. Long asked you about --

24 **MR. THOMAS:** Jimmy, correct me if I'm wrong if you
25 didn't and I won't go here.

1 Q: -- but about what the impact would be on both,
2 if both were approved, and whether or not you
3 had seen any analysis on that?

4 MR. THOMAS: Did you get into that?

5 MR. LONG: I don't believe I did. I think I just --
6 no, I didn't ask about it.

7 MR. THOMAS: Okay. I'll take his word for it. I
8 just can't remember.

9 Q: Summerville Medical Center application, Mr.
10 Long asked you a couple questions about that.
11 Again, what's the cost of that project give or
12 take?

13 THE COURT: Which project?

14 MR. THOMAS: The Summerville Medical Center, the 30-
15 bed addition.

16 A: It's in the \$28, \$29 million range.

17 Q: I think it's actually a little less, but that's
18 -- that's fine. In terms of that project, did
19 Summerville Medical Center have a facility
20 specific bed need?

21 A: Yes, it did.

22 Q: Okay.

23 MR. THOMAS: Pardon me, Your Honor. Go to 232 for
24 me and page -- so this would be Baehr 1912.

25 THE COURT: Is it Petitioner's 232?

1 **MR. THOMAS:** Yes, sir.

2 Q: Okay. Mr. Long asked you some questions about
3 this map and whether or not -- or about these
4 series of maps, these Google aerial maps, made
5 a comment about the size of the H's. But on
6 page five here where Roper St. Francis is, are
7 you familiar with this general area in terms of
8 the development that's going on now?

9 A: Yes.

10 Q: Okay. Of this here, this area that is bound by
11 US 176 and 17A and 26 that can be seen here,
12 are you aware of any new developments in that
13 general area?

14 A: No, I'm not.

15 Q: That since this map was taken or aerial
16 photographs have been taken?

17 A: I don't know. I don't know the --

18 **MR. LONG:** Your Honor, I just put out in the record,
19 he said he didn't know when it was taken.

20 **MR. THOMAS:** That's fine. That's fine.

21 A: I don't know when the map, or the Google map
22 was shot.

23 Q: And I understand that, and that's not what I'm
24 asking you. I'm asking you are you aware based
25 on this of any other new developments that have

1 taken place in the area bound by 176, 26 and
2 17A on what is shown in this aerial map?

3 **THE COURT:** You know, let's say bounded by 26 and 17
4 because that takes in the whole area. 176
5 splits it and that confuses the record.

6 **MR. THOMAS:** Okay. Well, that's what I was kind of
7 interested in, Your Honor, this area kind of
8 west of 176 going to 26 that is -- looks like
9 some prime deer kind of land out in here.

10 **THE COURT:** I see what you mean, 17 bounded to the
11 south.

12 **MR. THOMAS:** Right.

13 **THE COURT:** The southeast.

14 **MR. THOMAS:** Okay.

15 **THE COURT:** If it's in the top, ignore it.

16 **MR. THOMAS:** Sure.

17 **Q:** And so Mr. Rardin again, based on your
18 familiarity with the area and the developments
19 that are taking place, are you aware of any
20 other developments that are not shown on this
21 map?

22 **A:** No.

23 **Q:** Okay. Thank you. Now, got to be perfectly
24 honest with you, I got a little confused with
25 some of the testimony about HCA's ability to

1 pay for it and financing. But what -- HCA is
2 a corporation, correct?

3 A: Yes, sir.

4 Q: As a corporation, is it charged with making
5 prudent business decisions?

6 A: Yes.

7 Q: Reasonable business decisions?

8 A: Yes.

9 Q: Okay. Now, at the end of the day, HCA provided
10 a financing letter, correct?

11 A: Yes.

12 Q: Okay. Now, if you'd gone to Wells Fargo, Wells
13 Fargo if they liked the product could finance
14 it, correct?

15 A: Yes, sir.

16 Q: You could have asked Wells Fargo to finance
17 this project?

18 A: I don't know. I guess they could have, yes.

19 Q: Okay. All right. Well, HCA, a bank, I mean,
20 people that want to finance a project, would
21 you agree, are hoping that the project is going
22 to be successful?

23 MR. LONG: Your Honor, I know it's late in the day,
24 but he's got to stop leading.

25 MR. THOMAS: All right.

1 MR. LONG: It's redirect.

2 THE COURT: And I agree with that. I'm going to
3 sustain that objection.

4 MR. THOMAS: I know it's late in the day and I'm
5 trying to move things along and I apologize.

6 Q: Okay. The HCA finance letter, all right,
7 that's in the CON application, does HCA finance
8 project -- well, what is HCA looking for when
9 they're financing a project?

10 A: Well, they're looking for a successful project
11 which would include a reasonable return on
12 their investment.

13 Q: Okay. Now, the project in this instance, it
14 had pro formas done, project specific pro
15 formas, correct?

16 A: Yes.

17 Q: Okay. And those pro formas in terms of the
18 project existing alone at the time as the only
19 project that had been applied for showed what?

20 A: After the third year it began to cash flow.

21 Q: Okay. And based on that, okay, based on that
22 --

23 MR. THOMAS: Bear with me one minute, Your Honor.
24 And I'm fine, Your Honor. I'll withdraw that
25 last question. I can't find the document I was

1 looking for.

2 Q: In terms of, and we're still here, this area
3 17A, 176, 26, not necessarily based on this
4 map, but is it your understanding that area
5 that is bound by those roads I just mentioned,
6 is that a densely populated area, or is it
7 sparsely populated area?

8 A: Sparsely.

9 Q: Okay. And do you have any idea what this area
10 is right here?

11 MR. THOMAS: And could you go back to number 4.
12 Page 4. Okay.

13 Q: This area --

14 MR. THOMAS: Yeah. That's good. Go back down one
15 more. One more. Another page. Yeah. There
16 you go. Your Honor, we're having some
17 technically difficulty. All right.

18 Q: This area here.

19 THE COURT: All right. Wait just one minute. Tell
20 us what photographs you're refer -- what's this
21 document number?

22 MR. THOMAS: Okay. What Baehr number?

23 MS. TYER: Baehr 1910.

24 THE COURT: It says Petitioner's exhibit, is that
25 232?

1 MR. THOMAS: 232, Baehr 1910. Okay. And -- yeah,
2 there you go.

3 Q: I just want to make this clear for the record
4 if we can. Starting with Roper's proposed
5 hospital site going 17 and this is a road going
6 across here, 52. Do you see that at the top of
7 the screen?

8 A: Yes.

9 Q: Okay. 52 is bound -- it's bound by 52, and
10 then if you take a right to St. James Avenue
11 and go back up, what is that area up there, Mr.
12 Rardin, if you know?

13 A: I'm sorry, could you point to it again?

14 Q: Yeah. Right in here (indicating).

15 A: I'm not familiar with that location.

16 Q: Is that not the Alcoa plant?

17 A: I guess it could be the Alcoa plant, yes.

18 Q: All right. Well, are there any homes in that
19 area?

20 A: No, sir, just the plant.

21 Q: Okay. The letter of support from MUSC, does
22 that have anything to do at all with the CT
23 application?

24 A: No, sir.

25 Q: Okay.

1 MR. THOMAS: Bear with me, Your Honor. Your Honor,
2 I don't have any more questions for this
3 witness.

4 THE COURT: Thank you. You may step down. All
5 right. The time is 5:05. What's the pleasure
6 of your attorneys?

7 MR. SUMMER: Your Honor, my next witness is my chief
8 executive officer and he's a pretty lengthy
9 witness and if we swear him, I can't talk to
10 him tonight. So my preference would be, and I
11 don't care how early the Court wants to start
12 in the morning, but not being able to confer
13 with him does put me at a bit of a
14 disadvantage. But whatever. The Court's
15 pleasure is, I'll do.

16 THE COURT: No, we'll recess. I understand your
17 dilemma. As for the time of commencement in
18 the morning, we've got folks here from out of
19 town. I don't know how many of them have been
20 bored beyond tears today and are returning
21 tomorrow. But if they have to travel, we'll
22 try to give them time to get here.

23 MR. SUMMER: 9:30, Your Honor?

24 THE COURT: Is 9:30 acceptable, first of all to the
25 lawyers?

1 MS. BIGGERS: Yes, Your Honor.

2 MR. LONG: Yes.

3 THE COURT: What about to those who may travel here
4 again tomorrow? No objections to 9:30?

5 MR. SUMMER: I do suspect, Your Honor, that the
6 attrition rate will be high during the course
7 of the week.

8 THE COURT: All right. Well, we'll be in recess
9 until 9:30 in the morning. I'm counting on the
10 staff to tabulate the admission that you spoke
11 of, and we'll put it in the record first thing
12 in the morning. Have a safe trip wherever
13 you're going. Good night.

14 MR. SUMMER: Thank you, Your Honor.

15 MS. BIGGERS: Thank you, Your Honor.

16 (There being nothing further, the hearing recessed at
17 4:54 p.m.)

18 DAY 2 - TUESDAY, JANUARY 31, 2012

19 THE COURT: We're on the record, Mr. Summer.

20 MR. SUMMER: Thank you, Your Honor. We'd call our
21 next witness, Mr. Todd Gallati.

22 TODD GALLATI, being duly sworn, testifies as follows:

23 MR. GALLATI- DIRECT EXAMINATION BY MR. SUMMER:

24 Q: Mr. Gallati, would you state your full name for
25 the record, please, sir.

- 1 A: Sure. Todd Gallati.
- 2 Q: And what's your current occupation?
- 3 A: I'm the president and CEO of Trident Health.
- 4 Q: And when you say Trident Health, describe for
- 5 the Court what Trident Health is.
- 6 A: Well, primarily we're made up of three
- 7 facilities: Trident Medical Center in North
- 8 Charleston, Summerville Medical Center in
- 9 Dorchester County, as well as Moncks Corner
- 10 Medical Center, our freestanding emergency
- 11 department in Moncks Corner.
- 12 Q: Okay. We'll come back to Trident in a few
- 13 minutes. If you don't mind, tell the Court
- 14 where were you born?
- 15 A: I was born in Harvey, Illinois.
- 16 Q: And how long did you live there?
- 17 A: I lived there until I was about 11 or 12.
- 18 Q: And what did your father do for a living?
- 19 A: He was a general surgeon.
- 20 Q: How about your mom?
- 21 A: She was a nurse.
- 22 Q: Okay. And when you left Illinois, where did
- 23 y'all go?
- 24 A: Warmer weather. We went down to a little bit
- 25 south of Tampa to Bradenton, Florida.

1 Q: Okay. Where did you go to school?

2 A: Went to Florida State University where I got a
3 bachelor's in management. And went to the
4 University of Florida where I received a
5 master's in business administration and health
6 administration, a combined program there in
7 Gainesville.

8 Q: Are you a Seminole or a Gator?

9 A: Have to be a Seminole.

10 Q: Just had to check. Tell me a little bit about
11 your working career. How old were you when you
12 first started working in a hospital?

13 A: I was 15 actually. I started as a nursing
14 assistant in a hospital. Actually, it was an
15 HCA hospital in Bradenton, Florida.

16 Q: What does a nursing assistant do?

17 A: Work the med/surg floors with the patients.
18 Provide, you know, vitals as well as help care
19 for those patients, kind of the non-nursing
20 tasks.

21 Q: Okay. When you finished your degree program
22 for your masters in health administration at
23 the University of Florida, what year was that?

24 A: That was -- I finished my coursework at the
25 University of Florida in 1989, and then had a

1 one-year residency in that community at a
2 hospital, which was -- which finalized my
3 degree. So 1990 officially.

4 Q: And what was the name of the hospital you had
5 your internship with?

6 A: North Florida Regional Medical Center in
7 Gainesville.

8 Q: And what was your first job after you completed
9 your degree program and internship?

10 A: I was the director of planning after my
11 residency year.

12 Q: And where were you director of planning?

13 A: Right there at North Florida Regional.

14 Q: Okay. So the hospital that you interned in
15 actually hired you for full-time employment?

16 A: Right. And I remained there for about seven
17 years after my residency.

18 Q: What was some of the positions you held at
19 North Florida?

20 A: After director of planning, took on more
21 operational roles, was an assistant
22 administrator where I had responsibility for a
23 lot of the ancillary departments within the
24 hospital. I had basically departments
25 reporting up to me in administration, helped

1 them direct their activities.

2 Q: There are a lot of terms and terminology in
3 healthcare, and what I'd like for you to do as
4 we go through your history is to explain some
5 of those. One of the words you just mentioned
6 were ancillary services. Explain what that is
7 and what they're ancillary to so that the Court
8 understands what you're referring to.

9 A: Typically, the ancillary services in a hospital
10 are more of the back office activities, if you
11 will, the non-nursing, sometimes non-clinical
12 areas. They might be plant operations, which
13 is in charge of the maintenance of the
14 facility, or housekeeping, dietary, feeding the
15 patients. Those types of services.

16 Q: Okay. The other -- while we're here doing
17 terms, another term that was used a lot
18 yesterday was this notion of tertiary care.
19 Can you kind of describe the concepts of
20 primary, secondary, and tertiary care?

21 A: Yeah. In my mind you have primary and tertiary
22 services and nowadays they're talking about, or
23 over the last ten been talking about quaternary
24 services, which are very high advanced services
25 for patients, but primary services might be

1 everything from a primary care physician in an
2 office taking a patient's blood pressure to the
3 less -- less sick medical patients. Typically
4 we see Moncks Corner and Summerville Medical
5 Center as more your primary services, whereas
6 a hospital like Trident might be more -- more
7 acute, higher surgical acuity patients, open
8 heart, those type of patients. And then a
9 place like the Medical University may offer
10 quaternary services, transplant services,
11 trauma, advanced trauma services.

12 Q: All right. You led us to another term and
13 that's the acuity level of the patient. What
14 do we mean when we say the acuity level of a
15 patient?

16 A: Well, it's how sick they are, number one.
17 There actually is a fairly standardized
18 methodology in the industry that Medicare has
19 developed, CMS has developed, that actually
20 codes those patients after they're discharged
21 to determine their acuity level. And that's --
22 that's getting into terms like case mix. So
23 they assign a case weight or a case mix, case
24 weight to a particular discharge. A case
25 weight over two, three, four would be your more

1 acute patients and most hospitals run in the
2 1.6 range for total case mix.

3 Q: And again, when you're talking about the case
4 mix, you're talking about the acuity level of
5 a patient and the higher the acuity level, is
6 that more sick or less sick?

7 A: More sick.

8 Q: Okay.

9 A: And that typically comes with more
10 reimbursement. Medicare has developed this
11 system in order to pay hospitals for the acuity
12 of those patients.

13 Q: So from a conceptual standpoint, do you find
14 patients with higher or lower acuity levels in
15 tertiary care medical centers?

16 A: Absolutely higher. Higher acuity levels,
17 higher case mix.

18 Q: So, you know, we're going one, two, three, from
19 primary to secondary to tertiary. Give the
20 judge an idea about what are some tertiary
21 services. What are some of the sickest, most
22 complicated type patients that end up in a
23 tertiary hospital?

24 A: Your cardiology patients typically. Most of
25 your surgical patients that are going to stay

1 any length of time in the hospital after a
2 major surgical procedure are going to be
3 tertiary, some trauma services. We actually
4 offer trauma services at Trident, but we're a
5 lower level trauma where only one or two
6 systems might be involved with the patient. So
7 those are probably the main categories in your
8 tertiary services in a hospital.

9 Q: Okay. When we look at -- and I'm going to be
10 moving back and forth into your career history,
11 but as we go through this career history, let's
12 talk about where you worked that was maybe
13 tertiary and maybe where you worked that was a
14 community or a secondary type hospital. So
15 let's start where you were for your first seven
16 years post MHA, and that was at North Florida.
17 What type of hospital was that?

18 A: It was very similar to Trident. Similar in
19 beds, close to 300 beds at the time, and it was
20 a referral center. We actually received
21 patients from as far away as 60 miles and
22 covered about six or seven different counties
23 where we would receive patients. So they were
24 coming there for your tertiary services, for
25 your open heart, cardiac cath, and perhaps an

1 open heart procedure; your more advanced
2 procedures.

3 Q: Can some of those procedure involve other
4 things like neurosurgery and things of that
5 nature?

6 A: Correct.

7 Q: That would also be a tertiary care service?

8 A: Yes.

9 Q: Okay. After your seven years at North Florida,
10 where did you go next?

11 A: Lake City, Florida, just north of Gainesville.
12 Lake City, Florida, or Lake City Medical Center
13 was a 75-bed facility that also was attached to
14 a smaller facility in more northern and rural
15 Florida, but we also were part of a system
16 similar to Trident and Summerville Moncks
17 Corner.

18 Q: Before I get to there and talking about kind of
19 that community hospital setting, that was at
20 Lake City, that was your first time being a
21 chief executive officer?

22 A: Right. Yeah, that was 1997.

23 Q: In the seven years that you had been at
24 Gainesville at North Florida Regional, what are
25 the positions that you held and how did they

1 help prepare you to be a CEO?

2 A: Well, the director of planning position
3 certainly helped in Gainesville where I helped
4 with project proposals, replacement of
5 equipment, addition of new equipment, starting
6 new services, market share analysis. That was
7 helpful. And then the operation experience was
8 really invaluable, getting into the hospital
9 and learning a lot more about the importance of
10 a fine running hospital and its effect on
11 patients there. So kind of moved up as the
12 assistant administrator. Then chief operating
13 officer is a position that is one below the CEO
14 where you're reporting to the CEO, working with
15 the management team within the hospital to make
16 that better. So it's good -- it was very good
17 preparation, and although, you know, I felt
18 like -- although I stayed there for quite some
19 time, I was, you know, almost every year doing
20 something different. Had two or three bosses
21 during my eight years there, too, so it was a
22 good experience.

23 Q: Okay. Was that part of kind of a formalized or
24 a customized training program with HCA?

25 A: It was not.

1 Q: Okay. Talk to me about -- a little bit about
 2 while we're there at North Florida how your
 3 hospital was organized or how a typical
 4 hospital was organized in terms of day-to-day
 5 administrative operations. If you could, just
 6 explain to the Court the concept of various
 7 clinical departments and how they're
 8 administrated and how that rolls up to the COO
 9 and CEO.

10 A: Yeah, typically you have three or four main
 11 positions under the CEO in a hospital, and that
 12 would be your chief operating officer and your
 13 chief nursing officer and chief financial
 14 officer, and those three individuals have
 15 primary responsibility for the departments that
 16 would fall into those areas. Your nursing
 17 director obviously in charge of all the nursing
 18 functions in the hospital would have the
 19 various nurse managers reporting up though her.
 20 And your CFO in charge of a lot of the business
 21 office accounting, information systems,
 22 functions; and then the COO kind of everything
 23 else, radiology to groundskeeping and
 24 everything in between.

25 Q: The CFO, and let's just go on and use these

1 acronyms, but the CFO you've already testified
2 is the chief financial officer.

3 A: Correct.

4 Q: The DON is the?

5 A: Director of nurses.

6 Q: Okay. And then the COO is?

7 A: Chief operating officer.

8 Q: When we look at the -- those are three direct
9 reports to the CEO; is that correct?

10 A: Correct.

11 Q: When we look at their responsibilities, you
12 know, you've identified that the CFO is
13 basically purely financial.

14 A: Correct.

15 Q: What are the responsibilities of the DON? Is
16 that more clinical, or how would you describe
17 it?

18 A: Yeah, the DON or chief nursing officer, CNO
19 position is all clinical. Typically, every
20 nurse in the facility technically reports up
21 through that chief nurse. Sometimes in
22 hospital they're actually over the quality
23 function of the hospital, too, which is an
24 important department in the hospital.

25 Q: Okay. And then what does the chief operating

1 officer do? If the clinical people are
2 basically reporting up through your DON, what
3 is the COO's responsibility?

4 A: COO's responsibility is the operations of the
5 both the clinical non-nursing departments and
6 the non-clinical departments, or the ancillary
7 departments, and making sure they're
8 functioning well. Oftentimes the COO will be
9 responsible for the medical staff credentialing
10 as well, so they a lot of interaction with the
11 physicians within the hospital.

12 Q: And you don't have to name all of them, but if
13 you could just let the Court know what are the
14 various departments in a hospital that report
15 up either to the DON or to the COO?

16 A: The COO you would have your surgical
17 departments, your radiology departments,
18 respiratory therapy, engineering, housekeeping,
19 food service, grounds, security, those type of
20 departments. And then your chief nursing
21 officer would have all of the nurse managers,
22 so every floor within the hospital or every
23 unit, nursing unit, whether it be in ICU,
24 intensive care unit or a stepdown unit or a
25 general med/surg floor where patients are cared

1 for, those nurse managers would report to that
2 individual.

3 Q: When you refer to these clinical departments,
4 do they usually have their own director or
5 directors?

6 A: Yes. Yes. Yeah, these are department
7 directors or department managers is typically
8 what they're called.

9 Q: And those are administrative personnel?

10 A: Yeah. Typically it's -- you know, if you take
11 the director of imaging, typically it's an
12 individual that had been a radiology tech and
13 has flourished in that role and has been
14 promoted from within to become a manager or a
15 director eventually.

16 Q: Okay. When we look at the CFO's role, there's
17 not an operational role for the CFO, is there?

18 A: There is. You know, they have departments
19 reporting to the CFO that do have a number of
20 people in them. The business office, everyone
21 that registers a patient is in the business
22 office. Everybody that bills is in the
23 business office, that department reports up
24 through the CFO. So there's some pretty
25 intensive operations, as well as, you know, you

1 see your CFOs behind a desk a lot times, you
2 know, working on budgets, working on plans,
3 working on financial reporting, but you also
4 see them in an operational role as well.

5 Q: Okay. Talk to me about your first CEO position
6 in Lake City, Florida.

7 A: Well, it was in '97 that I moved from
8 Gainesville to Lake City and was CEO, named CEO
9 of Lake City Medical Center. It was a smaller
10 hospital, a smaller community hospital in a
11 little bit smaller town than Gainesville, but
12 it was close to Gainesville. We had a working
13 relationship between those two hospitals. So
14 I knew -- I knew the market. But we were there
15 in a 1940s, 50s Hill-Burton type hospital that
16 was -- it had too much duct tape in it. It was
17 -- it was falling into disrepair. And we made
18 a decision to replace that hospital within a
19 couple miles away, a 75-bed replacement
20 hospital. So that was very exciting to bring
21 a new hospital to a community like Lake City
22 and replace the facilities that really weren't
23 serving the community at that time. It was
24 nice to see that community and the employees
25 rally around. So I was there during just a few

1 a very good time.

2 Q: A few -- your answers spawned a few more
3 questions. First would be, you referred to
4 this as a community hospital. How is a
5 community hospital different from a tertiary
6 care hospital?

7 A: Yeah, we didn't have the physician complement
8 that we had in Gainesville. We had a medical
9 school there in Gainesville and had all kinds
10 of specialists, you know, everything from
11 neurosurgeons to cardiac surgeons, oncologists.
12 We didn't have that in Lake City. We might
13 have that -- they'd travel up for a day or so
14 a week. What we were providing in that
15 hospital is fine emergency department services.
16 When those patients were admitted, it would
17 typically be for shorter stays and they were
18 less acute. They didn't require the higher
19 specialists that were in Gainesville. But if
20 we did have that need, we would certainly
21 transfer them to Gainesville. It was about 45
22 minutes away.

23 Q: That's what I wanted you to focus on was the
24 lower acuity level. How would the Lake City
25 Medical Center that you were in compare with

1 your proposed Berkeley Medical Center in Moncks
2 Corner?

3 A: It's very, very similar. You know, I think the
4 -- I think the key difference in terms of the
5 operation of that center in Berkeley would be
6 just the startup nature. In Lake City, we had
7 been there 50 years, had a number of
8 physicians, had capabilities; whereas in Moncks
9 Corner, we're starting with an emergency
10 department. So it's going to be -- it's going
11 to be different just from a challenge
12 standpoint right out of the gate. But
13 services-wise, after a couple of years in
14 Moncks Corner, I think Lake City and Moncks
15 Corner, operation or hospital there would be
16 very, very similar.

17 Q: Something else that you mentioned, and this is
18 just for a healthcare history lesson, because
19 it predates -- certainly predates my
20 involvement in healthcare and I imagine it
21 predates yours. You referred to the Lake City
22 hospital as having being a Hill-Burton
23 hospital. Can you explain to the Court what a
24 Hill-Burton hospital is?

25 A: I mean, that was a congressional act that

1 provided a lot of -- I hate to use the word
2 stimulus dollars because that's a bad word, but
3 a number of dollars to communities to either
4 rebuild or build new hospitals back in the 50s,
5 kind of post World War II era. And the
6 hospitals in many communities were hurting and
7 this really was a modernization of those
8 facilities. So they were typically government
9 run hospitals that were started up during that
10 time frame.

11 Q: And you may or may not know this, but what
12 relationship did the Hill-Burton Act have to
13 have to the federal certificate of need
14 program? If you don't know, that's fine.

15 A: No, I don't. I don't know.

16 Q: All right. Talk to me a little bit about Lake
17 City. You said you also had, as part of your
18 responsibility, a smaller hospital in Hamilton?

19 A: Yeah.

20 Q: What did that involve?

21 A: In Jasper, Florida, Hamilton Medical Center was
22 a -- was a smaller hospital about half the size
23 of Lake City, but we didn't -- we didn't have
24 the census level there. So it was a challenge.
25 We would run anywhere from three to ten

1 patients at a time overnight in the hospital
2 and see approximately 20 patients in the
3 emergency department. So it was a very small
4 hospital. We actually had nursing staff that
5 would work in the ER and on the floor. Those
6 units were practically combined, so they would
7 be working both locations at the same time. So
8 very small hospital.

9 Q: How long were you in the Lake City position as
10 CEO?

11 A: About four years, three and a half years.

12 Q: And where did you go next?

13 A: Went to Panama City in the panhandle of Florida
14 with HCA still and was the CEO of Gulf Coast
15 Medical Center in Panama City. That was a 176-
16 bed facility.

17 Q: How does it compare to either being a tertiary
18 or community medical center?

19 A: Probably a little closer to a community medical
20 center, but we did have more services than we
21 had in Lake City. We had a cath lab and had
22 some advanced surgical services, not open
23 heart. But we did -- did provide a little bit
24 more care because of the specialist and their
25 ability there.

1 Q: This might be a good juncture to talk about
2 some concepts in healthcare. You went
3 basically from a 75-bed hospital to a 176-bed
4 hospital; is that what you testified?

5 A: Yes.

6 Q: And you've indicated that you had these
7 additional services and specialists. Let's
8 talk a little bit about critical mass. What is
9 the concept, just in general terms, about what
10 critical mass is when we talk about healthcare
11 planning?

12 A: Well, in my mind, critical mass is ensuring you
13 have enough patients in a particular service to
14 provide quality and to be able to operate that
15 at a financial positive. So it's both a
16 quality and a financial equation, in my mind.
17 You don't put services in a community -- you
18 wouldn't put open heart services in a community
19 like Lake City because there wouldn't be enough
20 patients to demand that service to be able to
21 have that team, a heart surgeon, the operating
22 room nurses and techs, anesthesiologists, to be
23 as competent as you would in a larger -- a
24 larger town, a referral center where you have
25 more patients for that service.

1 Q: Let's pick a specialist, for example. Would a
2 pulmonologist have enough patients to see to
3 make a living if he worked in a community that
4 only had a 50-bed hospital?

5 A: No.

6 Q: Explain that concept of critical mass and total
7 number of beds and what's necessary to support
8 that kind of physician in a medical center.

9 A: Yeah, I guess if you take pulmonolgy or a
10 pulmonologist, a lung doctor specifically, they
11 typically hang out in the ICU. They -- they
12 will see patients for most of the day in an
13 intensive care unit type setting, and that's
14 where they, frankly, generate their income.
15 And at least in Lake City's example, I believe
16 we had eight ICU beds out of our 75. So we did
17 not have the ability to attract a pulmonologist
18 in that setting. Now, we did have some
19 internists that had some additional training in
20 critical care pulmonology, but they were not
21 full-fledged pulmonologists intensivists, but -
22 - so it did provide good solid care, but if
23 those patients needed to stay in the ICU for
24 any length of time, over four or five days, we
25 were looking, and that physician was looking to

1 transfer them to Gainesville.

2 Q: Okay. On the other hand, when you got to
3 Panama City with 176 beds, was that enough
4 critical mass to support a specialist like a
5 pulmonologist?

6 A: Yes. Yes, we had -- we had at least two -- two
7 pulmonologists, I believe.

8 Q: What other type specialties need to have a
9 higher patient population to support them in a
10 hospital?

11 A: Well, really all of your medical sub-
12 specialists like pulmonary, cardiology,
13 endocrinology, nephrology, all of those
14 specialties need a critical mass. I mean, they
15 train for extra years after internal medicine,
16 sometimes two and three and four years in their
17 training programs to become specific, to become
18 sub-specialists in those areas. They only want
19 to see those type of patients when they come
20 out of training. So those are areas -- and
21 then on the surgical side, cardiac surgery is
22 probably the biggest example of specialists
23 that really need a critical mass of patients.

24 Q: Talk to me a little bit about how long you were
25 at Panama City.

1 A: I was there for about seven years, almost eight
2 years.

3 Q: And did you consider that a promotion or a step
4 up from your Lake City experience?

5 A: I did. I did. It was more responsibility.

6 Q: Bigger hospital?

7 A: Bigger hospital.

8 Q: Where did you go from Panama City?

9 A: Came here to South Carolina, came to
10 Charleston.

11 Q: Talk to me a little bit about your decision to
12 come to Trident. How did you find out about
13 the job?

14 A: I got called from somebody at the hospital that
15 I had worked with in the past, as well as I
16 gotten a call from my boss in Florida who told
17 me about the position.

18 Q: Okay. And what was your understanding about
19 what your task would be if you took that job?

20 A: I think it was similar to my task in any job.
21 It was obviously to see to it that the
22 organization succeeded, and you know, in my
23 mind from what I learned pretty quickly coming
24 here and what I knew prior to coming to
25 Charleston, I guess the best description of the

1 status of the health system at that time was
2 there were several pieces that were off the
3 track.

4 Q: Okay.

5 A: Kind of what one person had indicated.

6 Q: Give us an idea about what some of those
7 challenges were that you knew you were going to
8 have to tackle when you got here.

9 A: Well, besides just the competitive challenges
10 of having a Medical University and another
11 institution that had been in the Charleston
12 area for about 150 years as a hospital, I also
13 knew that there was going to be two new
14 hospitals in the market that were coming up at
15 the time that I was coming. Internal to the
16 hospital, we had had some challenges, had some
17 nursing vacancies, nursing leadership concerns
18 that I think led to patients not being as
19 satisfied with their service as they could be.
20 We had some citations from the Joint Commission
21 that were in the process of being fixed; some
22 regulatory things that needed to be fixed. And
23 then the medical staff and employees, didn't
24 sense that we had built a sense of pride as
25 much as we wanted to in the past, particularly

1 among the employee group. And there were some
2 specialties that were missing in the hospital,
3 in the health system that were very important
4 and needed to be brought back into the fold.

5 Q: Who was your predecessor as CEO?

6 A: Terry Gunn.

7 Q: And do you know where he is or what he's doing
8 now?

9 A: I think he's remained in the Summerville area
10 doing some non-healthcare type activities.

11 Q: Let's talk a little bit about this certificate
12 of need project. When did you first arrive in
13 Charleston?

14 A: It was late 2008. So October time frame.

15 Q: All right. Late 2008, October. Let's take a
16 look at -- let's take a look at Joint Exhibit
17 1.

18 **MR. SUMMER:** Beg the Court's indulgence. Your
19 Honor, I will readily admit that I'm not as
20 technologically savvy as Mr. Thomas or Ms. Tyer
21 and that I'm probably going to be referring to
22 pieces of paper more than I am to computer
23 screens, but I'm learning.

24 **THE COURT:** All right. Are you going to put
25 something up for me or you want me to go to the

1 paper?

2 **MR. SUMMER:** Right now I'm just getting some dates
3 and some times from him, but when we get there,
4 I'll probably try to do both with their help.

5 **Q:** What I want you to do is look in Joint Exhibit
6 Number 1, which is the Trident Record, and if
7 you will, turn over to page three and just look
8 at the date that the application was filed.

9 **A:** Yeah, so that was -- that was the Certificate
10 of Need for the new hospital in Moncks Corner
11 filed in August of '08, August 12th.

12 **Q:** All right. If you go to page one, there's
13 actually a stamped file date at the bottom
14 right above the Bates stamp number one; what
15 does that say?

16 **A:** That was submitted on our wedding anniversary
17 on August 13th of 2008.

18 **Q:** Well, then I assume you would know where you
19 were on that day. Were you at Trident yet?

20 **A:** No.

21 **Q:** Okay. So what involvement, if any, did you
22 have in putting the initial application
23 together?

24 **A:** None.

25 **Q:** What was your understanding when you got on the

1 ground about how this application was postured?

2 A: Well, my understanding was we -- we really had
3 wanted to expand services in the Moncks Corner
4 area for some time. Had an existing outpatient
5 center there and a 24 hour emergency
6 department, and there was really a need to go
7 back to Moncks Corner and build a hospital. So
8 we decided to submit the certificate of need.

9 Q: We'll probably be talking about this more
10 during the course of the day, but were you in
11 the courtroom yesterday?

12 A: Yes.

13 Q: And did you hear testimony regarding the Cane
14 Bay property?

15 A: Yes.

16 Q: What is the Cane Bay property?

17 A: The Cane Bay property is about 20 acres of land
18 that we own, the hospital owns. It's a couple
19 of miles, I think, from Roper's proposed site
20 of their hospital.

21 Q: Have you ever, you personally as CEO, have you
22 ever considered the Cane Bay property as a site
23 for a hospital?

24 A: No.

25 Q: Why not?

1 A: No, I -- you know, I've visited that location
2 a number of times and it's -- it's too close to
3 existing facilities. It doesn't provide
4 anything new to the residents of that area.
5 It's a -- it's a location where Goose Creek
6 residents and residents in Cane Bay, it's a
7 subdivision that has built kind of slowly over
8 the last few years. I think maybe there's 100
9 or so home sites there now and a new high
10 school. It's an area that is within ten or 15
11 minutes of Trident Medical Center, maybe a
12 little bit more than 20 minutes, depending on
13 traffic, to St. Francis. So, it's -- it's my
14 belief that maybe someday an outpatient center
15 or outpatient services could be located there.
16 But I don't have any strategic plans with
17 anything related to Cane Bay on them currently,
18 really nothing in mind.

19 Q: Okay. Talk if you would, or explain, if you
20 don't mind, to the Court, the -- what, if any,
21 difference exists in the cost of creating an
22 outpatient surgery, an outpatient facility as
23 opposed to an inpatient facility.

24 A: Well, it's significantly different. Inpatient
25 facility, you're talking about two million

1 dollars per bed to build an inpatient facility,
2 so it multiplies up pretty quickly.
3 Exponentially less would be an outpatient
4 center, like Moncks Corner currently, which is
5 a freestanding emergency department. Pretty
6 intensive outpatient services, freestanding
7 emergency department. But I believe that was
8 built for right around a million dollars. So
9 you can build an imaging center for a couple of
10 million dollars, three million dollars, or a
11 hospital for \$115 million. So it's a very big
12 difference.

13 Q: If you would while you're sitting there with
14 Joint Exhibit 1, turn over to page six, if you
15 would.

16 A: (Witness does as instructed.)

17 Q: This is part of the Part A questionnaire, which
18 is a standard part of the certificate of need
19 application. And just by comparison purposes,
20 you mentioned that you can build an outpatient
21 center for one or two million dollars. What's
22 the purposed total project cost for the Trident
23 project in Moncks Corner?

24 A: It's kind of a scary number, \$115 million total
25 project cost.

1 Q: Okay.

2 A: Construction, equipment, land, and
3 architecture, financing.

4 Q: If we look at the breakdown under number 11,
5 which gives us the cost, how much is the land
6 going to cost if purchased?

7 A: That would cost us approximately \$3.2 million
8 is the estimate.

9 Q: And what is the proposed architectural fee?

10 A: Four million.

11 Q: So the architectural fee alone would be more
12 than an outpatient center?

13 A: Correct.

14 Q: The construction cost is how much?

15 A: Construction is the bulk of that 115 million.
16 That would be estimated at 57 million.

17 Q: What's the equipment cost?

18 A: Twenty-seven.

19 Q: Twenty-seven million dollars for this proposed
20 hospital. Would you describe a 50-bed hospital
21 as large or small?

22 A: Small.

23 Q: If we're talking about critical mass, is 50 bed
24 the minimum that you would use?

25 A: I would think so. To provide any level of

1 service that's different than a freestanding
2 emergency department, which is kind of one step
3 below a hospital, I think you need 50 beds.

4 Q: Looking at equipment costs, and that -- would
5 you consider that to be a significant amount of
6 money?

7 A: Yes. Yes. Certainly it's needed to equip a
8 hospital of that size. Unfortunately, whether
9 it's a 100-bed hospital or a 50-bed hospital or
10 a 200-bed hospital, you still need to start
11 with a CT scanner and you need an MRI so that
12 you can diagnosis important disease states,
13 like stroke. So it does get expensive, but you
14 need a minimum level of equipment to start to
15 provide that level of care that you need.

16 Q: Those are just basic pieces of equipment?

17 A: Yes.

18 Q: Okay. You mentioned an MRI. Explain to the
19 Court what an MRI is.

20 A: MRI is a diagnostic tool that the radiologists
21 use. It's similar to a CT. Your patients are
22 placed in a tube, basically, and there's a
23 level of imaging that picks up soft tissue
24 better than typical x-ray and fluoro so that
25 they can look at other organs differently and

1 more specifically than CT. So most notably
2 with stroke, sometimes things won't show up on
3 CT, but they will show up with MRI. So you
4 really need both.

5 Q: Prior to having MRI as a technology, was CT the
6 latest and greatest technology in imaging?

7 A: I would think so, yes.

8 Q: Okay.

9 A: It was the most advanced.

10 Q: And CT is a radiological-based imaging?

11 A: Yes.

12 Q: What does MRI stand for?

13 A: Magnetic resonance imaging.

14 Q: And just in the time that you've been involved
15 in healthcare, since the early '90s, what's
16 been the evolution of, let's just take the MRI
17 technology; how has it evolved in the
18 marketplace?

19 A: Well, the strength of the MRIs have grown
20 significantly. There's a magnet, and I'm not
21 going to get too technical because I can't, but
22 the size and the strength of the magnet help
23 the image quality. So the higher the magnet
24 strength, the higher the image quality and the
25 speed of the machine. Nobody likes to stay in

1 the machine for too long because it can be
2 quite noisy and uncomfortable and if you're
3 claustrophobic it's very difficult. So speed
4 of the image is important as well as the
5 quality. Now instead of one Tesla magnets, now
6 they have three Tesla magnets that are somewhat
7 common and most hospitals have maybe a 1.5
8 Tesla magnet.

9 **THE COURT:** Tesla is a unit of measure?

10 A: Yes, it's a unit of -- it's the size of a
11 magnet basically.

12 Q: Is it fair to say that the size of that magnet
13 enhances the image?

14 A: Yes.

15 Q: So the bigger the magnet, the better the image?

16 A: Right.

17 Q: Let's talk about the cost of technology. When
18 we look at this equipment, you just talked
19 about, you know, in the beginning there were
20 1.0 Teslas and now there are 3.0 Teslas. Can
21 you buy an MRI and run it for 20 years?

22 A: No. No, I mean, you know, technology is moving
23 so quickly and the need for more specificity
24 and the availability of more specificity with
25 this imaging equipment is there. So your

1 physicians and you as an operator, you really
2 want to chase that technology almost as quickly
3 as you can financially. So, you know, less
4 than one Tesla magnets that you see in some
5 outpatient imaging centers not run by hospitals
6 are really fairly poor in quality. Your
7 physicians are saying I can't -- this doesn't
8 even compare to what I need to see from a 1.5
9 Tesla.

10 Q: Unless they have it in their own office?

11 A: Correct.

12 Q: Let's look at that notion of that constantly
13 evolving technology. Does that actually make
14 some of your equipment obsolete, become
15 obsolete?

16 A: Yeah. I think, you know, keeping an MRI for
17 more than ten years over the last ten years is
18 rare. CT scanners, if you're not upgrading
19 them every couple of years, maybe not with a
20 new chassis, but with new software or with new
21 add-ons, you're pretty well behind. You're not
22 doing your patients a service.

23 Q: And again, just ballpark, but in your
24 experience, if you're trying to upgrade an MRI
25 and go to a 3.0 Tesla, which is the latest and

1 greatest, how much does that cost?

2 A: You know, I don't know. I haven't priced a
3 three Tesla magnet. We don't have one at
4 Trident Health System. We have 1.5. I think
5 there's only a couple of threes in the
6 Charleston area, so I -- Mr. Summer, I'd be
7 guessing.

8 Q: Is it more expensive than a 1.5?

9 A: Yeah. I believe it's double.

10 Q: Okay. And what does a 1.5 cost you on average?

11 A: I think you can find some for around a million
12 dollars.

13 Q: Okay.

14 A: Give or take.

15 Q: So at least some of the kind of -- we've just
16 been talking about MRI, but are these some of
17 the kind of costs that drive that equipment
18 number to be \$27 million?

19 A: Yeah, those are the big ticket items. I mean,
20 you just multiply 50 beds times -- the little
21 beds that you need in each of the rooms, you're
22 getting to a big price tag. But the biggest
23 price tag items are the imaging equipment and
24 the operating room equipment.

25 Q: On an ongoing basis, year after year, do you

1 have to replace equipment?

2 A: Absolutely. Trident Health System will replace
3 almost, on average about a million dollars
4 worth of equipment a year, whether it be beds
5 or operating room equipment.

6 Q: While we were just talking about the latest and
7 greatest in technology, what's a PET?

8 A: PET scanning is very important for your
9 oncology patients, your cancer patients, for
10 determining location and size and presence of
11 a tumor.

12 Q: Let's go back now to the CON application and
13 you're now coming onsite. We've talked about
14 some of your challenges of late fall or early
15 winter of 2008. What did you view your
16 responsibility and how did you handle
17 advocating for this certificate of need
18 project?

19 A: Well, I viewed my responsibility first and
20 foremost was to understand it, understand the
21 market better and understand the need and
22 justification for this expensive project. Did
23 that obviously through talking with HCA
24 executives, as well as the leadership at the
25 hospital, board of trustees, clinical staff,

1 community members in the upper Berkeley County
2 area.

3 Q: Would you say that you devoted a lot of time to
4 that education process for yourself?

5 A: I would. I would. I mean really over the last
6 three years this has been -- in my tenure in
7 the last three years here in Charleston, this
8 has been one of the top activities that I've
9 been engaged in is, you know, not only
10 understanding it, which obviously I do at this
11 point, I think I understand the driving need
12 and the important need for a hospital in rural
13 Berkeley County, but also, you know, advocating
14 for it and moving the project forward.

15 Q: About six months after you got to South
16 Carolina there was a project review here on
17 this application; do you recall that?

18 A: Yes.

19 Q: Did you participate in that hearing?

20 A: Yes. I opened the presentation with a
21 description of our project and the need and
22 then Mr. Baehr closed the presentation for us.

23 Q: We've heard a lot of -- heard a lot of
24 references to Mr. Baehr's name. But who is Mr.
25 Baehr?

1 A: Mr. Baehr is an outside professional
2 consultant, a planner, healthcare planner that
3 we hired to help us put together the
4 certificate of need document and provide
5 estimates and projections since that time.

6 Q: And have you found his expertise helpful?

7 A: Absolutely.

8 Q: Have you relied upon that expertise?

9 A: I have. We have.

10 Q: Let's talk about project review, the actual
11 hearing. Could you just describe for the Court
12 your understanding, since you participated in
13 it, what that hearing was for and how it was
14 conducted.

15 A: It was -- my understanding of the purpose of
16 the hearing was it was an opportunity for the
17 CON and DHEC staff to hear our project. After
18 receiving countless documents and reviewing
19 that, I felt like they -- that they used the
20 hearing as an opportunity to learn a little bit
21 more, maybe what's between the pages as opposed
22 to what's on the pages. And Roper was also at
23 the hearing presenting their project, which I
24 -- you know --

25 Q: All right. Now we're going -- we're going to

1 fast forward to that large binder that you're
2 in and we're actually going to use the screen.
3 We're going to go to page 754. And I want to
4 get you to identify the pages that you
5 presented to DHEC. Tell me if you can identify
6 what appears on page 754.

7 A: At 754, that was the title slide of our
8 presentation made that day.

9 Q: All right. And what would you have presented
10 through in terms of this project?

11 A: Up to, not including page 70 -- 770.

12 Q: Okay. That's where Mr. Baehr's took over?

13 A: So, 769 is where I stopped and Mr. Baehr took
14 over.

15 MR. SUMMER: Okay. And with counsel's permission,
16 because of the fact that what we had in terms
17 of the record was not in color and not very
18 legible based on our experience of yesterday,
19 we've got the original on the screen. Do you
20 have a problem with us utilizing that for ease
21 of reference?

22 MR. LONG: I don't think so but --

23 MR. SUMMER: It's identical.

24 MR. LONG: I'm sure it is. It doesn't have the
25 pages, does it?

1 MR. SUMMER: No, but I don't mind as we go through
2 it, I will recite each page, and if I mess up,
3 you can tell me.

4 MR. LONG: That's fine.

5 MR. SUMMER: All right. Thanks.

6 Q: All right. Then let's start in Joint Exhibit
7 Number 1, let's start with page 754. That's
8 what's on the screen right now?

9 A: Yes.

10 Q: Okay. There we go. Now we're going over to
11 page 755, and would you please explain to the
12 Court what this is.

13 A: Well, in this kind of opening -- we tried to
14 provide, I tried to provide just a general
15 description of what we were wanting to offer in
16 Moncks Corner in terms of a hospital. So
17 expanding our presence there to include a 50-
18 bed hospital obviously, and then all the
19 services listed there on the right-hand side,
20 everything from imaging to pharmacy and lab
21 services.

22 MR. LONG: Your Honor, can I just state an aside
23 here, in all of these cases in which we go
24 through these project review presentations, I
25 just want to state for the record just kind of

1 a general objection or explanation. I think
2 the PowerPoint is part of the application; it's
3 what the Department considered, and I think
4 it's rightfully admitted in evidence. There is
5 more than like -- I'm sure there's hearsay
6 information in there and other factual
7 information. If it's based on hearsay or
8 information that is, it should not be taken for
9 the truth of the matter asserted because it's
10 in the PowerPoint.

11 **MR. SUMMER:** You know I --

12 **MR. LONG:** I mean if I'm saying that clearly --

13 **MR. SUMMER:** I've made the same objection, as well
14 as some of our other able adversaries have made
15 that objection, and what I'm willing to do is
16 to stipulate -- I think it's informative for
17 the Court for him to go through what he went
18 through with DHEC. We're only offering this
19 for the purpose of showing what was presented
20 to the Department. So to the extent that there
21 may be a newspaper clipping or something like
22 that, it was presented to the Department, but
23 we're not offering it for the truth of the
24 matter asserted.

25 **THE COURT:** I understand.

1 MR. LONG: Okay. And that would of course work for
2 ours.

3 MR. SUMMER: Right. And I'm comfortable with that,
4 Your Honor.

5 THE COURT: What was your last comment, Mr. Long?

6 MR. LONG: I said that would of course apply to ours
7 also.

8 THE COURT: Yes.

9 Q: When we look at this elevation for the hospital
10 and you said the services are listed over here
11 on the right-hand side, how does this compare
12 with what services Roper is going to provide?

13 A: I think it's identical.

14 Q: Do you view these hospitals as being very
15 similar in the services that they'll provide?

16 A: Very similar, yeah, almost to a T.

17 Q: Okay. This might be a good time to talk about
18 duplication in health planning. What does
19 duplication mean to you from a health planning
20 perspective?

21 A: Redundant.

22 Q: Redundant.

23 A: Extra, already there. You know, it becomes a
24 challenge to provide that critical mass that we
25 just talked about when you have that type of

1 redundancy. I certainly would make the
2 argument that it's -- it's not good for
3 patients from a quality standpoint. I want my
4 staff and my physicians to be as educated and
5 competent as they can be, and sometimes
6 duplication doesn't allow you to provide the
7 repetition in some of the precise procedures
8 that we perform in hospitals. So that
9 duplication can hurt quality.

10 Q: As a hospital administrator, which you've been
11 doing your whole career, all other things being
12 equal, if you have two identical hospitals in
13 the same community or area, what effect does
14 that have by dividing the patient population?
15 What effect does that have on, for instance,
16 average daily census?

17 A: Well, it splits it. It could split it in half.
18 We certainly see it now in Mount Pleasant where
19 we have a new hospital introduced there in that
20 market.

21 MR. LONG: Objection, Your Honor. He's going to
22 have to lay some foundation before he goes into
23 Mount Pleasant. He doesn't have -- he doesn't
24 work there. He doesn't have any background
25 dealing with those hospitals.

1 MR. SUMMER: Your Honor, I'll tell you, we can lay
2 foundation for that probably a little more
3 later on in the testimony, so I can rephrase
4 the question and direct the witness to use his
5 examples without making reference to Mount
6 Pleasant for now.

7 THE COURT: All right. The question is withdrawn
8 and Mr. Summer is starting over.

9 Q: Now, let's just talk from a conceptual basis.
10 If you had 40 patients in there now, divide
11 them between two hospitals, 20 and 20, as an
12 administrator, what effect does that have on
13 your ability to administrate your hospital?

14 A: Well, it just creates significant challenges.
15 I guess I would liken it to a -- to a
16 manufacturing plant that automatically or
17 suddenly has their demand for their services
18 cut in half, and just all the changes that
19 would need to occur within a hospital if that
20 were to occur is very significant. We're
21 talking about needing less staff, perhaps
22 needing less services because we can't maintain
23 our services. I've had to close services that
24 didn't have sufficient demand for them in a
25 community, and it's not something that is taken

1 lightly. It's not something that is often good
2 for patients immediately. But I think it's
3 better to close a certain service that is low
4 volume than to try and limp along and not
5 provide it to its fullest extent. So that's
6 what happens when you do have duplication.

7 Q: When we look at unnecessary duplication, as a
8 hospital administrator, what effect does that
9 have on you and your ability to recruit and
10 retain staff?

11 A: Well, it -- you know, nationwide we are seeing
12 a shortage of healthcare personnel, a nursing
13 shortage. It has gotten a little bit better.
14 In Charleston we've been -- at least at Trident
15 we've been, I would say on the lucky end of
16 that trend where we have had enough nursing
17 staff over the last three years to provide
18 quality service. But -- but you introduce a
19 new -- a new hospital in the area and then
20 suddenly you are competing for those nursing
21 positions, for those other hospital positions
22 in a greater way and it can create some
23 immediate challenges, like hiring contract or
24 agency nurses is one potential solution a lot
25 of hospitals use. And we don't like to use it.

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RECORD 000776

1 I don't like to use it. These are nursing
2 staff that you hire from other states,
3 typically, that will sign a 13 week contract
4 with you. They don't know your medical staff
5 or what you're about or what you're trying to
6 accomplish. And I think contract or agency
7 staff can be one of the biggest challenges for
8 patient satisfaction and quality in a hospital.

9 Q: Let's continue to go through your presentation
10 to DHEC. And next we're going to go in the
11 record to page 756 of Joint Exhibit 1. If you
12 would, just share with the Court what you
13 shared with the Department.

14 A: When you look back 40 years and we have a long
15 history at Trident with working with the north
16 area of Charleston, is kind of what we call it.
17 And there was a tri-county region planing
18 counsel that met back in the early '70s to
19 determine what they needed to do for the future
20 of health services. And this planning counsel
21 didn't have any members of Trident Health
22 System on it. It was mainly community members,
23 governmental members on that group. And they
24 -- they made the decision, difficult decision
25 to close down Dorchester and Berkeley County

1 Hospitals if someone would come and build a
2 hospital in between.

3 Q: Okay. And who was that someone who came to
4 build a hospital?

5 A: HCA was the chosen company to build that
6 hospital.

7 Q: Okay. We move on in the record to page 757.
8 And what's your understanding historically
9 about what transpired between '72 and '75?

10 A: During that time, and this slide indicates they
11 chose to move forward with HCA and closing the
12 Berkeley and Dorchester Hospitals, and HCA
13 would build a 200-bed full service hospital in
14 the North Trident area of Charleston, which was
15 almost right in between Berkeley and Dorchester
16 Counties on that line of those three counties
17 really.

18 Q: Would you consider that a centralized location
19 for those counties?

20 A: Yes.

21 Q: Okay.

22 A: Yeah, I think where we sit at Trident Health
23 we're approximately -- I think yesterday they
24 talked about two miles, but I think we're about
25 one mile from the Berkeley County line and

1 about two or three miles from the Dorchester
2 line.

3 Q: Okay. If we go over now to page 758 of the
4 DHEC record, Joint 1. Let's talk a little bit
5 about your Trident Health System that was
6 established in 1975 and its 35 year history.

7 A: We opened Trident Medical Center in that
8 location, the green starred location in 1975.
9 And shortly around that time in downtown
10 Summerville and downtown Moncks Corner, those
11 two hospitals were closed. They were both run
12 by the counties that they sat in. So we
13 started our history there a little over 35, now
14 37 years ago.

15 Q: Okay. If you'll turn over next, this is a
16 slide I think I want to ask you a number of
17 questions about. But this is page 759 of Joint
18 1, and we've got three different columns there.
19 So if you would, just walk the court through
20 the evolution of your health system.

21 A: Yeah, I think it's important to note too that
22 -- before I kind of walk through the timeline
23 that in talking, myself talking with officials
24 that were around this decision back in Moncks
25 Corner and Summerville to close those

1 hospitals, they had relayed to me and the
 2 newspaper articles indicated that we had
 3 already -- always committed to going back to
 4 those communities to provide services. Not to
 5 -- just because they were closing the hospital
 6 didn't mean they wanted to abandon health
 7 services, but they wanted one hospital more
 8 centrally located that could provide more
 9 services than they were providing. So my
 10 understanding of that history was that we gave
 11 a commitment. So that was part of -- our
 12 mission has always been part, as you can see
 13 from the timeline, has always been part of our
 14 commitment, to fill that commitment, to go back
 15 to those communities. So if you look at just
 16 Dorchester County, it did take us a while, but
 17 in 1989, we went back and opened a freestanding
 18 ER and outpatient center at the site of our
 19 current hospital, turned that into a hospital
 20 a few years later. And of course, now we're
 21 looking to expand even further at that
 22 hospital. And then in Berkeley County, in 1983
 23 opening the outpatient diagnostic and rehab
 24 center in Moncks Corner, and then expanding to
 25 provide ER care in the late '90s, that time

1 frame, early 2000 time frame.

2 Q: Okay. If we look at your total daily
3 complement now at Trident, and again, this is
4 2009, a number doesn't come -- how many beds
5 are currently at Trident now?

6 A: Yeah, and it hasn't changed for several years.
7 We're at 296 beds.

8 Q: And Summerville now has its own hospital?

9 A: Yeah, that opened back in '93, so it's been in
10 existence for a number of years, and it's now
11 94 beds.

12 Q: And does Trident view that as fulfilling its
13 commitment to Summerville?

14 A: Absolutely. That's been a great hospital for
15 that community and absolutely helps to fulfill
16 our commitment we made to them.

17 Q: There was some reference yesterday to a 30-bed
18 application to add beds at Summerville. Are
19 you familiar with that CON?

20 A: Yes.

21 Q: Okay. Now, are you responsible for it?

22 A: I didn't put the CON together, but certainly as
23 CEO of Trident Health System, I would consider
24 myself responsible, engaged in that decision,
25 yes.

1 Q: So Summerville is not static; you're going to
2 add beds to it?

3 A: Right. Correct.

4 Q: And who handled that certificate of need
5 administratively and who was responsible for
6 that?

7 A: That was my CEO at Summerville Medical Center,
8 Lou Caputo.

9 Q: Lou Caputo. So Summerville has a separate CEO?

10 A: Yes.

11 Q: And who does he report to?

12 A: Myself.

13 Q: This might be a good juncture to talk a little
14 bit about your job description in terms of what
15 your job responsibilities are as it relates to
16 all of these different facilities. Are you --
17 explain if for the Court, I guess is what I'm
18 trying to get you to do.

19 A: Well, certainly as president and CEO of Trident
20 Health, I feel like I have and do have
21 responsibility for all three of our facilities
22 providing quality care, making sure that
23 they're resourced appropriately, making sure
24 that we have a strategic direction that will
25 fulfill the communities needs in our area and

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THE COURT: Excuse me just a second.

(Off the Record)

THE COURT: Proceed, I'm sorry.

Q: I think you'd finished your answer.

A: Yeah, I think that describes in general fashion my responsibilities.

Q: And then on the Berkeley County side, it looks like in 1999, what did you do there with the facility up there?

A: We -- I believe we were only the second provider in the state, if I'm not mistaken, to provide a freestanding emergency department in Moncks Corner. We opened a 24 hour, seven, 365 day a week freestanding emergency department staffed by emergency medicine trained physicians and staff. Basically, Judge, it's an emergency department without a hospital. So residents of that community and surrounding communities can come there for any type of healthcare need, typically emergency. But we do have patients that come there sometimes for primary care reasons as well, not just emergencies. But we actually have Charmaine Williams here in the back row who runs that

1 center very ably and they have, believe it or
2 not, done everything from deliver babies there
3 to provide immediate trauma care to gun shot
4 victims and, of course, lesser emergencies as
5 well. So it's a great service.

6 Q: And is that operated as part of your emergency
7 department at Trident?

8 A: Yes. We'll actually transfer approximately 80
9 patients a month from that center, from that
10 emergency department to Trident or Summerville
11 for either higher level emergency care or
12 patients that would be admitted into the
13 hospital.

14 Q: I'm assuming then that it's operated under
15 Trident's license; is that correct?

16 A: Yes. All three of our facilities are operated
17 under Trident's -- Trident's initial license.
18 We're licensed as kind of one organization, one
19 facility. Medicare sees us as one
20 organization.

21 Q: Okay.

22 A: Joint Commission as well.

23 Q: We might as well since we're talking about
24 regulation talk about Medicare. Can you
25 explain to the Court what CMS is?

1 A: CMS is the agency that runs Medicare, which is
2 the healthcare funding insurance mechanism for
3 seniors.

4 **THE COURT:** Is that the name or is that an acronym?

5 A: It's an acronym. Centers for --

6 **THE COURT:** Medicaid Services?

7 A: Medicare Services.

8 **THE COURT:** Medicare services.

9 A: Center for Medicare Services I believe is what
10 it is.

11 **MR. SUMMER:** And there's federal regulation, Your
12 Honor, for Medicaid that also rolls up into
13 that. So they have Medicaid oversight even
14 though Medicaid is partially state funded and
15 partially state operated program.

16 Q: And so you use a single, what we call, CMS
17 provider number then for all of these
18 facilities?

19 A: Correct.

20 Q: Okay. We're going to turn over now to -- I'm
21 going to back up because it looks like I
22 skipped a slide. In the record on page 760,
23 what does that depict?

24 A: That depicts a map of our region and the
25 locations of our three facilities within

1 Trident Health.

2 Q: All right. And let's look now in the record,
3 part of your presentation to DHEC, at page 761,
4 and just as you did to DHEC, explain what
5 Trident does for the community.

6 A: This is a list of all of the services, not an
7 exhaustive list, but a list of the services we
8 offer at each of our three facilities to our
9 patients, Trident Medical Center having the
10 more intensive and more services than the other
11 two facilities. But you can see we offer
12 everything from emergency care to outpatient
13 burn center care at our Trident facility. And
14 then at Summerville, very active emergency
15 department where we see approximately 130
16 patients a day. Very active in women's
17 services as well. In fact, the whole health
18 system will deliver approximately 3,000 babies
19 a year combined between Trident and
20 Summerville, and hopefully not, but the
21 occasional baby at Moncks Corner. It's not
22 designed.

23 Q: When we're looking at Trident Medical Center,
24 would you categorize that as a tertiary care
25 medical center?

1 A: I would.

2 Q: And then what kind of facility would you
3 characterize Summerville as?

4 A: A primary, general, acute care hospital.

5 Q: What we referred to earlier as a community
6 hospital?

7 A: Right.

8 Q: I noticed that you've got DiVinci robots at
9 Trident Medical Center. What is a DiVinci
10 robot?

11 A: DiVinci robot is a tool surgeons use to assist
12 them in certain types of procedures. Literally
13 it's a console similar to where I'm sitting
14 here where a surgeon would look through a very
15 good lens to look at the images, the camera
16 images from the patient that may be sitting
17 across the room where this robot is used to --
18 not only does the robot have cameras attached
19 to it that are inside the patient, but also has
20 surgical instruments attached to it where a
21 surgeon over here can actually control the
22 robotic motions. And actually, it's all done
23 laparoscopically, so these incisions are very
24 small and the robot can be a lot more precise
25 than the human hand. What we're seeing is

1 actually a reduction in blood loss for these
2 patients, as well as a reduction in time that
3 they spend in the hospital. If these
4 procedures are done without the robot, they're
5 staying almost twice as long, maybe two days
6 for a hysterectomy as opposed to one day for a
7 hysterectomy. And the results, the quality
8 results for prostatectomy are much better. So
9 we've seen that program grow at Trident and
10 across the nation. Performed actually about
11 700 robotically assisted surgeries last year at
12 Trident.

13 Q: I heard one surgeon refer to it as X-box
14 surgery.

15 A: Yeah.

16 Q: Is that an accurate analogy?

17 A: It is. It is. Very good. Very good
18 visualization for the surgeons. A very
19 comfortable operating room or operating
20 environment. They're sitting down in front of
21 this console. They do have an assisting
22 surgeon at the bedside. But it's very
23 impressive technology.

24 Q: I'm just guessing, but I would imagine that
25 this costs money?

- 1 A: 1.6 million dollars.
- 2 Q: For one robot?
- 3 A: For one robot. We have two.
- 4 Q: So you paid \$3.2 million for two robots that
- 5 actually reduced your hospital utilization?
- 6 A: Right.
- 7 Q: So you spent money to lose patient days?
- 8 A: Yeah, and in some respects we've lost
- 9 reimbursement. It's been interesting. A lot
- 10 of hospitals have seen this like ours, but
- 11 these patients that typically would come in for
- 12 a hysterectomy that would stay a couple of
- 13 nights in the hospital, you would typically
- 14 generate more charges and be paid more by the
- 15 insurance companies than now. Of course, they
- 16 would have less costs now because they're not
- 17 staying as long, but reimbursement is usually
- 18 cut in half for these type of procedures. We
- 19 don't really receive more reimbursement for
- 20 greater technology, which is interesting.
- 21 Q: But it does have -- you indicated that you've
- 22 done 700 surgeries, but those surgeries are
- 23 resulting in less patient days, right?
- 24 A: Right.
- 25 Q: Which at least in some circumstances would mean

1 less reimbursement?

2 A: Always. Less reimbursement, yes.

3 Q: Well, why would you pay \$3.2 million for
4 something that's going to make you less money?

5 A: Well, I think two reasons. I think -- I think,
6 you know, the surgeons have shown us and the
7 research has shown us it's better for patients.
8 So definitely from a patient care perspective
9 we would all now want that if we were a
10 patient. So it makes sense. And then also,
11 you know, there is -- some discussion yesterday
12 about halo effect. I think there is a belief
13 that if you offer the most technologically
14 advanced equipment and procedures in your
15 hospital that you will see more patients, that
16 more patients will be more attracted to that
17 technology and those results. We've seen that.
18 So we've performed more hysterectomies, more
19 prostatectomies than we had in prior years.
20 More patients are coming to us.

21 Q: What's average daily census; what does that
22 mean, ADC?

23 A: The average number of patients that are housed
24 in your hospital overnight, inpatients. So
25 it's a count of the number of patients. It's

1 probably the most significant measure of how
2 busy your hospital is.

3 Q: Finishing up on this slide, which is 761, the
4 circle is your proposed hospital?

5 A: Yes.

6 Q: And do you view that, or does Trident view that
7 as fulfilling its commitment to Moncks Corner?

8 A: Yes. Yes, I think that completes the circle,
9 if you will, of bringing back a hospital to
10 Moncks Corner, just like we committed to
11 bringing back a hospital to Dorchester County,
12 we did. I think that fulfills -- that would
13 allow us to fulfill that commitment.

14 Q: You also explained to DHEC several of your
15 certifications or accolades. You want to run
16 through those on page 762 with the Court.

17 A: Yeah, there's some national agencies that will
18 certify quality. Joint Commission is probably
19 the most known. They not only survey hospitals
20 every three years, but they also will provide
21 mechanisms for disease specific certifications
22 so you can follow some algorithms within the
23 Joint Commission to meet the need for disease
24 specific certifications. We've done that in
25 hip and total knee since this time. We've also

1 done this in carpal tunnel surgery and our
2 surgery center, as well as congestive heart
3 failure, and another agency has certified our
4 chest pain center for heart attack care. So
5 we're proud of those certifications. You know,
6 it's not only been somewhat of a -- gives us
7 some marketing ability, but more importantly,
8 we've seen it improve results. Patients are
9 staying less -- less time in the hospital for
10 their hip and knee replacements and they're
11 seeing better results. So it's a collaboration
12 with the Joint Commission, our surgeons, and
13 our staff at the hospital to improve what we
14 do.

15 Q: You had mentioned earlier that you had various
16 challenges in accepting this job back in 2008
17 regarding things like medical staff and nursing
18 and nursing attrition and some other things
19 that you mentioned. How do you feel you've
20 progressed in meeting those challenges?

21 A: I think well. I think well. I mean, there's
22 always work to be done. I feel like the work
23 we've done to restore some needed specialties
24 within the hospital, as well as the work on the
25 quality side with these certifications and

1 working through the Joint Commission
2 shortcomings that we had, I think we -- we're
3 much more solid for our patients today.

4 Q: If you will, let's turn over now to for profit
5 equals for the community. Again, this is Joint
6 1, page 763. If don't mind, share with his
7 Honor what you shared with DHEC at project
8 review.

9 A: Well, I don't know exactly what I said to DHEC
10 obviously on these slides, but I will go back
11 to a misconception that for-profit hospitals
12 don't provide a great service to the community,
13 not only in terms of the care that they
14 provide, but also in terms of the tax support
15 that it provides the community. We have mayors
16 like Mayor Summey in North Charleston that is
17 very happy that we're either number one or
18 number two on his tax roles each year. And we
19 feel like we're helping to buy school buses and
20 provide needed revenues for the communities
21 we're in to a really significant extent. I
22 mean, \$12 million in state and federal taxes
23 paid in 2008 is a hard check to write, but it's
24 -- but it's one that we feel is necessary to
25 support our communities. And then looking down

1 past the lower portion of that chart, we tried
2 to give an idea of what free care, if you will,
3 we provide patients that either don't have
4 insurance or are underinsured and can't pay
5 their bills oftentimes end up either in bad
6 debt or the charity line. And that's, as you
7 can see, 6.6 percent of our patient revenues
8 end up as bad debt, about two percent is
9 charity.

10 Q: Later on we're going to quantify that in terms
11 of dollars and what it really costs you to do
12 that. This outside column for RSFH System,
13 what is that?

14 A: I guess it's 15 million in total taxes. I was
15 looking at the state and federal only. But
16 it's a comparison of -- to the far right-hand
17 column that shows Roper St. Francis' system,
18 our data on the taxes that they pay as a non-
19 tax paying hospital. I don't like to call
20 those type of hospitals nonprofits because
21 they're not nonprofit; they're non-tax paying.
22 They don't have an obligation to pay taxes so
23 -- they do have an obligation to provide
24 charity care and free care to a greater extent
25 to make up for that nonprofit, non-tax paying

1 status. And as you can see, we actually
2 provided more in terms of percentages bad debt
3 and charity combined than Roper did in 2008.

4 Q: There's another interesting line there in the
5 comparison is the net revenue per patient day.
6 In a little while we're going to talk a little
7 bit about the nuances of healthcare accounting,
8 but can you just give a layman's explanation
9 for what the concept "net revenue" is?

10 A: Net revenue is the cash that you take in for
11 each patient or for in total for the hospital.
12 It's the actual payment for services. So it's
13 not the charge, but it is the payment from
14 insurance companies, as well as from patients.
15 It's that combined amount to make up that
16 revenue.

17 Q: And so --

18 **THE COURT:** Excuse me. Net to me means after
19 expenses, and what I'm hearing from you, that's
20 not the case here.

21 A: Yeah. Net in this case is after deductions
22 from insurance companies. So Medicare as well
23 as other insurance companies will take -- not
24 pay full charges. We start with full charges,
25 which is gross revenue. Then we have our

1 discounts to our insurance companies; then we
2 have our net revenue.

3 **THE COURT:** And your other expenses are yet to come
4 out of that?

5 A: Right. Then we work on the other expenses
6 below that line of revenue.

7 **MR. SUMMER:** Your Honor, with the Court's
8 indulgence, this is going to be I think more
9 instructive for the Court.

10 Q: Let's go back the paper and let's go to page
11 643, if you don't mind, of Joint 1, 643, so
12 that we can explain to the Court some of these
13 nuances of healthcare accounting.

14 A: I'm definitely going to need glasses soon.

15 Q: Well, these are tiny lines. But I don't want
16 to go through all these numbers. What I want
17 to do is have you walk us through, starting at
18 the top, let's -- let's put this thing down and
19 look at what exactly are these adjustments that
20 have to be made. And having had to do this for
21 a bank before, it's not what we refer to as
22 normal accounting, is it?

23 A: No, but this is normal for me, I guess. This
24 is my normal accounting.

25 Q: Let's start with, first of all, what is this

1 document? It's in the DHEC record, Joint 1 at
2 page 643. But what is this document?

3 A: Financial projections for Trident Health System
4 for the entire system starting with a
5 projection of 2008 that year end might have
6 looked like, and then going out through 2016.

7 Q: So since we've already established through
8 prior testimony this application was filed on
9 August 13, 2008, would you refer to this as a
10 pro forma?

11 A: I think the pro forma is a project document to
12 justify a project, but I would see this as a
13 projected financial statement.

14 Q: Okay. Projected financial statement. Let's
15 start at the top with revenues, and there's a
16 number up there for inpatient revenue of
17 \$811,920,640. Now, as the CEO of Trident
18 Health System, did Trident receive over \$811
19 million in cash in 2008?

20 A: No, absolutely not. I mean, that's a gross
21 revenue. That's a charge number.

22 Q: Well, let's kind of continue the basic lesson.
23 That's the inpatient revenue, gross charge
24 projection, right?

25 A: Right.

1 Q: Okay. Then there's also a projection for
2 something called outpatient ancillary. What's
3 included in that \$462 million -- \$426 million
4 projection?

5 A: Any patient that would come in for any
6 outpatient service, whether it be an ER visit
7 or an outpatient imaging procedure or lab
8 procedure would be charged a certain amount.
9 It's a collection of all those projected
10 charges.

11 Q: Outpatient surgery as well?

12 A: Yes.

13 Q: Okay. So those folks didn't spend the night?

14 A: Right.

15 Q: Then you come up with something that's total
16 patient revenue, which is the two numbers
17 combined?

18 A: Correct.

19 Q: Other operating income, what other kind of
20 operating income can you have?

21 A: Most likely that's everything from cafeteria
22 revenue to investment, joint ventures that we
23 might have. It's a combination of any non-
24 direct patient service revenue.

25 Q: It's other stuff?

1 A: Other stuff.

2 Q: And then we have a total revenues of over \$1.2
3 million, right?

4 A: Right.

5 Q: Again, did you receive that total amount of
6 cash in 2008?

7 A: No.

8 Q: Now, start walking us through the deductions.
9 If there's a gross charge and there's a
10 deduction from it, explain to the Court, let's
11 start first with Medicare. How does that work?

12 A: Yeah, I mean hospitals have, at least in our
13 situation, we have five major payer sources.
14 We could be paid by Medicare, which is senior
15 care for patients over 65; Medicaid, which is
16 the state run program for poorer patients, if
17 you will; Champus, which is the military
18 insurance plan; and then HMO, PPOs which is
19 your -- typically your commercial insurance,
20 those people that are employed and their
21 employer provides them some sponsored plan
22 perhaps; and then charity, those patients that
23 don't have any insurance. So Medicare is the
24 bulk of the patients that we treat in hospitals
25 still, roughly 50 percent. And this \$411

1 million represents what we wrote off. We
2 accept a government fee schedule from Medicare,
3 and they pay roughly, you know, 50 percent or
4 so of what our hospital charges.

5 Q: Let's use an MRI, for example, and you have a
6 gross charge of \$1,000 for an MRI. How much
7 would Medicare pay?

8 A: Typically between 300 and \$500.

9 Q: All right. So the cash, the actual cash that
10 you realize that comes in the door is at least
11 50 percent less than your average -- or your
12 stated charge?

13 A: Right.

14 Q: Let's do the same thing for Medicaid. And
15 qualitatively you've talked to us about
16 Medicare being 50 percent. Qualitatively, what
17 kind of payer is Medicaid?

18 A: You know, next to probably no insurance,
19 Medicaid provides the most limited
20 reimbursement, certainly in our state, of any
21 of the other payers. So, you know, we'll
22 receive maybe 20 cents on the dollar for a
23 Medicaid patient, where Medicare it might be 50
24 -- 50 cents on the dollar.

25 Q: Okay. Champus. Let's talk about Champus, and

1 qualitatively how is Champus as a reimbursor of
2 fees?

3 A: Fairly similar to Medicare. They run off of a
4 similar fee schedule.

5 Q: That's about 50 percent of stated charges?

6 A: Yes.

7 Q: Okay. HMO/PPO discounts, what is -- first of
8 all, what's an HMO?

9 A: Health maintenance organization.

10 Q: Okay. What's a PPO?

11 A: Preferred Provider Organization.

12 Q: And what are these entities? How do you --

13 A: They are private insurance companies. Blue
14 Cross is the best example in the state of South
15 Carolina, providing insurance for individuals
16 that would -- maybe wouldn't qualify for
17 Medicaid or Medicare. It's a typical employed
18 individual.

19 Q: I think it would be good from a historical
20 context, but also from what you have to live
21 with on a daily basis with payers, do you see
22 indemnity policies anymore?

23 A: No. I guess when I think of indemnity policies
24 I think of those insurance companies that pay
25 you a percent of charges, maybe 90, 95, 100

1 percent of charges. We just don't see those.
2 I mean it's -- it's probably one or two percent
3 of our payers right now are in that category.

4 Q: So most insurance companies are now writing
5 products that are either HMO or PPOs?

6 A: Right.

7 Q: And do we refer to that as managed care?

8 A: Yes.

9 Q: Explain to the Court how managed care works.
10 How do you as a hospital contract for that
11 managed care?

12 A: When we work out a contract for say Blue Cross
13 Blue Shield for the care of their enrollees --
14 **THE COURT:** Is Blue Cross Blue Shield an HMO or a
15 PPO?

16 A: They have both an HMO and a PPO plan, I
17 believe. They have a Medicaid HMO, actually.
18 And we'll have different contracts with them
19 depending on the type of plan that they have,
20 sometimes two or three contracts. And those
21 are usually negotiated every couple of years.
22 And we use those contracts to set rates between
23 us and Blue Cross, the amount we'll charge --
24 we'll accept. We'll still charge them full
25 rate, but we will accept less. Typically it's,

1 I mean, it's -- it's a generalization because
2 it depends on the contract, but it's a
3 significant discount off of the charges, put it
4 that way.

5 Q: Is it better than Medicare?

6 A: Yeah. Typically better than Medicare.

7 Q: So would you say that your HMO/PPO products and
8 your HMO/PPO contracts are your best payers?

9 A: Yes.

10 Q: Okay.

11 A: And then Medicare is next and TriCare and then
12 Medicaid.

13 Q: Last?

14 A: Kind of -- yeah, last.

15 Q: When you say TriCare, is that part of Champus?

16 A: Champus. Military healthcare.

17 Q: Okay. Let's talk a little bit about --

18 A: Going back, I think Medicare is probably less
19 than 50 percent of our charges currently.

20 Q: And of course, part of Obamacare was giving up
21 \$100 billion in Medicare reimbursement, wasn't
22 it?

23 A: Correct.

24 Q: Okay. So you don't expect to see Medicare
25 reimbursement increasing in the future, do you?

1 A: No. No, I think those future increases, at
2 least for the time being, have been offset to
3 pay for the changes in healthcare.

4 Q: I want to try to help the Court understand how
5 your managed care contracts work. If for
6 instance, you know, my company has -- offers
7 Blue Cross HMO Blue, that's a Blue product, HMO
8 Blue, and I have -- I'm a participant in the
9 HMO Blue network, when I present to your
10 hospital to have my gallbladder taken out and
11 you send me a bill for, let's say, \$5,000, how
12 does your contract with HMO Blue work? Because
13 I came to you and got the service, but I showed
14 you my HMO Blue card. How do you then
15 negotiate payment among me and HMO Blue?

16 A: Well, we have -- we have an HMO Blue contract
17 that we would go by. So basically, we would be
18 accepting a certain payment level less than
19 full charges.

20 Q: And let's say it's \$3,000.

21 A: For that service, yeah.

22 Q: What if I have deductibles or co-pays; how do
23 they work?

24 A: You would pay those out of pocket. The patient
25 would pay those out of pocket, either at the

1 time of service or hopefully sometime shortly
2 thereafter. And then we would look to the
3 insurance company to collect the remaining,
4 say, \$3,000. The patient might pay \$500 and
5 we'd look to the insurance company to pay the
6 remaining 3,000 so that we'd be paid 3,500 for
7 maybe a \$5,000 surgery.

8 Q: When we look at some of your bad debt charges,
9 does that also include some co-pays and
10 deductibles you never were able to get?

11 A: Yeah. Yeah, it's not just your patients with
12 no insurance, but patients that have insurance
13 that don't -- aren't able or don't meet their
14 financial obligations on deductibles or co-
15 pays.

16 Q: When we look at charity, what's the difference
17 between charity and bad debt? I see that
18 charity deduction right there from gross
19 revenue. What's the difference between charity
20 and bad debt?

21 A: For our purposes, not really much difference.
22 We don't make an important distinction between
23 the two, or at least I don't. Maybe a CFO
24 would. But charity patients, patients that
25 would fall under this 1.9 percent might be able

1 to meet some income thresholds, might qualify
2 for charity. It might allow us to negotiate
3 down the amount that they owe and perhaps, you
4 know, be able to write off, legitimately write
5 off the entire amount. But there's some tax
6 advantages for that, but really, I don't make
7 an important distinction between the two.

8 Q: But embedded in that there's a lot of people
9 who simply present with absolutely no means to
10 pay, right?

11 A: Yes.

12 Q: Might be a good time to talk about EMTALA just
13 briefly so His Honor has an idea about what
14 that requirement is for any hospital that
15 participates in Medicare or Medicaid. But
16 EMTALA, which I think -- well, first of all, if
17 can you tell me the acronym; that's the way
18 it's supposed to work. What is EMTALA?

19 A: It's federal legislation passed probably over
20 20 years ago, maybe close to 30 years ago now,
21 that regulated hospitals and provided
22 safeguards for patients in terms of emergency
23 care. So if a patient seeks emergency care
24 anywhere in the nation and comes and presents
25 to a hospital, that hospital is obligated by

1 law to take care of that patient regardless of
2 their ability to pay, and we're not allowed to
3 delay that treatment to discuss financial
4 arrangements.

5 Q: Can't even ask them, can you?

6 A: Right.

7 Q: All right. And EMTALA, I believe, stands for
8 Emergency Medical and Labor?

9 A: Yeah, Emergency Medical and Labor Treatment
10 Act. I'm butchering it, but it's been awhile
11 since I've seen it. But it did originate in,
12 as I understand it, some cases where patients
13 were in labor in the back of ambulances and
14 could not, the EMTs, paramedics could not
15 secure a hospital to accept those patients. So
16 it was brought about for some very good
17 reasons. Those patients needed to be cared for
18 and they needed to deliver a baby in a
19 hospital, not in the back of an ambulance.

20 Q: And in order for you to get Medicare and
21 Medicaid money, you have to comply with EMTALA,
22 right?

23 A: Right.

24 Q: It's a condition of your participation with
25 Medicare and Medicaid?

1 A: Correct.

2 Q: It might also -- because you used the world
3 contractals. Does your hospital have a
4 contract with CMS, with Medicare?

5 A: I guess you could see the conditions of
6 participation and their rate schedule as a
7 contract, yes.

8 Q: And in similar fashion, you do the same thing
9 with South Carolina Medicaid?

10 A: Yes.

11 Q: Okay.

12 A: Yeah, it's not a negotiated contract.

13 Q: It's a dictated contract?

14 A: It's handed to you, yes.

15 Q: Okay. While we're on here, we've already made
16 reference to decreases in Medicare
17 reimbursement as a result of Obamacare. What,
18 if any, decreases are you seeing in Medicaid
19 reimbursement from the State of South Carolina?

20 A: Well, 2011 was a very difficult year for
21 Medicaid reimbursement for hospitals. Most
22 hospitals took at least a seven percent decline
23 in what already has been historically our
24 lowest payer, so it has put some strains on us.
25 Seven percent, I believe for Trident was

1 between one and two million dollars in total
2 reimbursement declines for Medicaid.

3 Q: Eventually after we get all of these deductions
4 backed out on page 643 of Joint 1, you come
5 down to something called total net revenue,
6 correct?

7 A: Yes.

8 Q: And I think previously you testified that's the
9 cash that comes in the door?

10 A: Right.

11 Q: So all of this stuff above the line, above net
12 revenue, are really just contractual
13 adjustments, are they not?

14 A: Right.

15 Q: And the only cash that comes in the door, the
16 only reimbursement you receive is expressed on
17 that one line?

18 A: You know, it's a rough approximation of cash in
19 the door. There is -- obviously, bad debt is
20 an expense line item that we've -- we, in the
21 net revenue figure, we account for no bad debt.

22 Q: So --

23 A: So it's a little higher stated than what actual
24 cash comes in the door.

25 Q: We can look down below the line, we can look at

1 bad debt, that's 67 million, so we can back
2 that out of the 371, couldn't we?

3 A: Right.

4 Q: And that would probably give you a closer
5 picture to the cash you actually received,
6 would be about 309 million?

7 A: Yes.

8 Q: And we could have expressed bad debt above the
9 line as well. You could have included it with
10 charity care, couldn't you?

11 A: It has been above the line in the past at
12 times, too.

13 Q: So when we look at that total net revenue, then
14 you have to figure out what does it cost to run
15 your facility?

16 A: Yes.

17 Q: You know, we look at salary and wages, how much
18 were you projected to pay in salary and wages
19 in your system in 2008?

20 A: Ninety million.

21 Q: Ninety million dollars. How many employees
22 have you got?

23 A: We've got nearly 2,000 employees. About 1,700
24 full-time equivalents.

25 Q: And the rest are PRN?

1 A: Yeah.

2 Q: Okay. So would you say that -- I guess that is
3 your -- that's your largest expense?

4 A: It is.

5 Q: Okay. And if you don't mind, just kind of walk
6 though, what's contract labor? You may have
7 alluded to this earlier.

8 A: We talked a little bit about contract nursing.
9 Fortunately, we have not had any contract
10 nursing in our facility in the last couple
11 years. We did in 2008. So that would be any
12 positions that would not be full employees, but
13 might be contract employees. And that might be
14 a contract service. Typically, some hospitals
15 will contract out the food service department
16 and all those employees might be contract
17 labor.

18 Q: Okay.

19 A: And then just, you know, walking down
20 obviously, employee benefits and supplies is
21 our next largest expense item. Very expensive.
22 Any time you put medical next to the name of a
23 supply, it seems to go up in price. And then
24 contract services. We see a significant
25 expense in that line item, as well as bad debt.

1 Q: Let's talk a little bit about -- you know, I
2 was focusing so much on the salary and wages,
3 your total labor costs are far more than 90
4 million, though, aren't they?

5 A: Yeah, and if you include contract labor and
6 employee benefits, you're over 100 million,
7 110.

8 Q: Hundred and ten million dollars just to pay
9 your people every year?

10 A: Yes.

11 Q: Every year?

12 A: (Nods head affirmatively.)

13 Q: If we look down at your EBIT number, we've
14 heard Mr. Long refer to, you know, 90 million
15 and 70 million and these large EBIT numbers,
16 but that's not your income, is it?

17 A: No. No, that's not.

18 Q: Okay. If we look at your deductions, I'm
19 looking at your capital deductions, your
20 depreciation, interest expense, management fees
21 and those other things. Your pretax income was
22 projected in 2008 for how much?

23 A: Forty-four million.

24 Q: Okay.

25 THE COURT: Mr. Summer, if you defined the acronym

1 EBIT, I've missed it. What does that stand
2 for?

3 MR. SUMMER: It's right below expenses and it's a
4 boxed line if you see it.

5 THE COURT: I see it.

6 Q: Okay. And if I'm not -- well, I'll ask you,
7 what does EBIT stand for?

8 A: Earnings before depreciation, interest and
9 taxes.

10 Q: Actually, it's EBDIT, so I apologize.

11 A: EBDIT.

12 THE COURT: Thank you.

13 A: Sometimes it's referred to as operating
14 margin.

15 Q: Right. Your pretax income, again, was 44
16 million?

17 A: Yes.

18 Q: Okay. Not 72 million?

19 A: No.

20 Q: Okay. And those are real expenses, aren't
21 they?

22 A: Yes.

23 Q: Okay. Now, interesting, because if we take
24 that and look at it in conjunction with the
25 slide that we were on -- you talked earlier

1 about this page which was -- let me get this
2 right. I think it was page 763 of Joint 1, and
3 you said total in 2008, Trident spent \$15
4 million in state and local taxes, state and
5 federal local taxes; remember that number?

6 A: Yes.

7 Q: Fifteen million dollars when you add all those
8 taxes up. So your net income, if you were to
9 impute that tax that was actually paid to your
10 projection in 2008, would actually be \$29
11 million, wouldn't it?

12 A: Correct.

13 Q: It's not 72 million, is it?

14 A: No.

15 Q: It's not 92 million?

16 A: No.

17 Q: It's 29 million?

18 A: Yeah, bottom, ultimate bottom line for our
19 hospital is, after tax, after interest, after
20 depreciation.

21 Q: That's a true net income number?

22 A: Yeah.

23 Q: Do you equate net income with profit?

24 A: Yes.

25 MR. SUMMER: We'll come back to some of this later,

1 but I just thought, Your Honor, it would be
2 helpful to kind of go through these accounting
3 issues to get an understanding about this.

4 Q: So when we come back now to this slide and Your
5 Honor's question about net revenue and what it
6 meant, net revenue is the cash that you get;
7 correct?

8 A: Correct.

9 Q: And your net revenue number is \$1,200 less per
10 patient day than Roper?

11 A: Right.

12 Q: And they're supposed to be not-for-profit?

13 A: Right.

14 Q: And they don't pay taxes?

15 A: No.

16 Q: So it's \$1,200 less per day for a patient to be
17 in your hospital than in theirs?

18 A: Correct.

19 Q: All right. Let's get back into --

20 MR. SUMMER: Your Honor, if you want to take a quick
21 restroom break?

22 THE COURT: What's the hour?

23 MR. SUMMER: It's 11:30.

24 THE COURT: Let's take five minutes.

25 (Break from 11:24 a.m. until 11:34 a.m.)

1 Q: Back on the record, Mr. Gallati. Let's turn
2 now over to page 764 of Joint Exhibit Number 1,
3 and if you could explain to the Court as you
4 did to DHEC why Moncks Corner.

5 A: Well, Moncks Corner is centrally located, and
6 really it's a hub for northern Berkeley County.
7 It's the most populated area, town of northern
8 Berkeley County, in my opinion, and it -- if
9 you look at the areas to the north of Moncks
10 Corner, they're really void of any significant
11 health services. So the most need, significant
12 need for health services up in that area. And,
13 of course, we've been there for 25 years. We
14 always committed to going back there when they
15 closed their hospital back in the '70s. We
16 felt like Moncks Corner was the best place from
17 an accessibility standpoint for the less
18 populated underserved areas. When we talk
19 about underserved, we really are talking about
20 underserved. I've done a series of town hall
21 type meetings, most recently in northern
22 Berkeley County and areas like Cross where they
23 don't have consistent access to physicians.
24 They have a community health center there that,
25 my understanding is there's a physician there

1 a couple times a week and literally, that is
2 their health services, unless they drive a good
3 20 minutes, 30 minutes to Moncks Corner or an
4 hour to Trident Medical Center.

5 Q: This is probably a good time for us to talk
6 about this, even though I don't have the map
7 up. When we look at urban development from
8 North Charleston, Hanahan and up through Goose
9 Creek as it comes up that I-26 and Highway 52
10 corridor, talk for me as a hospital
11 administrator, what's the difference in that
12 kind of a patient population down in the
13 southern part of the county from what you have
14 experienced through your ED and in your town
15 meetings in the northern part of Berkeley
16 County?

17 A: Well, typically what we see around Trident and
18 Goose Creek and Summerville area, is that the
19 -- that the patients tend to be more insured,
20 if you will, with Medicare or private
21 insurance. And we see a little more in the way
22 of Medicaid and no insurance in the more rural
23 areas. There is a fair amount of Medicare
24 there, but in the rural areas you do tend to
25 see a little higher unemployment, which leads

1 to a little less commercial insurance, HMO/PPO
2 population.

3 Q: In his opening -- were you here for opening
4 statements that were made by the various
5 counsel?

6 A: Yes.

7 Q: Mr. Thomas referred to the Goose Creek area as
8 being more affluent than the northern part of
9 the county. Would you agree or disagree with
10 that characterization?

11 A: I would agree. I think the average household
12 income is higher in Goose Creek and in
13 Summerville than it is in Moncks Corner and
14 certainly more than Cross.

15 Q: As a hospital administrator, do you pay
16 attention to the payer mix that comes from
17 different communities?

18 A: Absolutely. You know, in general, we do try to
19 gear the services in certain communities to
20 what the community can afford and what they
21 will tend to utilize. So payer mix is
22 important.

23 Q: What's your experience in terms of patients'
24 ability to pay if they flow through that ED in
25 Moncks Corner?

1 A: Well, just one day this week, as an example, we
2 saw approximately 25 patients in our ED,
3 emergency department in Moncks Corner, and
4 about 35 percent of them did not have
5 insurance.

6 Q: Or Medicaid?

7 A: Or Medicaid. And that compares, you know, not
8 totally dissimilar to what we see throughout
9 the health system, but Trident ER and
10 Summerville ER is typically in the 25 percent
11 range when I look at my daily reports. And
12 this is just -- you know, I looked at it before
13 I came in this morning. I get an email of
14 patient activity at the various facilities kind
15 of every few hours, and it's a report that I
16 look at and helps us gauge, you know, where
17 we're at, where we need to resource. And
18 between midnight last night and seven a.m. this
19 morning, we had seen two patients in our Moncks
20 Corner emergency department. Neither of those
21 patients had any insurance, at registration
22 anyway. So the registration report that I saw
23 showed that both, 100 percent of those patients
24 were uninsured.

25 THE COURT: Just a moment ago you gave a 25 percent

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1 figure for Summerville and Trident. That was
2 25 percent uninsured; was that what you were
3 referring to?

4 A: Twenty-five percent of the patients that
5 presented to the ED at Trident and Summerville
6 typically are -- do not present with insurance
7 at the time of registration, correct.

8 Q: Contrasting that to Moncks Corner which is more
9 like?

10 A: Thirty-five percent, yes.

11 Q: Well, if the people with the money are in Goose
12 Creek, why do you want to build a hospital in
13 Moncks Corner?

14 A: That's where the need is. Goose Creek has a
15 few hospitals to choose from clearly. You
16 know, they -- within a half an hour, they've
17 got several hospitals to choose from. And if
18 you spend any time in Cross or Bonneau or St.
19 Stephen, or even Moncks Corner, you know that
20 the access to care there is just significantly
21 less. And we know that, you know, financially
22 it is a -- it is a concerning proposition to
23 think we're going to spend \$115 million in that
24 community to build a hospital with a payer mix
25 that's not as good as the health system as a

1 whole, but we think we can make it work. In
2 fact, we know we can make it work with the
3 right conditions. And the biggest right
4 condition right now is the fact that two
5 hospitals have been approved. So, you know,
6 that's where the need is. So it certainly --
7 it certainly meets that need. And Moncks
8 Corner and the communities to the north are the
9 only areas in our region that are not in
10 compliance with the goal of the Health Plan,
11 which is to provide access to a hospital within
12 30 minutes, and clearly that's not the case.
13 Like I said, I spent time talking with
14 residents and community leaders over the last
15 several years, most recently town hall meetings
16 in Cross, St. Stephen, Bonneau, and Jamestown
17 and their -- their trips to the hospital are
18 adventurous and long. And we think we can
19 improve care, improve health outcomes with
20 placing a hospital in Moncks Corner. And we're
21 excited to do that.

22 Q: You talk about the right conditions, and I
23 think you were here when Mr. Rardin testified
24 that Trident has made the decision not to build
25 in Moncks Corner if Roper is allowed to build

1 in Goose Creek. Did you hear that testimony?

2 A: Yes.

3 Q: Okay. Do you agree with that testimony?

4 A: I did.

5 Q: Okay. You referred earlier to Mr. Baehr. Has
6 Mr. Baehr prepared an adverse impact analysis
7 that shows what financial negative impact the
8 Roper hospital in Goose Creek would have on the
9 Trident System?

10 A: Yes.

11 Q: And by year three, how much annually would that
12 decrement be?

13 A: Well, it's significant. It's 16 and a half
14 million dollars, about \$16.5 million adverse
15 impact to Trident Health System as a whole by
16 the third year.

17 Q: We had previously looked at the fact where we
18 -- on the pro forma projections when you
19 figured in your taxes paid and all the other
20 deductions that we had a -- I think the net
21 income number you had was 29 million; is that
22 correct?

23 A: Right.

24 Q: What, if any, relevance to that net income
25 projection does the proposition of a 16 and a

1 half million dollar loss have to you?

2 A: Well, it's huge. I mean, you're talking about
3 a net income number that gets cut more than in
4 half. So less than \$15 million. And to
5 replace technology, to meet the needs of the
6 community and expand services in other areas,
7 we're going to need more capital than that in
8 the bank account to be able to provide those
9 services. So while \$30 million does sound
10 healthy, \$17 million adverse impact off of that
11 number, bringing that to less to 15, \$14
12 million is very difficult to swallow.

13 Q: At the end of the day, you have a
14 responsibility to shareholders as well, don't
15 you?

16 A: Correct.

17 Q: And so you need to make money for shareholders
18 as well?

19 A: Yes.

20 Q: Do you believe it's a prudent business decision
21 not to build in Moncks Corner if the Goose
22 Creek hospital goes forward?

23 A: I think -- I think it's a very difficult
24 decision, but it's extremely prudent from a
25 business standpoint that we not duplicate

1 services up there. If two hospitals are
2 approved, one hospital will get built.

3 Q: Is it fair to say that you need to have the
4 continued net income without the impairment
5 from Roper in order to meet the mission of a
6 Moncks Corner hospital?

7 A: I believe it is. I believe it is. For the
8 reason I mentioned regarding capital and
9 services and to be able to meet that need in a
10 quality fashion, we need those financial
11 resources of our current net income to move
12 forward.

13 Q: Just out of curiosity, what was that EBIT
14 number for 2011? Do you have an idea what that
15 number is?

16 A: We dropped down considerably. We talked about
17 robotics and the impact of that. We also had
18 reduced utilization in our OB area. With the
19 lower birth rate nationwide, we saw that affect
20 us. So we actually were down to EBITDA from
21 2010 to 2011, we dropped to \$22 million between
22 that time period down to about \$72 million.

23 Q: Okay. Let's talk about some of those factors
24 that are impacting you financially. You
25 indicated that utilization was down. What, if

1 any, effect does higher unemployment and a
2 negative economy have on hospital utilization?

3 A: Well, we certainly see more bad debt. Less in
4 terms of net revenue for those patients that
5 are unemployed than if they are employed. So
6 we saw a self-pay percentage, those patients
7 without insurance, grow some. It's close to
8 double digits now, the total of our self-pay
9 percentage. It's right around nine percent.

10 Q: What, if any, effect does lack of employment
11 and lack of insurance have on patient's ability
12 to get elective surgery?

13 A: Well, of course they have full access to
14 emergency care. We talked about EMTALA. But
15 it is the elective surgeries and we -- nobody
16 electively, not many people electively have
17 surgery; usually there's still a driving reason
18 for "elective surgeries," medical reason. But
19 it tends to drop during times of higher
20 unemployment.

21 Q: You live with a bad knee?

22 A: Right.

23 Q: Instead of getting a surgery you have to pay
24 for out of pocket?

25 A: Right.

1 Q: You also mentioned birth rate went down. Is
2 that in any way tied to the economy?

3 A: Yeah, I think so.

4 Q: You also mentioned that -- I think also the
5 robotics and that that contributed to decreased
6 utilization throughout the system. What other
7 things may be contributing to that decrease in
8 utilization throughout the service area?

9 A: We always look at competition. Like I said,
10 Medical University and Roper have been around
11 for a long, long time, have continued to kind
12 of expand those services up into the north area
13 with specialty clinics and physicians. So I
14 think that's had an impact on our utilization.
15 We saw in 2011 about a two percent drop in
16 admissions. About half of that came from our
17 OB and neonatal area, and some came from the
18 shift from what would have been an admission or
19 inpatient surgery to now an outpatient surgery
20 with robotics. I think some of it has come
21 from competition. We won't know that for sure
22 until the market share reports come out for
23 2011. They're usually a little bit delayed.
24 But we think competition has had an impact.
25 Roper has been employing physicians over the

1 last several years. In my time here, they have
2 been employing more and more physicians over
3 the years, and now I believe they have over 200
4 physicians that are employed. And we have seen
5 at least a couple of physicians drop off of our
6 medical staff from our surgery center and
7 become employed. They said they were no longer
8 able to perform procedures at our surgery
9 center because they were employed by Roper, and
10 those were two orthopaedic surgeons.

11 Q: Let's talk about that a little bit. As a
12 hospital administrator, can you personally
13 admit a patient?

14 A: No.

15 Q: Who can admit a patient to a hospital?

16 A: We certainly depend on our medical staff. Our
17 physicians are the only ones that can admit a
18 patient into the hospital.

19 Q: Does Trident, as a hospital, enter into an
20 agreement with a physician and grant privileges
21 to that physician to allow him or her to come
22 into the facility?

23 A: Yes.

24 Q: And only the physician can admit?

25 A: Yes.

1 Q: What is the advantage of a hospital basically
2 purchasing a physician practice and directly
3 employing a physician?

4 A: I think there's several advantages. Typically,
5 your physician practices are very, very
6 independent. They have an independent mind set
7 and a strategy about their practice. Employing
8 those physicians can help sit down -- help you
9 sit down at a table and talk about a common
10 understanding or common direction. I think
11 there's also times where employing physicians
12 you can see increased utilization of your
13 facilities because you are employing them. So
14 that shared direction does lead to -- and
15 sometimes it's built into the contract, the
16 employment contract, where they have to admit
17 to their employer's facility, unless they have
18 -- unless there's a strong patient preference
19 or a good reason not to. One thing we've done
20 with employment, we don't employ too many
21 physicians, but maybe about a dozen out in the
22 community out of our 500 physicians on the
23 medical staff, but it has helped to recruit new
24 physicians into the area and provide important
25 specialties that maybe we didn't have in the

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1 health system in the past.

2 Q: Let's go ahead and go next to page 765 in Joint
3 1. And this was part of the program, and this
4 is entitled "Roper St. Francis Berkeley cannot
5 survive without taking significant market share
6 from Trident." And I realize that Mr. Baehr is
7 going to testify at length on this particular
8 topic. But as a hospital administrator, what's
9 your view on that?

10 A: Well, I believe it to be the case. Not only
11 can they not survive, but they certainly will
12 take market share from Trident Health System,
13 just by the virtue of being within ten minutes
14 of our Trident facility. You know, our EMS
15 services in the Charleston, greater Charleston
16 area, Dorchester and Berkeley County do a great
17 job. And what I've seen with EMS services over
18 the years is they, rightly so, like to take
19 patients to the closest hospital with that
20 service. And Berkeley and parts of Dorchester
21 County will take patients to their proposed
22 hospital in Carnes Crossroads because they will
23 be the closest to the scene for the vast
24 majority of residents in Berkeley County, Goose
25 Creek, kind of the population hub of Berkeley

1 County, Goose Creek. So they start in the
2 emergency department, and then they can be
3 admitted, and that's when the market share
4 begins to shift.

5 Q: Move next to page 766 in the record. And I
6 realize that there's a time travel expert who's
7 actually going to testify, but this is what you
8 presented to DHEC off of Mapquest; was it not?

9 A: It is.

10 Q: And what's the significance of increased access
11 to you as a health professional?

12 A: Well, better outcomes. You know, with increase
13 to access to higher level emergency care and to
14 specialists can save your life in the most kind
15 of dramatic of circumstances, the chest pain
16 patient or the stroke patient.

17 Q: Again, these are comparing the Berkeley
18 Regional Medical Center, which is Trident's
19 property?

20 A: Correct, in Moncks Corner.

21 Q: To the Roper St. Francis Berkeley proposed
22 site, right?

23 A: Right.

24 Q: With Trident in Summerville?

25 A: Right.

1 Q: And what conclusions did you draw from this and
2 share with DHEC?

3 A: Well, you know, just for instance currently, if
4 you're in Jamestown and you want to seek
5 hospital care, you're talking about 52 minutes.
6 It's probably a little bit longer than that.
7 I've driven it and it's -- and I think Mapquest
8 might be understating this in this case, but
9 it's at least 52 minutes to the nearest
10 hospital for somebody in Jamestown. Obviously,
11 there's not a community on this page that meets
12 the goal of the Health Plan. So the closest
13 hospital for anybody in Bonneau, Cross,
14 Jamestown, St. Stephen, is generally speaking,
15 Trident Medical Center now. And without a
16 hospital in Moncks Corner, we really don't get
17 significantly within that 30 minute travel time
18 unless it's a Moncks Corner hospital. Roper's
19 hospital at Carnes Crossroads improves
20 timeliness in a small degree. You can say
21 somebody from Bonneau will save eight minutes
22 because of a hospital at Carnes Crossroads, but
23 still a 30 minute drive time for somebody from
24 that community.

25 Q: As the administrator of Trident, do you believe

1 that poor people deserve equal access to
2 healthcare?

3 A: Oh, absolutely.

4 Q: You know, Mr. Long talked yesterday a little
5 about this concept of a halo effect. Have you
6 also heard the phrase of a hospital being a
7 "safety net" for a community?

8 A: Yes.

9 Q: When we look at that hospital and proposed
10 hospital in Moncks Corner, what, if any, effect
11 does having a hospital in that community do to
12 either increase or decrease physician
13 recruitment to that area?

14 A: Well, I really see hospitals as kind of, maybe
15 because I'm a hospital guy, as kind of the
16 central hub for healthcare in a particular
17 area. So, you know, what you see from
18 hospitals is they tend to attract physicians
19 around the hospital, home health agencies,
20 pharmacies, durable medical equipments,
21 physical therapy, outpatient labs. You tend to
22 get a concentration of health services in and
23 around the hospital ring, if you will. And in
24 the case of Moncks Corner, that's what we're
25 envisioning. We do envision that we will

1 provide, obviously a hospital, but then
 2 physicians will locate their offices. And as
 3 physicians get busier, they add partners. As
 4 they add partners, they may want to extend out
 5 beyond Moncks Corner. Currently from Trident
 6 we have physicians that travel to Moncks Corner
 7 and set up part-time offices there each week.
 8 We envision that for Moncks Corner whereby we'd
 9 have full-time physicians at Moncks Corner
 10 providing part-time offices in Cross, which is,
 11 you know, much needed for primary care. Like
 12 I said, my understanding is there's only a
 13 part-time physician there that comes up all the
 14 way from Charleston a couple times a week to
 15 Cross. That's not meeting the need.

16 Q: The next slide in your presentation to DHEC is
 17 paid 767 on Joint 1 with the title "Why Not
 18 Moncks Corner Roper St. Francis Berkeley."
 19 Share with the Court, if you would, what you
 20 shared with DHEC.

21 A: This is an excerpt from Roper Berkeley Carnes
 22 Crossroads surgery center CON application.
 23 They were looking to -- Roper was looking to
 24 move their current surgery center at Moncks
 25 Corner to Goose Creek or Carnes Crossroads back

1 in early 2008. This is some statements they
2 made in that CON application to indicate that
3 they were having a tough time in Moncks Corner
4 making it work. They were able to attract the
5 number of physicians to support that surgery
6 center, and they felt like the average
7 utilization of 13 percent needed to change and
8 were looking to go to a more busy area, I
9 guess.

10 Q: After Trident filed its Certificate of Need
11 application for a hospital in Moncks Corner,
12 what did Berkeley do with its application to
13 leave Moncks Corner and move the surgery
14 center?

15 A: They withdrew this application, is my
16 understanding. They abandoned plans to move
17 that surgery center and to stay in Moncks
18 Corner.

19 Q: Okay. What, if any, belief do you have about
20 the -- if you spend \$115 million and build a
21 full service hospital, what, if any, opinion do
22 you have about that being able to help you
23 attract physicians and attract the people to
24 provide services?

25 A: Well, you know, I think it's huge. I mean, I

1 think certainly it's going to be a challenge
2 almost starting fresh. There's no specialists
3 that reside their office in Moncks Corner. As
4 I understand it, they're only itinerant, or
5 they come to Moncks Corner for a day or so a
6 week and leave. So, you know, I think that
7 hospital will provide a hub, an attractive
8 place for specialists to practice.
9 Specialists, whether it be a general surgeon or
10 a cardiologist or a pulmonologist, they need a
11 hospital, and they don't need a surgery center
12 or an outpatient office as much as they need a
13 hospital to provide the services and what they
14 do. So I think it will be an attractive
15 element to attract specialists, but it will
16 still -- it will still be a long road.

17 Q: Okay. Is Trident committed to spending
18 recruitment dollars to get physicians needed?

19 A: We are. We are. And we already provide
20 significant recruitment dollars to recruit
21 physicians, maybe a dozen a year we recruit
22 into the Trident Health System, and we want to
23 do the same at Moncks Corner.

24 Q: Okay. And are you willing to employ physicians
25 if necessary to staff the hospital?

1 A: Yes.

2 Q: Okay. Let's go over to page 768 of Joint 1.
3 And just explain to the Court what you
4 explained to DHEC regarding Roper and Goose
5 Creek.

6 A: We believe that -- that Roper wants to be in
7 Goose Creek with their hospital to compete with
8 us, to go head to head and take our patients.
9 And, you know, in reaction to our filing the
10 CON, this came out in the Post and Courier
11 where Roper's CEO announced that they had
12 accelerated their plans to file for their CON
13 because of Trident's application for a hospital
14 in nearby Moncks Corner. And more importantly,
15 he uses a pretty important word that I don't
16 think was used by accident, I think he believes
17 it and I certainly believe it. These two
18 hospitals are just very, very similar. They're
19 very, very similar areas of central and
20 northern Berkeley County. I think they're
21 competing and David Dunlap, by this statement
22 obviously thinks so, too.

23 MR. LONG: Objection and move to strike that, Your
24 Honor. He can't testify on what David Dunlap
25 thinks. And the way he phrased the answer,

1 that's what he did.

2 **MR. SUMMER:** I wouldn't want to strike the whole
3 response to the question. I would only agree
4 that we can strike the David Dunlap thinks
5 phrase, because he had quite a long answer
6 before then. Madam Court Reporter, take great
7 care not to strike the whole answer.

8 **THE COURT:** Do you agree to that?

9 **MR. LONG:** I will.

10 **THE COURT:** All right. So sustained to that extent
11 and that portion only stricken.

12 **A:** And I would add, just simply by reading this
13 quote that David Dunlap said he wanted -- he
14 wanted to announce his plans about a year ago
15 from now, but had to accelerate them because of
16 Trident's competing, and I state that again,
17 competing proposal. He stated this for the
18 newspaper in nearby Moncks Corner.

19 **MR. LONG:** That goes back, Your Honor, to the issue
20 we raised at the beginning where he's now doing
21 the hearsay part. This is what he presented to
22 the --

23 **THE COURT:** I sustain the objection.

24 **MR. SUMMER:** We'll get to it with Mr. Dunlap. I
25 appreciate that.

1 Q: Let's talk a little bit about do you view the
2 Roper St. Francis project as a competing
3 application to Trident's application?

4 A: I do.

5 Q: Okay. Is there any doubt in your mind that
6 Roper is a competitor of Trident?

7 A: No doubt in my mind. They actually -- if you
8 look at market share data, they're actually the
9 leader. They see more patients than anyone in
10 the entire market.

11 Q: I want to talk to you from your position as a
12 hospital executive about the market place. And
13 if we look at the tri-county area, okay, there
14 are distinct regions of that tri-county area;
15 would you agree with that statement?

16 A: I would.

17 Q: Mount Pleasant, is that a distinct market?

18 A: Yes.

19 Q: The peninsula, is that a distinct market?

20 A: Yes, I think you have West Ashley and you got
21 the North area, if you will.

22 Q: Where is Roper's main campus?

23 A: Downtown on the peninsula.

24 Q: Okay. On Calhoun Street?

25 A: Yes.

1 Q: That's their tertiary care facility?

2 A: Correct.

3 Q: Where is the Medical University?

4 A: Downtown, across the street from Roper.

5 Q: Okay. Where is St. Francis?

6 A: In West Ashley, a little closer to our
7 facility.

8 Q: And what are the facilities in Mount Pleasant?

9 A: There's a Roper facility in Mount Pleasant as
10 well as nearby another health system, Tenet has
11 a hospital called East Cooper.

12 Q: Okay. Was East Cooper a hospital in Mount
13 Pleasant before Roper had a hospital?

14 A: Yes.

15 Q: Was that for many years?

16 A: Yes.

17 Q: I want to talk about how you view the
18 certificate of need program in terms of
19 investment in your market. How does Trident
20 view the certificate of need program as a
21 protector of a market?

22 A: Well, it is, to an extent. I think -- I think
23 the idea behind a highly regulated industry
24 having some regulations around where health
25 facilities can be built is generally a sound

1 idea. It does provide some incentive, some
2 significant incentive to invest in facilities
3 in locations where you, as well as the state of
4 South Carolina, believe there's a need. And it
5 allows for some semblance or idea, belief of
6 protection, if you will, that that investment
7 is going to be protected and that you will be
8 providing good access for patients, but not
9 duplicative access to those same patients.

10 Q: Were you here yesterday when Mr. Rardin talked
11 about the original certificate of need
12 application in the 1970s how the other two
13 hospitals closed and that Trident was built
14 after the CON was granted by the State of South
15 Carolina?

16 A: Yeah, I understand we went through an appeal
17 process, some sort of challenge from Roper at
18 that time, but yes, I was here for that
19 discussion.

20 Q: Would Trident ever have built that hospital if
21 there hadn't been a CON program in South
22 Carolina?

23 A: I can't --

24 MR. LONG: Objection, Your Honor, he can't possibly
25 testify to that.

1 THE COURT: Sustained.

2 Q: What, if any, effect does having a certificate
3 of need program have on Trident's continued
4 investment at Summerville, for example?

5 A: Ask that again.

6 Q: What, if any, effect or inducement does the CON
7 program provide for Trident's continued
8 investment at Summerville, for example?

9 A: Yeah, I think -- I think it has a big effect.
10 You know, it's probably more applicable to
11 Moncks Corner situation where you don't have
12 any hospital, but in Summerville's situation,
13 to have an identified bed need and -- and know
14 that that bed need is there, health planners
15 within the state have identified that bed need
16 and believe that the need is there, then we
17 obviously follow suit and do some analysis on
18 whether or not it can be supported. And it
19 provides some protection that as you invest \$25
20 million in that bed addition, hopefully, once
21 we get a free and clear CON, that you're not
22 going to get another provider, another hospital
23 nearby jeopardizing that investment. I guess
24 I keep thinking about examples in the state of
25 Texas where they don't have a CON process and

1 they've had significant ups and downs with
2 hospital investments. Since that time,
3 hospitals have changed hands. There's been
4 specialty hospitals that typically only
5 provide, say, cardiac care or only provide
6 orthopaedic care. They're owned sometimes by
7 physicians. They don't provide the emergency
8 room services that sometimes can be a drain on
9 hospitals so that they -- I have this kind of
10 vision of them taking the cream off of the top
11 or cherry picking certain services that might
12 be more profitable. I think in an unregulated
13 environment that can occur and -- not to say we
14 don't need to improve our CON process in some
15 ways.

16 Q: You referred to both your mission and your
17 commitment to both Dorchester and Berkeley
18 counties in prior testimony. In what way has
19 the approval of the Roper Berkeley project
20 compromised that mission and commitment?

21 A: Well, in a big way. You know, we're here very
22 close to being able to complete that circle, to
23 complete that commitment, that mission that we
24 set out after the hospital closed in Berkeley
25 County. We're close to going back there and

1 providing full hospital care and growing from
2 there. Now that has been left in a lot of
3 uncertainty. I have, you know, obviously large
4 concerns having to go back to that community if
5 it ever were to come to that where two hospital
6 were approved and I need to go back to that
7 community and say, you know, we talked about
8 this over the last several years; it has come
9 true. They've approved two hospitals. We
10 cannot build a hospital in Moncks Corner now.
11 So it's a -- we're faced with a pretty damaging
12 situation to not be able to fulfill that
13 mission.

14 Q: Do you think DHEC has reneged on it's original
15 agreement with Trident?

16 A: Well, I think so. I mean, you know, we were in
17 collaboration as evidence has shown in the
18 early '70s that we were in collaboration with
19 DHEC and the -- and the hospital healthcare
20 committee that was put together that picked,
21 literally picked the location, helped to pick
22 the location for Trident Medical Center. We're
23 trying to fulfill that commitment now and we're
24 not being allowed to.

25 Q: Do you feel that the CON program has failed

1 Trident in that regard?

2 A: No question. The whole reason for CON is to
3 avoid situations like this where you have two
4 hospitals on top of each other, and to go from
5 zero hospitals to two in Berkeley County
6 doesn't make sense. And it's not going to
7 happen with our help.

8 Q: Okay. What, if any, effect do the events in
9 Mount Pleasant over the last few years have on
10 your analysis of the Berkeley County situation?

11 A: Well, I think it's provided kind of, in my mind
12 and our mind collectively at Trident Health,
13 it's provided some rather scary truths to our
14 initial concern that two hospitals was too many
15 in Berkeley County and that it would be a
16 struggle. In talking to, you know, their
17 administrator at East Cooper --

18 MR. LONG: Objection. I was afraid he was headed
19 there. It's hearsay, Your Honor.

20 MR. SUMMER: I'll rephrase the question, Your Honor.

21 THE COURT: Sustained.

22 MR. LONG: Thank you, I'd also that maybe we lay
23 some foundation because I'm listening carefully
24 to where he -- he's still never given any
25 foundation to how he has any information about

1 those hospitals in Mount Pleasant.

2 **MR. SUMMER:** I will be happy to do so.

3 **Q:** As part of your job description in running the
4 Trident System, do you look at market data
5 throughout the tri-county area?

6 **A:** Absolutely.

7 **Q:** And as part of the evaluation of that market
8 data, do you look at the performance of your
9 competitors?

10 **A:** Yes.

11 **Q:** And is much of that market data available
12 through sources like South Carolina Budget
13 Control Board and DHEC?

14 **A:** Yes.

15 **Q:** And in your analysis of that information, are
16 you able to draw conclusions about how your
17 competitors are performing in the market place
18 vis-a-vis you and other competitors?

19 **A:** Yes.

20 **Q:** And is this something that you routinely do in
21 your job?

22 **A:** Yes.

23 **Q:** In that regard, have you reviewed such
24 information and conducted such research
25 regarding the Mount Pleasant market?

1 A: Yes.

2 Q: And what, if any, conclusions can you draw
3 regarding what's happening in the Mount
4 Pleasant market and how that might impact what
5 happens in Berkeley County?

6 A: Well, East Cooper is shown to have
7 approximately five percent, if I'm not
8 mistaken, of the total market in Charleston.
9 So it's a rather small percentage. And they
10 were one of the hospitals that did show a
11 declining market share over the last several
12 years.

13 Q: They built a brand new hospital in Mount
14 Pleasant?

15 A: Yes.

16 Q: And added 40 beds to their hospital?

17 A: Yes.

18 Q: And Roper was allowed to build an 85-bed
19 hospital further up Highway 17?

20 A: Yes.

21 Q: And what's been the census experience at those
22 two facilities?

23 A: Low.

24 Q: And has East Cooper's census decreased
25 dramatically since Roper opened its new

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1 facility?

2 A: It has, the percent is around 40. Forty
3 patients average daily census.

4 Q: What, if any, Roper physician acquisitions in
5 Mount Pleasant concern you as a hospital
6 administrator?

7 A: The Roper acquisitions of physicians at East
8 Cooper doesn't concern me. I feel like that's
9 part of our market; it's not part of the
10 patients that we serve. We're certainly not
11 trying to put a hospital there. But the trend
12 of physician employment, aggressive physician
13 employment, having over 200 physicians employed
14 by Roper is concerning in terms of patient flow
15 and where those patients might be admitted to.

16 Q: And did Roper employ the number one admitting
17 group to East Cooper?

18 A: They did.

19 Q: Okay. And has that contributed to the decline
20 in admissions at East Cooper?

21 A: I think it has.

22 MR. LONG: Objection, Your Honor, he can't know
23 that.

24 MR. SUMMER: Yes, he can.

25 MR. LONG: He's laid no foundation for that.

1 MR. SUMMER: I can rephrase.

2 MR. LONG: Anything he'd know would have to be
3 coming from people he's talked to in the
4 community, which would be hearsay.

5 MR. SUMMER: I can rephrase the question, Your
6 Honor.

7 THE COURT: I will sustain the objection and allow
8 him to proceed and rephrase.

9 Q: In your experience as a hospital administrator,
10 what, if any, relevance does purchasing a
11 physician group that admits to a competitor
12 have to the purchasing hospital?

13 A: It has a significant positive impact in the
14 number of referrals from that group.

15 Q: Okay. Is there any doubt in your mind -- well,
16 let me strike that before I get an objection.
17 Strategically, can you think of a more affluent
18 area than your market that Roper could have
19 placed this hospital?

20 A: Than Goose Creek? No.

21 Q: And why do you say that?

22 A: My belief is Goose Creek is a bedroom community
23 of Charleston and the -- the ready access to
24 jobs leads to an unemployment rate that is less
25 than the area as a whole. And, you know, I

1 think you're mainly, at least what we see from
2 Goose Creek at our hospital is mainly an
3 insured population, whether it be Medicare or
4 private insurance.

5 Q: Would you describe Roper's decision to place
6 that hospital in Goose Creek predatory?

7 A: Yeah, yeah. In fact, I think I used that term
8 in reviewing this data with DHEC at project
9 review. I think it's -- it's poaching and
10 predatory in nature. It's a rather aggressive
11 strategy.

12 Q: And do you believe that that hospital will
13 impact your ability to fulfill your mission?

14 A: It will.

15 Q: And will that be a negative impact?

16 A: Negative impact by not being able to place a
17 hospital in Moncks Corner, as well as potential
18 reduction in services at Trident and
19 Summerville.

20 Q: Let's go back to the 3.0 Tesla, and I hate to
21 -- if you're going to make \$17 million less per
22 year, what's the likelihood you're going to get
23 a 3.0 Tesla?

24 A: Very slim. I think it's already had an impact
25 on us, the uncertainty of the market up in the

1 north area. We've seen a capital -- proposed
2 capital expansion that we've been working on
3 for a while, our cancer center, be kind of
4 whittled down. We wanted to build a -- maybe
5 apply for a CON for a large, freestanding
6 cancer center with three linear accelerators.
7 We think we have a need to add a third linear
8 accelerator and, you know, for a number of
9 reasons, I think this is one of them, HCA has
10 encouraged us to look at expanding where we are
11 and adding a third linear accelerator where we
12 are instead of building something new and
13 freestanding.

14 Q: Worried about getting that return on
15 investment, aren't you?

16 A: Yes.

17 Q: All right. Let's go to your, I believe your
18 last slide, which is 769 in the DHEC record.
19 And if you would, just sum up for the Court
20 what you told DHEC.

21 A: Well, during the CON process, they had --
22 before applying they worked very hard to
23 generate a lot of support by talking about the
24 project, and we continue to do that. These are
25 the areas that we received letters of support

1 from and of course there's a quote there from
2 the fire chief of the town of Moncks Corner
3 talking about what a hospital would mean
4 hopefully in response times for he and his
5 crew. I think the Medical University, as well
6 as East Cooper, and all the towns surrounding
7 Trident and Moncks Corner and Summerville
8 supporting our hospital and Moncks Corner was
9 really, really nice to see.

10 Q: So this is a list of the broad community
11 support that your project has experienced?

12 A: Yes.

13 Q: I assume that that's not all inclusive?

14 A: No.

15 Q: In addition to these -- well, let's talk about
16 these communities first. It sounds to me like
17 you've canvassed these communities and spent
18 time there?

19 A: I have.

20 Q: And what's your personal opinion about why you
21 want to see this hospital in Moncks Corner?

22 A: Well, I mean 40 percent of our patients come
23 from Berkeley County, 40 percent of our
24 employees within Trident Health System come
25 from Berkeley County. We consider it, as I

1 said in my town hall meetings many times, we
2 consider it to be our responsibility to meet
3 their needs. We consider ourselves as already
4 their hospital and -- and a hospital in Moncks
5 Corner is a logical extension. And when you
6 talk to residents of Cross and Jamestown and
7 talk about the access they have to care, or the
8 lack of access they have to care, you know, I
9 think it's very, very clear to me they're not
10 only kind of sort of want a hospital, they're
11 demanding a hospital; whereas in Goose Creek,
12 sure, another hospital is fine. You know, and
13 you don't get that sense of passion from those
14 areas like you do in northern Berkeley County
15 that, you know, eight or ten of them will
16 drive, like yesterday, drive over here a couple
17 of hours to see the opening statements.
18 They're very, very interested and engaged.

19 Q: Yesterday Mr. Long attributed a quotation to
20 your predecessor Mr. Gunn about Trident being
21 a hospital without a community. First of all,
22 is Mr. Gunn employed by Trident or any
23 affiliated entity anymore?

24 A: No. No, he's not with HCA.

25 Q: Second of all, do you share that opinion?

1 A: I don't. I've talked to our community, whether
2 it be in Goose Creek or Summerville or Cross or
3 Bonneau or St. Stephen, it's been really good
4 and eye opening for me to talk with residents
5 of those communities about the prospect of a
6 hospital in that area. Very exciting for them.
7 And they've been -- I feel like they've been
8 toyed with in the past. You know, Roper has
9 made overtures of turning their freestanding ER
10 into a hospital in the past and town officials
11 in Moncks Corner and other places have told me
12 about those potential plans that never came to
13 fruition. They feel like Roper has turned
14 their back on Moncks Corner. And they don't
15 want to see it happen again and they're fearful
16 of it though.

17 MR. SUMMER: Your Honor, we need to do a technology
18 change at this point and it might be a good
19 time to perhaps take a few minutes to break, to
20 go ahead and break for lunch.

21 THE COURT: What's the hour?

22 MR. SUMMER: It's 12:30.

23 THE COURT: All right.

24 THE COURT: All right. We'll come back at two
25 o'clock.

1 MR. SUMMER: That's fine.

2 THE COURT: Be in recess until two p.m.

3 (Break from 12:29 p.m. until 2:02 p.m.)

4 Q: Mr. Gallati, we're back on the record. And I
5 want to turn your attention again while we're
6 in the Joint Exhibit Number 1. First turn to
7 page 729.

8 MR. THOMAS: We've also got it on the screen.

9 Q: Take a minute and review that letter, and then
10 I've got a few questions I'm going ask you
11 about.

12 A: Okay.

13 Q: My first question is, who is Raymond Greenberg?

14 A: Dr. Greenberg is the president of the Medical
15 University of South Carolina.

16 Q: Do you know him personally?

17 A: Yes.

18 Q: And have you met with him before?

19 A: Yes.

20 Q: Would you describe yourself as a business
21 acquaintance?

22 A: Yes.

23 Q: How often do you meet with him?

24 A: I would say I might meet with him once every
25 six months or so.

1 Q: What's the purpose of having meetings with
2 someone who runs a competing university
3 hospital?

4 A: Well, I think primarily, you know,
5 collaboration as much as possible. There are
6 certain things that we share with the Medical
7 University. We share a residency program,
8 family medicine residency program, with the
9 Medical University where their residents are in
10 training in our hospital at Trident Medical
11 Center.

12 Q: Is that a -- is that a written contract you
13 have?

14 A: Yes, it is. Uh-huh (affirmative response).

15 Q: Okay. How else?

16 A: I think -- I think that's been the primary
17 reason, other than community boards that we're
18 on together, as well as we're on a board
19 together along with the other hospitals in the
20 -- in the region called the Carolina E-Health
21 Alliance whereby we have agreed to share
22 patient data via electronic systems in our
23 emergency departments. It's been a good
24 collaboration.

25 Q: Does the University hospital offer services

1 your hospital does not?

2 A: Yes. Yes, we frequently transfer patients from
3 Trident Health System to other hospitals,
4 mainly Medical University.

5 Q: And what are some of those, I think you refer
6 to them as quatio-services, but what are some
7 of those services that you refer down to MUSC?

8 A: The highest level, highest acuity, stroke
9 patients as well as any of the pediatric
10 patients that need any sub-specialty pediatrics
11 care, any trauma patients that we can't care
12 for. That's the -- that's the bulk of it.

13 Q: Okay. Would you describe your relationship
14 with the university as a positive one?

15 A: Yes.

16 Q: Okay. Previously it was, I think, insinuated
17 yesterday that there -- that there was a tit-
18 for-tat, that an appeal for a CT scanner was
19 dropped in exchange for this letter; is that
20 true?

21 A: No.

22 Q: All right. Talk to me about the circumstances
23 surrounding soliciting this letter, please.

24 A: This was about two or three months after I had
25 begun. I had just met Dr. Greenberg once, but

1 my boss Jamie Thomas, who's in charge of the
2 South Atlantic Division, had been in South
3 Carolina a little bit longer than I and had met
4 with Dr. Greenberg a number of times to talk
5 about different collaborative things we could
6 do together, and asked him sometime during that
7 time if -- if he'd be willing to write a letter
8 of support after hearing about what our project
9 is in Moncks Corner and what we're trying to
10 accomplish.

11 Q: Is that something he willingly did?

12 A: Yes.

13 Q: And did you have to promise him anything in
14 exchange for that letter?

15 A: No.

16 Q: And was anything given in exchange for that
17 letter?

18 A: No.

19 Q: Would you characterize this as a letter of
20 support for your project?

21 A: Yes, I would.

22 Q: All right. Was a similar letter given for
23 Roper's project?

24 A: No.

25 Q: How unusual, in your experience, in all the

1 years that you've been an administrator in
2 Florida and South Carolina, how unusual is it
3 for a competitor -- a competitor to give a
4 letter of support for the construction of a
5 satellite hospital?

6 **MR. LONG:** Objection, your Honor. I mean, I don't
7 think he's ever -- I mean, he's never even
8 testified. This is the only CON in South
9 Carolina, so how could he know whether it's
10 unusual or not?

11 **THE COURT:** Well --

12 **MR. LONG:** There's no foundation on the question.

13 **THE COURT:** Sir?

14 **MR. LONG:** I said so basically there's no foundation
15 on the question.

16 **THE COURT:** Well, I was going to say, I would
17 sustain it on the basis of no foundation, but
18 if he wants to lay one then I'll hear it.

19 **MR. SUMMER:** Glad to, your Honor.

20 **Q:** Let's go back to -- when did you finish your
21 degree program, 1990?

22 **A:** 1990.

23 **Q:** 1990. And when you started your career at
24 North Florida -- let me get my notes -- North
25 Florida Regional, correct?

- 1 A: Correct.
- 2 Q: All right. There you were -- what, your first
- 3 job was director of planning?
- 4 A: Correct.
- 5 Q: You were in that hospital for how many years?
- 6 A: About eight years.
- 7 Q: Okay. From there you went to where, what --
- 8 A: Lake City Medical Center.
- 9 Q: And your position at Lake City was?
- 10 A: CEO.
- 11 Q: And how many years were you at Lake City?
- 12 A: Three and a half.
- 13 Q: And then from there you went to where?
- 14 A: Gulf Coast Medical Center.
- 15 Q: And where is that facility?
- 16 A: In Panama City.
- 17 Q: Okay. And how many years were you there?
- 18 A: About seven and a half.
- 19 Q: Okay. And then you came to Trident?
- 20 A: Yes.
- 21 Q: Okay. In your career, have you seen satellite
- 22 hospitals being built in and around your
- 23 markets?
- 24 A: Yes.
- 25 Q: Okay. And in fact, did you not yourself

1 oversee the construction of a hospital?

2 A: I did.

3 Q: Okay.

4 A: In Lake City.

5 Q: In your career, have you seen a competing
6 hospital give a letter of support for the
7 construction of a satellite hospital?

8 MR. LONG: Objection. He still hadn't laid a
9 foundation because he hasn't said anything
10 about CON applications.

11 THE COURT: Overruled.

12 A: I've not seen it until this circumstance. We
13 had a competing hospital go up in -- in a
14 neighboring county in Panama City, in South
15 Walton, Walton County, and we -- we did not
16 write a letter of support for that, and I'm not
17 aware of any competitor. We had another HCA
18 hospital in Fort Walton Beach on the other side
19 of that hospital, and they did not write a
20 letter of support. I'm not aware of any other
21 hospital that did.

22 Q: Okay.

23 A: We -- when we built the hospital in Lake City,
24 I came on after the CON had been approved and
25 AM not aware of any support from our

1 competitor, Shands, for building that hospital.

2 Q: Okay. If you look at Dr. Greenberg's letter,
3 the second paragraph, could you read that into
4 the record for me, please.

5 A: "As a major healthcare system in the Charleston
6 Metropolitan area, MUSC is keenly aware that
7 accessibility to basic inpatient services is a
8 significant challenge to Berkeley County
9 citizens, especially those residing in the
10 northern and central areas of the county.
11 Trident's proposal to build a full-service
12 hospital in a centrally located Moncks Corner
13 will overcome that challenge."

14 Q: Okay. Do you agree with that statement?

15 A: I do.

16 Q: Okay. If you would, turn over to page 744
17 Joint Exhibit 1. Are you familiar with this
18 letter?

19 A: Yes.

20 Q: Okay. And it is signed by Janie Sinacore-
21 Jaberg; is that correct?

22 A: Correct.

23 Q: Who is she?

24 A: She was the previous CEO at East Cooper Medical
25 Center, the Tenet facility.

1 Q: They've had several CEOs recently, haven't
2 they?

3 A: I've met two in my three years here.

4 Q: If we look at the third, I think it's the third
5 sentence, "Trident's proposal to build a
6 hospital in Moncks Corner would improve access
7 to inpatient services for Berkeley County
8 residents, especially those living in the
9 northern and central portions of the county."
10 Do you agree with that?

11 A: Yes.

12 Q: Now, as part of your duties, did you at any
13 point in time meet with DHEC staff?

14 A: Yes.

15 Q: Okay. In particular, did you have an occasion
16 on June 9th of 2009 to meet with Ms. Brandt?

17 A: Yes.

18 Q: And what was the purpose of your meeting with
19 Ms. Brandt?

20 A: To follow up on our project review hearing that
21 we had had to -- to try to make some of the
22 points that we -- that we made at that project
23 review, clarify any questions that they might
24 have before they make a decision.

25 Q: Okay. If you would -- let's see if I can find

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MR. SUMMER: Beg the Court's indulgence. Deemed complete letter.

Q: Can you turn to page 726 for me, please.

A: All right.

Q: This is a letter from back in January. Would you -- would you read, see the bottom paragraph on page 726. Would you read that, please, into the record.

A: "In accordance with Section 304 of Regulation Number 61-15, Certification of Need for Health Facilities and Services, the following project review criteria are considered more important than the review of this application. These criteria are ranked according to their relative importance, with the most important being listed first. All other relevant criteria will be given equal importance."

Q: And then if you go over to the next page, there are how many criteria listed?

A: Five.

Q: And if you would, you don't have to read all of the lettering, but if you would just read the concepts of those five criteria.

A: First one, compliance with the South Carolina

1 Health Plan. Second, community need
2 documentation. Third, financial feasibility.
3 Fourth, acceptability and adverse effects on
4 other health facilities. And fifth,
5 distribution.

6 Q: Also listed in number two, I think you skipped,
7 is distribution and accessibility. Do you see
8 that?

9 A: Yeah, distribution and accessibility, right.

10 Q: Now, was it your understanding that these were
11 the most important concepts that DHEC would be
12 considering in reviewing your application?

13 A: Yes.

14 Q: And are these the kinds of concepts that you
15 went to discuss with Ms. Brandt on June -- in
16 June of 2009?

17 A: Yes.

18 Q: Describe for me how that meeting proceeded.

19 A: Went there with our attorney, Andrea Brisbin,
20 to meet with Ms. Brandt, and we tried to talk
21 about some of the, perhaps, controversial
22 aspects of the application, what the planning
23 district was going to be for Roper's hospital,
24 seven miles, some discussion about that; asked
25 her some questions around that as well as

1 whether or not there were any questions on her
2 -- on her side. Talked about whether or not
3 these would be competing, and shared some
4 information on whether we felt like they were
5 competing applications. She was unable to
6 answer our questions or to respond. She -- I
7 sensed that it was a very kind of closed
8 meeting, or perhaps she was there to listen but
9 not to respond. At one point, she said she
10 couldn't answer that question about competing,
11 and -- because that was a central part of her
12 decision upcoming. She didn't have any
13 questions for us about anything in our
14 application or anything from the project
15 review. She did ask one question not related
16 to these five points that had to do with the
17 type of community support that we had for the
18 -- for the project, and she -- she asked about
19 whether or not we had any members of the
20 general assembly that were supporting our
21 application like they had supported Roper's
22 application.

23 Q: Were you concerned about that question?

24 A: Well, I was. I mean, I felt like we had a lot
25 of community support from the local community

1 as well as the mayors, some elected officials.
2 I couldn't recall at the time whether or not we
3 had any letters of support from any -- anybody
4 in the general assembly, but felt like with
5 that being her only question that that was
6 obviously important to her.

7 Q: The actual decision in this case was rendered
8 on June 26, 2009. What was your reaction when
9 you saw that both of these projects had been
10 approved?

11 A: Shocked and -- and angry really, frankly, that
12 this decision was made to approve both.

13 Q: Had anybody at DHEC assured Trident that only
14 one application would be approved?

15 A: Yeah, but Jamie Thomas, my boss, had an
16 occasion to meet with Earl Hunter and Earl --

17 **MS. BIGGERS:** Objection. This is clearly going into
18 hearsay. He's about to talk a conversation
19 that he did not have with someone about an out-
20 of-court statement.

21 **MR. SUMMER:** Your Honor, it would be an admission
22 against interest and therefore not considered
23 to be hearsay.

24 **MS. BIGGERS:** Your Honor, it sounds like hearsay
25 within hearsay, because he's claiming that the

1 commissioner told something to someone else who
2 told that to him.

3 **THE COURT:** Sustained.

4 Q: So what did Trident do in response to these
5 decisions?

6 A: We moved forward with an appeal.

7 Q: I want to talk to you a little bit about some
8 of these concepts that Ms. Brandt would not
9 engage with you on, these concepts on page 727.
10 And one of the first ones I want to talk to you
11 about is going to be adverse effects on other
12 facilities. We've previously talked this
13 morning about adverse effects in terms of
14 financing. But turn your -- turn your
15 attention, please, to -- okay. I want you to
16 look in your Joint 1 at page 646, and I have a
17 copy of it right there. I also want you to
18 look at -- and I assume Joint 2 is Roper's
19 record; is that correct? See if you've got
20 Joint 2 up there with you anywhere. In Joint
21 2, if you would, we're going to look at a
22 similar page in Joint 2. These are FTE
23 manpower budgets. Can you explain to the Court
24 what an FTE is?

25 A: It's a full-time equivalent. Basically, the

1 number of hours that equals a full-time
2 employee.

3 Q: Forty hours a week equals an employee?

4 A: Uh-huh (affirmative response). Yes.

5 Q: You've got to answer out for Madam Court
6 Reporter. If we look on page 646 for the
7 Berkeley manpower budget, you have a total
8 number of FTEs just to open the door in 2012 of
9 how many?

10 A: One hundred and forty-five.

11 Q: You got to have 145 new employees; is that a
12 fair statement?

13 A: Yes.

14 Q: How many new employees is Roper going to have
15 to have for their hospital in the first year of
16 operation?

17 A: What page is that?

18 Q: That would be on page 49. It starts on 47 and
19 goes to 49 of Joint 2.

20 A: Okay. It looks like 214.

21 Q: How many?

22 A: 214.

23 Q: So year one, they've got to have 214 new
24 employees. So between the two facilities, how
25 many new employees are going to have to be

1 hired to provide healthcare in that county?

2 A: About 350, 360.

3 Q: Now, that number increases as operations ramp
4 up in the future, correct?

5 A: Correct.

6 Q: And how do we know that?

7 A: Well, these -- these projections show a higher
8 number of employees through 2016.

9 Q: Okay. And how about Roper's? How many years
10 did they project out?

11 A: They projected three years, it looks like, to
12 286.

13 Q: So those first year numbers are just to open
14 the door, correct?

15 A: Correct.

16 Q: All right. How many nurses will Roper need?
17 You see that on page 48? I think there's a RN
18 total number.

19 A: Sixty-eight.

20 Q: Sixty-eight?

21 A: 68.1.

22 Q: Okay. And how many would you need in Moncks
23 Corner?

24 A: 68.4.

25 Q: Does that cause you any concern as a hospital

1 administrator?

2 A: Well, yeah -- yes. I mean, as -- as the
3 highest expense line item on our -- on our
4 financial books, labor is a -- can be an area
5 that you -- that obviously you need to manage,
6 and hiring up 68 nurses out of the gate is not
7 a short order. So it's something that's -- it
8 is significant.

9 Q: Now, would you just be able to take employees
10 from Trident and move them up to Moncks Corner
11 and not hire new people?

12 A: No. No. We certainly will try to reassign
13 some of our staff from Trident, but the
14 majority of the staff would be new hires.

15 Q: Okay. And then if Roper's allowed to build in
16 Goose Creek, they're going to need 68 nurses;
17 are they not?

18 A: Yes.

19 Q: Okay. Do you have any idea how many of your
20 employees live in Berkeley County?

21 A: It's just under 40 percent, about 38 percent of
22 our employees live in Berkeley County.

23 Q: Would you expect that you would have to fight
24 a battle of attrition to keep nurses if Roper's
25 Hospital is built?

1 A: Definitely, definitely. I've seen where new
2 services open up, the VA recently expanded
3 their ER services and that caused some
4 attrition at Trident, so yes.

5 Q: What do you -- what do you have to do to try to
6 hang on to those employees?

7 A: Well, we do a great number of things, I mean,
8 pride in the facility, work on employee
9 engagement, satisfaction. Of course, your pay
10 ranges need to be competitive first and
11 foremost.

12 Q: Would you anticipate having to increase nursing
13 salaries in response to Roper building a
14 hospital?

15 A: Yes, and I think that's reasonable.

16 Q: We talked earlier about travelers and contract
17 labor, contract nurses. What, if any, role
18 would that play in the scenario where you're
19 competing with a new hospital to try to hang on
20 to staff?

21 A: You know, you never like to turn to travelers
22 as I mentioned earlier, but I -- I do think to
23 hire that many nurses, I think it's very
24 possible that we would turn to travelers to
25 fill some of those positions in the short term.

1 I mean, we're typically hiring a handful of
2 nurses kind of every month within Trident
3 Health System, but not -- not 68. Sixty-
4 eight's more like a number of nurses we might
5 hire in a year or year and a half.

6 Q: Okay. In addition to the economic cost of
7 higher wages, what are the quality concerns you
8 have when you get into these kinds of manpower
9 shortages for clinical positions?

10 A: Well, I've seen in the past when you -- when
11 you do have a significant shortage,
12 particularly in nursing or other areas,
13 nursing's kind of been the most, during my
14 career, been the most significant, that you end
15 up hiring maybe individuals that you're going
16 to have to spend more time in training or work
17 with closer. Because what you see is the
18 number of applicants just simply is not high
19 enough to be selective. We look at the
20 application ratio, hire to application ratio.
21 And there's been times in my career where
22 nursing positions, in particular, you have two
23 people applying for one position. That's
24 basically the ratio. That's not a position
25 that we want to -- want to be in to be a high

1 performing organization. Much better to have,
2 you know, 20 applicants for one position.
3 That's obviously not the case in nursing
4 either, but we are certainly in a better place
5 now where we have higher ratios to be able to
6 choose applicants from, but it's nowhere close
7 to ideal at this point.

8 Q: I'm assuming that there are other clinical
9 staff, like in laboratory and respiratory
10 therapy and radiology and those kinds of things
11 separate apart from nurses, right?

12 A: Correct.

13 Q: And would you be competing for those positions
14 as well?

15 A: We definitely would. Pharmacists are our most
16 expensive employees. They earn the highest
17 wages within our employee basis, besides
18 physicians, and there's a number of areas for
19 them to go work now with retail locations
20 expanding, but for another hospital competing
21 with another hospital pharmacists would be
22 difficult.

23 Q: Let's shift gears and talk a little bit about
24 physician staffs because we spoke before the
25 break regarding physicians and their crucial

1 importance for admission of patients into the
2 hospital or the system. Do you recall that
3 testimony?

4 A: Yes.

5 Q: What kind of competition for physicians do you
6 foresee if there's a hospital built in Goose
7 Creek?

8 A: Well, I think it would be significant. I think
9 that, you know, just the -- just the fact of
10 sharing your physicians with another health
11 system would be a challenge, not just
12 logistically for them but also for patient care
13 for you. If they spent more time in a
14 competing hospital, would you need to bring in
15 more specialists in that -- in that arena to
16 care for your patients? So it would -- it
17 would make it -- make it difficult. There's
18 some physicians in town that cover as many as
19 five or six hospitals. You talk to them, and
20 they have a very difficult time meeting all the
21 needs in a timely basis that they'd like to
22 meet.

23 Q: Are you concerned about Roper hiring physicians
24 away from you like they have with East Cooper?

25 A: Absolutely.

1 Q: And what is that concern?

2 A: Well, that concern, you know, would be -- I
3 think is real. I think it's based on past
4 track record in Mount Pleasant where they've
5 hired two groups there away from East Cooper.
6 I think that's entirely possible for our system
7 as well.

8 Q: Right now because of geographic distance
9 between Trident and Roper, do you share much
10 medical staff right now?

11 A: Not as much as I've seen in -- in other places
12 that I've been in because of the, you know,
13 half and hour, 20 minutes distance between the
14 facilities you don't see it. It's almost like
15 a different market.

16 Q: So your concern is once they enter your market
17 and come to Goose Creek, then that will become
18 a problem?

19 A: Yes.

20 Q: There was some testimony yesterday regarding
21 how this project may have been approved
22 internally, and my questions are basically
23 this: You worked in support of this
24 certificate of need application once you
25 arrived on the scene in 2008?

1 A: Yes.

2 Q: Is there any doubt in your mind that Trident is
3 committed to this project?

4 A: There's no doubt.

5 Q: Okay. Is there any doubt in your mind that if
6 only one hospital is built in Berkeley County
7 and it's in Moncks Corner, is there any doubt
8 in your mind that Trident is committed to
9 building this hospital?

10 A: No doubt in my mind.

11 Q: Okay.

12 A: I mean, you look back at our track history with
13 Summerville Medical Center in Moncks Corner,
14 our commitment to go back to those communities
15 and bring healthcare facilities we said we're
16 going to build, the hospital in Summerville, we
17 did. We said we were going to put more
18 services in Moncks Corner, we did. This is
19 really just the final step.

20 Q: There was a great deal of questioning yesterday
21 about why don't you go ahead and just buy the
22 land in Moncks Corner. As a CEO, what's the
23 benefit of simply in an annual operational
24 budget paying an option payment? Is there
25 benefit there to doing that rather than taking

1 the land down? What's the thought process
2 there?

3 A: Well, we have, you know, every organization is
4 faced with limited capital. Our capital for
5 replacement of equipment, for new equipment,
6 for new services, for expansions, we'd like to
7 spend that judiciously. And I think -- I think
8 the decision to put that option payment on the
9 -- as an expense as opposed to capital does
10 help us with that. It frees up more capital
11 for projects that are ready to go now, ready to
12 buy now, ready to put online now; whereas this
13 is a -- this obviously is still in question.

14 Q: In other words, you could buy a CT scanner this
15 year instead of buying that land?

16 A: Right.

17 Q: Okay. You talk about community benefit, and I
18 want to draw your attention to Petitioner's
19 Exhibit 216, and it's going to be on the
20 screen..

21 **MR. SUMMER:** Can you blow that up?

22 Q: There's been an awful lot of talk about how
23 much money you make and how much money Roper
24 makes. I want to talk right now about charity
25 care and bad debt and how much money you have

1 to spend to provide what we refer to as
2 uncompensated care. Are you familiar with this
3 exhibit?

4 A: Yes.

5 Q: So looking at 2010 dollars, and what is the
6 definition that you use to come up for charity
7 charges here?

8 A: Charges written off for patients who meet the
9 charity policy as defined by certain levels of
10 the federal poverty guidelines.

11 Q: These are indigent patients; is that right?

12 A: Right.

13 Q: And when we use that \$25 million number, that's
14 a gross charge number; is that right?

15 A: Yes.

16 Q: Okay. So that's -- starting at the very, very
17 top of that financial statement we looked at
18 this morning on that that projected budget that
19 we looked at this morning, that would have
20 embedded in a number like the \$811 million
21 number?

22 A: Right.

23 Q: And then we have total charges for like
24 uninsureds. It says, "Charges written off as
25 discounts to patients who exceed poverty

1 levels, but who do not have insurance, and do
2 not qualify for Medicaid," right?

3 A: Right.

4 Q: But nevertheless, you didn't get paid for it?

5 A: Right.

6 Q: What's that -- what's that total number?

7 A: Eighty-two million.

8 Q: Okay. And then what's the number for bad debt?

9 A: Sixty-eight million.

10 Q: And what's the definition for bad debt there?

11 A: Those those are writeoffs and allowances for
12 current self-pay AR based off hindsight
13 percentages.

14 Q: Okay.

15 A: So we -- we estimate how much we think is going
16 to be written off, and then we adjust it is
17 what that hindsight means for actual.

18 Q: You have a pretty good track record about what
19 that's going to be from year to year, don't
20 you?

21 A: Yes. It continues to increase on a trend line,
22 yes.

23 Q: So we have total uncompensated care, and what's
24 that total number?

25 A: That total cost of charity and uncompensated

1 care is \$41,944,000.

2 Q: Well, I'm looking -- I'm just going to look at
3 the total number of charges for uncompensated
4 care is how much?

5 A: Hundred and 77 million.

6 Q: Okay. And then that RCC, that ratio of cost to
7 charges, what does that mean?

8 A: It basically means that, on average, we collect
9 23 cents on the dollar. So to go from a gross
10 charges number to a net number, you need to
11 multiply by that -- by that rate, that 23
12 percent.

13 Q: Okay. So the actual cost of charity care to
14 your system is how much?

15 A: \$41,944,000.

16 Q: In one year?

17 A: Right.

18 Q: Do you see that number going up or down in the
19 future?

20 A: It will -- it will likely continue to go up, at
21 least in the short term.

22 Q: And why do you say that?

23 A: Based on the past three years with unemployment
24 increasing. And what we're seeing too is even
25 people with insurance, they have higher

1 deductible, higher co-pay plans, so they have
2 more out-of-pocket they have to pay which leads
3 to greater financial strain. We do see bad
4 debt increasing, not just the charity. Now,
5 with healthcare reform, if there is more --
6 more people insured on some sort of a plan,
7 that has the potential of maybe righting itself
8 or steadying a little bit in 2014, but at least
9 until then we see it increasing still.

10 Q: And of course if the Roberts' court rules
11 unconstitutional insurance mandate and
12 Obamacare, what would that do prospectively?

13 A: Well, then it's the worst of both worlds, in my
14 opinion, because healthcare reform, at least
15 from the hospital's perspective, was designed
16 to balance itself out. So we would -- we would
17 give up some in payment rates, but we would
18 expect more people to be insured, and maybe
19 there would be a balance. If all the elements
20 of healthcare reform go through except for more
21 coverage, then that -- then that balance is out
22 of whack.

23 Q: If you took Medicare and Medicaid cuts and got
24 nothing in return --

25 A: Right. We got no more coverage; no more people

1 covered.

2 Q: Okay. Now, we've looked at numerous maps, but
3 let's get --

4 MR. SUMMER: Will you pull up for me, please -- I
5 think this is Mr. Thomas' favorite map.

6 Q: We heard testimony -- we heard lines of
7 questioning that Berkeley County has no
8 hospital. As a practical matter, does Trident
9 provide proximate care to Berkeley County?

10 A: I would say a mile is proximate, yes,
11 definitely.

12 Q: Okay. And does it provide convenient care to
13 the southern part of Berkeley County?

14 A: Yes.

15 Q: What part of Berkeley County does not have good
16 access to hospital care?

17 A: Well, to me, you know, 30 minutes -- within 30
18 minutes of a hospital is good access, and by
19 the Health Plan it is too. Anything above the
20 one, beyond the one, as you go towards inland,
21 towards Williamsburg County and Clarendon
22 County is what would be beyond 30 minutes. So
23 I would say that area around the lake and out
24 to Jamestown is considered less than adequate
25 access.

1 Q: Would you agree that folks in Berkeley County
2 also have convenient access to some other
3 medical center?

4 A: Yes.

5 Q: If we look at the planning region itself --
6 let's look at the '08-'09 Plan. Yeah. Pull up
7 on -- let me grab my copy. Look in the record
8 at the Joint Exhibit 4. Do you have a Joint
9 Exhibit Number 4 over there with you anywhere?
10 I'm going to give you a page number here. How
11 many counties are in the DHEC planning region
12 for Trident?

13 A: Three.

14 Q: Three. And what are those counties?

15 A: Berkeley, Dorchester, and Charleston.

16 Q: I want to turn you to the inventory section of
17 that '08-'09 Plan, which is the Plan that Roper
18 filed its application under. And specifically,
19 I want to turn your attention to -- it begins
20 on the bottom of page II-18, and then continues
21 over to II-19. So if we start on II-18, okay,
22 do you see the reference as to Trident in
23 Summerville there?

24 A: I do.

25 Q: Okay. Now, under this Plan, Trident Medical

1 Center had a bed need for how many beds? Go to
2 the far right-hand column?

3 A: Fifty-six.

4 Q: And Summerville had a need for how many?

5 A: Twenty-four.

6 Q: Let's look at the rest of the service area. Of
7 course, by this point in time we have all these
8 new hospitals approved in East Cooper.
9 Charleston Memorial no longer exists, does it?

10 A: Correct, that's closed.

11 Q: How many excess beds does MUSC have in this
12 planning region?

13 A: Sixty-five.

14 Q: And how many excess beds does the Roper system
15 have in this Plan?

16 A: Eight.

17 Q: How many excess beds does St. Francis, which is
18 also part of the Roper system, have in this
19 Plan?

20 A: Seventeen.

21 Q: And how many excess beds does East Cooper have?

22 A: Forty.

23 Q: And in the planning region as a whole under the
24 Plan that Roper has filed its CON application,
25 in the planning region as a whole, how many

1 excess beds are there?

2 A: Forty-eight.

3 Q: Now, let's look at the total number of existing
4 beds in the service area. How many total beds
5 exist in the service area?

6 A: 1,691.

7 Q: 1,691 beds. That's a lot of beds, isn't it?

8 A: It is.

9 Q: That's just the need, right?

10 A: Right.

11 Q: Look at the existing beds.

12 A: Yeah, so -- yeah, total beds existing is 1,739.

13 Q: All right.

14 A: The need -- the need is 1,691. I'm sorry,
15 yeah.

16 Q: So in addition to the convenient access that
17 folks have in southern Berkeley County to the
18 two Trident hospitals, there are a lot of other
19 hospital beds in that three county service area
20 that have capacity to provide care?

21 A: Absolutely.

22 Q: One other issue I wanted to kind of touch on
23 was this notion of how patients access a
24 hospital system. Are ER departments, emergency
25 departments one way patients access systems?

1 A: Yes. Yeah, they're a big way.

2 Q: Where do most of the patients that are -- that
3 are admitted to a hospital end up? If they
4 present to the Trident ER in Moncks Corner, the
5 standalone ER, where are most of those patients
6 admitted if they need inpatient care?

7 A: Trident.

8 Q: In similar fashion, when those patients present
9 to the ER at Roper's ER in Moncks Corner, where
10 are they usually transported?

11 A: Roper or St. Francis.

12 Q: So once you present, you usually stay within
13 the system, correct?

14 A: Right.

15 Q: So the fact that patients are driving from
16 Moncks Corner and going downtown is a function
17 of where they presented?

18 A: Yeah. They may not be driving. The paramedic
19 may be driving.

20 Q: In similar fashion, let's talk about physicians
21 and physician alignment with hospitals. We
22 talked earlier this morning about if a
23 physician wants to practice in your hospital,
24 they have to apply for privileges at your
25 hospital?

1 A: Correct.

2 Q: Is that common throughout the industry?

3 A: Yes. In other words, it's -- it is the way
4 that physicians gain access to a medical staff,
5 they're credentialed through the hospital and
6 apply.

7 Q: And would Roper have a similar process?

8 A: Yes.

9 Q: So if I'm a physician and I practice at Roper,
10 where am I most likely to admit my patients?

11 A: To Roper.

12 Q: If I'm a physician and I have privileges at
13 Trident, where am I most likely to admit my
14 patients?

15 A: Trident.

16 Q: I think we've already established, you don't
17 have much crossover between your two medical
18 staffs, do you?

19 A: We really don't.

20 Q: Okay. So again, how those patients are ending
21 up downtown in large part depends upon where
22 they show up in an ED or who their doctor is?

23 A: Yeah. Yes, almost -- almost entirely.

24 Q: Okay.

25 A: Those two methods.

1 Q: I mean, if I can't get into a hospital without
2 a doctor. The doctor is pretty key to where I
3 go?

4 A: Yes.

5 MR. SUMMER: Beg the Court's indulgence.

6 Q: Would you please be kind enough to answer any
7 questions that Mr. Long or Ms. Biggers would
8 have of you.

9 A: Thank you.

10 Q: One other question that I'd like to ask is, do
11 you have anything as the CEO of Trident that
12 you want this Court to know that you haven't
13 already stated today?

14 A: Yes. I mean, we remain committed to northern
15 Berkeley County. We think it's our duty; we
16 think it's our mission. In meeting with a
17 number of community leaders, government
18 officials, community members, I feel more
19 committed now than I ever have that we need a
20 hospital there, and we're poised to do that if
21 given the right circumstances.

22 Q: And the right circumstances is for basically
23 the agreement you had with the state of South
24 Carolina to be honored?

25 A: One hospital to be improved in Moncks Corner so

1 that we could fulfill our commitment, go back
2 to that community, yes.

3 Q: Thank you very much.

4 MR. LONG: We need a second, your Honor.

5 THE COURT: Yes, sir.

6 MR. LONG: Please the Court?

7 THE COURT: Proceed, yes, sir.

8 MR. LONG: Thank you, your Honor.

9 MR. GALLATI - CROSS EXAMINATION BY MR. LONG:

10 Q: Mr. Gallati, I'm Jimmy Long. We've met before.
11 It's good to see you. You started at Trident
12 in October of 2008; is that correct?

13 A: Yes.

14 Q: And when you arrived at Trident, things were
15 kind of difficult there, weren't they?

16 A: They were.

17 Q: And as a matter of fact, your -- the market
18 share numbers for Trident Hospital had been
19 declining over the last couple of years. We
20 saw yesterday Respondent's Exhibit 116. Mr.
21 Rardin was testifying. This shows the five
22 year market share number for Trident Health
23 System on the next page, the this is ugly
24 email, you saw that, and you seen that in
25 discovery.

1 A: I believe so.

2 Q: So that's one of -- that's six months before
3 you arrive. That's one of the things that you
4 were dealing with, right?

5 A: Right.

6 Q: And you testified this morning and in your
7 deposition that the morale among the employees
8 and among the physician staff, medical staff,
9 was low, wasn't it?

10 A: Yes.

11 Q: And when Mr. Gunn was the CEO of the hospital
12 and the head of the division, he had moved most
13 of the administration people over to the Daniel
14 Island office, hadn't he?

15 A: He --

16 Q: Are you aware of that?

17 A: -- he had created a market office, as I
18 understand --

19 Q: Yeah.

20 A: -- it where he and maybe the CFO were over
21 there, yes.

22 Q: And so actually, the CEO for Trident Medical
23 Center, which was him, was not in the hospital
24 on a day-to-day basis, was he?

25 A: The COO was, right.

1 Q: And the people didn't like that. They didn't
2 like -- they wanted the management to be more
3 visible, didn't they? That had been a
4 complaint that you heard when you got here was
5 the prior administration wasn't visible enough,
6 right?

7 A: Correct.

8 Q: Another thing you found when you got here was
9 you had a very bad Joint Commission review,
10 right?

11 A: Yes.

12 Q: Joint Commission had come in and found 15 or 20
13 deficiencies at the hospital. I mean, you told
14 me that you'd never been in a hospital that had
15 more than five, right?

16 A: Correct.

17 Q: Now, when you got there, you had spent your
18 entire career in Florida, right?

19 A: Right.

20 Q: And you lived in Florida?

21 A: Yes.

22 Q: You went to school in Florida?

23 A: Yes.

24 Q: Okay. You'd never lived in South Carolina, and
25 you really knew nothing about this market, did

1 you?

2 A: I knew what I had been told and what I had
3 studied on, yes.

4 Q: Studied when you were looking at coming up here
5 to do the job, right?

6 A: Yes.

7 Q: I mean, you didn't even know Mr. -- you barely
8 knew Terry Gunn, right?

9 A: I knew -- I knew Mr. Gunn.

10 Q: You knew him, but you didn't really, you know,
11 like knew who he was, but you didn't have any
12 sort of relationship with him, right? Y'all
13 worked in different areas of the country,
14 right?

15 A: We were in the same division at one time, so we
16 had a working relationship through that.
17 Colleagues.

18 Q: But you're not going to sit here and tell the
19 Court today that you really had any knowledge
20 of the South Carolina market when you showed up
21 October of '08, are you, because really you
22 didn't, correct?

23 A: I had a significant amount of knowledge, and I
24 had met with a number of individuals, including
25 my now boss, as well as the group president to

1 hear about, review statistics, review strategic
2 plans before I came.

3 Q: And all that was done in the summer and fall of
4 '08?

5 A: Correct.

6 Q: Now, Mr. Thomas, who's your boss -- because Mr.
7 Gunn had both the positions, right? He had
8 your job and he had Mr. Thomas' job basically
9 for a smaller region of the state, right?

10 A: Yes.

11 Q: If they called it a market, but they split
12 those jobs when Mr. Gunn left the company,
13 right?

14 A: Yes.

15 Q: So Mr. Thomas, who's your supervisor, he, even
16 though he's in charge of the whole division, he
17 had no background with South Carolina either,
18 did he? He was a Florida guy just like you,
19 right?

20 A: He had worked in a number of different states.

21 Q: Never South Carolina, right?

22 A: I know of Georgia and Florida beforehand.

23 Q: And he --

24 A: I'm not sure about South Carolina.

25 Q: And he was in Florida before he came here to

1 this position, that's one of the ways that he
2 knew you, right --

3 A: Correct.

4 Q: -- because y'all had worked in the same little
5 -- in the same area of Florida together, right?

6 A: We were in the same division like Terry Gunn,
7 yes.

8 Q: Okay. Now, you, since you've been here, you've
9 replaced the CEO at Summerville Medical center,
10 right? You've got a brand new CEO over there,
11 Lou Caputo, since you got here, right?

12 A: Yes. He's been here two and a half years.

13 Q: And you basically -- and you're new. You've
14 replaced the controller, Ronnie Midgett. He's
15 no longer at -- he's at Colleton now, right?

16 A: Yes. He was promoted to --

17 Q: He got a promotion.

18 A: -- CFO in Colleton.

19 Q: So he's out. Karl Gorrell is not here in South
20 Carolina anymore. He's in Georgia, right?

21 A: Right.

22 Q: He was your CFO. You've got a new chief
23 nursing officer too, right?

24 A: No.

25 Q: You have the same chief nursing officer?

1 A: Correct.

2 Q: But other than that and Mr. Rardin, it's pretty
3 much a new team in regards to the management,
4 isn't it?

5 A: My chief operating officer and my chief nursing
6 officer at Trident and my chief nursing officer
7 at Summerville were all existing when I got
8 here.

9 Q: But the upper-level management has changed,
10 because it's you, Mr. Caputo, a new CFO, and
11 Mr. Thomas, right?

12 A: Those are the three individuals that are new,
13 right.

14 Q: Well, four if you --

15 A: But I --

16 Q: -- count Mr. Thomas?

17 A: But I wouldn't say that's upper management.
18 The chief nursing officer and chief operating
19 officer are upper management as well.

20 Q: Okay. Now, when you got here, the CON had
21 already -- the project had already been decided
22 upon and the CON had already been filed, right?

23 A: Correct.

24 Q: And you knew that Roper St. Francis was going
25 to file for a CON in -- at Carnes Crossroads,

1 because that had already been announced?

2 A: I think either shortly after me coming or right
3 before they had -- they had announced, yes.

4 Q: Okay. One of the first things that you had to
5 deal with when you got here in October was what
6 to name the new hospital in Moncks Corner,
7 wasn't it? Let's look at Respondent's 110, if
8 we could.

9 MR. LONG: Can you blow up the date on that in the
10 email.

11 Q: Now, this is an email from Ginger Tyra, right?

12 A: Yes.

13 Q: Is that right? She's one of your marketing
14 people.

15 A: Yes.

16 Q: Is that right?

17 A: Yes.

18 Q: Okay. And that date is October of '08. So
19 this is like just a matter of weeks after you
20 had started in your position, right?

21 A: No. I hadn't started yet.

22 Q: You hadn't even started yet, right. Okay. So
23 she's -- but it was announced. It was
24 announced that you were starting. I thought
25 you started in late -- in October?

1 A: I think it was the 30th.

2 Q: Okay. So it's two days before you were
3 supposed to start. All right. So, and she
4 sends you an email saying we need to decide
5 what we're going to name the hospital in Moncks
6 Corner, right?

7 A: Right.

8 Q: And she said, We should take this time to
9 disassociate or disconnect, I'm sorry, any
10 possible negative perception associated with
11 Trident and name it something like Community
12 Medical Center, right?

13 A: That's what it says, yes.

14 Q: What did you think? I mean, you were getting
15 ready to start work and your marketing person
16 sent you an email and said we can't name the
17 new hospital with the same name that we have
18 because of the public's negative perception of
19 the hospital. That's a kind of disturbing
20 email, isn't it?

21 A: I didn't think we needed to tie down the name,
22 as evidenced by my response.

23 Q: The facility in Moncks Corner has been -- is
24 named Moncks Corner Medical Center, right?

25 A: Correct.

1 Q: And if the hospital gets built, you're just
2 going to throw that name away, right, because
3 this hospital is going to be called Berkeley
4 Regional Medical Center, right?

5 A: Perhaps.

6 Q: Wasn't that what the signs say and all the
7 posters, Berkeley Regional Medical Center?

8 A: There are a couple signs that say that now,
9 yes.

10 Q: And isn't that -- that's the commitment you've
11 made on the name, right?

12 A: At this time, yes.

13 Q: Okay. And if you take that name and you just
14 throw away the Moncks Corner Medical Center
15 name, you won't need that name -- you won't use
16 it anymore, right?

17 A: I'm not sure.

18 Q: You got another facility you're going to name
19 Moncks Corner Medical Center?

20 A: We have a medical -- the current building would
21 be turned into a medical office building.

22 Q: You might name it that?

23 A: Correct.

24 Q: Okay. But no name of Trident, right, in the
25 name?

1 A: No. What I've learned from being on the ground
2 the last three years has been that we tend to
3 name our facilities, although they're connected
4 to Trident Health, we tend to name our
5 facilities from a geographic standpoint. So
6 you have Summerville Medical Center, Trident
7 Medical Center, Berkeley Regional Medical
8 Center.

9 Q: Okay. Well, my question for you though was
10 were you kind of disturbed by the email since
11 you were starting work? You said -- I thought
12 you were already here, but you said you started
13 in two days, and your marketing person sent you
14 an email with this kind of language in it. So
15 were -- was that a little disconcerting to you?

16 A: Well, she goes on into the email to say that
17 the -- that the name would actually appeal to
18 a broader area than Moncks Corner. So Berkeley
19 County, some reference to Berkeley County she's
20 alluding to would be -- would be a potential.

21 Q: Well, let's talk about some of the things
22 you've done since you got here. You've
23 increased the visibility of the hospitals,
24 right?

25 A: I think so.

1 Q: You've actually run commercials in the
2 Lowcountry with yourself and the commercials,
3 I've seen one of them before; isn't that right?

4 A: Yes.

5 Q: Okay. You're trying to -- to try to introduce
6 yourself to the market, right?

7 A: I --

8 Q: And your hospital?

9 A: I think, yeah. I think the marketing folks
10 maybe have a number of reasons why they run
11 that commercial.

12 Q: Now, you've also fixed those deficiencies with
13 the Joint Commission, right?

14 A: Yes.

15 Q: And you had a better Joint Commission the next
16 time they came, right, and since then?

17 A: Actually, the Joint Commission issues had been
18 cleared before -- shortly before I got there in
19 the -- in the spring time.

20 Q: But you've had one since --

21 A: And then --

22 Q: -- you got there, right?

23 A: -- and then we had a full inspection since I've
24 been here.

25 Q: Fifteen or 20 deficiencies?

1 A: No, roughly --

2 Q: Right?

3 A: -- less than five.

4 Q: Less than five, right. Okay. Morale is
5 higher, right?

6 A: Yes.

7 Q: And morale among the physicians is higher,
8 right, your medical staff?

9 A: I think they're -- they're satisfied with the
10 -- with the level of services generally. I
11 don't know how you can measure physicians
12 morale. It's kind of always changing.

13 Q: You got 500 physicians on your medical staff,
14 right?

15 A: Correct.

16 Q: And I think you testified today that there's
17 very little overlap between your medical staff
18 and the other -- and the medical staff of the
19 other hospitals on the peninsula and in the
20 tri-county area, right?

21 A: Correct. Only in the sub-specialty areas like
22 some in cardiology and some in some other
23 specialties.

24 Q: And those were -- those are doctors who would
25 typically go to multiple hospitals, right,

1 because they --

2 A: Actually, we have two cardiology groups that
3 are only at Trident in Summerville and Moncks
4 Corner, but we have one cardiology group that's
5 between us and Roper.

6 Q: Do you think your medical staff is loyal to the
7 Trident system?

8 A: We're constantly working on raising that level
9 of loyalty by offering the best services, the
10 best care we can to the patients.

11 Q: All right. Now, there's no doubt though that
12 Roper St. Francis has been in this market --
13 has been in Berkeley county, and as a -- as a
14 significant player for decades, right?

15 A: I don't know how long they've been there.

16 Q: Well, the facility in Moncks Corner has been
17 open for 25 years.

18 A: So they've been there for 25 years.

19 Q: And there is significant -- they have a
20 significant market share in Berkeley County,
21 right?

22 A: Twenty-three percent.

23 Q: You think that's significant?

24 A: I would want more.

25 Q: If you were them?

1 A: Yes.

2 Q: Forty-seven percent of the people in Berkeley
3 County don't go to Trident facilities, do they?

4 A: No, we have the majority. It's 50 plus
5 percent.

6 Q: It's about 53 percent, right?

7 A: Yes.

8 Q: Now, as part of your position as CEO, you
9 talked earlier today, you understand hospital
10 economics, right?

11 A: Yes.

12 Q: And whenever HCA wants to do a major capital
13 project, you calculate the return on
14 investment, right?

15 A: You put -- you put together a pro forma.

16 Q: Uh-huh (affirmative response).

17 A: Correct.

18 Q: Well, and you described earlier today when he
19 asked you if the document you were looking at
20 was a pro forma, you said that -- let me make
21 sure I can get the quote here. I'm sorry --
22 that that didn't look like a pro forma to you,
23 right?

24 A: Correct.

25 Q: The one that you looked it. That looked more

1 like a financial statement. A pro forma to you
2 is a document that tells you how much money --
3 what kind of return you're going to get on the
4 investment, right?

5 A: No, that document was a projected financial
6 statement for all of Trident Health System, I
7 believe, with the new Moncks Corner hospital
8 built into it. A pro forma, to me, is specific
9 to the project. So if it was a -- it was a --
10 showing a number of years just for the Moncks
11 Corner hospital, proposed Moncks Corner
12 Hospital, the cash flow from the hospital, to
13 me that would be a pro forma.

14 Q: Which would -- and the cash flow is really the
15 most important thing to look at, right?

16 A: I think -- I think the cash flow and the -- and
17 the covering of the projected debt service,
18 both are important.

19 Q: And being able to cover the debt service is
20 part of the cash flow, right?

21 A: Yeah. I mean, there's certain -- certain
22 things that go below the line on the -- on a
23 cash flow statement that are important as
24 well.

25 Q: No one ever did that type of return on

1 investment for this hospital project, did they?

2 A: Yes. On the CON application, there was a
3 statement of projected income from that project
4 for multiple years.

5 Q: And no one ever calculated out a return on
6 investment percentage that you've ever seen,
7 right?

8 A: An investment return percentage, not exactly,
9 no.

10 Q: When you --

11 A: Well, it did show a cash flow statement that
12 showed that in the first year of operation if
13 we were the only hospital in Berkeley County
14 that within the first year of operation it
15 would be barely, but a positive cash flow.

16 Q: Well, actually, it doesn't show if we were the
17 only. It shows what you would cash flow if you
18 had a certain volume in the hospital, right?

19 A: Yes. And clearly the assumption was that there
20 was no other competitor hospital in Berkeley
21 County, or we wouldn't have projected those
22 volumes.

23 Q: Well, no. The assumption isn't in the
24 application was is that you were not going to
25 move market share at all.

1 MR. SUMMER: I want to object to that.

2 Q: Isn't that right?

3 MR. SUMMER: It's an argumentative question to look
4 at a witness and say no. He's entitled to ask
5 a question. He's entitled to ask a leading
6 question. But pronouncing to the witness "no"
7 is argumentative, and I object.

8 MR. LONG: Your Honor, I'll try to ask the question.
9 I don't think it was argumentative.

10 THE COURT: All right. Refrain from argumentative
11 questions.

12 Q: The pro forma or return on investment
13 calculates the volume of patients that will be
14 seen at the hospital, right?

15 A: That's part of it.

16 Q: And then it calculates the revenue off of that
17 volume, right?

18 A: Correct.

19 Q: And then it calculates the expenses?

20 A: Yes.

21 Q: And it determines whether it's going to cash
22 flow or not; isn't that correct?

23 A: That's correct.

24 Q: Okay. And if you had the volume that you
25 projected, then the pro forma works. It

1 doesn't matter what anybody else is doing,
2 right? Right?

3 A: Can you ask that again?

4 Q: I said if you meet the volume projections and
5 the financial numbers are correct, it doesn't
6 matter what your competitors are doing on
7 whether it's going to cash flow or not, does
8 it?

9 A: If the assumptions change from the time that
10 you put -- from the time you put the cash flow
11 statement together, and then an assumption
12 changes, like another application is submitted
13 shockingly, it absolutely changes that previous
14 cash flow statement that was made.

15 Q: Yeah. But the assumptions would have to
16 change, which would mean that the volume
17 numbers would have to change, correct?

18 A: Correct.

19 Q: All right. Now, do you think that the Moncks
20 Corner Hospital can survive without attracting
21 patients that -- can survive without attracting
22 patients already served by Trident or
23 Summerville?

24 A: No.

25 Q: They've got to attract new patients, right?

1 A: We've got to see some population growth in that
2 area.

3 Q: Okay.

4 A: No question about it.

5 Q: And there's going to be population growth in
6 Berkeley County, isn't there?

7 A: I don't know that. It's a very difficult time
8 for our economy. There aren't homes being
9 built.

10 Q: Did you see the 2010 census numbers?

11 A: I did.

12 Q: And they were higher than they were projected
13 to be, right?

14 A: Yes.

15 Q: Okay. And don't you think that when Mr. Gunn
16 and Mr. Rardin decided to file the application
17 in 2008 that they thought there was going to be
18 growth in the Berkeley County to support those
19 volume assumptions?

20 MR. SUMMER: I'd object to the form. He can ask him
21 about assumptions, but not what those
22 individuals thought.

23 Q: Was the -- I'll rephrase it. Is the
24 application based on the assumption that the
25 population is going to grow in Berkeley County?

1 A: I think there's a portion of the application
2 that's based in that -- that assumption, yes.

3 Q: Okay. And you also believe that you would get
4 new patients at the Moncks Corner Medical
5 Center, right?

6 A: No, I think -- I think the -- the analysis that
7 Richard Baehr put together shows a growth in
8 patients based on the population growth.

9 Q: Well, that's right. That's a good point,
10 because the CON application projects that there
11 will be no change in market share with the new
12 hospital; isn't that correct?

13 A: I believe that's the case.

14 Q: Okay. And when you sat down and looked at
15 that, after it'd already been prepared, that's
16 not typically what you would expect for a new
17 hospital, is it?

18 A: I don't think that's out of the realm of
19 possibilities, no.

20 Q: Yeah, but I asked you -- that's -- if that's
21 what you would expect for a new hospital?

22 A: I would expect to see growth, whether it be
23 from population growth, change in market share.

24 Q: When I asked you --

25 A: One of the other or both.

1 Q: And you think there will be new patients that
2 will come to this hospital, right?

3 A: Yes. Through population growth, yes.

4 Q: And don't you think there are going to be new
5 patients that would come to this hospital that
6 would otherwise go to other hospitals?

7 A: I don't know. I don't -- I don't know if I
8 today can split those hairs to tell you if
9 they're -- if they're new patients, where
10 exactly the new growth is coming from. Is it
11 population growth, is it -- is it change in
12 market share? As we look at Trident Health
13 System today since 2008 leading up to 2010,
14 we're the only health system to grow market
15 share. And, you know, we grew -- we grew a
16 little bit. So that was a -- that was a --
17 that was a positive.

18 Q: What do you attribute that to?

19 A: I think the new services that we've -- we've
20 brought online and quality of care, patients'
21 confidence in us.

22 Q: When you were in Lake City, you walked into a
23 new hospital, right? Was that the location
24 where you were --

25 A: Yes.

1 Q: -- at, the new hospital, Lake City?

2 A: Yes.

3 Q: And the community at -- HCA built a new
4 hospital for the community, and it was a very
5 positive event, wasn't it?

6 A: It was.

7 Q: People were excited about it, right?

8 A: Right.

9 Q: People wanted to use their new hospital, right?

10 A: Yes.

11 Q: Okay. Don't you think the same thing is going
12 to happen in Moncks Corner?

13 A: Unfortunately in Lake City, we still fought the
14 -- the mindset that only quality care could be
15 given in a hospital that's over two or three
16 stories. So a lot of patients drove a half an
17 hour to Gainesville still, where it's kind of a
18 healthcare hub. So we fought a lot of out-
19 migration there. We did have some success
20 keeping patients home.

21 Q: Sure. Don't you think the people in Moncks
22 Corner are going to be excited about their
23 hospital?

24 A: Yes.

25 Q: You're going to turn your ED into a medical

1 office building, right?

2 A: Correct.

3 Q: And you're going to put physicians there,
4 right?

5 A: We're going to try, yes.

6 Q: And usually physicians attract patients, right?

7 A: Right.

8 Q: And do you think the physicians that are in the
9 medical office building and the location next
10 to your hospital are going to use your
11 hospital?

12 A: Yes.

13 Q: Okay. So that would be another way for you to
14 attract patients, right, in that area of this?

15 A: Yeah. Yeah, we look forward to serving those
16 patients that are currently having to -- to get
17 to Trident or Summerville.

18 Q: Okay. Many patients come to a small hospital
19 through the ED, right, the emergency
20 department?

21 A: Yes.

22 Q: Don't you think the people that live in that
23 community of the state are going to want to go
24 to an emergency department in a brand new
25 hospital instead of going to an emergency

1 department in a 25-year-old building that's not
2 part of a hospital?

3 A: I think that might be a desire of -- of
4 patients or of the community. I think it
5 depends on the physician affiliation. I think
6 it depends on EMS. EMS is going to take
7 patients to the -- to the closest emergency
8 department.

9 Q: Well, don't you think EMS is going to take
10 people to the hospital emergency department if
11 they think they're very sick?

12 A: They are going to make the decision from a
13 triage standpoint to -- do these patients --
14 does this patient need to go to the Medical
15 University, does it need to go to Trident, does
16 it need to go to freestanding ER that's
17 closest, or does it need to go to Moncks
18 Corner, yes.

19 Q: And so the more sicker the patient, you're
20 going to get that patient over the freestanding
21 ED, emergency department, right?

22 A: Yes.

23 Q: I mean actually, what's going to happen is
24 you're going to turn -- you know what an urgent
25 care center is, right?

1 A: Yes.

2 Q: An urgent care center is below an emergency
3 department, right?

4 A: Yes.

5 Q: Acuity level of people that go there. It's
6 more similar to a doctor's office than it is
7 actually to an emergency department, right?

8 A: Yeah, where patients go is sometimes maybe --
9 maybe somewhat misguided. We've seen a lot of
10 chest pain patients go to an urgent care
11 center.

12 Q: Because they were making a mistake, right?
13 They needed to go to a hospital?

14 A: I wouldn't make that decision. I just --

15 Q: Right. And so don't you think that your
16 hospital is going to turn the emergency
17 department at Roper into an urgent care center
18 where the more sick patients are going to go to
19 your institution, and the people who have the
20 cuts and bruises are going to maybe go to
21 theirs?

22 A: No, I don't think so. They'll still be
23 licensed as a -- as a freestanding emergency
24 department. We fully expect them still to
25 compete with us.

1 Q: Now but my question for you is not whether
2 they're going to try to compete with you or
3 not, it's whether they're going to be able to
4 compete with you?

5 A: The question was, was the facility going to
6 turn into a freestanding emergency or --

7 Q: New urgent care.

8 A: -- urgent care.

9 Q: In a practical matter, don't you think your
10 facility will basically affect the acuity of
11 the patients that go to their facility, the
12 Roper St. Francis facility in Moncks Corner?

13 A: Maybe. I had -- had not -- had not thought
14 about that.

15 Q: Yeah. I asked you in the deposition do you
16 think that the Carnes Crossroads hospital that
17 Roper St. Francis is going to build would have
18 an impact to Summerville Medical Center. Do
19 you remember what you said --

20 A: I think --

21 Q: -- about the application?

22 A: I think there's a potential.

23 Q: Well --

24 A: A Carnes Crossroads hospital is going to have
25 an impact on any hospital nearby, whether it be

1 in Moncks Corner, at Trident, or Summerville.

2 Q: Do you recall what you said in regards to the
3 decision regarding the Carnes Crossroads
4 hospital when I asked you that question in your
5 deposition?

6 A: About the decision? What decision?

7 Q: The Department's decision --

8 A: The Department's --

9 Q: -- about Carnes Crossroads? You remember
10 saying it was a bad healthcare decision -- it
11 was bad healthcare planning?

12 A: Well, I have said that in the past. I could
13 see that, yeah.

14 Q: And you said in your deposition that, the
15 Carnes Crossroads is bad healthcare planning
16 because bad -- it's bad planning to spend \$100
17 million to build a hospital when you can add
18 beds to an existing facility for much less. Do
19 you recall saying that?

20 A: Yes.

21 Q: Okay. Do you believe that?

22 A: Yes.

23 Q: Okay. And really, that's just a philosophy
24 that you have in regards to healthcare
25 planning, right? That's a debate among

1 planners, should you build new facilities or
2 add onto existing facilities, right?

3 A: I think if you look at the five criteria for a
4 CON, you would weight further some of the costs
5 and lack of duplication implications of a -- of
6 a decision. But we're debating that here, so
7 yes, it's debatable.

8 Q: And that statement about whether it's bad
9 healthcare planning to spend \$100 million to
10 build a new hospital rather than adding on to
11 an existing facility for much less applies to
12 your facility in Moncks Corner, right?

13 A: Correct.

14 Q: Because y'all planned -- proposed to spend \$115
15 million to add 50 beds in Moncks Corner, and
16 it's going to cost you \$27 million to add 30
17 beds at Summerville, right?

18 A: Correct.

19 Q: Now, when you met with Ms. Brandt on June the
20 9th of 2009, after the project review, you did
21 not tell her that you were not going to build
22 the hospital if only one was approved, did you?

23 A: I don't know if that came up.

24 Q: Because you hadn't even made that decision yet,
25 had you?

1 A: We really were not thinking of the likelihood
2 of any decision by the -- by the Department
3 that would -- that would put our project in
4 jeopardy in Moncks Corner. In other words, we
5 had not considered seriously that two hospitals
6 would be approved.

7 Q: Well, Mr. Gallati, you went to the project
8 review, right?

9 A: Yes.

10 Q: You heard the people from Roper St. Francis.
11 It was pretty clear that we told the Department
12 we had -- it was fine for them to approve both,
13 and that we didn't think the applications were
14 competing; you heard that, right?

15 A: I heard a lot of things that day, right.

16 Q: Including that?

17 A: Yeah.

18 Q: Right?

19 A: I mean, from what I can remember.

20 Q: And when you went on June the 9th, which was a
21 couple weeks after the project review, you knew
22 there was a very real possibility that the
23 Department was going to find that the
24 applications were not competing, didn't you?

25 A: I did not.

- 1 Q: You just didn't even think there was any
- 2 possibility that she would find them competing?
- 3 A: I didn't say that either.
- 4 Q: You talked to her about the competing issue,
- 5 didn't you?
- 6 A: I did.
- 7 Q: You actually asked her point blank, are you
- 8 going to find these applications to be
- 9 competing, right?
- 10 A: Yes.
- 11 Q: And she refused to tell you her answer, right?
- 12 A: Right. Right.
- 13 Q: Because that would have been her telling you
- 14 her decision without Roper St. Francis being
- 15 present to hear it also, right?
- 16 A: That would not have told me her decision, no.
- 17 Part of her decision.
- 18 Q: Well, a big part of her decision was whether
- 19 these applications were going to be competing,
- 20 right?
- 21 A: Yeah, part of it.
- 22 Q: Did you ask her if she was going to approve the
- 23 Roper St. Francis decision -- application that
- 24 day?
- 25 A: No.

1 Q: But you did ask her if she was going to declare
2 the applications to be competing?

3 A: Yes.

4 Q: Now, after that decision came down, okay, you
5 and Mr. Thomas and Mr. Caputo decided to do the
6 Summerville expansion, right?

7 A: Yes, well after the decision.

8 Q: Right. It was filed almost a year later. I
9 mean, you started on it almost a year later,
10 right?

11 A: Right.

12 Q: At no time prior to that had you told anybody
13 that you weren't going to build the Moncks
14 Corner hospital if the Court affirmed the
15 decision, did you?

16 A: Yes, we have. Yes, that decision evolved over
17 a period of time. Right after the decision by
18 the Department to grant both hospitals, we felt
19 like appeal was our best option. But we also
20 begun thinking about the -- the possibility
21 that -- that appeal would be withheld, you
22 know, upheld, and what are the implications of
23 that for us in Moncks Corner. We went back to
24 begin looking at our financial assumptions, the
25 impact of two hospitals, what that would have

1 on our -- on our assumptions. And it became
2 very, you know, scary. We had -- we felt like
3 we had a good maybe borderline project in
4 Moncks Corner because of some -- because of
5 some of the unemployment there and the lack of
6 growth, significant growth in the northern part
7 of the county. But we were committed to it
8 until the thought of two hospitals being
9 approved. So we began talking to the community
10 almost immediately, and, you know, it was very
11 common for my discussion to be, you know, when
12 asked, would you build if both were approved,
13 it was very common for me to consistently say
14 if the conditions were what they are now, we
15 would not, but we're going to continue to look
16 at these conditions and our assumptions as we
17 get closer to trial.

18 Q: I deposed Mr. Rardin in September, I mean, in
19 March of 2011. When I asked him in his
20 deposition if a decision had been made on
21 whether you were not going to build in Moncks
22 Corner if both were approved, he testified it
23 had not been made. Was that accurate?

24 A: I don't know. I don't -- I don't know the
25 dates. I clearly have stated very publicly to

1 many different audiences that if we had to make
2 the decision today, we would not be able to
3 build. And that was, you know, roughly within
4 about a year of the decision, the Department's
5 decision. So that would have been, you know,
6 beginning in 2010.

7 Q: You've had -- there's no doubt in your mind you
8 have the money to build the Summerville
9 project, right?

10 A: Yes, HCA has given us a funding letter for
11 that.

12 Q: Okay. And you've done an ROI on that. You
13 know how -- you know what the return on
14 investment is going to be, correct?

15 A: I've seen cash flow statements for that, yes,
16 the projections.

17 Q: All right. Does Trident have the money to do
18 both projects?

19 A: Yes.

20 Q: So you've got the money to do the \$140 million
21 or so that it would cost to do both projects,
22 right?

23 A: Correct, HCA. does, yes.

24 Q: Okay. HCA does. And is HCA making the
25 decision on whether to build the hospital in

1 Moncks Corner, or are you making it?

2 A: Well, I am HCA. I mean, I'm Trident and HCA.
3 We're collaborating on that decision. The
4 ultimate funding, the ultimate check will be
5 written out of Nashville.

6 Q: And now you said -- there's been no internal --
7 and HCA is a company that has hospitals all
8 over America, right?

9 A: Yes.

10 Q: And you have a big corporate department. It's
11 a sophisticated organization, right?

12 A: I think it is.

13 Q: And if you want to build a hospital, you've got
14 people there that can deal with the
15 architecturals and equipment, and a lot of the
16 kind of sophisticated parts of that you can
17 turn over to them, right?

18 A: With HCA running 180 and owning 180 hospitals,
19 there's some corporate departments that do
20 offer us good support, yes.

21 Q: And they certainly have financial people in
22 there who know what they're doing, right?

23 A: Yes.

24 Q: And they certainly have planning people who can
25 basically assess markets and determine the

1 financial -- the ramifications and decisions,
2 right?

3 A: To some extent. They rely on outside
4 consultant's like Mr. Baehr.

5 Q: Well, your decision and support unit that you
6 have at HCA can tell the contribution margin of
7 every service line in every facility, can't it?

8 A: Yes.

9 Q: And I've seen those reports. They're readily
10 available to you as a CEO, aren't they?

11 A: Sure.

12 Q: Okay. You have never accessed any of the
13 people at HCA to give you an opinion on whether
14 this hospital is financially feasible in Moncks
15 Corner, have you, you personally?

16 A: Absolutely I have.

17 Q: You have? Who?

18 A: Jamie Thomas.

19 Q: Okay. He's your supervisor in management,
20 right?

21 A: Right.

22 Q: Did you ever run a report? I've never seen a
23 report or any sort of report that was ever
24 produced that was a financial analysis of
25 whether the hospital in Moncks Corner would be

1 successful or not, other than Mr. Baehr. Have
2 you ever seen one?

3 A: Mr. Baehr ran a report -- worked on a report
4 with Ronnie Midgett and Karl Gorrell and Steve
5 Woodford and others that's enclosed in the CON.
6 Those are -- those are the reports that I've
7 reviewed with Jamie.

8 Q: Okay. So basically, your decision not to build
9 the project in Moncks Corner if the Court
10 approves this is based solely on Mr. Baehr's
11 work, right?

12 MR. SUMMER: Objection. That mischaracterizes the
13 testimony --

14 MR. LONG: Well, it's a question.

15 MR. THOMAS: Objection, and may I please state it for
16 the record, Your Honor?

17 THE COURT: You may state it.

18 MR. THOMAS: Thank you, Your Honor. The objection
19 is he just testified that those numbers were
20 done in collaboration among three individuals,
21 two HCA employees and Mr. Baehr. His question
22 then said, so Mr. Baehr did it all. That
23 mischaracterizes the previously sworn testimony
24 and is an improper question, and I object to
25 it, Your Honor.

1 THE COURT: Overruled. If they're wrong, then he
2 should say so.

3 MR. SUMMER: Thank you, your Honor.

4 A: It was wrong.

5 Q: All right. What did Mr. Midgett do?

6 A: He performed the financial analysis on the --
7 for the CON document along with Steve Woodford
8 and Karl Gorrell and Mr. Baehr.

9 Q: Okay.

10 A: I know Mr. Baehr presented a financial analysis
11 if two hospitals were built in Berkeley County.
12 He presented a financial analysis for us to
13 review. I reviewed that with Jamie Thomas,
14 others within our organization, Karl Gorrell,
15 and that was the analysis that basically led us
16 down the path of making this decision that we
17 could not build given these financial
18 projections.

19 Q: That's what I'm trying to get to. So your
20 decision not to build based on these financial
21 projections is based on the information that
22 was presented at project review, right?

23 A: I don't know where it was originally presented.

24 Q: I said was it -- was it based on the
25 information that was presented at project

1 review by Mr. Baehr?

2 A: I don't recall whether or not Mr. Baehr
3 presented that financial analysis or if that
4 came later. But the financial analysis, they
5 compared two hospitals and what would happen
6 and what -- what that financial picture would
7 look like for Trident Health if two hospitals
8 were built, was the concern for us.

9 Q: Okay. Did Mr. Baehr ever come and make a
10 presentation to just you and Mr. Thomas?

11 A: No.

12 Q: Okay. First time you ever met him was project
13 review in person?

14 A: I think so. I think that was about three
15 months into my tenure here.

16 Q: Okay. And he never made any sort of
17 presentation after that to you and Mr. -- you
18 or Mr. Thomas, other than what he did at
19 project review, right?

20 A: He did. He did. I don't know if it was
21 directly to Mr. Thomas. It certainly was to
22 me, Karl Gorrell, and other -- other
23 individuals.

24 Q: And when did that occur, before or after the
25 project review?

1 A: It -- it's occurred several times after project
2 review.

3 Q: Did he give you revised information from
4 project review? Has he revised his information
5 since then?

6 A: He's given some different information. I don't
7 know if it's been revised. It's been expanded
8 upon, yes. Updated some projections.

9 Q: Do you -- when I asked you in your deposition
10 if you knew the number of patients that were
11 going to be lost by either Trident or
12 Summerville, you had no idea, did you?

13 A: I'm not sure of the number of patients. I
14 certainly know the millions of dollars.

15 Q: Okay. And you think it's going to be millions
16 of dollars to your system just from the Carnes
17 Crossroads facility being built?

18 A: Yes.

19 Q: And that's based on --

20 A: Mr. Baehr --

21 Q: -- Mr. Baehr?

22 A: -- Mr. Baehr's analysis.

23 Q: So --

24 A: \$16.5 million adverse impact to the third year
25 of operation.

1 Q: All right. Did Mr. Gorrell do an analysis like
2 that for you?

3 A: Not that I recall.

4 Q: You asked him to, but he never did it, right?

5 A: I asked him what the adverse impact showed, I
6 believe.

7 Q: You asked it what it was, and he never did it
8 for you, did he?

9 A: I didn't ask him to produce it. I asked him
10 what it was.

11 Q: And did he ever give you a number?

12 A: Not that I recall, but Richard did. He gave it
13 to both Karl and I.

14 Q: Now, that's a different question. Not the
15 number of what the impact would be if both
16 hospitals were built, just the impact if only
17 Roper St. Francis was built?

18 A: Right. Correct.

19 Q: Okay.

20 A: The adverse impact if Carnes Crossroads
21 hospital was put there, yes.

22 Q: And when did he give you that, at project
23 review?

24 A: No. Huh-uh (negative response). No, I don't
25 think I was aware at that point what that was.

1 THE COURT: Wait, you've lost me here. You were
2 talking about Carnes Crossroads versus
3 Berkeley. Now you're into what if one is
4 built. You mean if Berkeley is not built?

5 MR. LONG: If Berkeley is not built. If only Roper
6 St. Francis Hospital was built, I asked him if
7 he knew what the impact would be if --

8 THE COURT: On the existing facilities?

9 MR. LONG: On the existing facilities, correct.

10 THE COURT: I see.

11 MR. LONG: Okay.

12 Q: And when I asked you to give a range or a
13 number that would be significant, you didn't
14 know the answer to that. But you're telling me
15 know that Mr. Baehr has sat down with you and
16 told you exactly what it's going to be? He
17 made a presentation to you?

18 A: I'm aware that in the -- in the third year of
19 operation, it's a -- it's a hit to Trident
20 Health System, an impact of 16 and a half
21 million dollars based on lower utilization
22 within Trident Health System because of that
23 facility, yes.

24 Q: Have you ever seen that -- and how do you know
25 that? That's what I'm trying to find out. How

1 do you know that?

2 A: I have seen an adverse impact analysis
3 projection that Mr. Baehr has -- has put
4 together.

5 Q: Do you remember when you saw it?

6 A: I do not.

7 Q: You understand that there are only going to be
8 50 beds at the Roper St. Francis facility,
9 right?

10 A: Which Roper St. Francis facility?

11 Q: Berkeley. Roper St. Francis Berkeley facility.

12 A: That'll be -- yeah, 50 beds, you know, on top
13 of their other beds that they have at St.
14 Francis and Roper, right.

15 Q: Just talking about the hospital in Berkeley.

16 A: Right.

17 Q: It's a 50-bed hospital, right?

18 A: Right..

19 Q: Okay. And you've been in a small hospital
20 before. Lake City was only 70 beds, right?

21 A: Seventy-five, yes.

22 Q: Seventy-five beds. And it's typical that
23 hospitals don't operate at full capacity,
24 right? They're not hotels, right?

25 A: They're not hotels. Typically, you like to see

1 75 to 85 percent capacity.

2 Q: But actually, you'd agree that your -- you
3 would agree that your -- that you have a bed
4 need in Summerville, right?

5 A: Correct.

6 Q: Okay. And you don't have 75 percent occupancy
7 at Summerville, do you?

8 A: Today we do.

9 Q: Over the -- in 2010 and 2011, your occupancy
10 percentages were under 65 percent, weren't
11 they?

12 A: I think they were approximately 65 percent,
13 yes.

14 Q: And in the Health Plan, it talks about
15 hospitals being 65, 70, and 75 percent
16 occupancy, right, based on their size, by
17 calculating the formula?

18 A: I'm not aware of that, no.

19 Q: Okay. Now, you understand that in a 50-bed
20 hospital, the total number of admissions that
21 the hospital -- you would expect the hospital
22 to have in a year is about 2,800 admissions,
23 right?

24 A: I'm not aware of what that number would be in
25 a 50-bed hospital.

1 Q: You don't know?

2 A: It would depend on length of stay.

3 Q: And it would also depend on your occupancy
4 percentage, right? How many -- how many
5 admissions do you think you'll have a Moncks
6 Corner?

7 A: I'd have to look at the projections, but -- so
8 I couldn't state what that number would be.

9 Q: Okay. Do you know anything about what the
10 volume projections would be at Moncks -- for
11 the proposed hospital in Moncks Corner?

12 A: Yeah. In our CON application, we -- we
13 projected an average daily census, I believe,
14 after a few years of around 50 percent
15 occupancy. So around 25 to 30 patients.

16 Q: Okay. And at 25 or 30 patients, you projected
17 the facility would cash flow, right?

18 A: Yes.

19 Q: Okay. And if you -- and so you'd expect the
20 same thing for the Roper St. Francis facility,
21 right?

22 A: Yes.

23 Q: Okay. And Berkeley. So how in the world can
24 25 patients in Berkeley have an adverse impact
25 on Trident and Summerville's 390 beds?

1 A: Well, you know, it's -- it's a misconception to
2 just hang on beds when you're talking about a
3 hospital. You're talking about a whole lot of
4 other services, and you're certainly talking
5 about the transferability. We've seen patients
6 that -- that get inside of the Roper St.
7 Francis system at Moncks Corner are taken and
8 transferred to Roper in St. Francis for higher
9 level care. So while -- while that facility is
10 not necessarily taking care of them, that
11 facility would be, in Carnes Crossroads, would
12 be the receiving facility, and they would then
13 have access to higher level care, and you would
14 see frequent transfers.

15 **THE COURT:** Mr. Long, I'd appreciate it if you would
16 make a distinction for the record purposes
17 between existing Trident facilities and the
18 proposed Trident facilities.

19 **MR. LONG:** I'm trying to, Your Honor. If I've
20 slipped on that, I'll try to do better with
21 that.

22 Q: In your hospital at -- so what you're worried
23 about in regards to the Roper St. Francis
24 facility to your existing hospitals at Trident
25 Medical Center in Summerville is the tertiary

1 patients? That's what you're talking about,
2 the higher acuity level patients?

3 A: I'm worried about it all.

4 Q: Don't you think if -- what about the 47 percent
5 of the people who choose not to go to your
6 facility and live in Berkeley County? Don't
7 they have a right to have a facility?

8 A: Patients certainly have a right. What we've
9 seen is that with the employment practices of
10 some of the hospitals in the area and the EMS
11 system, patients aren't always the one making
12 the choice. They have others that are
13 influencing them on those choices.

14 Q: Let's talk about that. One of the major
15 choices for them is physicians, right?

16 A: Right.

17 Q: Okay. Now, Berkeley County has got a --
18 Berkeley and Dorchester County have a physician
19 -- primary care physician group that dominates
20 the market, right? Palmetto Primary Care?

21 A: I don't know whether they dominate the market
22 in Berkeley County.

23 Q: Well, they have 25 locations, right?

24 A: They have 25 locations throughout the tri-
25 county area approximately.

1 Q: And they have 70 physician, primary care
2 physicians in their group, right?

3 A: I don't know the exact number, 60 maybe is the
4 last number I heard.

5 Q: Well, in your deposition you told me you
6 thought it was 70 or 80.

7 A: Well, if you count the nurse practitioners and
8 physician assistants, they probably do have
9 close to 75 providers, physician providers. It
10 might be closer to 60.

11 Q: Okay. We'll go with this number of 60. So
12 they have 60 in their group, and the next
13 highest group, the next largest group has five,
14 right?

15 A: Who would that be?

16 Q: Berkeley Family Practice.

17 A: Okay.

18 Q: They're probably the second largest group,
19 right? Probably Berkeley County?

20 A: Probably.

21 Q: So the largest group has 70 or 60, and the next
22 group has five. Now --

23 A: Actually if we're talking about the tri-county
24 area, the largest group, I think, is LMO
25 purchased by Roper St. Francis.

1 Q: Well, you're talking about --

2 A: Are we just talking about Berkeley?

3 Q: No, I'm talking about Berkeley and Dorchester.

4 A: Okay.

5 Q: Okay. The Berkeley-Dorchester market is
6 dominated by Palmetto Primary Care who has over
7 60 primary care physicians in 25 locations,
8 right?

9 A: Palmetto Primary Care has locations throughout
10 the tri-county area. In just Berkeley and
11 Dorchester county, they don't have 60. I don't
12 know --

13 Q: The vast majority --

14 A: -- what the number is.

15 Q: They dominate the market, right? Do they
16 dominate the market or not? You don't think
17 they do or do you?

18 A: They're probably one of the larger primary care
19 groups in the -- in the tri-county area, yes.
20 I just don't know how many they have in
21 Dorchester and Berkeley County.

22 Q: Okay. Is there anybody in Berkeley or
23 Dorchester County that's even remotely close to
24 them in size?

25 A: From a primary care perspective?

- 1 Q: Yes.
- 2 A: Probably Berkeley Family Medicine.
- 3 Q: They have five physicians.
- 4 A: Right.
- 5 Q: Okay. How many doctors does Palmetto Primary
- 6 Care have in Berkeley and Dorchester County?
- 7 A: In Berkeley, I would guess, speculate --
- 8 Q: Don't speculate. You don't know, just say you
- 9 don't know.
- 10 A: Okay. Let me -- let me count them then.
- 11 Q: Okay. Do you want to see the list?
- 12 A: Approximately ten.
- 13 Q: And how many in Dorchester?
- 14 A: I don't know. I would say it's a little bit
- 15 larger than ten.
- 16 Q: Now, they have offices near your facility, and
- 17 they also have offices in North Charleston,
- 18 right?
- 19 A: Yes.
- 20 Q: Okay. And you're not counting them in the
- 21 Berkeley group, right?
- 22 A: No.
- 23 Q: The North Charleston office?
- 24 A: No, you asked for Berkeley.
- 25 Q: Right. So you didn't include them, right?

1 A: Right.

2 Q: Okay. So they have offices on your campus or
3 right near your campus at Trident Medical
4 Center, right?

5 A: Right.

6 Q: They also have offices right near your campus
7 or on your campus at Summerville Medical
8 Center, right?

9 A: Right.

10 Q: There are at least ten of those physicians who
11 don't even use the hospitalists that y'all have
12 in the office -- at the hospital, right? They
13 admit their own patients --

14 A: Correct.

15 Q: -- is that what you told me?

16 A: Ten of the 60 admit their own patients.

17 Q: All right. And let's talk about that for a
18 second. What's a hospitalist?

19 A: It's a -- it's a physician that is only based
20 at the hospital. They are charged with
21 admitting patients from community physicians or
22 from the emergency department, and they staff
23 the hospital to care for those patients, as
24 opposed to community doctors coming to your
25 hospital and admitting these patients and

1 caring for them.

2 Q: Okay. And those doctors, the hospitalists, are
3 employed by the hospital, right?

4 A: Correct.

5 Q: Okay. And they just work at the hospital as
6 primary care physicians, right?

7 A: Internists, yes.

8 Q: Internists. And which is a form of primary
9 care, right?

10 A: Yes.

11 Q: Most primary care doctors are internists or
12 family practice, right?

13 A: Correct. Or pediatricians or obstetricians.

14 Q: Or pediatricians, children; OB, women, right?

15 A: Yes.

16 Q: Okay. Now, why are hospitals -- the reason
17 hospitals hire hospitalists is because it makes
18 it a little easier for the primary care
19 physicians because then they don't have to come
20 to the hospital and see their patients, right?
21 The hospitalists can do it for them?

22 A: That's part of the reason, yes.

23 Q: Because a primary care physician is --
24 physician is in an office, and he's working in
25 the office seeing patients, and that's what he

1 desires to do, right?

2 A: Right.

3 Q: And most primary care physicians are trying to
4 see as many patients as they can in their
5 office during the day instead of getting in
6 their car and driving to the hospital and going
7 and seeing people or making rounds prevents
8 them from seeing patients in the office, right?

9 A: It makes their schedule more difficult, yes.

10 Q: So that's a way that a hospital can make time
11 -- quality of life issues and make it better --
12 make the practice better for a primary care
13 physician is to hire hospitalists to help them,
14 right?

15 A: Correct.

16 Q: Okay. And you've done that?

17 A: Yes.

18 Q: And actually since you've been here in '08,
19 you've hired over ten of those doctors to work
20 in your two hospitals, right? Or is it 13?

21 A: Ever since I've been there, we've had about --
22 a group of about 16 physicians that are
23 hospitalists at Trident and Summerville.

24 Q: Since you've arrived in '08, or since '08,
25 you've grown the employed physicians at Trident

1 Medical -- at Trident Medical Center in
2 Summerville, right?

3 A: Yes.

4 Q: You doubled it actually, right?

5 A: We may be up to a dozen now outside the
6 hospital, not including hospitalists --

7 Q: Right.

8 A: -- which has remained static. We might have
9 started with eight or so when I got here.

10 Q: So there's nothing wrong -- so you've only
11 hired four physicians, that's your testimony,
12 since you came here?

13 A: Yeah.

14 Q: I'm pretty sure in your deposition --

15 A: Four, five -- four, five, or six.

16 Q: I'm pretty sure in your deposition you told me
17 you'd increased it to up to 30 employed
18 physicians for Trident Health System.

19 A: If you include the hospitalists, yes.

20 Q: Right. And --

21 A: But I didn't -- I didn't employ them. They
22 were here when I got here.

23 Q: You had 13 when you got here, I thought is what
24 you told me?

25 A: We -- we've been pretty consistently 15 or 16

1 hospitalists over the last three years.

2 Q: Well, there's nothing wrong with employing
3 physicians, is there?

4 A: I don't think so.

5 Q: And as a matter of fact, you can employ primary
6 -- Palmetto Primary Care today, couldn't you?
7 There's nothing stopping you except them,
8 right?

9 A: No, I could --, I think -- I think strategy
10 would dictate a potential decision like that.

11 Q: Yeah. The strategy would say you might want to
12 employ, right, since they're the largest group
13 in Berkeley and Dorchester County?

14 A: You might want to; you might not want to.

15 Q: Well, ideally you wouldn't employ them because
16 they're already loyal to your hospital, right?

17 A: Not necessarily.

18 Q: The vast majority of them send their patients
19 to Trident and Summerville, right?

20 A: The ten physicians that admit to our hospital
21 out of the 50 or 60 total in Palmetto certainly
22 do.

23 Q: Do the ones who have their offices right near
24 your campus at Summerville and Trident Medical
25 Center send their patients primarily to you or

1 to other hospitals?

2 A: I think primarily to us, to Trident and
3 Summerville..

4 Q: And they're your number one referral source,
5 right, among primary care doctors?

6 A: Yes.

7 Q: Okay. And but they do not want to be employed,
8 do they?

9 A: I don't think so. I think they're comfortable
10 with the model. We've been comfortable with
11 the model that we're currently operating under,
12 which is they're affiliated physicians.

13 Q: And when you employ a physician, you don't get
14 into a bidding war over them, do you? It's a
15 highly regulated transaction, isn't it?

16 A: Not highly regulated like CON. I mean, you
17 certainly would want to make sure you do not
18 offer more than fair market value, but I've
19 certainly seen bidding situations.

20 Q: If you -- the reason you don't want to offer
21 more than fair market value is because the law
22 doesn't allow you to buy referrals, does it?

23 A: Correct.

24 Q: It's against the federal law. It's the Stark
25 law, right?

1 A: Yes.

2 Q: And when you want to hire a physician at
3 Trident Medical Center or for Summerville for
4 Trident Health System, you have to go through
5 a whole separate department at HCA for that
6 transaction to be basically negotiated and
7 finalized, right?

8 A: We have resources within HCA on the physician
9 side and legal side to talk about that
10 acquisition or that -- or that hiring of that
11 physician, yes.

12 Q: Right. And the reason HCA does it that way is
13 because they want to make sure that their
14 hospitals are complying with the law and not
15 paying for referrals, right?

16 A: I think the reason we do that is we have
17 experts in physician practices that are in that
18 department that do that every day, so they're
19 in the best position to do that.

20 Q: Because as part of that, you have to negotiate
21 and determine what the fair market value is for
22 the physician's services, right?

23 A: Right.

24 Q: Okay. HCA's not opposed to hiring physicians.
25 You've got a whole department to do it, right?

1 A: Correct.

2 Q: You hire -- you hire physicians around the
3 country, right?

4 A: Correct.

5 Q: You've hired them here? There's nothing to
6 stop you from hiring the primary care
7 physicians in Berkeley or Dorchester County
8 today, yesterday, or tomorrow, is there?

9 A: I think there are a number of things. It does
10 come back to strategy and the -- and the
11 financial resources. There's significant
12 financial resources. We have -- we have been
13 very cautious and judicious about hiring
14 physicians. It can be a very expensive
15 proposition.

16 Q: But there are also benefits to it, aren't
17 there, which you testified to this morning when
18 you testified about how it was helpful as an
19 administrator to be able to kind of align the
20 physicians and the institutions together to
21 improve quality and efficiency in the hospital,
22 right?

23 A: Correct.

24 Q: That's one of the main reasons that you hire
25 physicians, right?

1 A: Yes.

2 Q: Okay. And you hopefully also hire because you
3 hope that they'll be loyal, right? They'll be
4 loyal to your facility, right?

5 A: Yes.

6 Q: A big part of being a CEO at a hospital is
7 actually kind of marketing your facility to
8 physicians, right? You want to make them
9 happy, right?

10 A: Improving your facility for your patients and
11 the physicians, right.

12 Q: And making your doctors happy is a way to do
13 that, isn't it?

14 A: Yeah, satisfied with the quality of care, yes.

15 Q: And making it as friendly a place for them to
16 come and work as possible by, I mean, make it
17 easy for them, right? You want to be
18 efficient. I'm going to do things that make
19 their quality of life higher and make their
20 practice easier, right?

21 A: Correct.

22 Q: And that's a big part of being a CEO at your --
23 at Trident Health System, right?

24 A: That's part of it.

25 Q: So have you just decided from a strategic point

1 of view that you don't want to spend the money
2 to hire physicians?

3 A: We have decided from a strategic point of view
4 that we're going to use those resources
5 conservatively, more conservatively, I think,
6 than a lot of hospitals. We believe that the
7 quality of our services inside the hospital
8 should be driving those decisions for our
9 patients and for our physicians, and that's an
10 expensive proposition. We're reserving those
11 resources for times when we have specialty
12 gaps, gaps where we definitely need a
13 particular specialist. Then we'll go out and
14 hire a new young resident out of a training
15 program or very strategic purchases of
16 different practices.

17 Q: And that's a business decision that you and HCA
18 have made, right?

19 A: Yes.

20 Q: Now, there is another way that you can assist
21 physicians, assist groups, and that is to help
22 them locate -- to pay the relocation, or help
23 with the relocation of new physicians to the
24 area --

25 A: Correct.

1 Q: -- correct?

2 A: Uh-huh (affirmative response).

3 Q: And that is a strategy that Trident Health
4 System has done over the years, isn't it?

5 A: Yes.

6 Q: As a matter of fact, one of the reasons that
7 Palmetto Primary Care has been able to grow to
8 the size that it's been able to grow is because
9 Trident Health System has helped them with the
10 relocation of new physicians, right?

11 A: No.

12 Q: You don't think that's the case?

13 A: No. What really has grown Palmetto Primary
14 Care, I think, is their desire, their strategy,
15 and the needs up in the north area. They
16 actually have been fortunate to kind of
17 piggyback onto the Medical University's
18 training program at Trident, get to know the
19 young residents, work with them, and then hire
20 them.

21 Q: So these residents that they hire learn how to
22 be a doctor at your facility, then they become
23 a doctor at the practice that refers patients
24 to your facility, right?

25 A: They come out of Trident and Medical

1 University's residency program and they're
2 hired by either Palmetto Primary Care or
3 Berkeley Family Medicine. Actually, there's a
4 -- three out of the five are -- have come out
5 of that program to Berkeley Family Medicine,
6 and they refer primarily to Roper.

7 Q: Okay. But your -- but your purpose in doing
8 that, or what occurs is they become loyal to
9 you, right? They use you?

10 A: Can you restate that?

11 Q: Let's go back to the relocation. When you help
12 relocate a doctor here and pay money to help
13 relocate them here, your expectation is that
14 that physician will use your hospital, right?

15 A: No. Our --

16 Q: You're not paying for it, but you're hoping
17 that that's what going to happen, right?

18 A: No. Our expectation is that we're trying to
19 meet a community need, and those physicians are
20 certainly free to refer anywhere they want.

21 Q: I didn't say they weren't free to, I said what
22 your hope was is that they would refer patients
23 to you at your facilities, right?

24 A: My hope is today that there's more patients
25 choosing us than they did yesterday, yes.

1 MR. LONG: Your Honor, would this be a good time to
2 take a break for a minute or two? It's four
3 o'clock.

4 THE COURT: That will be fine.

5 MR. LONG: Thank you, your Honor.

6 THE COURT: Five minutes.

7 MR. LONG: Thanks.

8 THE COURT: Ten minutes.

9 MR. LONG: I appreciate that.

10 THE COURT: Ten minutes.

11 (Break from 3:54 p.m. until 4:11 p.m.)

12 Q: Let me go back on something I forgot to ask you
13 earlier on. On the Lake City hospital when you
14 were the CEO there and y'all built a brand new
15 hospital, you increased the market share of the
16 hospital, didn't you?

17 A: I'm not sure. It was --

18 Q: You don't recall?

19 A: -- a number of years ago, 12 years ago.

20 Q: You just don't remember?

21 A: I don't remember.

22 Q: All right. Now, nursing shortage. There's no
23 nursing shortage today, is there?

24 A: There is.

25 Q: There is? You're having trouble filling nurses

1 at your hospitals right now?

2 A: We -- we aren't right now.

3 Q: You are or not?

4 A: We are not right now.

5 Q: Right. Because -- now, it's five years ago
6 before you came here, people talked about a
7 nursing shortage, didn't they?

8 A: Yes.

9 Q: Hospitals felt like there was a shortage of
10 nurses, right?

11 A: Yes.

12 Q: But also -- but two things have occurred since
13 then. One, the economy has gotten a little
14 worse, the unemployment rate has gone up, and
15 that's probably putting more nurses back in the
16 market, right?

17 A: Correct.

18 Q: And secondly, at least in South Carolina,
19 institutions have made efforts -- hospitals
20 have made efforts to have more nurses
21 accredited and put through school, right? The
22 programs have expanded in the last years to
23 accommodate some of that need, right?

24 A: Charleston may be a little bit behind that. I
25 know that both Charleston Southern and the

1 community college, Trident Tech, are trying to
2 raise money now to expand their nursing
3 programs. So they see some significant future
4 demand.

5 Q: And what's -- all right. Let's go to
6 Respondent's Exhibit Number 150. I'm sorry,
7 151. And I can blow this up. This is actually
8 Trident Health System's financials -- this is
9 just Trident Health System's financials for
10 2010, right?

11 A: Yeah, that's what it looks like.

12 Q: Okay. And the earnings -- the EBITDA number,
13 which is the top number, which is the earnings
14 before interest, taxes, and depreciation,
15 that's the metric that y'all use to measure
16 yourselves at your facilities, right?

17 A: That's one of the metrics, yes.

18 Q: It's the most important metric, isn't it?

19 A: I don't know if it's the most important.
20 There's several.

21 Q: Okay. And --

22 A: I've graded based on that, as well as patient
23 and physician satisfaction growth.

24 Q: Okay. Growth as in market share?

25 A: Growth as in market share, yes.

- 1 Q: All right. And the amount of money -- the
- 2 earnings at Trident Health System earned in
- 3 2010 was \$92,862,000, right? \$92 million --
- 4 almost \$93 million, right?
- 5 A: That's not what we earned, no.
- 6 Q: That's your EBITDA number?
- 7 A: That's our EBITDA number, yes.
- 8 Q: Right? Okay. Now, your net income number is
- 9 \$71 million, right, on the financial statement?
- 10 A: Before taxes, yes.
- 11 Q: Now, your taxes are actually paid by HCA,
- 12 right?
- 13 A: Correct.
- 14 Q: Okay. Now, that management fee line of -- is
- 15 that 27 million?
- 16 A: Yes.
- 17 Q: Okay. That's HCA, right?
- 18 A: Yes, it's --
- 19 Q: That's money that's paid to HCA to manage the
- 20 facility, right?
- 21 A: Correct.
- 22 Q: So you're paying yourself, because you just
- 23 testified earlier that you were HCA?
- 24 A: There's a -- there's a allocation of 27 million
- 25 made from Trident Health System to HCA, yes.

1 Q: Okay. So HCA would certainly get the net
2 income number plus the \$27 million. That's all
3 -- that's y'all's money, right? Now, let's
4 look at the depreciation number at the top, the
5 15 million, right? You're not writing a check
6 for depreciation, are you?

7 A: It's a non-cash expense.

8 Q: Right. That's why it's below the line, right?

9 A: Basically --

10 Q: That's why it's below the EBIDTA, right?

11 A: Basically reimbursement for your capital
12 expenditures.

13 Q: Let's go look at the financials Respondent's
14 150. Actually if we could, let's do -- I'm
15 sorry. Let me call out a different one for
16 you. Let's go into Joint Exhibit Number 1,
17 page 643. All right. Okay. This was the
18 document that we were looking at earlier -- you
19 were looking at earlier with Mr. Summer when he
20 was -- you were explaining, kind of, how to
21 read these financial statements. Do you
22 recall?

23 A: Yes.

24 Q: And these were -- this is a document that was
25 created by Ronnie Midgett, who was the

1 controller at Trident Health System, right?

2 A: I'm not sure who created this.

3 Q: Well, it's an internally created document,
4 right? It's in the CON application. Do you
5 know anything about the document?

6 A: I've seen it a couple times, but I don't know
7 its origination.

8 Q: Let's look and see what you projected the EBIT
9 number would be for 2010 in the CON
10 application.

11 **MR. LONG:** Can you go up there and pull that up and
12 look.

13 Q: It's \$75 million, isn't it?

14 A: Correct.

15 Q: Okay. So you actually had earned -- your
16 earnings were \$17 million higher in 2010 than
17 what you projected them to be from 2008; isn't
18 that what that shows?

19 A: And in 2011, we were five million dollars less
20 than we projected.

21 Q: So you're doing pretty good on the two years,
22 right? Let's go back and look at 150. You
23 haven't produced the financials for 2011 yet,
24 have you?

25 A: Produced them to you or --

1 Q: Yeah. They're not in this case. That's just
2 something you're telling the Court, right?
3 There isn't a document?

4 A: Yeah. Unfortunately, I've seen the document.
5 I don't know who has access to it at this
6 point.

7 Q: And this is 2007.

8 THE COURT: We're back to --

9 MR. LONG: This will be actually --

10 THE COURT: -- 150?

11 MR. LONG: Right. This is Respondent's 150, which
12 is the financials for Trident Health System
13 from 2007, 2008, 2009. Okay.

14 Q: EBIT number for -- EBIT for 2007, \$82,999,000;
15 does that look right to you?

16 A: For what year?

17 Q: I believe this is 2007.

18 A: I'm not sure what it was in 2007, that was
19 before my time.

20 Q: We can go back and look at the document if you
21 need to. You made -- all right. Next year --
22 all right. Let's look at the net revenue
23 number also. The net revenue number, that's
24 the actual cash in the door, right? Trident
25 Health System, \$370,210,000 in 2007, right?

- 1 A: Is this definitely 2007? I --
- 2 Q: Yes.
- 3 A: -- I lost --
- 4 Q: We can go back.
- 5 A: The top of the page.
- 6 **MR. LONG:** Can you show him the top of the page.
- 7 A: Yes, that is 2007.
- 8 Q: Okay. All right. Let's skip over, if we
- 9 could, to 2008. EBIT number in 2008,
- 10 \$56,944,000, right?
- 11 A: Correct.
- 12 Q: Okay. This is the year that you started --
- 13 A: Yes.
- 14 Q: -- with the hospital in South Carolina. The
- 15 net revenue number \$369,151,920 --
- 16 A: Yes.
- 17 Q: -- correct? All right. Let's go to 2009. Are
- 18 these numbers \$78,077,131?
- 19 A: No. Mine are -- net income is \$56 million.
- 20 That would be closer to the earnings without
- 21 taxes.
- 22 Q: The EBIT number, the earnings before
- 23 depreciation, interest, and taxes --
- 24 A: But that would be --
- 25 Q: -- \$78,077,000?

1 A: Before depreciation, interest, and taxes, yes,
2 78 million.

3 Q: That's the financial metric we're looking at.
4 Net revenue for that year \$394,124,000, right?

5 A: Correct.

6 Q: So you increased in your first year as CEO
7 there, the net revenue by about \$25 million?

8 A: Bad debts increased very significantly.

9 Q: And let's just be clear, when you talk about
10 net income, you're include -- you said the net
11 income is 56 million, but that net income has
12 a management fee of nearly \$25 million to HCA,
13 right?

14 A: Correct.

15 Q: Would that management fee -- what does that
16 management fee pay for?

17 A: All the management support services that we
18 receive from HCA, information systems.

19 Q: So you pay like \$25 million a year to Nashville
20 to give you all the support services to help
21 you run the hospital more efficiently, right?
22 This is basically the overhead, right?

23 A: More -- more --

24 Q: Of having --

25 A: -- more efficiently and more effectively, yes.

1 Q: Uh-huh (affirmative response).

2 A: A lot of -- a lot of legal support and other
3 support.

4 Q: And instead of accessing all of that
5 information that you pay \$25 million a year
6 for, you turned the whole decision as to
7 whether you're going to build the hospital in
8 Moncks Corner over to Richard Baehr, right?
9 He's your source of information?

10 A: No, we didn't turn the decision over to him.
11 I never --

12 Q: Well, I didn't mean turn --

13 A: I've never got --

14 Q: -- the source of --

15 A: I've never gotten any decision --

16 MR. SUMMER: I object. Will you please let --

17 Q: I'll withdraw it.

18 MR. SUMMER: Your Honor, I would appreciate an
19 instruction. Time and time again he talks over
20 the witness, interrupts him, doesn't --

21 MR. LONG: I have not.

22 MR. THOMAS: -- please let him finish his answers.
23 Please let me state my objection on the record,
24 counsel. Time and again he's done that, and I
25 would ask the court to please instruct Mr. Long

1 that when the witness is speaking not to
2 interrupt him or to speak over him.

3 **THE COURT:** The same rule applies as between
4 counsel. Let him finish.

5 Q: You pay \$25 million a year to HCA to provide
6 management services, right?

7 A: Correct.

8 Q: Okay. But in regards to this hospital at
9 Moncks Corner, you chose to use Mr. Baehr as
10 your source of information instead of the
11 management services in Nashville, right?

12 A: He's been part of the information, but we did
13 also confer with HCA executives on this
14 decision throughout.

15 Q: That's Jamie Thomas, right?

16 A: Correct.

17 Q: Okay. Who's the head of the South Carolina
18 division?

19 A: Right.

20 Q: Okay.

21 **MR. LONG:** Your Honor, we would move Respondent's
22 160. It's is the summary document that I -- I
23 did just send this over to Mr. Summer
24 yesterday, but we just created it yesterday.
25 It's just a summary document, and I just went

1 through the numbers with the witness, so I
2 think it's accurate.

3 MR. SUMMER: Your Honor, I --

4 MR. LONG: We could show --

5 MR. SUMMER: I've got a couple comments. One is is
6 that we've had discovery in this case for two
7 years. We had a scheduling order in this case
8 about when discovery would end and when
9 documents would be produced. We went to great
10 lengths to create our exhibit list and to
11 complete them and get them to the Court, and
12 last night I get three new exhibits. I'm not
13 going to object assuming that I -- I do want to
14 reserve the right, because they came in last
15 night, and I'd released this witness. I didn't
16 have a chance to go over it with him until this
17 morning, but I will not object to this subject
18 to we need to go back and make sure -- this is
19 a summary exhibit apparently they've done, and
20 I want to make sure that the numbers are
21 accurate. But I'll agree not to object to
22 these exhibits, but I would hope that I would
23 be accorded the same courtesy by the court,
24 that if I find it necessary during the course
25 of this trial to bring a new exhibit, that I'd

1 be accorded the same courtesy as we're doing
2 with Mr. Long in these.

3 **THE COURT:** Well, you'd have to look to Mr. Long for
4 the courtesy rather than the court.

5 **MR. LONG:** Your Honor, just -- can I respond to that
6 just for a second?

7 **THE COURT:** Yes.

8 **MR. LONG:** Last week, I got probably ten, eight or
9 ten new exhibits from Mr. Baehr where he had
10 done completely new calculations and new
11 exhibits, and all that was sent over to me last
12 week. I hadn't said a thing about it in court.
13 This document is a straight summary document,
14 and I just went --

15 **THE COURT:** When you say summary, you mean that the
16 content of it can be derived from matters that
17 are already in the record?

18 **MR. LONG:** Yes, sir. I should have explained that a
19 little better. Exactly. And I actually just
20 went through it with him, so actually if he was
21 following it and looking at it, he would see.
22 So that's my point on that. The other exhibits
23 that I did send to him earlier I haven't used
24 in my cross examination yet. I thought I might
25 need to use them, but I haven't used them. So

1 I think his complaints a little, you know,
2 what's good for the goose is good for the
3 gander, Your Honor.

4 **MR. SUMMER:** If we're going to have this as a course
5 of dealing, I just didn't expect to be -- if
6 this is going to be a course of dealing during
7 the case, I just expect to be accorded the same
8 courtesy, that's all I'm saying, your Honor, to
9 be given things -- I can't ask Mr. Rardin about
10 any of these documents unless I bring him back
11 in rebuttal. So that's the point I wanted the
12 Court to understand. And I will not object to
13 these documents subject to us verifying the
14 numbers on the summary. But I did want the
15 Court to understand the means by which they
16 were produced to us.

17 **THE COURT:** All right. Well, I'm not going to rule
18 on the admission now until you do the
19 verification, which I assume will be tomorrow?

20 **MR. SUMMER:** We can do it overnight, Your Honor.

21 **THE COURT:** All right.

22 **MR. SUMMER:** Thank you very much.

23 **Q:** Is there any loss of number that Trident can
24 have sustained from the Roper St. Francis
25 hospital at Carnes Crossroads that would in

1 your mind not be an adverse impact and cloud
2 the approval of the application?

3 A: Any loss of what -- any loss of --

4 Q: Yeah.

5 A: Loss of dollars or --

6 Q: Dollars first. Let's say that Roper St.
7 Francis at Berkeley is going to cause Trident
8 Health System to lose \$100 a year. Is that a
9 material adverse impact to you?

10 A: No.

11 Q: Okay. All right. How much is a -- what's a
12 material adverse impact to you?

13 A: I think -- I think a significant impact on our
14 -- on our financial capabilities within Trident
15 Health System would probably be in the five
16 million dollar range.

17 Q: So if you were to lose -- to make -- now,
18 that's money that you would be making less than
19 you made the year before, when you talk about
20 a loss?

21 A: Correct.

22 Q: Because on just this -- in the four years that
23 we talked about, your earnings fluctuated from
24 \$56 million to \$92 million. That's the high
25 number and the low number. So when we -- when

1 you went from \$82 million to \$56 million in
2 earnings in 2007 to 2008, was the hospital at
3 risk of being closing?

4 **MR. SUMMER:** Object to the form.

5 A: I don't know, I wasn't there.

6 **MR. SUMMER:** Object to the form.

7 **THE COURT:** Let's here his objection.

8 **MR. SUMMER:** Thank you. This witness has repeatedly
9 stated that this number that Mr. Long continues
10 to use, the EBITDA number, is not earnings. He
11 says that's not earning. And Mr. Long
12 continues to characterize it the same way. My
13 point simply is, is once the witness has
14 refused to characterize it as earnings, I don't
15 believe Mr. Long should be able to continue to
16 badger him and use that phrase to describe the
17 EBITDA number. If he wants to refer to it as
18 EBITDA, which is -- it does on this paper, I
19 have no objection.

20 **THE COURT:** Well, let me respond to that. I'm doing
21 my best to follow along with all this, but I
22 can't always sift out the fine points that
23 you're sifting out. For that reason, I'm going
24 to let Mr. Long continue, and it will be up to
25 the witness to say, I've already answered that

1 or, it's not right, or whatever. Do you
2 understand?

3 MR. GALLATI: Yes, sir.

4 A: Can you restate the question.

5 Q: Between 2007 and 2008, the earnings or EBITDA
6 number for Trident Health System decreased from
7 \$82,999,000 to \$56,944,000. You see that --

8 A: Yes.

9 Q: -- on the summary sheet?

10 A: The EBITDA decreased from 82 to 56, yes.

11 Q: Right. So that is a loss of about \$25 million
12 less in earnings, right?

13 A: Well, that's an EBITDA.

14 Q: Uh-huh (affirmative response). When you
15 arrived in 2008, was Trident Health System at
16 risk of closing?

17 A: I did not get that sense, no.

18 Q: Well, you'd lost \$25 million -- you made \$25
19 million less in your EBITDA number from one
20 year to the next. That's a pretty substantial
21 decrease, isn't it?

22 A: I would -- I would think it's substantial. I
23 wasn't here during that time.

24 Q: Okay. In your -- between 2009 to 2010, the net
25 revenue, the cash money in the door of the

1 hospital decreased by \$24 million in one year;
2 you see that?

3 A: Yes.

4 Q: Were you at risk of closing your doors?

5 A: No.

6 Q: You still feel like today, even though your net
7 revenue decreased by \$24 million between 2009
8 and 2010, that that had nothing to do with your
9 decision -- well, let me back up. Your net
10 income -- your net revenue decreased by \$24
11 million between 2009 and 2010, and you decided
12 to do a \$27 million expansion in Summerville in
13 late 2010, right?

14 A: Correct.

15 Q: Okay. So obviously that \$25 million drop in
16 net revenue didn't affect your ability to do a
17 major capital investment, did it?

18 A: I think clearly we may need to walk through
19 these financial statements so that we're
20 talking about relevant data. You know, when
21 you're talking about net revenue, that's
22 nowhere close to the bottom line.

23 Q: Uh-huh (affirmative response).

24 A: Certainly it's something that we watch, but,
25 you know, when -- if we're going to talk about

1 profitability, let's talk about profitability.
2 Let's talk about what is brought home at the
3 end of the day after tax, after depreciation,
4 not net revenue, not EBITDA. Let's talk about
5 profitability.

6 Q: Well, that's fine, but let's talk about cash in
7 the door, okay, because that's what net revenue
8 is, right?

9 A: It's not cash that you take home.

10 Q: No, but it's the cash in the door, right? And
11 you made -- how did you -- as a CEO, how did
12 you increase the earnings before interest,
13 taxes, and depreciation from \$78 million to
14 almost \$93 million in the same year that you
15 brought in 25 million less in net revenue. How
16 did you do that?

17 A: I would have to look at the financial
18 statements specifically to see what changed,
19 but certainly the increase in our profitability
20 in our bottom line earnings in 2010 came from
21 growth, seeing more patients, being more
22 judicious with our resources.

23 Q: But you had less revenue.

24 A: Less net revenue, I think you have to look at
25 bad debt to see how that changed during that

1 same time period. I think you'd have to look
2 at your expenses as well.

3 Q: Well, let's look at it. Let's go to P 151.
4 All right. Let's look at the last page of --
5 do you want to look at '09 or 2010 first?

6 A: Let's start with '09.

7 Q: Okay. Go to the 150, the last page of that.

8 MR. SUMMER: Which exhibit again?

9 MR. LONG: 150.

10 MR. SUMMER: And what page are you going to?

11 MR. LONG: It's the last page. Looks like it's
12 Trident 810. Is that '09? Okay. Can you blow
13 that up?

14 MR. SUMMER: You're on page 813; is that correct?

15 MR. LONG: Yeah.

16 Q: So in 2009, your total net revenue, \$394
17 million?

18 MR. THOMAS: 2009 or 2010, counsel?

19 MR. LONG: This is '09, 150. I'm not -- Exhibit
20 150.

21 MR. SUMMER: On exhibit 150, you're on page 813?

22 MR. LONG: 810.

23 MR. SUMMER: 810, thank you.

24 THE COURT: 810?

25 MR. LONG: Yes.

1 Q: Your earnings before interest, depreciation,
2 and taxes, \$78 million, right?

3 A: Correct.

4 Q: You can look at the financial -- let's just
5 look at the whole statement. Okay. Anything
6 you want to check on that? Do you want to look
7 at 2010?

8 A: Sure.

9 Q: Okay.

10 MR. LONG: We'll go to 2010. That's Exhibit
11 Petitioner 151.

12 Q: And here's the front page, and then the second
13 page has the final EBITDA number on it. You
14 can see EBITDA is at 92 million.

15 MR. LONG: If you can go back to page before and
16 show him.

17 Q: Cash revenue, 370.

18 A: Bad debt's above the line in this case in 2010,
19 and it was below the line in operating expenses
20 in 2009. I'd really need to see it side by
21 side to get more specific, and we'd probably
22 need a CFO in the room to get even more
23 specific, but clearly the bad debt has been
24 taken out of the -- the net revenue. The net
25 revenue now is called cash revenue in 2010. In

1 2009, it was called net revenue. It did not
2 include bad debt, and that's a swing of about
3 \$70 million.

4 Q: Seventy million dollars, yeah, I see that. And
5 so if you add that to the cash --

6 A: What you need to do is take bad debt out of the
7 net revenue number of 2009 to get a side by
8 side comparison.

9 Q: So then your revenue actually was dramatically
10 greater in 2010 than it was in 2009, right?

11 A: I don't know. I'd have to look at it.

12 Q: Okay. Well, did the 2009 or 2010 financials
13 drive your decision to expand Summerville?

14 A: No, the bed need did.

15 Q: The need, the bed need in the State Health
16 Plan?

17 A: Yes.

18 Q: But you also did an internal analysis to
19 determine whether you can make money off of
20 that, right?

21 A: Correct.

22 Q: Because you know if you add 30 beds to
23 Summerville, your \$27 million, you'll have the
24 full revenue of the beds, right? I mean, 30
25 beds in Summerville is about the same net

1 revenue as 30 beds in Moncks Corner, right? Or
2 30 beds at Trident Medical Center, right?

3 A: If they're all filled with the same number of
4 patients and the same types of patients with
5 the same payers, it could be similar, yes.

6 Q: And actually, internally you as the CEO of the
7 system wouldn't even really know that because
8 all the financials are combined, right? So
9 there's no -- you don't run separate pro formas
10 for each one of your entities, right?

11 A: We ran a separate pro forma for Summerville,
12 yes.

13 Q: You can do that, but you don't typically do it?

14 A: For any -- for any new project we would.

15 Q: I'm sorry. I didn't -- you're right. I didn't
16 ask the question -- let me rephrase the
17 question. I'm talking about in the operations
18 of the hospital, you -- it's all combined,
19 right? There are no separate financials for
20 Summerville Medical Center versus Trident
21 Medical Center? It's one system financial,
22 right?

23 A: We separate out the volume statistics among the
24 facilities. We do not -- we do not perform
25 three different financial statements on a

- 1 monthly basis, no, --
- 2 Q: So --
- 3 A: -- for each of our facilities.
- 4 Q: So from Trident Health System's perspective, 30
- 5 beds at Summerville is the same thing as 30
- 6 beds at Moncks Corner if they have the same
- 7 number of patients in those beds, right?
- 8 A: No, they're -- I mean, they're different --
- 9 different locations serving different areas,
- 10 different communities. Are you asking about
- 11 the net revenue or are they --
- 12 Q: No.
- 13 A: -- treated the same?
- 14 Q: The net revenue.
- 15 A: The net revenue would likely be different.
- 16 Different utilization, different payer mix.
- 17 Q: So there's no question that return on
- 18 investment is higher at the Summerville Medical
- 19 Center expansion than it is at the Moncks
- 20 Corner Hospital, right?
- 21 A: I don't know that.
- 22 Q: You don't know that?
- 23 A: I don't.
- 24 Q: Did you run a return on investment for the
- 25 Summerville project?

1 A: Run a cash flow statement, yes.

2 Q: But you don't know whether it's higher than the
3 Moncks Corner Hospital?

4 A: I -- I --

5 Q: As the Moncks Corner Hospital?

6 A: I would have to re-familiarize myself with --
7 with Summerville's pro forma. That was -- that
8 was done by Lou and others.

9 Q: Well, it's certainly a less expensive project,
10 isn't it?

11 A: The capital expenditure is less, correct.

12 Q: Now, you testified about duplication of
13 services. Okay. How is Summerville Medical
14 Center not a duplication of services to Trident
15 Medical Center?

16 A: It's not.

17 Q: Okay. How? They have all the same services,
18 right? There's not a single service offered at
19 Summerville Medical Center that's not also
20 offered at Trident Medical Center, right?

21 A: Yes, there is. There's different services.

22 Q: What?

23 A: Sleep lab is a good example.

24 Q: Okay.

25 A: And Trident has burn services. So we try -- we

1 try not to duplicate. Certainly every hospital
2 needs a CT scanner. There's certain equipment
3 that is needed at every hospital, which does
4 increase the cost of the -- to the healthcare
5 system, certain core services that every
6 hospital has to have. It has to have an
7 emergency department.

8 Q: Now, I know there are services at Trident
9 Medical Center that aren't offered at
10 Summerville Medical Center. I'm talking about
11 services that are offered at Summerville
12 Medical Center that are not offered at Trident
13 Medical Center.

14 A: Correct.

15 Q: Okay. You have a sleep lab. That's it, right?

16 A: Cardiac rehab.

17 Q: Okay. And those are decisions that you made.
18 You have a cardiac, full cardiac program at
19 Trident Medical Center, right?

20 A: Correct.

21 Q: You're doing open heart surgery and intensive,
22 invasive casts, everything, right?

23 A: Yes.

24 Q: But you moved cardiac rehab over to
25 Summerville, right?

1 A: I didn't move it.

2 Q: You didn't but --

3 A: It's located there.

4 Q: Okay. And you don't think that those
5 facilities duplicate each other?

6 A: I think the fact that they are in the same
7 health system does help so that we can make
8 good decisions about locating services that are
9 similar but somewhat different at one facility
10 over the -- or the other.

11 Q: Do you think that Summerville Medical Center
12 was an unnecessary duplication to Trident
13 Medical Center?

14 A: I do not.

15 Q: They're only six miles from each other, right?

16 A: Six or -- probably seven, yeah.

17 Q: Summerville and Trident are the two closest in
18 geography of the four facilities that this
19 trial is about, right?

20 A: Say that again.

21 Q: Moncks Corner -- the four facilities that we've
22 been talking about, Moncks Corner, which is
23 where your proposed hospital is, the facility
24 that Roper's planning to build at Goose Creek,
25 Summerville Medical Center, and Trident Medical

1 Center, the two facilities that are closest to
2 each other are Trident Medical Center and
3 Summerville Medical Center, right?

4 A: I'd have to get the exact miles between the
5 Goose Creek facility and Trident to see if it
6 actually is further away than Trident and
7 Summerville. It's probably close.

8 Q: You don't know today whether --

9 A: They're both about ten minutes.

10 Q: And your testimony is that the Roper St.
11 Francis facility and Goose Creek is a -- is a
12 duplication of current services, right?

13 A: Correct.

14 Q: That's what you testified to this morning?

15 A: Yes.

16 Q: Is it a duplication of the facility in Moncks
17 Corner, or is it a duplication of the
18 facilities in Summerville and Trident Medical
19 Center?

20 A: Both.

21 Q: But Summerville Medical Center isn't a
22 duplication of services to Trident, right?

23 A: No.

24 Q: Do you have any reason for that?

25 A: Not in my opinion, based on my experience, I

1 don't think it is.

2 Q: No, is there any basis to that opinion?

3 A: My experience.

4 Q: Now, the land where you're going to put the
5 hospital in Moncks Corner is not owned by
6 Trident Health System, is it?

7 A: No.

8 Q: Have you ever ridden out there and looked at
9 it?

10 A: Yes.

11 Q: It's an undeveloped track of land, right?

12 A: Yes.

13 Q: Just grass and trees, right?

14 A: Correct.

15 Q: We've been calling that, or I call that a
16 greenfield. It's just a field, right?

17 A: It's land, right.

18 Q: There's no building there --

19 A: No.

20 Q: -- or any other facility on that track, right
21 --

22 A: Right.

23 Q: -- of land? Did you make the decision not to
24 oppose the CT scanner for the Medical
25 University?

1 A: No.

2 Q: Were you involved in that decision at all?

3 A: No, that was -- that was going on when I first
4 got here, and I was aware of our interest in
5 filing, I think, as an effective party at the
6 time, interested party.

7 Q: Did you ever have a conversation with anyone
8 about whether you should appeal that decision
9 or not, or was that decision made by others?

10 A: I believe Jamie Thomas and I did talk about
11 that, yes.

12 Q: And why did you decide, or why were you
13 opposing it at the staff level?

14 A: I was not aware we were opposing it. I thought
15 we were -- had filed as an affected party, but
16 it potentially was a concern to us having a
17 Medical University specialty clinic across the
18 street from the hospital, and they were
19 beginning to build some ancillary services
20 within that facility. You know, ultimately a
21 CT scanner is not a large concern to us. We've
22 seen physician offices put in CT scanners and
23 other ancillaries and have not challenged that.

24 Q: But this one caught your eye because it was the
25 Medical University of South Carolina?

1 A: No. It caught -- it caught my eye because of
2 what I learned when I first got here. There
3 seemed to be a lot of concern about that
4 specialty clinic among HCA and Trident Health
5 System at the time. I didn't see it as a
6 concern. I saw the collaborative nature of the
7 Medical University, and the fact that we had a
8 teaching program with them. We worked well
9 with them. So I didn't see a need to be
10 concerned about a CT scanner.

11 Q: Did you tell Mr. Greenberg that you were not
12 going to appeal that?

13 A: No.

14 Q: Did Mr. Thomas?

15 A: I don't know.

16 Q: You don't know? Because they meet without you
17 being present, right?

18 A: They have, yes. Particularly when I first got
19 here. They had met several times before I got
20 here.

21 Q: Now, let's talk about the -- going back to the
22 communities a little bit. Moncks Corner --
23 Santee Cooper is located in Moncks Corner,
24 isn't it?

25 A: Correct.

1 Q: That's a pretty large employer, right?

2 A: I think so. I think they have maybe 800 or
3 1,000 employees.

4 Q: Probably one of the largest employers in
5 Berkeley County, right?

6 A: One of them.

7 Q: And the people that work there have insurance,
8 right?

9 A: I believe the full-time employees have -- it
10 might be state insurance. It's kind of a state
11 run organization.

12 Q: And so you would expect those employees that
13 live in that area to basically use your
14 facility. They use the ED facilities now,
15 right?

16 A: I think they do. I would hope so, hope they
17 would use our facilities, yes.

18 Q: Have you gone and told the people in Goose
19 Creek that you don't think they deserve to have
20 a hospital?

21 A: No. Physically gone there, no.

22 Q: Because you testified earlier that you'd had
23 these community meetings in the northern part
24 of Berkeley County. I just wondered if you'd
25 had any in southern part of the county to tell

1 them that you didn't think they should have a
2 hospital?

3 A: No.

4 Q: And you've told these people at these community
5 meetings recently that if the judge affirms,
6 you won't build the hospital, right?

7 A: Correct.

8 Q: Okay. When you go to those meetings, do you
9 put your financials up on the board and explain
10 to them how much money you make?

11 A: Do I explain that the adverse impact for that
12 facility in Carnes Crossroads would be \$17
13 million and take away from \$30 million in net
14 income and cut our profitability in half? No.

15 Q: And do you tell them that you give \$25 million
16 a year to HCA as kind of overhead on the
17 hospital?

18 A: No. We don't get in -- we don't get into
19 discussions about expenses.

20 Q: But the basis of you not building the hospital
21 there is a business decision, right, because
22 you don't think it will be profitable?

23 A: Correct.

24 Q: Okay. And --

25 **THE COURT:** When you say the decision not to build,

1 that seems if there were two facilities
2 approved?

3 MR. LONG: Right. Their statement that they would
4 not build a hospital if both were -- if the
5 decision was affirmed is --

6 Q: Summerville is the most affluent community in
7 the Berkeley, Dorchester, North Charleston
8 area, right?

9 A: I don't know.

10 Q: You don't know?

11 A: I would say it's between maybe Summerville and
12 Goose Creek.

13 Q: But you don't know that?

14 A: I don't know which one would be seen as more
15 affluent.

16 Q: Because you testified earlier that Goose Creek
17 was very affluent, didn't you?

18 A: Yes.

19 Q: But you don't know about whether Summerville is
20 more affluent than Goose Creek?

21 A: I don't.

22 Q: Let's go to Joint Exhibit Number 9. I'm sorry,
23 Joint 10. Let's look at what the CON
24 application said on page 10231 as to the
25 purpose -- this is what HCA said in 1972 as the

1 reason for where they were putting the site for
2 the hospital, "Because it's the best location
3 to the largest number of residents in the North
4 Trident community and possesses some of the
5 requisites necessary to ensure the success of
6 the 200-bed complex that is presently owned by
7 the City of Charleston." So it was population
8 that drove the decision to put it there, right?

9 A: Largest number of residents. Yes, the
10 population played into that, right.

11 Q: And you had to -- even though you haven't been
12 here very long, you certainly learned through
13 this litigation in this process about that the
14 population is growing and changing in this area
15 of the state, right?

16 A: Yes.

17 Q: Okay. And then, of course, since then, HCA
18 decided that they were going to add another
19 hospital, and they chose to add it six miles
20 down the road in Summerville instead of adding
21 it at Berkeley, right, County?

22 A: Correct.

23 Q: And that's Summerville Medical Center. Now, do
24 you think that the Department can give in a CON
25 program a monopoly to an institution? Just

1 give them a county and say you're the only
2 provider in that county forever?

3 A: I don't know.

4 Q: You don't know that?

5 A: I've not seen any contract that says that.

6 Q: When you get a CON it doesn't say in there,
7 right, that you are the -- it's not like a
8 patent or anything. It doesn't say you are the
9 exclusive and only provider for so many years,
10 right?

11 A: I don't think so.

12 Q: Okay. But you think that the Department should
13 not allow another provider in Berkeley or
14 Dorchester because 40 years ago HCA built a
15 hospital there; is that your testimony?

16 A: That's part of my testimony of today, all day,
17 yes.

18 Q: So I guess that means that you shouldn't be
19 allowed to add any more services to your
20 hospital, right, if somebody else is already
21 adding them, right? Already had them? Or is
22 that different?

23 A: State that again.

24 Q: I said does that mean that you're prohibited
25 from moving into other counties or locations?