

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.

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(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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1 A: Seemingly. I mean every move, including this
2 1972 move, we were blocked by Roper. But it's
3 just a historical -- historical fact that they
4 continue to block everything we try and do.
5 They blocked us in Summerville. They're
6 blocking us in Moncks Corner. They blocked us
7 back in '72. So yes, we are being blocked.

8 Q: Okay. You think this is Roper's blocking your
9 hospital in Moncks Corner today?

10 A: Yes.

11 Q: You understand you have a CON from the
12 Department?

13 A: I don't have a CON from the Department.

14 Q: Well, you have a CON award. If you drop this
15 lawsuit, you'll have a CON.

16 A: I don't have a CON right now.

17 Q: Okay.

18 MR. LONG: That's all I have, Your Honor. Thank
19 you.

20 THE COURT: Ms. Biggers?

21 MS. BIGGERS: Thank you, Your Honor. I don't have
22 many questions.

23 MR. GALLATI - CROSS EXAMINATION BY MS. BIGGERS:

24 Q: And actually the first questions I wanted to
25 ask are following -- just following up on what

1 Mr. Long was just asking you about. DHEC
2 granted Trident's CON application for the 50-
3 bed hospital in Berkeley County, right?

4 A: We got an award letter that said we were -- we
5 were approved, correct.

6 Q: And you've talked today, I think some when Mr.
7 Summer was questioning you and at least once
8 when Mr. Long was questioning you, about
9 Trident's mission and commitment to Berkeley
10 County. You remember those kinds of
11 statements?

12 A: Correct.

13 Q: And you and Mr. Rardin both testified that if
14 Roper builds its hospital in Berkeley County,
15 Trident is not going to build a hospital in
16 Berkeley County, right?

17 A: We can't. Right.

18 Q: And that's a business decision made by Trident,
19 right?

20 A: By a number of folks within Trident and HCA,
21 correct.

22 Q: DHEC did not tell you that Trident can't build
23 if Roper builds, right?

24 A: No.

25 Q: So the only thing that is stopping Trident from

1 fulfilling its mission to Berkeley County is
2 Trident's own business decision, isn't it?

3 A: No. No, Roper is stopping us by putting a
4 hospital too close to our existing operations
5 at Trident in an area that's already met need.
6 And the Department made the wrong decision.
7 And it's a duplication of a hospital that we've
8 applied for first in Moncks Corner.

9 Q: The Department decided that there is enough
10 evidence to support that both could be granted
11 without exceeding the need?

12 A: The Department decided that both should be
13 approved, yes.

14 Q: And you just testified that it is Trident's
15 business decision not to build if Roper builds,
16 right?

17 A: Yes.

18 Q: Now, regarding that meeting on June 9, 2009,
19 with Beverly Brandt, Trident requested that
20 meeting, right, not DHEC?

21 A: Correct.

22 Q: And I think that you testified that the purpose
23 was to -- for Trident to be able to expound
24 upon points raised during the project review
25 meeting; is that right?

1 A: Yes.

2 Q: So Ms. Brandt had not submitted questions to
3 you that she specifically wanted Trident to
4 come in and answer, had she?

5 A: No. And she didn't ask me any questions other
6 than the political question.

7 Q: And do you know that Ms. Brandt has an open
8 door policy with regard to CON applicants who
9 request a courtesy meeting with her to come in
10 and speak with her?

11 A: No. I didn't -- I was not aware of that.

12 Q: She did grant you such a courtesy when y'all
13 requested to meet with her, didn't she?

14 A: Yes.

15 Q: And do you know that it's Ms. Brandt's practice
16 not to inform anyone outside of the Department
17 of what her decision is going to be on an
18 application before she actually makes the
19 decision?

20 A: No. I didn't know that was her practice.

21 Q: When you went to meet with her, she was still
22 reviewing the applications, right?

23 A: I don't know who was reviewing them.

24 Q: Well, the decision had not yet been made, had
25 it?

1 A: No.

2 Q: And Roper wasn't present in that meeting, was
3 it?

4 A: No.

5 Q: And I think you testified earlier that with
6 regard to the effect that it might have upon
7 your hospital, where an EMS provider decides to
8 take a patient; do you remember testifying to
9 that?

10 A: Yes.

11 Q: Isn't it the patient's choice where EMS takes
12 them?

13 A: The guidelines I'm familiar with with EMS is
14 that they take patients to the closest hospital
15 unless a patient requests otherwise.

16 Q: Are you familiar that if the patient requests
17 otherwise, they have to honor the patient's
18 request?

19 A: I've seen evidence of that, yes.

20 Q: Okay. That's all I have.

21 **THE COURT:** Mr. Summer, before you start, let me ask
22 how long you folks want to run this afternoon?

23 **MR. SUMMER:** At least an hour.

24 **THE COURT:** Another hour?

25 **MR. SUMMER:** Yes.

MR. GALLATI - REDIRECT EXAMINATION BY MR. SUMMER:

Q: In light of that, and I know the day is long and you're tired, but would you like a break before we get started?

A: No, I'm good.

Q: Okay. Good. Do you remember Mr. Long started his questioning with, I was going to say, the state of affairs, how you found things when you got to HCA -- excuse me, to Trident in the fall of 2008?

A: Yes.

Q: And you recall that he went through issues regarding being cited by Joint Commission, low morale, those kinds of issues; do you recall that?

A: Yes.

Q: I'm going to -- I'm going to throw up a document for you to look at.

MR. SUMMER: If you could take a look at Petitioner's Exhibit 233, please, ma'am.

Q: Do you recall Mr. Long saying that another one of your challenges was there had been a declining market share under Mr. Gunn's administration?

A: Yes.

1 Q: Let's look at 233. Mr. Rardin had talked about
2 this yesterday.

3 MR. LONG: Your Honor, excuse me. I'm going to have
4 to object to this document and this line of
5 questioning because this doesn't have anything
6 to do with the comparison from year to year.
7 And this is a brand new document that I didn't
8 ask him about. So you're in -- I'm not calling
9 for recross, but I do think that redirect
10 should be limited.

11 MR. SUMMER: May I please respond?

12 THE COURT: Go ahead.

13 MR. SUMMER: He asked him about his declining market
14 share and he asked him about how bad things
15 were there. I'm entitled to address those.
16 And this is a document I intend to utilize to
17 address those to show what the market share was
18 and how he had addressed it, and how he had
19 improved the facility. And this is all --
20 these are all questions that he asked about how
21 bad things were at Trident, and I think I'm
22 entitled to respond to that. They're not as
23 bad as he said.

24 THE COURT: Objection --

25 MR. LONG: Yeah. The problem is this document is

1 2010 market share, and so he came in '08. So
2 it's not -- as I read the document, it's one of
3 the documents Mr. Baehr prepared we got last
4 week, it says 2010 market share, that's the way
5 I read it.

6 **MR. SUMMER:** But it addresses a number of issues.
7 First, Your Honor, I intend to use it with this
8 witness to address market share issue raised by
9 and questioned of this witness by Mr. Long.
10 But there are also issues regarding patient
11 choice and that patients ought to be allowed to
12 get to their hospitals. Well, we can look at
13 a lot of issues regarding patient choice from
14 this document. It shows where everybody's
15 going. These are the major zip codes for the
16 primary service area of the proposed Goose
17 Creek hospital. And I believe that this
18 document is going to be responsive to a number
19 of issues that were raised on cross
20 examination, and I think I'm entitled to refute
21 a lot of those assertions. And I intend to
22 utilize this document to do so.

23 **THE COURT:** Objection overruled.

24 **Q:** The first thing I want to ask you about in
25 terms of market share, if you look across this

1 document, it's organized in terms of the
2 Trident Hospital, MUSC, and the Roper St.
3 Francis Hospitals. Do you see that?

4 A: Yes.

5 Q: And is this the kind of market share
6 information that you're used to seeing on a
7 routine basis when you run a hospital?

8 A: Yes.

9 Q: The first question I want to ask you is, who
10 are the two primary facilities or providers of
11 choice for these zip codes? When I say two
12 facilities, two systems. What two systems get
13 most of the patients?

14 A: It's a mixture between Trident and the Medical
15 University, and then Trident and Roper St.
16 Francis.

17 Q: Okay. Well, let's do a zip code by zip code.
18 If we look at the Goose Creek area, 29445, what
19 was your market share in 2010?

20 A: Fifty-five percent.

21 Q: And what was MUSC's?

22 A: Twenty-two percent.

23 Q: And what was Roper's?

24 A: Nineteen percent.

25 Q: So three out of every four patients would

1 rather go somewhere than Roper St. Francis in
2 that zip code?

3 A: Right.

4 Q: Well, let's look at Ladson. What was Trident's
5 market share?

6 A: Sixteen percent.

7 Q: And what was Medical University's?

8 A: Twenty-one percent.

9 Q: So four out of every five patients in that zip
10 code prefer to go somewhere other than Roper
11 St. Francis, don't they?

12 A: Yeah, a little bit higher than that. Yes.

13 Q: Let's look at Moncks Corner. Again, 54 percent
14 and 17 percent. Three out of four patients
15 prefer to go somewhere other than Roper St.
16 Francis, right?

17 A: Correct.

18 Q: Okay. It's a little bit higher. You think
19 that might be because they've got a standalone
20 ED and they can funnel those patients downtown?

21 A: Definitely.

22 Q: Okay. And then if we look at Summerville for
23 this non-tertiary care services, 69 percent
24 choose Trident, 17 percent choose the Medical
25 Center. So it's about six out of seven

1 patients who would rather go somewhere else
2 than Roper St. Francis?

3 A: Right.

4 Q: Are those similar numbers for tertiary services
5 listed below?

6 A: Fairly similar. You see the Medical University
7 bump up a little bit in each of the zip codes
8 because of the nature of their services.

9 Q: Your real competitor is not Roper St. Francis;
10 your real competitor is the Medical University,
11 isn't it?

12 MR. LONG: Objection, Your Honor. You know, that's
13 a classic leading question.

14 THE COURT: Sustained.

15 MR. SUMMER: That is a leading question, and I'll
16 rephrase it.

17 Q: Who is the more successful opponent or
18 competitor for you?

19 A: I would say we concern ourselves from a
20 competitor standpoint more with Roper St.
21 Francis because they have the bulk of the
22 private physicians along with Trident. The
23 Medical University has a captive employed
24 faculty type physicians. They're both
25 formidable competitors, obviously. But maybe

1 Roper a little bit more so.

2 Q: Do medical universities have that halo effect?

3 A: They do.

4 Q: Okay. Are you proud about how your numbers
5 stack up against major research institutions?

6 A: Yes.

7 Q: When you look at these numbers and you look at
8 how MUSC is more of a dominant market player in
9 these zip codes than Roper St. Francis, what if
10 -- what if any relevance does that have to you
11 in looking at Roper's strategy about trying to
12 get into that Goose Creek market?

13 A: Well, I think it's -- I think it's a bigger
14 opportunity for them since they are a third
15 player in the market. They have -- they have
16 identified, I think, a significant upside for
17 market share gains if they were to increase the
18 amount of facilities in that area and employed
19 physicians.

20 Q: They're basically coming to take your patients,
21 aren't they?

22 A: That's my concern.

23 MR. LONG: Objection.

24 THE COURT: Same objection?

25 MR. LONG: Yes, Your Honor.

1 THE COURT: Sustained.

2 Q: Why do you think they've come?

3 A: I think they're coming because they -- they
4 clearly have a strategy of a hub and spoke
5 strategy where they want to see smaller
6 facilities, satellite facilities in and around
7 their major hub facility. They want to
8 continue to grow market share, and this is the
9 next obvious place. They've had some
10 challenges in East Cooper. They want to move
11 on to Goose Creek close to us.

12 Q: It's about money, isn't it?

13 A: I think -- I think gaining market share is a
14 way to increase their profitability. They see
15 this as a big opportunity, yes.

16 Q: Mr. Long asked you a question about a statement
17 he made in your deposition. He asked you about
18 your characterization of the Goose Creek
19 decision by DHEC as being bad healthcare
20 planning. Why do you believe it's bad
21 healthcare planning?

22 A: I think -- I think it's clearly putting a
23 hospital where the residents of Goose Creek and
24 that surrounding area have ready access, not
25 only to hospital care, but physician care and

1 other care that's in and around hospitals.
2 They're very, very close to existing
3 facilities, and the better planning decision
4 would seem to be in Moncks Corner where these
5 residents of Cross and St. Stephen and Bonneau
6 just don't have access.

7 Q: Is the CON program supposed to promote creating
8 access?

9 A: It definitely is. It gives providers like ours
10 that want to go out into the rural areas and
11 locate facilities some sense of stability that
12 they can get their feet on the ground in
13 perhaps a challenging market at a challenging
14 time. And Moncks Corner is a perfect example
15 of that.

16 Q: There was also a line of questioning regarding
17 how the evaluation was made to go to Moncks
18 Corner. Do you recall that line of
19 questioning?

20 A: Yes.

21 Q: Do you recall Mr. Long asking you about whether
22 or not decision support had been consulted in
23 your decision to go to Moncks Corner?

24 **THE COURT:** Wait. Ask that questions again because
25 I didn't understand it.

1 MR. SUMMER: There is an entity, Your Honor. Well
2 let me ask --

3 Q: Do you remember the question regarding decision
4 support?

5 A: Yes.

6 Q: What is decision support services? What are
7 they?

8 A: They're individuals within HCA that helps us
9 analyze the various market share of facilities,
10 as well as various services within the hospital
11 and provide more detailed information than the
12 typical financial statements. So they're kind
13 of an arm of HCA that provide at your request
14 reports.

15 Q: One of the services that's available to you
16 under your management agreement?

17 A: Yes.

18 Q: Do you recall that you basically responded to
19 Mr. Long that the CON and the pro formas in the
20 CON were the information and documents you
21 used, or that Trident used, to evaluate whether
22 or not to go forward with that project?

23 A: Yes, that along with the documented bed need in
24 that area.

25 Q: I believe from your testimony that you

1 identified four different people who worked on
2 those numbers. You identified Mr. Woodford?

3 A: Correct.

4 Q: Who is Mr. Woodford?

5 A: He was a chief financial officer of our
6 division office in the past, I believe, was
7 hired as a consultant at the time to help with
8 the CON financials.

9 Q: And he worked on those financials?

10 A: Yes.

11 Q: And did Mr. Midgett work on financials?

12 A: Yes.

13 Q: And who is Mr. Midgett?

14 A: He was the controller, kind of the number two
15 financial individual at Trident Health.

16 Q: And who is Mr. Gorrell?

17 A: He was the CFO, chief financial officer of the
18 health system.

19 Q: He was a direct report to you?

20 A: Yes.

21 Q: And he also worked on the financials?

22 A: Yes.

23 Q: And then who is Mr. Baehr?

24 A: Our consultant, expert consultant health
25 planner.

1 Q: Did you always have four people working on
2 financials for CON applications?

3 A: Well, I mean no, we don't. But this obviously
4 is a big expense. When you look back at our
5 balance sheet which was flashed up here a
6 number of slides ago, this \$115 million expense
7 is virtually going to double the assets we have
8 in our property plant equipment on the balance
9 sheet. So it's a significant sizable
10 investment. And I'm glad we had a number of
11 people analyzing this every which way.

12 Q: So do you think you were deliberative enough in
13 your analysis?

14 A: Yes.

15 Q: Is there any shortcoming or problem of not
16 going to decision support services when you had
17 all these other people working on it?

18 A: No. I'm not sure if Ronnie Midgett went to
19 decision support services. I don't have any
20 unanswered questions at this time. Comfortable
21 with the financial statements.

22 Q: Okay. I want to look in Joint 1, Joint Exhibit
23 1. Would you go to page 902 for me, please.
24 I want to see if this refreshes your
25 recollection. Do you remember Mr. Long was

1 asking you about how many patients were going
2 to be lost, and how many dollars were going to
3 be lost, and did you ever tell DHEC. Take a
4 look at that page and see if that refreshes
5 your recollection at all.

6 A: Yes. That's a summary by Mr. Baehr of the
7 number of adjusted admissions that we would
8 lose to Roper.

9 Q: Again, still a part of healthcare primer, okay,
10 explain to the court what an adjusted admission
11 is.

12 A: An adjusted admission is a measure that we use
13 in hospitals to try to identify more completely
14 what the activity level is in that hospital.
15 So you have admissions, but you also have
16 outpatient visits. And oftentimes without some
17 conversion formula you can't get a good measure
18 of your volume in the hospital. So the
19 adjusted admission is factoring in the
20 outpatients with a -- with a ratio. So it adds
21 maybe 50 percent to your admissions. Like a
22 outpatient visit is worth maybe half of what an
23 admission is worth. So it's a -- it's a
24 formula we use.

25 Q: So Mr. Baehr was working for you at the time,

1 correct?

2 A: Yes.

3 Q: And who is this letter addressed to? If you
4 look back on page 900, who is the letter
5 addressed to?

6 A: Beverly Brandt, Director of CON.

7 Q: And you see there's a stamp date of when it was
8 received by DHEC. When was it received?

9 A: June 23rd, 2009.

10 Q: And if we go back to 902, how many adjusted
11 admissions are we looking at losing over that
12 three-year time period?

13 A: In the first year 15,057; second year 26,069;
14 and then third year 3,114.

15 Q: If we look down at number two, is that
16 dollarized by Mr. Baehr?

17 A: Yes.

18 Q: Okay. And so he actually says how many --
19 what's the number he has for 2015 of the dollar
20 loss?

21 A: Fourteen million.

22 Q: Mr. Long also asked you a question about
23 contribution margin. If you look over on page
24 903, you can see Mr. Baehr making conclusions
25 about contribution margin. Why is the notion

1 of a contribution margin, what is it and why is
2 it important to you?

3 A: Contribution margin is basically your operating
4 expenses taken off of the net revenue. So it's
5 a -- it's an operating margin of sorts that's
6 used before you pay all the other things,
7 depreciation, interest and taxes, some of the
8 fixed expenses.

9 Q: Is that a very common term in healthcare
10 finance?

11 A: Yes.

12 Q: And is it also a very common way to measure
13 adverse impact?

14 A: Yes.

15 Q: Okay. Good to know. Let's also while we're in
16 this exhibit go over to page 36 for me. Mr.
17 Long was asking you some questions about what
18 your ADC was going to look like in the Berkeley
19 County hospital. I think you used the number
20 25?

21 A: Yes.

22 Q: Look on page 33 and see if that helps to
23 refresh your recollection about what your
24 projections were for ADC?

25 A: Yeah. They're approximately 20 or 19.8 in the

1 first year, 26 in the second year of operation,
2 and 33 in the third.

3 Q: Thirty-four if you round it up, right?

4 A: Yes.

5 Q: Okay. There was also a line of questioning, in
6 fact quite a bit of questioning, regarding
7 physician practices, which practices were
8 bigger, which practices are employed? Do you
9 remember all those questions?

10 A: Yes.

11 Q: You were talking about the service area. You
12 said you thought that LMA was the largest
13 practice in the service area?

14 A: Yeah. Now it's called Physician Partners, I
15 think, with Roper.

16 Q: Okay. Tell me a little bit about LMA and who
17 they are?

18 A: It's a -- originally, as I understand it, it
19 was a group of primary care physicians that
20 were independent. They were bought by Roper a
21 number of years ago, employed, and then they
22 went back independent. They were sold out, I
23 guess, and then -- and then about two years go,
24 I think, they were repurchased by Roper. And
25 I believe it's close to about 100 physicians.

1 Q: So substantially larger than Palmetto Primary
2 Care; is that correct?

3 A: Yes.

4 Q: In that discussion regarding employee
5 physicians, do you remember Mr. Long's question
6 about, well, you can't have a bidding war for
7 physicians because federal law prohibits that
8 with fair market value? Do you remember that
9 statement?

10 A: Yes.

11 Q: Okay. Well, there actually was a bidding war
12 for Mount Pleasant OB/GYN; was there not?

13 A: There was.

14 Q: Okay. And --

15 MR. LONG: Objection, Your Honor. Unless he was in
16 it, he can't testify about it.

17 THE COURT: Go ahead.

18 MR. THOMAS: Mr. Long had a series of questions
19 about limits on what could be paid for
20 physician practices. And I quoted verbatim his
21 question about, you can't have a bidding war
22 for physician practices. So he opened the door
23 on that issue. I'm going to ask him, and I'll
24 lay more foundation about his knowledge of this
25 particular physician acquisition by Roper, but

1 the name of the group is Mount Pleasant OB/GYN.

2 **THE COURT:** I don't think that was his objection,
3 though, was it?

4 **MR. LONG:** It was just a foundation, Your Honor. I
5 mean, unless he participated in a bidding war,
6 he can't answer questions about an alleged
7 bidding war --

8 **THE COURT:** Well, if he knows, he can --

9 **MR. SUMMER:** And I'll try and lay --

10 **MR. LONG:** Which would be based on his personal
11 knowledge.

12 **MR. SUMMER:** I'll lay some foundation for it.

13 Q: Mr. Gallati, is keeping up with what's going on
14 in the marketplace a key part of your job?

15 A: Absolutely.

16 Q: Okay. And in addition to all of this market
17 share information that we look at that you
18 watch, do you also watch physician practice
19 activity throughout the Trident area?

20 A: Yes.

21 Q: Okay. And do you look at and consider and gain
22 knowledge and do research on physician
23 practices and where they refer?

24 A: Yes.

25 Q: Do you also do research on who's buying whom or

1 who's aligned with which hospital?

2 A: Definitely.

3 Q: Okay. And is it common knowledge in your
4 profession that Roper St. Francis bought Mount
5 Pleasant OB/GYN?

6 A: Yes.

7 MR. LONG: Objection. It can't be -- he can't
8 testify to common knowledge. He doesn't know
9 -- he works for another -- Mr. Bowling will be
10 happy to testify about the purchase of the
11 physicians. He actually has personal knowledge
12 of it. This witness has nothing but hearsay
13 and speculation.

14 THE COURT: All right. I'm going to sustain that
15 objection.

16 MR. SUMMER: Your Honor, he basically makes a point
17 that we have no -- there is no competition to
18 buy these physician practices.

19 THE COURT: I understand that.

20 MR. SUMMER: All right.

21 THE COURT: But the nature of his testimony I'm
22 concerned with.

23 MR. SUMMER: There's nothing more further from that
24 truth. And he knows this from working in the
25 industry and in the community regarding this

1 transaction. There was a huge bidding war
2 between East Cooper and Mount Pleasant Roper to
3 buy these physicians. And I think he's opened
4 the door, and I'm entitled to ask him these
5 questions to refute the supposition that's left
6 in the record that you can't have a bidding
7 war.

8 **THE COURT:** But he is not entitled to respond with
9 hearsay answers.

10 **MR. SUMMER:** Can I ask him of his personal
11 knowledge?

12 **THE COURT:** Yes, sir.

13 Q: Are you aware that there was a bidding war
14 between Roper St. Francis and East Cooper for
15 the purchase of Mount Pleasant OB/GYN?

16 **MR. LONG:** Objection Your Honor. It's the same
17 question. He doesn't have personal knowledge.

18 **MR. SUMMER:** Unless he answers it, we don't know.

19 **MR. LONG:** Well, that's the problem with the --

20 **THE COURT:** Ask him if he knows from personal
21 knowledge.

22 Q: Do you know from personal knowledge?

23 A: I know from talking to the CEO of East Cooper.

24 **MR. LONG:** That's hearsay.

25 **THE COURT:** Thank you. Objection sustained.

1 MR. SUMMER: Your Honor, I'd like to reserve the
2 right to subpoena a physician or physicians
3 from Mount Pleasant OB/GYN to refute this
4 position as a witness in our case.

5 MR. LONG: Well, I'm opposed to that Your Honor.
6 There have been no -- I mean they're not even
7 on the list. And a witness, they certainly
8 haven't been deposed, they haven't been named
9 or anything. And there's no reason to do that.
10 There's nothing to refute. I asked him a
11 simple question: can you have a bidding war
12 over the purchase of a physician? He said, no,
13 because that's true because they had to -- you
14 have to pay fair market value. That was the
15 discussion; that was the testimony.

16 MR. SUMMER: Your Honor, that assumes that you --

17 MR. LONG: We would oppose it.

18 MR. SUMMER: -- pay for in fair market value. If
19 you pay in excess of fair market value, you
20 sure can have a bidding war.

21 THE COURT: Well, just as a fundamental matter, I
22 think we're too far down the road to start
23 dragging in new witnesses now unless you can
24 give me some basis in the rules for it.

25 MR. SUMMER: All right, Your Honor. I'll go to work

1 on it. Thank you.

2 Q: Let's talk about this concept of EBITDA or EBIT
3 or whatever you want to call it. At the end of
4 the day, both the IRS and South Carolina
5 Department of Revenue recognize depreciation as
6 a legitimate business expense; do they not?

7 A: Correct.

8 Q: And as far as accounting is concerned, that is
9 a legitimate deduction from revenue?

10 A: It is.

11 Q: Okay. As is insurance?

12 A: Yes.

13 Q: As is interest?

14 A: Correct.

15 Q: As is taxes?

16 A: Yes.

17 Q: At the end of the day, your net income is what
18 the IRS says is your net income, right?

19 A: Yes.

20 Q: Do you believe that for purposes of evaluating
21 the profitability of your hospital that the
22 EBITDA line that does not take into account any
23 of those deductions is the appropriate measure?

24 A: No. It's not -- it's not the final measure.
25 It's not the bottom line.

1 Q: There was also discussion about what to you is
2 a material adverse impact. Is a material
3 adverse impact an impact that affects your
4 ability to conduct business?

5 A: Yes.

6 Q: And you, I think, said five million to you was
7 material?

8 A: Right.

9 Q: And when we say five million, we're not talking
10 about five million in revenue; we're talking
11 about five million in profit, right?

12 A: Correct.

13 MR. LONG: Objection, Your Honor. He's starting to
14 lead again.

15 THE COURT: Okay. Sustained.

16 MR. SUMMER: The hour is late. I'll lay the
17 foundation for it, go all the way back to the
18 beginning.

19 Q: Now we talked about the difference between net
20 revenue and profit?

21 A: Yes.

22 Q: When you say that five million dollars is
23 material, are you talking about five millions
24 dollars net revenue, or are you referring to
25 five million dollars of profit?

1 A: Five millions dollars in net income. Net
2 profit after taxes.

3 THE COURT: Well, you've changed terms and so you've
4 lost me. Is income the same as revenue?

5 MR. GALLATI: No.

6 THE COURT: Just a minute. You ask that question
7 again if you can remember it please, sir --

8 MR. SUMMER: Okay.

9 THE COURT: -- so I can --

10 MR. SUMMER: I can. And I think, Your Honor, what
11 would be helpful would be to pull up -- let's
12 pull up while we're in this exhibit, let's pull
13 up page 643, which is where we started our
14 primer earlier today. And can we just take
15 that column on the left-hand side of
16 descriptions and the first year and expand it.
17 That's good. That's great. That's somewhat
18 helpful.

19 Q: So if we're in Joint 1, we're on page 643.
20 There the net -- and let's use an example for
21 projection for 2008, what -- and all of these
22 are going to be open-ended questions, no
23 leading questions. What is the total net
24 revenue for 2008?

25 A: 371 million.

1 Q: Would you consider a decrement or a reduction
2 in total net revenue of five million dollars to
3 be material?

4 A: No.

5 Q: Now let's go down to pretax income at the
6 bottom of the page. You see that?

7 A: Yes. Forty-four million.

8 Q: All right. Would you consider a decrement of
9 five million dollars in your pretax income to
10 be material?

11 A: Perhaps. I definitely would see the after tax
12 income, which is not shown here, which would be
13 approximately \$15 million off of this for
14 taxes, leading to about \$30 million in net
15 income. Five million of 30 million would be
16 concerning.

17 Q: And again, what was Mr. Baehr's projection of
18 your pretax income decrement?

19 A: I think it was around 15 or 16 million.

20 Q: We'll just defer him when he testifies.

21 A: It was -- yeah, 16.5 million.

22 Q: So when we talk about that materiality, we're
23 talking about the adverse impact being
24 material?

25 A: Yes!

1 Q: I want to talk a little bit about management
2 fees. And Mr. Long showed you various years,
3 but there were management fees paid to HCA, and
4 usually in the 20 million to -- 20 to \$27
5 million range. Is that a fair statement?

6 A: Yes.

7 Q: Let's talk about what you get for that. One of
8 the things you mentioned was legal. There's an
9 entire law firm inside of HCA in Nashville?

10 A: Yes.

11 Q: Fifty something lawyers, right?

12 A: I don't know how many. We have one that's
13 assigned to us.

14 Q: If you did not have those services, you would
15 have to hire an in-house counsel, wouldn't you?

16 A: Correct. Yes.

17 Q: And all the office support for that in-house
18 counsel?

19 A: Correct.

20 Q: And the staff attorneys for that in-house
21 counsel?

22 A: Yes.

23 Q: So you're talking a significant amount of
24 money?

25 A: Yes.

1 Q: All right. That's one example. Let's note
2 some other examples of services provided that
3 if you didn't pay the management fee, you'd
4 have to replicate with your own staff. How
5 about reimbursement support?

6 A: That's entirely outside of a facility and built
7 into the management fees.

8 Q: Can you give me an idea about what
9 reimbursement support would be and what you
10 would have to do if you didn't pay the
11 management fee, how would you expense that in
12 your budget?

13 A: Reimbursement support that works with managed
14 care to negotiate some of those contracts we
15 talked about earlier with private payers, they
16 also work with the government entities to
17 ensure that our payments are accurate and per
18 the fee schedules. They provide services such
19 as our cost report that's prepared by corporate
20 on our behalf. So we would need to staff up
21 for a number of services. I mean there's
22 everything from marketing support to accounting
23 to legal, quality, risk management. A lot of
24 the back office supports that you see within
25 the hospitals, we have not duplicated them at

1 the hospital level, but we utilize the support
2 at corporate.

3 Q: What about information technology?

4 A: And the information technology is very
5 expensive. And the support has continued to
6 grow as hospitals become more integrated with
7 information systems. So that's huge.

8 Q: If you had to replicate that yourself, you'd
9 spend far more than \$27 million a year on it,
10 wouldn't you?

11 MR. LONG: Objection.

12 THE COURT: Sustained. Leading.

13 Q: If you had to buy it yourself, how much would
14 it cost?

15 A: I don't know the exact amount, but I can tell
16 you that I wouldn't want to be faced with that
17 -- with that probability. It would be very
18 difficult to duplicate that expertise, not just
19 from the expense side, but the expertise.
20 They're dealing with a number of different
21 hospitals as opposed to hiring one individual
22 for one reimbursement issues that we have at
23 one hospital. These guys are experts. So we
24 get quality and quantity. I've never
25 questioned the expense that it's too high or

1 I'm, you know, against it, I'm seceding from
2 the union or anything like that. I mean, it's
3 well worth it.

4 Q: I'm trying to get a feel for it. But have you
5 been to HCA corporate in Nashville?

6 A: I have.

7 Q: And how big is that campus?

8 A: Three very, very large, large buildings there.
9 Four or five-story buildings filled with, you
10 know, administrative and information technology
11 support and everything in between.

12 Q: Do you have any how many thousands of employees
13 work there?

14 A: I don't.

15 Q: As a hospital administrator, do you believe
16 that you get good value for that \$27 million?

17 A: I definitely do. As I said, I would not want
18 to duplicate that myself and have not
19 questioned that as being an excessive amount.

20 Q: There was a number of questions regarding
21 duplication. The first issue regarding
22 duplication was duplicating your assets in
23 Moncks Corner. What, if any, relevance does
24 the proximity of duplicated assets to your
25 Trident campus have?

1 A: I mean, clearly proximity is factored into the
2 belief on whether or not a service is
3 duplicative. It depends on the market it's
4 serving. You know, there is duplicative
5 services on the peninsula to Trident, but
6 that's not concerning because it will be
7 serving, you know, different patients. So if
8 there's an MRI scanner in the peninsula and an
9 MRI scanner in North Charleston, that would
10 seem to be okay and not be duplicative from a
11 health planning perspective, so. But if you
12 have two hospitals right next to each other in
13 the shadow of each other with those same
14 services and not part of the same system, that
15 certainly can be deemed to be duplicative.

16 Q: There was also a line of questioning regarding
17 Summerville and whether or not it was
18 duplicative of the Trident campus. Do you
19 remember that?

20 A: Yes.

21 Q: Summerville and Trident are a separate provider
22 number or the same provider number?

23 A: Same.

24 Q: Separate license or the same license?

25 A: Same license; same system.

1 Q: Okay. So Trident had the choice to build new
2 beds either at Trident or to build new beds at
3 Summerville, right?

4 A: Correct.

5 Q: And so while they may be duplicative, you had
6 the ability to choose where to build them as
7 part of your bed need?

8 A: Yes.

9 Q: How is that different from if a competitor
10 comes in and builds a hospital right next to
11 you?

12 A: Well, like I said earlier, if you're part of
13 the same system you are balancing, making some
14 decisions what's best for the system to serve
15 those patients, trying not to offer the exact
16 same thing if you don't need to in both
17 locations. But if a competitor comes in,
18 they're duplicating not just the facilities but
19 the physician resources. We have similar
20 physician resources. We have one medical staff
21 for both facilities. Our physicians, by and
22 large, serve both hospitals. When they're on
23 the medical staff at Trident, they're also on
24 the medical staff for Summerville. It's the
25 same medical staff.

1 Q: There were a number of questions about Goose
2 Creek not having a hospital. Does Goose Creek
3 have a hospital?

4 A: Yes.

5 Q: What's Goose Creek's hospital?

6 A: Trident.

7 Q: If we look at the service area, and we talked
8 about this earlier when we looked at the State
9 Health Plan, how many counties are in the
10 service area?

11 A: Three.

12 MR. SUMMER: Pull it up for me. I want to go to --
13 I'll tell you.

14 Q: We're in the '08-'09 Plan. And we're going to
15 go back to Roman Numeral

16 A: 218.

17 Q: Yeah, we'll start at 218 and go to 219. And
18 that's in Joint which one?

19 MS. TYER: Four.

20 MR. SUMMER: Joint 1?

21 MS. TYER: Four.

22 MR. SUMMER: Four. See if we can put that up.

23 Q: It will be page II-18 in there.

24 A: How am I finding the page numbers? I can look
25 on this. Is it this?

1 Q: Okay. Roman Numeral II-18. All right.

2 MR. THOMAS: You can look at the screen.

3 Q: You have to look at the screen. Can you see it
4 on the screen?

5 A: Yes.

6 Q: You see where we start with -- if you look at
7 it, it's -- how many counties are in your
8 planning region?

9 A: Three.

10 Q: Okay. If we start with Trident Medical Center,
11 count out for me the number of hospitals that
12 are in this planning region.

13 A: Trident, Summerville are shown here. And then
14 the Medical University and Roper, Roper St.
15 Francis Mount Pleasant, Bon Secours, East
16 Cooper.

17 Q: How many is that?

18 A: One, two, three, four, five, six if you don't
19 count Mount Pleasant and Roper as a separate
20 hospital.

21 Q: Okay. What if you count them separately?

22 A: Seven.

23 Q: Do you feel like Trident has a monopoly in the
24 service area?

25 A: No.

1 Q: Is it more than one hospital there?

2 A: Absolutely.

3 Q: Would franchise be a better way to describe
4 what the CON program provides to Trident?

5 MR. LONG: Objection. It's a classic leading
6 question.

7 THE COURT: Sustained.

8 Q: If you don't have a monopoly, do you have any
9 other word that you might use to describe what
10 Trident believes is provided to it by the CON
11 program?

12 A: Maybe it's not one word, but certainly it's --
13 would be a series of words centered around good
14 health planning. You know, the CON process is
15 designed to adequately distribute facilities
16 across a planning area. And I think, clearly
17 I think this decision by the Department doesn't
18 do that.

19 Q: All right. Ms. Biggers asked you questions
20 about the June 9 meeting and, you know, what
21 Ms. Brandt said and what she didn't say. Do
22 you think Ms. Brandt understood what you were
23 talking about when you were there?

24 MS. BIGGERS: Objection. That calls for
25 speculation. How is he going to know what Ms.

1 Brandt -- is going on in Ms. Brandt's head?

2 **MR. SUMMER:** I'll rephrase the question, Your Honor.

3 **THE COURT:** Sustained.

4 Q: What, if anything, did Ms. Brandt say about
5 health planning impressed you?

6 A: She didn't -- she didn't -- as I said, it was
7 a very closed meeting. She didn't answer any
8 of my questions about health planning.

9 Q: Did she participate at all in any discussions
10 about adverse impact, duplication of services,
11 any of the criteria that were supposed to be at
12 issue in this case?

13 A: No.

14 Q: Did she demonstrate to you a knowledge of
15 healthcare planning?

16 A: No. She didn't have any questions and didn't
17 answer any of my questions other than the, you
18 know, how many members of the general assembly
19 we had on our side.

20 **MR. THOMAS:** No further questions, Your Honor.

21 **THE COURT:** Mr. Long, you were about to say
22 something?

23 **MR. LONG:** No, Your Honor.

24 **THE COURT:** All right. What's your wishes for us to
25 reconvene in the morning, 9:30?

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1 MR. LONG: Yes, Your Honor. We still have this
2 deposition issue. We're going to -- we kind of
3 thought that we might do that tomorrow morning.
4 I'm going to look at that again tonight and try
5 to talk to Mr. Thomas maybe see if we can
6 narrow some of that, if possible, and Mr.
7 Summer.

8 THE COURT: How long do you think that will take? I
9 mean, are we going to have witnesses in the
10 morning or you're going to spend all morning
11 talking about that?

12 MR. LONG: I'm not sure.

13 MR. THOMAS: I actually let Mr. Ridgeway go. He
14 lives out in Chapin. Got a pretty long drive
15 back. But that's kind of a hard one to know
16 just how long it's going to go in the morning.

17 THE COURT: Well, we'll just have to be flexible.

18 MR. THOMAS: Right.

19 THE COURT: Remember I'll be leaving at 11:00.

20 MR. THOMAS: Yeah, 11:00. Yes, sir.

21 MR. LONG: Your Honor, do you have any idea when you
22 think you might be back? 2:00?

23 THE COURT: Hopefully 2:00.

24 MR. LONG: Okay.

25 THE COURT: It might run a little over, which would

1 accord me leniency there.

2 **MR. THOMAS:** Would you want us to come back here
3 right at 2:00, or should we wait for maybe an
4 email from Anthony and then kind of get over
5 here? It's up to you.

6 **THE COURT:** Well, I don't think I'll be that far
7 past 2:00.

8 **MR. THOMAS:** Okay.

9 **THE COURT:** It's best for y'all to be here.

10 **MR. LONG:** All right. So we'll be ready to argue the
11 depositions at 9:30. And I guess Mr. Ridgeway
12 will be here if he starts and then we'll make
13 use of our time.

14 **MR. THOMAS:** That's what I've been -- I don't think
15 he's going to be a long witness just based on
16 --

17 **THE COURT:** Okay. Anything else for this afternoon?

18 **MR. THOMAS:** No, sir.

19 **MR. LONG:** No.

20 **THE COURT:** Be at recess until 9:30 in the morning.

21 **MR. THOMAS:** Thank you, Your Honor.

22 **MR. LONG:** Thank you.

23 (There being nothing further, the hearing recessed at
24 5:47 p.m.)

25 DAY 3 - WEDNESDAY, FEBRUARY 1, 2012

1 **THE COURT:** We're back on the record. I understand
2 that you have worked out all of your
3 differences in regard to designation of the
4 testimony; is that right?

5 **MR. THOMAS:** I believe we have, Your Honor.

6 **MR. LONG:** Yes, Your Honor.

7 **THE COURT:** All right. What about the issue of the
8 late presentation of documentary evidence?

9 **MR. LONG:** Your Honor, before we leave the
10 deposition issue, we might want to kind of put
11 that on the record, if we could.

12 **THE COURT:** Certainly, yes sir.

13 **MR. LONG:** Mr. Thomas and I have got an
14 understanding. We just went through it; we
15 think we do. There's a document that on Monday
16 Mr. Thomas had handed me a that -- a memo when
17 -- I think the easiest way to put this on the
18 record is just to kind of go through the memo
19 about what we've agreed to and what we haven't.
20 So if you wanted to kind of follow along with
21 that, I can kind of walk through that.

22 **MR. THOMAS:** And then we can also tell you kind of
23 logistically, Your Honor, how we'll present the
24 designations to you. So hopefully they're
25 going to be in an easy way for you to read

1 them.

2 **MR. LONG:** Well, we can comment on that. Do you
3 want to comment or do you want me to comment?

4 **MR. THOMAS:** Yeah. What we're planning to do is our
5 paralegals have gone through and they've
6 already kind of color coded everything. But
7 some of it's difficult to read, so the idea is
8 once we have all the designations agreed upon,
9 which we think we do, we'll present you a
10 transcript of the deposition designations and
11 only the deposition designations, so there
12 won't be anything there other than those. And
13 it also just be -- won't be color coded by
14 size, so you'll just be reading a transcript as
15 if either I was taking -- directing the witness
16 or cross-examining the witness or Mr. Long was
17 cross-examining the witness or directing the
18 witness. Does that sound good for you?

19 **THE COURT:** Sounds fine to me, yes.

20 **MR. LONG:** Your Honor, kind of going through these
21 witnesses, Mr. Dunlap has probably got the most
22 lengthy deposition of the ones that we're
23 submitting to you. We have made a series of
24 objections on those and we are -- and they're
25 laid out here on Mr. Summer's -- I mean Mr.

1 Thomas' thing here. We're withdrawing all of
2 the objections, one, two, three, four, five and
3 six and seven. We are -- Mr. Thomas agrees to
4 remove designation, to limit number eight's
5 designation to 176, line 24 through 177, line
6 four. So, in other words, 176 to -- I'm sorry
7 I didn't say that correctly.

8 MR. THOMAS: Yeah.

9 MR. LONG: Let me back up, I said it backwards. The
10 number eight, Mr. Thomas has conceded to our
11 objection at the end of the passage, so the
12 actual designation that would go into the
13 record is 176, 2, through 176, 23.

14 MR. THOMAS: That's correct.

15 MR. LONG: That's what would be in the transcript.
16 The remainder of it, 176, 24 to 177, 4, would
17 be withdrawn; would not be there. We have also
18 agreed in the rest of his -- in effect, he's
19 withdrawn all of his objections to our counter-
20 designations and I've agreed to allow him to
21 make counter, counter-designations and all of
22 those are coming in in regards to Mr. Dunlap.

23 THE COURT: All right. Refer to it by page number
24 so the court reporter can have something to
25 identify it, please.

1 MR. LONG: Thank you, Your Honor. On page 3 of the
2 memorandum, it sets out in Section B Trident's
3 counter, counter-designations. And we've
4 agreed that those can be admitted as part of
5 the transcript. On page 3 and 4 are Trident's
6 objections to our counter-designations and they
7 have withdrawn all of those. So those sections
8 would also come in. And that would take care
9 of Mr. Dunlap's. His deposition will be ready
10 to be submitted to the Court once we make these
11 changes on the transcript. The next witness is
12 Shannon Cantwell. She's also an employee of
13 Roper St. Francis. Mr. Thomas has agreed to
14 our -- to withdraw these portions of the
15 deposition on our objection. So we would not
16 include on page -- this is set forth on page 4.
17 We would not include page 48, lines 18 through
18 21A. We're going to split that 21 in half. We
19 would not include, page 93, 21 to 23. We would
20 not include page 94, lines 3 to 6. Your Honor,
21 page 155, line 2 through 157, 21, would be
22 included, Your Honor. But, as you know, we
23 objected to that issue about the Joel Grice
24 email and the Department had objected to that
25 also. But we -- Your Honor had ruled on that,

1 but I just wanted to reserve that objection so
2 that it's clear that we weren't waiving it just
3 because we agreed to allow it to come in on the
4 deposition.

5 **THE COURT:** Understood.

6 **MR. LONG:** In regards to the next witness, Matt
7 Severance. He's also a Roper St. Francis
8 employee. He actually will be testifying at
9 the trial. I had made one objection and Mr.
10 Thomas had made an objection there. We're both
11 going to agree to the objections and withdraw
12 those passages from the deposition transcript.
13 So 95, 8 through 96, 1 would not be included.
14 71, 21 through 73, 7 would not be included.
15 John Sullivan is the next witness listed on
16 page 5. He's also a Roper St. Francis
17 employee. I had made two objections in regards
18 to that. I will withdraw objection number one
19 so that 92 -- page 92, lines 1 through 9 would
20 be included in the transcript. Mr. Thomas is
21 conceding our objection on page 93, 2 through
22 8, so those -- those lines from that page would
23 not be included as a part of the transcript.
24 The last witness is Brenda Myers. She's also
25 an employee of Roper St. Francis. We have

1 agreed to -- I've withdrawn -- I withdraw my
2 objection to Ms. Myers' testimony here at the
3 bottom, so that would come in on the
4 transcript. There's typo -- this chart on page
5 6 is incorrect, Your Honor, so Mr. Thomas has
6 withdrawn his counter, counters that are listed
7 in part B and substituted page 21, lines 2
8 through 22, which would be included in the
9 transcript, and we agree to that. And then on
10 the bottom of page 6, these are Trident's
11 objections to our counter-designations. There
12 are six of them there listed there, Your Honor.
13 I have agreed to withdraw from the testimony,
14 numbers three, four, and six. So, 43-12
15 through 22; 45, 17 through 22; and 74, 15
16 through 20 would not be in the deposition. The
17 other three, one, two, and five would be
18 included. Mr. Thomas has conceded on those.
19 So 39, 14 through 41 would be in; 40, lines 12
20 though 14 would be in; and 59, 2 through 9
21 would be in. So I know that's a lot of numbers
22 and names, Your Honor. I appreciate you on
23 that. And so I believe our staffs can pull
24 this together and hopefully certainly have
25 something to you, you know, I think in the next

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1 weeks.

2 **THE COURT:** But what will come to me will be the
3 refined version of this. I don't have to weed
4 it out.

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

6 **MR. LONG:** Yes, sir. And actually if it works the
7 way we want it to, you'll just, you'll have
8 right there, you can just read it and you won't
9 have anything that you have to -- everything
10 that's on the page will be --

11 **THE COURT:** I won't have to disregard anything?

12 **MR. LONG:** You won't have to disregard anything.

13 **MR. THOMAS:** Right. And I guess, Your Honor, I
14 think this probably saves us a couple days of
15 testimony and I would imagine you'd rather --
16 you would rather read it in chambers yourself
17 rather than us having someone read it off of
18 the stand, as they sometimes do in court.

19 **MR. LONG:** Right. And I would say too, we have two
20 other witnesses that we will be submitting to
21 you, Mr. Jamie Thomas, you've heard his name.
22 He's an HCA employee. And then also Tom
23 Davidson, I think you've heard his name too, he
24 works with Mr. Baehr. We made a few
25 designations in regards to their depositions.

1 Mr. Thomas has done some counters. We don't
2 have any objections on those.

3 **THE COURT:** Okay.

4 **MR. LONG:** So those need to be -- our staffs will
5 include those also to submit to you.

6 **MR. THOMAS:** The other thing what we'll do in the
7 notebook, what I think we will do, Your Honor,
8 is there's several exhibits that are referenced
9 within the counter -- the designations and
10 counter-designations. And what we'll do is I
11 think maybe the best way to do that is to put
12 together a notebook for you. It'll kind of be
13 a reference notebook of exhibits that go along
14 with those deposition designations. And what
15 we can do is have a cross reference page for
16 you and just so that you, when you're reading
17 through it, you can go straight to that
18 exhibit. Because obviously in the deposition,
19 it's not listed as Petitioner's 5 or
20 Respondent's 7. So we'll figure out an easy
21 way for you to reference those exhibits,
22 because I think that it could get a little bit
23 complicated. Maybe there's some way we can --

24 **MR. LONG:** We could probably annotate it.

25 **MR. THOMAS:** Yeah.

1 MR. LONG: We'll be able to annotate the depositions
2 so when there's an exhibit reference we'll just
3 have an little annotation probably out there
4 that says like Petitioner or whatever. That's
5 probably possible, isn't it?

6 MR. THOMAS: Yeah, and that way, now, you know,
7 those exhibits would be in evidence from both
8 sides.

9 THE COURT: Thank you.

10 MR. LONG: Okay. I think that's it.

11 MR. THOMAS: Okay.

12 THE COURT: What about the documentary evidence that

13 --

14 MR. THOMAS: We reviewed this last night and it
15 appears to be correct, Your Honor. And that
16 would be, you're referring to Respondent's 160,
17 I believe. And we looked it over and it's the
18 Trident Health Systems financial statement, or
19 at least the summary of the net revenue and the
20 EBITDA. And we did look at it and it appeared
21 to be correct.

22 THE COURT: Well, I'm not sure that's what I was
23 referring to. I was referring to the, I
24 believe there were three documents that were
25 handed and Mr. Summer was complaining because

1 they were late but was willing to -- yeah,
2 that's the --

3 **MR. SUMMER:** I can respond to this. They're
4 Respondent's 160, 161, 162. As to 160, we
5 believe that those numbers are an accurate
6 summary of what they purport to me. Obviously
7 we reserve the right, at a later time, to
8 counter that summary with -- but we're okay
9 with that. As to 161 and 162, they haven't
10 been offered yet. We won't contest the fact
11 that they were delivered late, but we would
12 certainly want foundation laid and make sure
13 that they are an accurate representation of
14 what's on the internet.

15 **THE COURT:** All right. So you were suggesting
16 though some sort of a tit for tat if you
17 allowed those to pass, and I've had occasion to
18 consider that over the evening, and I'm not
19 willing to enter into any sort of agreement.
20 I mean, it would strictly be between you and
21 Mr. Long as to whether you will honor on each
22 other's late designations and offerings.

23 **MR. SUMMER:** All right, Your Honor.

24 **MR. LONG:** I think Your Honor, I think we --

25 **MR. THOMAS:** We've been working pretty good with

1 each other.

2 **MR. LONG:** We tried to work on that. I think we're
3 -- we may use those exhibits later, with another
4 witness. We would lay a foundation but I
5 think your -- okay, I understand the Court's
6 position.

7 **THE COURT:** All right. Your move, Mr. Thomas.

8 **MR. THOMAS:** Trident Health Systems would call its
9 next witness, Mr. Mike Ridgeway to the stand.

10 **MICHAEL R. RIDGEWAY**, being duly sworn, testifies as
11 follows:

12 **MR. RIDGEWAY - DIRECT EXAMINATION BY MR. THOMAS:**

13 Q: State your full name for the record.

14 A: Michael Ray Ridgeway.

15 Q: Okay. Mr. Ridgeway, where do you reside?

16 A: I reside in Chapin, South Carolina.

17 Q: Who do you reside there with?

18 A: I reside there with my wife, Maryann, and three
19 children.

20 Q: Where did you grow up?

21 A: I was born in Nashville, Tennessee, and I've
22 spent approximately half of my life in
23 Tennessee and half in South Carolina.

24 Q: Would you be a Gamecock?

25 A: I'm a Tennessee Volunteer.

1 Q: Now, tell the Court what you do for a living.

2 A: I am a traffic engineer. I own my own
3 consulting business with two other partners,
4 SRS Engineering. We've been in business for
5 eight years.

6 Q: What are the names of your other partners?

7 A: Todd Salvagin and Matt Short.

8 Q: And why don't you go through your educational
9 background for the Court, please. Starting
10 with college on that.

11 A: Okay. I received a bachelor's of science in
12 civil engineering from the University of
13 Tennessee. I followed that up with a master of
14 science in civil engineering from the
15 University of Tennessee. I did take some
16 courses towards by Ph.D. at the University of
17 Kentucky, but I did not finish that program.

18 Q: And why not?

19 A: I was very poor at the time and I did not want
20 to pursue that for three more years. I wanted
21 to get back into the workforce.

22 Q: Don't blame you. Do you have any licenses or
23 certifications?

24 A: Yes, I'm a registered professional engineer in
25 the state of South Carolina, North Carolina,

1 and Georgia.

2 Q: Okay. Could you take the Judge -- and just for
3 the record, are those license current and up to
4 date?

5 A: Yes.

6 Q: Why don't you give Judge McLeod your employment
7 history and background.

8 A: Okay. When I finished my master's degree, I
9 worked for a consulting firm in Columbia, South
10 Carolina, Florence and Hutcheson. I worked
11 there for one year. Then I thought I wanted to
12 pursue a Ph.D. and teach. So I went to the
13 University of Kentucky for a year; took a year
14 of courses and moved backed to South Carolina
15 to work for the City of Greenville, South
16 Carolina, where I was the acting city traffic
17 engineer for two years. My wife became with
18 child and we needed to be near family in
19 Columbia, so we moved to Columbia, South
20 Carolina in 2001. I became employed by Wilbur
21 Smith Associates where I stayed for three years
22 as a traffic engineer. And for the last eight
23 years I have run my own firm with the other two
24 gentlemen. We all three left Wilbur Smith the
25 same day and started SRS Engineering.

1 Q: And as far as this case goes, you were
2 specifically asked to do a travel time study;
3 is that right?

4 A: Yes.

5 Q: Okay. And had you ever conducted a travel time
6 study before?

7 A: Yes. I've worked in other certificate of need
8 cases. I was qualified as an expert witness
9 approximately six years ago in this same court
10 for the Loris vs. Grand Strand case.

11 Q: And have you done any travel studies for other
12 hospitals?

13 A: I have. I was recently engaged by the McNair
14 Law Firm in the Parkridge case.

15 Q: And have you ever done any work for Roper St.
16 Francis before?

17 A: I did a traffic impact study for the Roper
18 facility in Mount Pleasant.

19 Q: Okay.

20 **MR. THOMAS:** Your Honor, at this time, I'd like to
21 offer Mike Ridgeway as an expert in the field
22 travel time studies.

23 **MS. HOLLINGSWORTH:** We have no objection, Your
24 Honor.

25 **MS. BIGGERS:** No objection.

1 **THE COURT:** Without objection, Mr. Ridgeway is so
2 qualified.

3 **Q:** Mr. Ridgeway, are you familiar with the -- with
4 Berkeley County and the road system in that
5 area?

6 **A:** I am. During the course of my work, I've
7 conducted traffic impact studies in the area.
8 Even working at Wilbur Smith we did traffic
9 studies in the area, and I traveled the
10 roadways, counted intersections, analyzed
11 intersections in the area.

12 **Q:** With respect with what you did in this case,
13 were you told where the proposed hospitals
14 would be located in Berkeley County?

15 **A:** Yes.

16 **Q:** And could you tell the Court specifically what
17 you were asked to do in this case.

18 **A:** I was asked to conduct travel time runs between
19 the proposed facilities and known population
20 centers within the northern Berkeley County
21 area.

22 **MR. THOMAS:** Could you pull up Petitioner's 168 for
23 me. You may have to try 169.

24 **Q:** Can you read that on the screen okay, Mr.
25 Ridgeway?

1 A: Yes.

2 Q: All right. Mr. Ridgeway, before we kind of
3 launch into this document, did you have any
4 assistance with respect to conducting the
5 travel time study?

6 A: Yes. I conducted a majority of the travel time
7 runs, but I also received some assistance from
8 one of my business partners, Matt Short, on two
9 of the routes. We were under a tight time
10 frame and I needed some help and Matt was in
11 the area on other business, so I had him
12 conduct them. Mr. Short is a registered
13 engineer in South Carolina, and we've worked
14 together for 11 years, and I trusted him to do
15 the work.

16 Q: Okay. Now, what dates did you conduct the
17 travel time study?

18 A: They were in September of 2010, I believe.

19 Q: And why don't you look at the first page of
20 your report under methodology there. Would you
21 kind of go through for the Court the various
22 origins and destinations.

23 A: Yes. As I mentioned earlier, we conducted runs
24 between known population centers in this area
25 in the northern area of Berkeley County. For

1 instance, Cross, South Carolina, and I made a
 2 run from there to Moncks Corner Medical Center
 3 and drove logical routes that we would expect
 4 someone to travel, you know. We took the
 5 quickest route that we thought someone would
 6 make to make this route. For instance, one of
 7 the beginning points was Cross, one was St.
 8 Stephen, Bonneau, Jamestown. With regards to
 9 selecting the beginning point of the route, we
 10 tried to pick a, you know, a recognizable
 11 location. For instance in Cross, we started at
 12 the post office on Highway 6 and Ranger Drive.
 13 St. Stephen we started at Town Hall. Bonneau
 14 we started at the town limit sign. Jamestown
 15 we also started at the US post office.

16 Q: So none of your routes originated, you know,
 17 back out in kind of a neighborhood in
 18 Jamestown; is that right?

19 A: No.

20 Q: Turn to page two of your report for me.

21 MR. THOMAS: And actually, Sara, could you just
 22 enlarge that top paragraph starting with the
 23 method. That's fine. Just like that.

24 Q: Would you explain to the Court the method that
 25 you used to perform the travel time study.

1 A: We employed the maximum car technique, which
2 is, in my opinion, the legal way to do it. It
3 does not allow you to exceed the speed limit,
4 which in actuality, can be cumbersome on some
5 of the back roads when there's not much
6 traffic. But, you know, if it's signed 45
7 miles an hour, we went 45 miles an hour.

8 Q: And the speed limits are put on those roads for
9 a reason, correct?

10 A: Yes.

11 Q: All right. Are there any other techniques that
12 are methods by which travel time runs could be
13 done?

14 A: Yes. There are two others that I'm aware of,
15 the average car technique, which is when you
16 essentially go along with the prevailing speed
17 of traffic. If it's signed 45 but everyone's
18 going 55, you would travel 55. There's another
19 method I've never used, which didn't make a
20 whole lot of sense to me, called the floating
21 car technique, whereas you're supposed to pass
22 as many cars as pass you on the roadway.

23 Q: Which I guess that could be a little difficult
24 on these two lane rural roads in Berkeley
25 County?

1 A: Yes.

2 Q: Which travel time or method or technique do you
3 understand that DHEC recognizes for purposes of
4 travel time studies?

5 A: It's been my experience that DHEC recognizes
6 the maximum car technique as its -- there's no
7 laws being broken with that technique.

8 Q: Okay. Now, does page two summarize, and I
9 think Sara's actually got one through seven up
10 there. Does that accurately summarize the
11 routes that were taken to and from the
12 locations you've listed?

13 A: Yes.

14 Q: Okay.

15 MR. THOMAS: Would you put, real quickly put
16 Petitioner 18 up there for me.

17 THE COURT: Mr. Thomas, I notice that you're using
18 the abbreviation MCMC. Is that Moncks Corner
19 Medical Center that's now Berkeley Medical
20 Center?

21 A: Moncks Corner Medical Center is the existing
22 emergency facility where the proposed hospital
23 is to be built.

24 Q: So it's on --

25 MR. THOMAS: Your Honor, just to clear the record,

1 Moncks Corner Medical Center, as Mr. Ridgeway
2 just described, and the land that's right next
3 to that is where the hospital is going to go.
4 He didn't want to drive into the actual field.

5 Q: All right. Now, I put Petitioner's 18 up here
6 just so Mr. Ridgeway can go through this with
7 you. Could you quickly for the judge maybe go
8 through each one of these routes from Cross to
9 Moncks Corner Medical Center and just kind of
10 tell him, using the map as a guide, the routes
11 you drove.

12 A: Okay. Maybe I need to refer back to the --

13 Q: I can give you this right now.

14 A: Okay. The first route, Your Honor, was from
15 Cross. Again, we started at the post office,
16 traveled south on Highway 6 around the lake.
17 Took a left-hand turn onto 17A which took us to
18 Moncks Corner Medical Center. From St.
19 Stephen, the Town Hall is a little bit off of
20 the main road, but essentially we took US 52
21 south to 17A to the Moncks Corner Medical
22 Center. Bonneau, South Carolina, is a very
23 small community which actually is part of the
24 same route from St. Stephen. It's along US 52.
25 So we essentially started our run at the town

1 limits sign from Bonneau on US 52, followed
2 that to US 17A to Moncks Corner Medical Center.
3 Jamestown, which is a little bit south and east
4 of St. Stephen, we followed US 17A to US 52,
5 back on to US 17A to Moncks Corner. The route
6 from Carnes Crossroads --

7 **MR. THOMAS:** And Carnes Crossroads is the number
8 two, Your Honor.

9 A: Yes. There is an existing bank in the
10 northwest quadrant, or actually you could argue
11 northwest or northeast of the intersection of
12 17A and US 176. That was our beginning point.
13 We traveled from there to Trident via 17A to
14 College Park Road, accessed Interstate 26,
15 exited to US 78 and then to Trident Medical
16 Center. The route from Carnes Crossroads back
17 at numeral two on the map, we traveled 17A to
18 College Park Road, which took us to Ladson Road
19 to Midland Parkway into Summerville Medical
20 Center. And then the route from Carnes
21 Crossroads to Moncks Corner Medical Center is
22 pretty simple, it's just north on 17A to Moncks
23 Corner Medical Center.

24 Q: Thank you, Mr. Ridgeway. Just for the record
25 while we're looking at this map here, I know

1 you did, it looks like a -- you did a route
2 from Cross, you did one from St. Stephen, but
3 you didn't do any runs between or the northern
4 part of the lake between St. Stephen and Cross,
5 did you?

6 A: No.

7 Q: In your opinion, if you had done runs from
8 there, would they have been longer than, this
9 is just for the record, than what the route
10 would have taken from Cross or St. Stephen?

11 A: I would assume they would be longer.

12 Q: Because they're further away, right?

13 A: They're further.

14 Q: Lets get back to the report if we could, page
15 two. There's a paragraph right underneath the
16 --

17 **MR. THOMAS:** Would you blow up the travel run
18 starting with all travel runs and the day of
19 the week.

20 Q: So what time of day were the routes driven, Mr.
21 Ridgeway?

22 A: We conducted travel runs for three times during
23 the day, what we consider the a.m. peak period,
24 between seven and nine a.m., which is when
25 commuters are typically going to work; the

1 midday peak period, which typically occurs
2 between 11 a.m. and one p.m.; and then the p.m.
3 commuter peak between four and six p.m.

4 Q: Okay. And could you -- and why were these days
5 of the weeks chosen, Tuesday through Thursday?

6 A: We typically like to conduct our travel time
7 runs on a weekday, Tuesday, Wednesday, or
8 Thursday during a time of the year when school
9 is in session. In some areas of South
10 Carolina, I would say these would be included,
11 school traffic does have an impact on travel
12 times with school buses and etcetera. Mondays
13 and Fridays can offer slightly different travel
14 times. Some people don't work on Mondays, some
15 people don't work on Fridays, so we try to
16 follow a Tuesday, Wednesday, or Thursday when
17 school is in session.

18 Q: In your experience and based on your expertise,
19 are the roads more heavily traveled on Tuesday
20 through Thursday, rather than Monday or Friday
21 through Monday?

22 A: Yes.

23 Q: Would you go through your general traffic
24 observations for the Court, please, the more
25 important.

1 A: Most of the routes that we ran congestion was
2 really not a factor. Most of the areas are
3 very rural in natures and we just didn't
4 encounter much traffic congestion. As noted in
5 some of our data sheets, occasionally, you
6 know, there was some mild congestion at the
7 intersection of 17A and Highway 6, but it was
8 not observed to be excessive. 17A in the study
9 area was under construction when we were
10 conducting the runs, but it really didn't
11 appear to impact our travel time runs. There
12 was a reduced speed limit of 45. You know, we
13 encountered some school zones during the
14 morning peak hour, that really didn't appear to
15 impact our travel runs very much.

16 Q: Okay.

17 A: You know, the biggest congestion that I saw was
18 the route -- routes that ended at the
19 Summerville Medical Center. Ladson Road did
20 appear to get congested during the p.m. peak
21 hour.

22 Q: Lets go to your results. And I think those are
23 on SRS 4 with the -- these are going to show up
24 okay. And it might not. Let's see here. Why
25 don't we try to do maybe two at a time. There

1 you go. Okay. Why don't we kind of start with
2 the Cross, town of Cross Post Office to Moncks
3 Corner Medical Center. I see you did -- you
4 did three runs?

5 A: Yes.

6 Q: And why did you do three runs?

7 A: We did -- for each route we did a run during
8 the morning peak, the midday peak and the p.m.
9 peak.

10 Q: And what was the average travel time from Cross
11 to Moncks Corner Medical Center?

12 A: The average for this route was just over 25
13 minutes.

14 Q: And how about from St. Stephen Town Hall to
15 Moncks Corner Medical Center, what was the
16 average travel time to Moncks Corner Medical
17 Center from St. Stephen?

18 A: Twenty minutes and 41 seconds.

19 Q: Let's go to the next two here. We have the
20 town of Bonneau. From that town limits sign,
21 what was the average travel time from the three
22 peak runs you did to Moncks Corner Medical
23 Center?

24 A: Twelve minutes and 36 seconds.

25 Q: Okay. And then how about for Jamestown up

1 there in kind of the northern part of eastern
2 Berkeley Count, how long did that take?

3 A: It was right at 25 minutes.

4 Q: Okay. Now, the next three runs are the ones
5 you did from Carnes Crossroads to, it looks
6 like, Trident Medical Center, Summerville
7 Medical Center, and then Moncks Corner Medical
8 Center, right?

9 A: Yes.

10 Q: Why don't you -- could you tell the judge there
11 what those -- what the average travel times
12 were for each of those routes?

13 A: Yes. From Carnes Crossroads to Trident Medical
14 Center, it was right at 15 minutes. The
15 average from Carnes Crossroads to Summerville
16 Medical Center, the average was 20 and a half
17 minutes or 20 minutes, 28 seconds. And from
18 Carnes Crossroads to Moncks Corner Medical
19 Center, the average was 20 minutes and 41
20 seconds.

21 Q: And so it took -- to get from Carnes Crossroads
22 to Summerville Medical Center, that's what, ten
23 miles away, took an average of 20 minutes,
24 right? Twenty minutes, 28 seconds?

25 A: Yes.

1 Q: And then from that same Carnes Crossroads area
2 going north along that road to Moncks Corner
3 Medical Center, that took about 20 minutes, a
4 little more than 20 minutes, too, didn't it?

5 A: Twenty minutes and 41 seconds, yes.

6 Q: And then also from Carnes back down to Trident,
7 that again was, it looks like about an average
8 of 15 minutes, right under?

9 A: That's right.

10 Q: And this is the -- this is the most heavily
11 times, the travel times during the day,
12 correct?

13 A: Yes.

14 Q: Okay. During the most heavily traveled days
15 during the week, right?

16 A: Yes.

17 Q: Were any routes driven from Moncks Corner
18 Medical Center to Carnes Crossroads?

19 A: No.

20 Q: Okay. Can you offer an opinion to this Court
21 as to what the average drive time from Moncks
22 Corner Medical Center to Carnes Crossroads
23 would have been if you had traveled in the
24 opposite direction?

25 A: I would expect it be very similar to the travel

1 time from Carnes Crossroads to Moncks Corner.

2 Q: Why?

3 A: One of the reasons that we conduct runs during
4 the a.m., midday and p.m. is to pick up -- pick
5 up directional variations in traffic. For
6 instance, if you have heavy traffic inbound
7 towards Charleston in the morning and a lot of
8 traffic in that direction in the p.m., it
9 should be flip-flopped in the afternoon. So
10 because we studied it at different times of the
11 day, I would expect the opposite run would be
12 very similar.

13 Q: So you expect the average travel times between
14 Carnes Crossroads and Moncks Corner Medical
15 Center to be similar between as to those
16 between Moncks Corner Medical Center and Carnes
17 Crossroads?

18 A: Yes.

19 Q: Okay. Mr. Ridgeway, based on your report here,
20 could I combine, say, two routes to determine
21 how long it would take if that route were
22 simply driven as one?

23 A: You could make some assumptions on some of the
24 routes. For instance, from St. Stephen, you
25 know, we know that from St. Stephen to Moncks

1 Corner, the average travel time was 20 minutes
2 and 41 seconds. I could assume that, you know,
3 from St. Stephen to Carnes Crossroads I could
4 add the distance that we have from Carnes
5 Crossroad to Moncks Corner and add those
6 together, take out a couple minutes for
7 starting and stopping and have an
8 approximation.

9 Q: And in your opinion, would that be a reasonable
10 approximation?

11 A: I think it would be very close.

12 MR. THOMAS: Could you go back to Petitioner 18,
13 back on the board for me.

14 Q: This area here, Mr. Ridgeway, you got Carnes
15 Crossroads and then you've got, it looks like
16 a road, it's 176 going north?

17 A: Yes.

18 Q: From Carnes Crossroads. Have you ever driven
19 that route before?

20 A: I've driven that, not for this project, but I
21 have driven that route before, yes.

22 Q: Okay. And, you know, when do you think the
23 last time you drove it was?

24 A: I believe it was in the fall.

25 Q: Now, is that -- is that road heavily traveled?

1 A: I would not say it's heavily traveled. The
2 development, once you get north of Carnes
3 Crossroads, there is some development on the
4 right; I believe the new high school. I
5 believe it's Cane Bay High School. But there's
6 not a lot of as far as heavy development along
7 that route.

8 MR. THOMAS: Go to 232 for me, if you would,
9 Petitioner's 232 and go to page four.
10 Actually, go to page five, if you would.

11 Q: Okay. I guess this is the road. Just to make
12 it clear, again using this demonstratively with
13 Mr. Ridgeway from the satellite, the red H, is
14 that your understanding of, say, a proximate
15 location of Roper St. Francis Berkeley's, the
16 proposed location?

17 A: Yes.

18 Q: Okay. And Carnes Crossroads is where 17A and
19 176 come together, right?

20 A: Right.

21 Q: Okay. So the stretch of road I'm talking about
22 is from the red H going north along 176 and in
23 -- is that your understanding, the kind of
24 development along that road?

25 A: Yes.

1 Q: So you said you thought there was some
2 development on the right -- the right-hand
3 side, right?

4 A: Yes.

5 Q: Okay. All right. And just so I've got this
6 correct. From Carnes Crossroads to, I guess,
7 Trident Moncks Corner Medical Center that was
8 about 15, the average time was 15 minutes on
9 about eight miles?

10 A: Yes.

11 Q: And the distance was actually 7.9 miles; is
12 that right?

13 A: That's right.

14 Q: Now, just by my kind of fuzzy math, that works
15 out to a little bit less than two minutes a
16 mile, right?

17 A: Yes.

18 Q: Okay. Now, the question I've got here is, for
19 purposes of traveling along Highway 176, and
20 you didn't do that route, did you?

21 A: No.

22 Q: But I'm asking in your opinion and your
23 knowledge of the area, would you expect a rate
24 of travel time expressed in minutes per mile
25 for that road to be similar to the rate going

1 from Trident -- I don't have it up there, but
2 Trident to Carnes Crossroads, which was about
3 two minutes per mile?

4 A: I would probably think that the rate of travel
5 would be a little bit faster. As you go from
6 Carnes Crossroads to Trident, you do get into
7 more congestion as you're getting closer to
8 Charleston and Summerville and the populated
9 areas. So I would think that the travel times
10 north of this along 176 would probably be a
11 little bit quicker.

12 Q: Okay. In terms of the peak travel times, are
13 there really -- I think you may have referenced
14 this earlier, but are there really peak travel
15 times?

16 MR. THOMAS: Sara, go to page, if you would, page 1
17 and 232, The very first page of the exhibit.
18 We're having technical difficulties. There we
19 go. Thank you.

20 Q: And some of these routes that you did I guess
21 from Jamestown to Moncks Corner, St. Stephen to
22 Moncks Corner and Cross to Moncks Corner, is
23 there -- is there really a peak travel time for
24 those routes?

25 A: Really the data for those routes was very

1 similar for all three because, as I pointed out
2 earlier, we didn't see a whole lot of
3 congestion.

4 Q: That's a pretty rural area?

5 A: Right.

6 Q: Now, based on your travel time study, in your
7 opinion, would the residents who live in
8 Berkeley County up here between Cross and St.
9 Stephen, do you believe they would have any
10 chance of reaching an inpatient hospital
11 facility if there wasn't one located in Moncks
12 Corner?

13 **MS. HOLLINGSWORTH:** Objection, Your Honor. That's a
14 broad -- any chance of reaching it. I think
15 there needs to be more foundation of where he's
16 talking about.

17 **MR. THOMAS:** That's fine.

18 Q: Any chance of getting to a hospital, inpatient
19 hospital obeying the speed limit if there
20 wasn't one located in Moncks Corner within 30
21 minutes?

22 A: Unless -- I'm not aware of it. I'm not aware
23 of all the hospitals in the area. I don't
24 think that -- I know that someone from St.
25 Stephen and Cross could get to a hospital

1 within 30 minutes if there was a hospital in
2 Moncks Corner.

3 Q: And so, by that same token, if you live on the
4 other side of Cross and St. Stephen that's not
5 on the closer side of the hospital, would you
6 expect those residents would be able to get to
7 a hospital within 30 minutes, obeying the speed
8 limit and if there was not one in -- located in
9 Moncks Corner?

10 A: I guess it just depends on where the next
11 closest hospital is.

12 Q: Are you aware of any closer hospitals than
13 Moncks Corner for St. Stephen or Cross?

14 A: No.

15 Q: And based on your knowledge of the Goose Creek
16 area and the Carnes Crossroads area, would --
17 in your opinion, do you think any of these
18 residents in this area, Carnes Crossroads,
19 would have a problem getting to an existing
20 hospital, either Summerville Medical Center or
21 Trident Medical Center, within a 30 minute
22 time, travel time?

23 A: No, I don't think they would have any problems
24 under the existing conditions. No.

25 Q: That's all the questions I have.

1 MS. HOLLINGSWORTH: Thank you, Your Honor. May it
2 please the Court?

3 THE COURT: Ms. Hollingsworth.

4 MR. RIDGEWAY - CROSS EXAMINATION BY MS.

5 HOLLINGSWORTH:

6 Q: Good morning, Mr. Ridgeway.

7 A: Good morning.

8 Q: We met previously at your deposition. I'm
9 Jennifer Hollingsworth and I'm helping
10 represent St. Francis in this case. Now, you
11 recall your deposition that you took earlier in
12 this case; is that right?

13 A: That's right.

14 Q: We established again this morning that your
15 background is in civil engineering, right?

16 A: Yes.

17 Q: And would agree with me that your employment
18 experience is focused in transportation related
19 engineering?

20 A: Yes.

21 Q: You've done things like traffic studies,
22 highway design, signal timing; is that all
23 correct?

24 A: That's right.

25 Q: But you have done some travel time studies in

1 prior certificate of need cases, right?

2 A: Yes.

3 Q: Now, tell the Court a little bit about how you
4 first learned about this assignment and what
5 you first did when you were contacted to help
6 out in this case?

7 A: I was called by Mr. Thomas about the case, and
8 he asked if I could come meet with him, which
9 I did. And we sat down and located the
10 proposed hospitals and basically just went over
11 maps and determined the population areas in
12 proximity to the facilities and talked about
13 potential routes that should be driven.

14 Q: Okay. Did you bring maps with you to the
15 meeting?

16 A: I did bring some maps with me to the meeting.

17 Q: Okay. And where did you get those maps from?

18 A: From the internet.

19 Q: Like Google maps, for example?

20 A: Yes.

21 Q: Would Google have been your resource or would
22 you have used some other software program?

23 A: I use several software programs, Mapquest,
24 Google. I typically use Google for -- to get
25 aerial photos.

1 Q: Now, when you sat down with Mr. Thomas, how did
2 you decide what the origin points were for all
3 seven of your routes?

4 A: When we determined the population centers, we
5 decided, or I decided that it would be a good
6 idea to tie them to a known geographic
7 landmark, if you will. A lot of these places
8 are so rural in nature, but they -- most of
9 them do have a post office. If they didn't
10 have a town hall, then we typically chose a
11 post office in the area.

12 Q: Okay. But in terms of selecting Bonneau, St.
13 Stephen, Cross, and Jamestown, who selected
14 those actual physical locations?

15 A: Myself and Mr. Thomas, based on our
16 discussions.

17 Q: Okay. Now, after that meeting, what's the next
18 thing you did in terms of preparing your travel
19 time study?

20 A: I went back and selected the origin points
21 which was not selected in our meeting as far as
22 the physical post office or town hall; and then
23 I started investigating the best routes to take
24 between the two locations.

25 Q: Did you -- once you decided what the route

1 would be, did you talk with Mr. Thomas and did
2 you tell him I'm going to use 17A and College
3 Park Road to get to Trident?

4 A: I don't recall us having that conversation.

5 Q: So who did you speak with in order to determine
6 what roads you would take as your routes?

7 A: That was my decision.

8 Q: Did you speak to anyone in Berkeley County
9 about what routes to use?

10 A: No.

11 Q: You didn't interview any residents of Moncks
12 Corner or Goose Creek before you selected the
13 routes that you would use?

14 A: No.

15 Q: Did you meet with Mr. West to discuss how he
16 would do any of those travel routes?

17 A: Who is Mr. West?

18 Q: Mr. West would be, I think, a former mayor of
19 Moncks Corner that's going to testify in this
20 case.

21 A: No.

22 Q: Okay. Now, you commented earlier that you had
23 familiarity with the area from other projects.
24 What other projects specifically have you done
25 in Goose Creek?

1 MR. THOMAS: Object to the form, Your Honor. I
2 think his testimony was Berkeley County, that
3 he'd done Berkeley County.

4 MS. HOLLINGSWORTH: Yes, to follow up on that, Your
5 Honor, I'm trying to figure out where in
6 Berkeley County he's done these other projects,
7 and I'm specifically asking him about Goose
8 Creek.

9 MR. THOMAS: That's fine.

10 THE COURT: Objection withdrawn.

11 A: I recently did a traffic study for a multi-
12 family development in Goose Creek. I'm trying
13 to think of the -- it's a golf course
14 community. I can't recall the name of it right
15 now but -- and just general -- there's another
16 project I worked on, Liberty Hall Plantation.
17 I did a traffic study, I've done numerous
18 traffic studies for them. Designed a traffic
19 signal for their entrance. That's just an
20 example of the type of work I do in the area.

21 Q: The example you gave me of the golf course
22 community, do you recall approximately when
23 that was?

24 A: That was in -- that was actually last fall.

25 Q: Okay. And so that's a new community coming to

1 Goose Creek?

2 A: Actually it's a development within the overall
3 Plantation. So, yeah, it would be new
4 development.

5 Q: Now, in terms of your routes, for example, the
6 Carnes Crossroads to Trident, you commented
7 that you used common sense in order to select
8 the routes; is that right?

9 A: Common sense, and I would also use Mapquest to,
10 you know, suggest a route, and I would look at
11 it and say, that makes sense, this would be a
12 logical, the most logical way to go.

13 Q: When you made the decision of what the most
14 logical way to go was, were you at your
15 computer in West Columbia looking at the maps
16 or the maps you had printed out, or were you in
17 Goose Creek looking at what the most logical
18 route was?

19 A: I was at my computer.

20 Q: If I were to say that, for example, residents
21 of Goose Creek didn't prefer traveling on
22 College Park and they preferred maybe North
23 Main Street, would that have been helpful in
24 your analysis of the travel time study?

25 A: If you had said that?

1 Q: If a Goose Creek resident had said that.

2 A: I don't know.

3 Q: Okay. You talked about these peak time
4 periods, and I don't know if we've said this
5 already, I know we talked about it in your
6 deposition, but your current work address is
7 actually in West Columbia; is that right?

8 A: Yes.

9 Q: On 378?

10 A: Mohawk Drive right off of 378.

11 Q: I drive by you every day. I live right back
12 there. And you live out in Chapin; is that
13 right?

14 A: I do.

15 Q: What's the route that you take to get from
16 Chapin to 378, Sunset Boulevard in the morning
17 or in the afternoon?

18 **MR. THOMAS:** Object to the form, Your Honor.
19 Relevance. We're talking about a totally
20 different area here. I just think --

21 **THE COURT:** Well, it's cross examination..
22 Overruled.

23 **MR. THOMAS:** Okay.

24 A: I typically exit my subdivision, take Three Dog
25 Road to Forest Shealy Road over to Johnson

1 Marina Road, and then I get on the interstate
2 at Raush Metts Road, travel I-26 all the way to
3 378, make a left turn. Turn left onto Mohawk
4 Drive to my office.

5 Q: Okay. And now when you take that travel route
6 in terms of coming to work during what you
7 would call a peak window, do you travel between
8 7:00 and 9:00 a.m. to get to work?

9 A: This morning I was a little bit ahead of the
10 7:00 a.m., but typically yes, it's between 7:00
11 and 9:00.

12 Q: Now, would you agree with me that between that
13 two hour window, be it 7:00 to 9:00 nine a.m.
14 or I think 4:00 to 6:00 is your p.m. peak
15 window; is that right?

16 A: Right.

17 Q: Would you agree with me that as a resident
18 traveling along your route that actually the
19 peak time, most congested time may be a much
20 smaller period than that 7:00 to 9:00 window or
21 that four to six window?

22 A: Well, I think it can vary from day to day, but,
23 you know, I think the traffic is -- there's
24 definitely a concentration between 7:00 to 9:00
25 a.m. and a concentration between 4:00 and 6:00

1 p.m.

2 Q: Would you agree with me that actually the
3 concentration can be even greater, say, from
4 5:00 to 5:30 or 5:15 to 5:45 as opposed to 4:00
5 to 5:00?

6 A: It could be.

7 Q: And did you do any sort of analysis on any of
8 those routes to see if the peak time may be
9 even more concentrated during any of those
10 windows?

11 A: I did not.

12 Q: Now, you discussed that one of the things about
13 communities such as Berkeley County was that
14 schools can have an impact during these travel
15 times; is that right?

16 A: Correct.

17 Q: Did you do any analysis when you were selecting
18 your routes of where schools were located on
19 those routes?

20 A: No.

21 Q: And did you do any analysis to ensure that your
22 peak -- the choice that you chose within the
23 peak window would include any school zone
24 period, whether school was coming in or school
25 was being released?

1 A: No, but I do know that we encountered some
2 schools along the routes, and that the school
3 zone was operating at the time.

4 Q: Now, in terms of the actual report, you
5 commented or you told the Court that your
6 partner actually helped you with a couple
7 routes; is that right?

8 A: That's correct.

9 Q: Can we look at Petitioner's 169. And
10 specifically look at Bates SRS 4. And if you
11 could go down to the last three routes. And we
12 went over this in your deposition, Mr.
13 Ridgeway, but there are a few things I'd like
14 to highlight to the Court in terms of your
15 report that I think may come to mind. There
16 are actually a couple issues with Mr. Short's
17 routes that he did for the study; do you recall
18 that?

19 A: I recall us having a conversation, I think.

20 Q: If you look specifically at the Carnes to
21 Trident route, and I know it is difficult to
22 read, but those start times, as I see them, are
23 8:20, 11:50 and 4:50; is that right? Do you
24 see that on SRS 4?

25 A: Carnes to Moncks Corner?

- 1 Q: No, Carnes to Trident.
- 2 A: Yes.
- 3 Q: 8:20, 11:50 and 4:50; is that right?
- 4 A: That's right.
- 5 Q: And other pages of Petitioner's 169, actually
- 6 your report has a number of pages, correct?
- 7 A: Yes.
- 8 Q: If we could go to page Bates SRS 16, please.
- 9 And if we look -- yeah, that's fine, we can use
- 10 that as an example. We're looking at -- whose
- 11 notes are these, Mr. Ridgeway?
- 12 A: Those are Mr. Short's notes.
- 13 Q: And you used these notes in preparing your
- 14 report; is that right?
- 15 A: Yes.
- 16 Q: And you had discussions with him about the
- 17 routes that he did, you were comfortable with
- 18 his work; is that right?
- 19 A: Yes.
- 20 Q: Now, if we look here, I believe we know that
- 21 start same is because he did -- he used Carnes
- 22 Crossroads for both of his routes; is that
- 23 right?
- 24 A: That's correct.
- 25 Q: So this page of notes is actually starting at

1 Carnes Crossroads and ending at Trident Medical
2 Plaza; is that correct?

3 A: That's correct.

4 Q: And if we look at the start time, and I realize
5 it's hard to read, but he has a start time
6 written down at 11:50, correct?

7 A: That's correct.

8 Q: And he actually has two little squiggles, for
9 lack of a better word. And you would agree
10 with me that squiggle represents an
11 approximation, right?

12 A: That's correct.

13 Q: So that's read to me, you started at
14 approximately 11:50?

15 A: Yes.

16 Q: And then if we look over in the two columns
17 over, perhaps that says travel time or total
18 time?

19 A: Total time.

20 Q: Total time, okay. And there's two written down
21 but one is circled, correct?

22 A: That's correct.

23 Q: And tell the Court again, how is -- why is it
24 Mr. Short had two notations written down?

25 A: He used a -- when I conducted my travel time

1 runs, I used a simple method of a stopwatch and
2 an odometer. Mr. Short did the same, and he
3 also used a GPS device as a backup. The top
4 number here is his GPS device, which is one
5 second from the stopwatch. So there's a one
6 second difference. But that's the answer to
7 your question.

8 Q: But you chose to use the odometer and stopwatch
9 to be consistent with how you did the routes,
10 correct?

11 A: That's correct.

12 Q: And so this is -- is there anything special
13 about the stopwatch or just sort of a click on
14 click off type device?

15 A: It's a click on click off device.

16 Q: And the odometer is the odometer in your car?

17 A: That's correct.

18 Q: And did you reset it every time to make a note
19 to the, I guess, maybe tenths of a mile when it
20 started and when it stopped?

21 A: That's correct.

22 Q: And what kind of vehicle do you drive?

23 A: I drive a Volvo station wagon.

24 Q: And what does Mr. Short drive?

25 A: He drives a Chevy truck.

1 Q: Is he the big red truck I see in the parking
2 lot?

3 A: No. That's Mr. Salvagin's.

4 Q: What kind of pickup truck is Mr. Short's? I
5 mean, is it -- is it a bigger truck or --

6 A: It's a Chevy Silverado.

7 Q: Okay. And now I think -- Bonnielyn can zoom
8 out, but the other two routes on this SRS 16
9 also have the approximate start time, correct?

10 A: That's correct.

11 Q: Now, I also want to point out -- I apologize to
12 my able assistant for going back and forth, but
13 if we could go to SRS 4 again. And if you
14 could highlight the very last route. It should
15 be Carnes Crossroads to Moncks Corner route.
16 Do you see that?

17 A: Yes..

18 Q: And we have start times, and there's two in
19 particular I point out. I believe its 11:20
20 and 4:21 are indicated as start times; is that
21 right?

22 A: That's what they're indicated. That is a typo.
23 Those routes were started at 11:00 and 4:00
24 p.m. 11:00 a.m. and 4:00 p.m., but the
25 duration is correct. And they are two typos,

1 but they didn't have an impact on the travel
2 time.

3 Q: Okay. So it was just sort of a transposition
4 of numbers?

5 A: That's correct.

6 Q: And if we look, just to explain the exhibit to
7 the Court, SRS 18. If we look, for example,
8 his report, Mr. Short's report, or notes
9 actually say start time of 11:00, end time of
10 approximately 11:20; is that right?

11 A: That's correct.

12 Q: But somehow that, inadvertently I'm sure, the
13 start was noted as 11:20 on your report; is
14 that right?

15 A: That's correct.

16 Q: But as you said, the distances and the mileage
17 indicators are consistent. It would simply
18 affect what period of the peak window we're
19 commenting that the travel took place; is that
20 right?

21 A: Yeah, and both times would have been within the
22 peak hour window. And as I testified, the
23 total time and the mileage is correct. It's a
24 transposition.

25 Q: And then follow up just a few things that Mr.

1 Thomas asked you.

2 MS. HOLLINGSWORTH: If we could pull up that map, I
3 think it's Petitioner's 18. Thank you.

4 Q: First I ask you, would you agree with me that
5 those number indicators of the locations are
6 not to scale? The H's, the numbers are
7 slightly larger than covering the area?

8 A: I would say that would be true, yes.

9 Q: Now, you indicated that one of the things you
10 were looking for in your study was to do your
11 travel routes during the most heavily traveled
12 times and the most heavily traveled days. I
13 can't remember if that was you or Mr. Thomas,
14 but that was what said. You agree with that,
15 correct?

16 A: Yes.

17 Q: But again, we've established there was no
18 investigation of the routes themselves to
19 determine where within that window perhaps the
20 most congestion would take place?

21 A: I mean, we picked the peak hour windows that is
22 common traffic engineering practice to conduct
23 our runs. And I believe that's the correct
24 methodology.

25 Q: And I understand your testimony, but again, I

1 would say, I give you the example that
2 traveling on I-26 or even 378 trying to get out
3 to Lexington sometimes that at 4:00 p.m. the
4 congestion may not be near as heavy as it is at
5 5:00 or 5:30; would you agree with that?

6 A: It could be.

7 Q: And now Mr. Thomas asked you about whether you
8 can add some routes or do the math and
9 calculate a minutes per mile. You would agree
10 with me that you would have done those routes
11 had you been asked to, correct?

12 A: If I was asked to, I would have.

13 Q: And so you weren't asked to do a route from
14 Cross to Carnes Crossroads, were you?

15 A: No.

16 Q: And in terms of estimating some sort of two
17 minutes per mile average by using the example
18 of the route from Carnes Crossroads to Trident
19 Medical Center, you would agree with me that
20 that route includes some travel on the
21 interstate? The route that you took, I
22 believe?

23 A: From Carnes Crossroads to Trident?

24 Q: Carnes Crossroads to Trident Medical Center.

25 A: Yes.

1 Q: And so would you agree with me that travel
2 times and using an estimate would require some
3 comparison between whether you're on an
4 interstate traveling at that rate of speed
5 versus a rural highway or even an urban
6 highway, that those speed limits could be
7 different?

8 A: The speed limits can be different, yes.

9 Q: And using the maximum car technique, you do not
10 exceed the posted speed limit, correct?

11 A: That's correct.

12 Q: And Mr. Thomas was asking you some question
13 about access to healthcare and the existing
14 healthcare facilities. You didn't do any sort
15 of analysis as to where other healthcare
16 facilities are located in the tri-county
17 region, did you?

18 A: Other than knowing the hospitals that we drove
19 to, I didn't do any additional research on
20 other facilities.

21 Q: So you didn't look to see where Bon Secours was
22 located or the Medical University or Roper
23 Downtown?

24 A: No.

25 Q: And in terms of your route, I didn't see where

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1 you did the route between Summerville Medical
2 Center and Trident's main campus. Did you do
3 that route?

4 A: No.

5 Q: Now, did you -- you didn't do a route to see
6 the distance between Roper St. Francis Downtown
7 and the Medical University, did you?

8 A: No.

9 **MS. HOLLINGSWORTH:** I have no further questions,
10 Your Honor.

11 **MR. THOMAS:** I've got a couple.

12 **MS. HOLLINGSWORTH:** I'm sorry.

13 **THE COURT:** Wait just a second. Ms. Biggers.

14 **MS. HOLLINGSWORTH:** I apologize. To clarify, Mr.
15 Long pointed out, my references to Mr. Thomas
16 are to counsel, Will Thomas, not Jamie Thomas,
17 who is affiliated with HCA. So just to clarify
18 for the Court.

19 **THE COURT:** Thank you. Ms. Biggers.

20 **MS. BIGGERS:** I don't have any questions.

21 **MR. LONG:** I've just got a couple, Judge, because I
22 know you've got to get over to the Statehouse.
23 I might be able to ask a couple questions while
24 Ms. Tyer is doing that.

25 **MR. RIDGEWAY - REDIRECT EXAMINATION BY MR. THOMAS:**

1 Q: Had you continued routes, if you'd done a route
2 from Carnes Crossroads to Trident or Carnes
3 Crossroads to Summerville Medical Center and
4 then continued on down to MUSC or -- do you
5 know where MUSC is?

6 A: Down on the peninsula?

7 Q: Yes.

8 A: Yes.

9 Q: Do you know where Roper St. Francis downtown
10 location is?

11 A: It's really in the same general area.

12 Q: Across the street from it, isn't it?

13 A: Yeah.

14 Q: And do you know where Bon Secours is in West
15 Ashley?

16 A: Is that at Glenn McConnell Parkway and Magwood
17 Road? I'm not really sure. I think I know
18 where it is.

19 Q: Okay. Well, had routes from Carnes Crossroads
20 been driven to Trident Medical Center or --
21 well, let me just ask you this. Do you think
22 it would have taken you longer or shorter to
23 get from Carnes Crossroads to MUSC rather than
24 Trident Medical Center?

25 A: It would have taken me substantially longer.

1 Q: How about Roper St. Francis Downtown?

2 A: Same.

3 Q: How about the hospital, Bon Secours in West
4 Ashley?

5 A: If it's in West Ashley, it would have taken
6 longer.

7 Q: That route I think Ms. Hollingsworth asked you
8 about, the Cross to, or excuse me, Carnes
9 Crossroad and Trident, you were on the
10 Interstate 26, right?

11 A: Yes.

12 Q: Is that about a mile?

13 A: Yeah.

14 Q: Okay. And what time of day were you on that
15 interstate?

16 A: During the morning rush hour, the midday period
17 and the p.m. peak hour.

18 Q: And in terms of -- do you have any idea or
19 recall what the posted speed limit is on that
20 Highway 176 on Carnes Crossroads going north
21 from Carnes Crossroads?

22 A: I believe it's 55.

23 Q: Okay. And just to clarify, on the stopwatch
24 GPS method --

25 **MR. THOMAS:** If you could, Sara, go to Petitioner

1 169 and go to page 16.

2 Q: You were asked by Ms. Hollingsworth a couple of
3 questions about this. I just --

4 **MR. THOMAS:** Get on page, excuse me, SRS 16. There
5 you go.

6 Q: What's the difference between the stopwatch and
7 the odometer for the top time there?

8 A: It's a little bit more than a second.

9 Q: Okay. And can you tell what it is for the
10 second time there?

11 A: Less than a second.

12 Q: And how about the next one? Next time 15, 30
13 and -- less than a second. We're talking about
14 hundredths?

15 A: Yeah, less than a second.

16 Q: Do you feel confident that the stopwatch gave
17 you an accurate time --

18 A: Yes.

19 Q: -- as opposed to a GPS device?

20 A: Absolutely.

21 Q: Okay. Ms. Hollingsworth asked you a little bit
22 about some of the routes.

23 **MR. THOMAS:** If we could go quickly to Petitioner
24 18.

25 Q: Do you know of a more direct route from

1 Jamestown, other than by helicopter, from
2 Jamestown to Moncks Corner than 17A?

3 A: No.

4 Q: How about St. Stephen to Moncks Corner?

5 A: US 52 is the way to go.

6 Q: Is there any other way that you can drive a
7 more direct route than that?

8 A: No.

9 Q: Now, in terms of Cross, I believe your report
10 says you took basically Highway 6 into Moncks
11 Corner, right?

12 A: Yes.

13 Q: To get to Roper St. Francis Berkeley and the
14 Carnes Crossroads site, you'd have to go to 6
15 to 311 to 176 and go down like, is that 20
16 miles there on 176?

17 A: I'm not sure how far it is, but you can go that
18 way or, you know, travel to 17A and then go
19 down.

20 Q: Or you can go to 6, 16 to 176 or you could go
21 6 to 17A, right?

22 A: Right.

23 Q: Okay. Based on your knowledge of this area,
24 would any of those routes be quicker? Any way
25 to get to Carnes Crossroads quicker than to

1 Moncks Corner Medical Center?

2 A: No.

3 Q: Okay. Now, when you do a traffic study, you
4 know, stop -- stoplight study or something like
5 that, do you -- do you go to these communities
6 and interview all the citizens there?

7 A: No.

8 Q: Have you ever done that before in your -- as a
9 traffic expert and a traffic engineer?

10 A: No.

11 Q: That wouldn't be practical, would it?

12 A: No.

13 Q: Ms. Hollingsworth asked you about peak times
14 and some are more peak than others during the
15 peak hours, correct?

16 A: Yes.

17 Q: But the hours you chose are recognized in the
18 field of traffic engineering, correct, as peak
19 traffic times?

20 A: That's right.

21 Q: And that's why you do three runs, correct?

22 A: Right.

23 Q: So you can get an average; is that right?

24 A: Yes.

25 Q: Okay.

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1 MR. THOMAS: One second, Your Honor. That's all I
2 have for this witness, Your Honor.

3 THE COURT: I think this is an appropriate time to
4 break. I hate to make you lawyers and
5 witnesses lose even a single minute, but I
6 think that the appropriate thing to do is to
7 say that we will recess until 2:30 and I know
8 I'll be back by then. Thank you.

9 (Break from 10:53 a.m. until 2:30 p.m.)

10 THE COURT: All right. Let's go back on the record,
11 please. Mr. Summer.

12 MR. SUMMER: Your Honor, we'd like to call as the
13 next witness Ms. Beverly Brandt.

14 BEVERLY A. BRANDT, being duly sworn, testifies as
15 follows:

16 MS. BRANDT - DIRECT EXAMINATION BY MR. SUMMER:

17 Q: Ms. Brandt, would you state your whole name for
18 the record, please, ma'am.

19 A: Beverly Ann Brandt.

20 Q: And can you tell us where you were born?

21 A: Varnville, South Carolina.

22 Q: Hampton County?

23 A: Hampton County, yes.

24 Q: I've never tried a case in Hampton County. I
25 settled every one I ever had. I want to ask

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1 you a few questions today about your work at
2 DHEC. And what I'd like to do, if I could, is
3 to start, first of all, with your background.
4 And what I'm going to do is I'll provide you a
5 copy of your deposition. This is your
6 original. This deposition was previously filed
7 with the Court on January 12, 2012, summary
8 judgment motion hearing. And you'll recall, we
9 took your deposition in this case on Wednesday,
10 November the 2nd of this past year. Do you
11 recall that?

12 A: Yes.

13 Q: And what we'll be doing today is very, very
14 similar to what we did in your deposition, is
15 basically going through your background and
16 going through -- and also going through your
17 work at DHEC.

18 A: Okay.

19 Q: Where did you go to high school?

20 A: I went to Patrick Henry Academy in Estill,
21 South Carolina.

22 Q: And then where did you go to college?

23 A: I spent two years at a branch campus of USC,
24 USC Salkehatchie in Allendale; then I
25 transferred to the main campus in Columbia, and

1 I graduated in 1980 with a BS in biology. And
2 in 1986, I started graduate school part time,
3 and I graduated in 1991 with a master in public
4 health.

5 Q: Okay. Now, I recall from your deposition that
6 the focus of your master in public health was
7 in environmental health, correct?

8 A: That's correct. But I had to take courses in
9 a variety of subjects areas relative to public
10 health.

11 Q: But I believe you told me that your focus was
12 on physics because of radiology and that was
13 your job at DHEC; is that right?

14 A: Health physics.

15 Q: Health physics. Okay. All right, let's talk
16 a little bit about your employment history.
17 Where have you worked?

18 A: Well, other than a few months at the University
19 of South Carolina, I've worked entirely at the
20 Department of Health and Environmental Control
21 since October of 1981.

22 Q: Let's start with October of 1981 and talk about
23 the various positions you've held at DHEC.

24 A: Okay. Well, I worked in the Bureau of
25 Radiological Health for 22 years, and I started

1 out in an entry level position, which was in
2 health, a health physics technician and worked
3 my way up. And so I was responsible for Food
4 and Drug Administration contracts, which dealt
5 with inspections at hospitals and other
6 healthcare facilities. And I also oversaw a
7 contract that did laser light show inspections.
8 I did microwave oven inspections and radio
9 frequency radio -- radio frequency radiation
10 inspections. But the bulk of my duties dealt
11 with electronic product, non or ionizing
12 radiation, which would be at any healthcare
13 facility or industrial environments, mainly
14 just inspecting sources of x-ray equipment.

15 Q: Which is why your master's in public health
16 focused on health physics, right?

17 A: Correct, correct. And again, I dealt with
18 healthcare facilities. And that was the
19 inspection component of my job. I also served
20 in management. I supervised inspectors. I was
21 responsible for running various aspects of our
22 programs. You know, in portions, I was in
23 charge of dealing with the calibration lab,
24 shielding plans, inspections. And I was also
25 a working manager. I also was responsible for

1 a tanning facility program. I started that
2 program from the ground up. I drafted the
3 regulations; I drafted the inspection
4 procedures; I ran the program. And in various
5 roles, I was involved in the promulgation and
6 revision of other regulations. I worked in
7 enforcement activities and just a lot of
8 activities with healthcare facilities and
9 compliance issues.

10 Q: So the first 22 years would have been in
11 radiological health; is that correct?

12 A: That's correct.

13 Q: And in radiological health, was your focus
14 primarily on radiographic equipment?

15 A: That was one source of electronic products.
16 But a lot of it was radiographic, fluoroscopic,
17 computer tomography units, linear accelerators
18 and so forth.

19 Q: Okay. When did you work on the tanning bed
20 project?

21 A: Well, I was -- I was in and out of that. I
22 know that, you know, of course it took a while
23 to get the regulations passed. So, and I kind
24 of did dual roles for a while there, too. But
25 the regulations were effective around June of

1 1992. So I did that. And then I also did that
2 for a while and went back to electronic
3 products.

4 Q: Did you inspect tanning beds on behalf of DHEC?

5 A: Yes, I did.

6 Q: And does that require you to go out into the
7 field to where these things are located, like
8 in shopping malls and things to inspect them?

9 A: Yes, it does.

10 Q: In addition to the work you did for 22 years in
11 rad health, I'm just going to use that for
12 short; is that okay?

13 A: Yes, please.

14 Q: It's my understanding that you then went to do
15 grant work on disaster preparedness; is that
16 correct?

17 A: Right. After September 11th, there was an
18 influx of federal grant money. And it started
19 out being geared towards bioterrorism
20 preparedness, but it shifted towards just
21 general disaster preparedness. And we were
22 responsible for distributing federal funds to
23 hospitals primarily to help them get prepared
24 for -- for disasters and other events. So I
25 helped with writing the grant. And I met

1 extensively with the individual hospitals and,
2 you know, helped them select appropriate
3 equipment. And I went back and, I guess,
4 audited, if you will, their purchases. And we
5 participated in emergency exercises with them
6 and in general worked closely with them one on
7 one and collectively for regional cleaning
8 activities as well.

9 Q: Did you help them buy their hazmat suits?

10 A: Well, we provided the money for them to
11 purchase those.

12 Q: But that's the type of thing you would do is
13 dealing with like hazardous waste spills and
14 anything that could cause a disaster in a
15 community, your focus was on helping hospitals
16 be prepared to respond to those?

17 A: Right. And it wasn't just disasters, too. It
18 have been equipment, such as ventilators and
19 various other things to help them treat
20 patients --

21 Q: Okay.

22 A: -- in addition to the response.

23 Q: All right. And how long were you with the
24 disaster preparedness job at DHEC?

25 A: Five years.

- 1 Q: And when did you complete work in that job?
2 When did you leave that post?
- 3 A: I left it February of 2008.
- 4 Q: Now, before you -- let me ask you how you found
5 out about your current position. How did you
6 find out about that job?
- 7 A: I believe this is reflected in my deposition as
8 well. My office was among the CON staff
9 offices, so it was hard not to know about the
10 position that was opening.
- 11 Q: Y'all were on the same floor?
- 12 A: Right.
- 13 Q: And I believe your testimony in your deposition
14 was that you had never reviewed a South
15 Carolina State Health Plan until you applied
16 for this job; is that correct?
- 17 A: That's correct. I never had any need to up
18 until that point in time.
- 19 Q: And you also had never read Regulation 61-15
20 until you applied for this job, had you?
- 21 A: No, but I had extensive regulatory experience.
- 22 Q: Okay. But again the question was, you had
23 never read Regulation 61-15 until you applied
24 for this job, correct?
- 25 A: Yes, that's what I said.

1 Q: And I believe in your deposition you stated
2 that you applied sometime either in December of
3 2007 or January of 2008; is that correct?

4 A: Yes. I don't recall the exact date.

5 Q: Okay. Let's go back and talk a little bit
6 about your education, please, ma'am. You would
7 agree, and I think we went through this in your
8 -- in your deposition, that you've never had an
9 accounting course, have you?

10 A: No, I've had biostatistics, but not an
11 accounting course.

12 Q: Well, you would agree with me that statistics
13 is not accounting; wouldn't you agree?

14 A: Yes.

15 Q: So never had an accounting course. You've
16 never had an economics course, have you?

17 A: No, not specifically.

18 Q: You've never had a finance course, have you?

19 A: No.

20 Q: You've never had a course entitled health
21 planning, have you?

22 A: Well, I believe the class -- after my
23 deposition I went back and kind of looked over
24 my bookshelf, and it was -- I think it was like
25 healthcare management, was the name of the

1 class. Something to that effect.

2 Q: But you don't know if it had any component.
3 regarding health planning?

4 A: I believe it did have a few chapters. Yes, I
5 do.

6 Q: You do now?

7 A: Yeah, I went back and looked at the table of
8 contents. You know, it was minimal, but it was
9 in there.

10 Q: So it was in the table of contents, but at the
11 time of your deposition, you did not recall
12 that, did you?

13 A: No, I did not.

14 Q: So it's fair to say that you didn't retain
15 much, if any, of health planning that you
16 learned if you didn't realize you had taken it
17 in a course, did you?

18 A: Well, that was a long time ago.

19 Q: Okay. Talk to me about how you interviewed for
20 this job.

21 A: I'm not quite sure what you're asking, but I
22 was selected as a candidate and I interviewed.
23 I'm not sure what else you would like to know.

24 Q: Well, let's start first with what is your job
25 title?

1 A: My job title is Chief, Bureau of Health
2 Facilities and Services Development. My
3 official state title is Program Manager II.

4 Q: And in shorthand, you run the CON program; is
5 that correct?

6 A: Yes, correct.

7 Q: So is it all right for purposes of the
8 deposition, I mean excuse me, the testimony
9 today, we simply refer to you as the director
10 of the Certificate of Need program; is that
11 acceptable?

12 A: Yes, that's fine. Thank you.

13 Q: Okay. Let's start out with the process of your
14 selection. Did you submit an application? How
15 did that work?

16 A: Well, yes, you're required to submit an
17 application, which I did.

18 Q: Did you do that electronically?

19 A: Yes.

20 Q: And then from the time you submitted that
21 application, which again, you said was sometime
22 in either December of '07 or January of '08,
23 from the time you submitted that, what happened
24 in terms of were there interviews, how was the
25 selection determined?

1 A: Well, I didn't determine the selection, so I
2 can't really answer that. All I know is I was
3 asked to interview. I qualified for the
4 position, and I was interviewed for the
5 position.

6 Q: When you say you qualified for it, what were
7 the qualifications that were posted; do you
8 recall?

9 A: I believe it was a master's degree in public
10 health and five years experience, and then
11 there were -- I'm sure there was a listing of
12 preferred qualifications or other
13 qualifications dealing with regulatory
14 experience, and probably something to the
15 effect of perhaps experience or expertise in
16 writing reports and able to work independently.
17 I mean, I don't remember the exact wording.

18 Q: Who interviewed you?

19 A: I'm trying to remember if I went through a
20 second interview, but I know that Ms. Dukes did
21 the final interview. Pamela Dukes.

22 Q: Who is Ms. Dukes?

23 A: She is the Deputy Commissioner for Health
24 Regulation.

25 Q: How long have you known Ms. Dukes?

1 A: I've known her at least 20 years.

2 Q: Did you guys work together in RAD health?

3 A: Yes. Yes, she didn't start out in the area
4 where I worked, but she eventually did transfer
5 over to electronic products.

6 Q: So y'all worked together at DHEC?

7 A: Yes.

8 Q: And y'all are good friends, aren't you?

9 A: Yes. I mean, I can't say that I see her
10 socially, but I consider her a friend.

11 Q: Why did you leave the job with the grant work
12 for the disaster preparedness position?

13 A: The funding was -- was being severely cut
14 because it seemed the further away we got from
15 September 11th, the less funding was available.
16 So the funding was being severely cut, and I
17 had topped out, and I felt that it was time for
18 another challenge.

19 Q: The fact of the matter is your job was being
20 eliminated, wasn't it?

21 A: No. I wouldn't say that.

22 Q: Okay.

23 A: I said funding was being eliminated or cut.

24 Q: Well, you were going to have to find somewhere
25 else within the agency to work then?

1 A: No, I didn't say that. I was never told that
2 my job was in jeopardy. But I was aware from
3 having prepared the grant, the grant proposals,
4 and from knowing what money was being supplied
5 to us that the funding was being decreased.
6 And I was never told that I was being
7 eliminated.

8 Q: Let me ask you a few more questions then.
9 Would you agree with me that the grant funding
10 funded your position at DHEC?

11 A: Yes, it did.

12 Q: And who replaced you when you left that
13 position?

14 A: Randy Langston.

15 Q: Is he still there?

16 A: Yes, he is. I can't say that he's performing
17 -- I think his duties have changed, though. I
18 can't speak to that 100 percent.

19 Q: He works in licensure, doesn't he?

20 A: No, he does not anymore work in licensure. He
21 works for the grant. I'm not exactly sure who
22 he answers to directly.

23 Q: Let's go back and talk a little bit about this
24 particular application. It was filed the same
25 year you started work, 2008, wasn't it?

1 A: Yes, it was.

2 Q: And do you recall in your deposition I asked
3 you a number of questions about the application
4 and how you evaluated it. Do you recall that?

5 A: Yes.

6 Q: The first thing I'd like to talk to you about
7 is the language in the state health -- I mean,
8 in Regulation 61-15 regarding competing
9 applications. There we go. And that is
10 Regulation 61-15 Section 103(6), is it not?

11 A: Yes.

12 MR. SUMMER: Your Honor, may I approach the bench?

13 THE COURT: You can.

14 MR. SUMMER: This is for your convenience.

15 THE COURT: Thank you.

16 MR. SUMMER: Anybody else need a copy? Y'all got
17 one?

18 Q: These two applications, the one for Roper in
19 Goose Creek and the one for Trident in Moncks
20 Corner, are for virtually the same types of
21 facilities; can we agree on that?

22 A: I'll agree that they're for two 50-bed
23 hospitals and that, according to the
24 applications, what they proposed to offer were
25 similar; however, that there are distinct

1 differences in the applications in that the
2 Trident application is proposed to be located
3 in Moncks Corner and the Roper application is
4 proposed to serve their patients in the Carnes
5 Crossroads and Goose Creek area.

6 Q: Why don't we do it this way. Why don't we
7 start with the regulation and see if we can
8 answer the questions within the framework of
9 the regulation. This is the definition. You
10 would agree that 61-15 is the regulation that
11 you and your agency apply when evaluating
12 certificates of need applications?

13 A: Yes.

14 Q: If we look at the definition, competing
15 applicants means two or more persons and or
16 healthcare facilities as defined in this
17 regulation. Okay. Can we agree -- let's go
18 back and look at the definition for healthcare
19 facility. Thirteen, you see 13, the next page?

20 A: Yes.

21 Q: That means acute care hospitals, correct?

22 A: Yes.

23 Q: So can you and I agree that these two
24 applicants are both applications for the
25 establishment of healthcare facilities? Can we

1 agree on that?

2 A: Yes. I mean, obviously the difference is Roper
3 is proposing a transfer that Trident is not.

4 Q: They're both going to be hospitals, correct?

5 A: That's correct.

6 Q: They're both going to offer the same services;
7 is that correct?

8 A: It appears they're pretty well identical
9 services.

10 Q: So we can agree that that portion of the
11 regulation, who apply for Certificates of Need
12 to provide similar services and or facilities
13 in the same service area, okay, we can agree
14 that they both meet that part of the
15 definition?

16 A: Yes.

17 Q: Because they're both going to be in that tri-
18 county service area; are they not?

19 A: Right. And even though the applications did
20 reflect a more defined service area. Yes, the
21 identified service area is the tri-county
22 service area.

23 Q: You would agree that the service area
24 referenced in this regulation, 61-15-102,
25 excuse me, 103(6), that phrase "service area"

1 is referring to the service area as defined in
2 the State Health Plan. Can we agree on that?

3 A: Yes.

4 Q: It's not the service area as defined by the
5 applicant, but by the State, correct?

6 A: That's correct. I had just made the point
7 about a further defined area for their target
8 population. Yes.

9 Q: But you're not suggesting that their
10 discussions of target population would change
11 their status under this particular regulation?

12 A: No. The service as defined by the Health Plan
13 remains the three county area.

14 Q: And whose applications, if approved, would
15 exceed the need for the facility or service,
16 correct?

17 A: That's what it states.

18 Q: And it says facility or service, right?

19 A: Yes.

20 Q: If we look -- let's look at the -- we have two
21 different Health Plans that apply to these
22 applications; is that correct?

23 A: Yes, that's correct.

24 Q: But just for the sake of argument, let's just
25 look at the 2008-2009 Plan. And in

1 particular, let's look at page II-18.

2 **MR. SUMMER:** Can we put that up on the screen for
3 the witness, please.

4 Q: Now I have to find my eyes.

5 A: Me, too.

6 Q: Thank you. We have to look at two pages. We
7 have to look first at II-18. And let's just,
8 as we go through this, let's look at whose got
9 a bed need and who doesn't. And then let's
10 look at what the total bed excess is for the
11 planning region. So first of all, under this
12 Plan, Trident Medical Center had a bed need of
13 how many beds needed to be added?

14 A: It's the number in the last column, 56.

15 Q: So that's a positive bed need of 56 beds; is
16 that correct?

17 A: Yes.

18 Q: And then we'll look at Summerville Medical
19 Center. And does it have a positive bed need?

20 A: Yes, it states 24.

21 Q: Okay. Now, let's go over to page Roman Numeral
22 II-19. We're still in the tri-county planning
23 region, correct?

24 A: Yes.

25 Q: All right. Charleston Memorial is no longer in

- 1 operation, is it?
- 2 A: It doesn't appear so, no.
- 3 Q: Do you know?
- 4 A: Yes, I know.
- 5 Q: Okay. And then we look at MUSC. And does MUSC
- 6 have a need for beds or an excess of beds?
- 7 A: An excess of beds.
- 8 Q: How many?
- 9 A: It appears to be 65.
- 10 Q: How about Roper Hospital and Roper Mount
- 11 Pleasant?
- 12 A: The number there is a negative five.
- 13 Q: Is that a five or a six?
- 14 A: Yeah, I'm having a tough time.
- 15 Q: Me too.
- 16 A: I think it's a five. If I can see the actual
- 17 document.
- 18 Q: Let me hand you a hard copy and see if it's any
- 19 better.
- 20 A: Yeah, that would be better. Thank you.
- 21 Q: It's Les' fault if we can't read it.
- 22 A: Yes, negative six.
- 23 Q: All right. Thank you very much.
- 24 Q: So if Roper St. Francis or Roper Mount Pleasant
- 25 wanted to add beds at their existing facilities

1 under this Plan, you could not approve that,
2 could you?

3 A: Not under this Plan, but that's not the Plan in
4 which they applied.

5 Q: They didn't apply under the '08-'09 Plan.

6 A: I'm sorry. Yes, they did. Trident applied
7 under the '04-'05 Plan?

8 Q: Right. Okay.

9 A: Could you please repeat the question?

10 Q: I'll repeat the question. Had Roper Hospital
11 or Roper St. Francis, since you're treating
12 them as one facility here on this page, right?

13 A: Yes.

14 Q: If they had -- instead of trying to build a
15 hospital in Berkeley County, if they had
16 submitted an application, either facility, to
17 construct new beds, either downtown or at Mount
18 Pleasant, you would have had to have denied
19 that application, wouldn't you?

20 A: Well, perhaps we wouldn't have accepted it.
21 However, that's not what they proposed to do.
22 They proposed to transfer beds.

23 Q: I understand that. I'm asking you if they had.

24 A: Yes.

25 **THE COURT:** Wait a minute. She answered --

1 A: Yes, I understand the question.

2 THE COURT: -- she answered --

3 A: I'm sorry, Your Honor.

4 THE COURT: Yes, you understand the question. Okay.

5 Q: So if they had proposed to add, say, 20 beds
6 downtown, you would have had to have denied
7 that application because it would not be
8 consistent with the State Health Plan?

9 A: Correct. Or either we would not have accepted
10 it.

11 Q: So if there's no bed need in the Plan, you
12 might not -- you might have refused the
13 application; is that what you're saying?

14 A: Perhaps so. We would have certainly had a
15 discussion with them.

16 Q: So there's just no possible way when you have
17 a negative bed need to add beds to your
18 facility in South Carolina, is there?

19 A: Not under this Plan.

20 Q: Let's look next at Bon Secours. You understand
21 that Bon Secours is part of the same corporate
22 organization at Roper; you understand that?

23 A: Yes.

24 Q: And Bon Secours, do they have a positive or
25 negative bed need?

- 1 A: It appears to be negative 17.
- 2 Q: So, let me know when you're sure.
- 3 A: Negative 17, yes.
- 4 Q: Thank you. Again, if Bon Secours -- if Bon
- 5 Secours had delivered an application to you
- 6 under this Plan to add 17 beds at its West
- 7 Ashley campus, you would have had to have
- 8 denied it or rejected the application at the
- 9 time of filing, wouldn't you?
- 10 A: Yes.
- 11 Q: And let's look at East Cooper Regional Medical
- 12 Center. How many bed need or excess do they
- 13 have under the Plan?
- 14 A: Forty excess beds.
- 15 Q: Again, if East Cooper had come to you and
- 16 submitted an application to add beds at its
- 17 site in Mount Pleasant, you would have had to
- 18 have denied that application or rejected its
- 19 filing under the '08-'09 Plan?
- 20 A: Yes.
- 21 Q: So you'll agree with me that, under this Plan,
- 22 Roper has an excess of beds, correct?
- 23 A: Yes.
- 24 Q: All right. Let's go back now to our language
- 25 in the regulation. The language in the

1 regulation for competing applications states as
2 follows, "Same or similar services," we agree
3 that they're going to -- they are hospital
4 facilities, and we agree that they're going to
5 offer the same or similar services; can we
6 agree on that?

7 A: Yes.

8 Q: All right. And so, "And whose applications, if
9 approved, would exceed the need for this
10 facility or service." Now, your prior
11 testimony was that Roper has an excess of beds
12 and that you would have rejected an application
13 at their existing facilities. So if there is
14 an excess of beds, they have an excess of beds,
15 then there is no way that they can apply for
16 beds to relocate and not be competing with
17 Trident under this definition?

18 A: My prior testimony reflected that Roper
19 proposes to transfer beds from downtown to the
20 Carnes Crossroads area, that is not adding to
21 the bed. So the need is not exceeded, and as
22 you know, I determined that the applications
23 were not competing.

24 Q: Do you not think it's logically inconsistent to
25 sit here and testify that you would not even

1 accept an application if they applied downtown,
2 but that you'll let them spend over \$100
3 million dollars and build 50 beds anywhere else
4 in the service area?

5 A: I think it is quite logical that they chose to
6 plan to transfer these beds to an area of
7 explosive population growth, so they decided
8 that they would best meet the needs of their
9 patients by relocating the beds to an area
10 where the patients were located.

11 Q: Define explosive population growth.

12 A: Well, I think if we were to pull up the
13 population statistics, which I'm not sure where
14 they are amongst all this stuff, you would see
15 that if you looked at the census for 2000 --
16 for 2000 and the census population figures for
17 2010, that there was a quite a lot of increase
18 for Berkeley County.

19 Q: Do you think explosive growth is growth of more
20 than one percent?

21 A: Well, I don't know that I can define explosive
22 to your satisfaction, but I can just say that
23 there was quite a bit of growth between the
24 year 2000 and 2010. It was rapidly growing.
25 And so the population growth, you know, was a

1 part of their need analysis, and they supported
2 through their application that -- that this was
3 an area of rapid growth.

4 Q: Rapid growth between 2010, you're using 2000 to
5 2010 as your benchmarks?

6 A: Right. But there are projections in the
7 application that go out further than that.

8 Q: Is explosive growth more than five percent?

9 A: I think it would be difficult to define because
10 five percent of what. I think you would have
11 to look at the statistics as a whole and
12 compare them with other areas, such as
13 Charleston County versus Berkeley County.

14 Q: While we're still on the State Health Plan, how
15 many total beds exist in the tri-county service
16 area?

17 A: According to this, it's 1739.

18 Q: And how many beds are actually needed in the
19 service area?

20 A: That's either 1591 or 1691.

21 Q: And so the total bed excess in the service area
22 under this Plan was 48?

23 A: Yes.

24 Q: And it didn't concern you that approving 100
25 hospital beds in a service area that was

1 already significantly over bedded, that didn't
2 concern you?

3 A: Well, significantly over bedded is your
4 language, not mine. But again, Roper was
5 proposing to transfer beds to an area of growth
6 to better meet the needs of their patients.
7 And Trident as well, used the need amongst
8 their patients to site, according to their
9 application, where they chose to put their
10 proposed facility as well.

11 Q: Let me understand --

12 MR. LONG: Your Honor, if I could just interject
13 here, because I know the screen is hard to
14 read. The actual number is 1691. Isn't that
15 right, on the page and she said 1591 or 1691.
16 I just think we need to clarify what it says
17 for the record.

18 MR. SUMMER: It is what it is and I'm fine with that
19 clarification. Thank you, counsel.

20 Q: All right. So is it your testimony then that
21 because there's a bed transfer, there can never
22 be an exceeding the need for the facility or
23 service?

24 A: Well, you have to look at the merits of the
25 application as a whole. According to what was

1 proposed in this application for this
2 particular situation, it was appropriate, in my
3 opinion, for them to propose to transfer these
4 beds to meet their -- the needs of their
5 patients.

6 Q: So in this situation, the fact that there's a
7 bed transfer negates any analysis of whether or
8 not there's an excess; is that your testimony?

9 A: I didn't say that. I said that each of the
10 applications stood upon its own merit. The
11 tri-county area covers a lot of territory, so
12 I mean a lot of the territory is downtown
13 Charleston as opposed to down in Berkeley
14 County.

15 Q: Let's try to get back to some things that maybe
16 we can agree on, okay. We can agree that you
17 made your decision in this case on June 26,
18 2009, correct?

19 A: Nine, yes.

20 Q: You would agree with me that on June the 25th,
21 2009, Roper had an excess of beds, correct?

22 A: I agree, yes, according to what's in the State
23 Health Plan.

24 Q: And you will agree with me that Bon Secours St.
25 Francis, which is also a part of the same

1 system, had an excess of beds on June the 25th,
2 2009?

3 A: Yes.

4 Q: Would you also agree with me on June the 27th,
5 the day after you made your decision, that
6 under this Plan, Roper had an excess of six
7 beds under the Plan, correct?

8 A: Yes, but they did not propose to add beds.
9 They proposed to transfer beds.

10 Q: That's not the question.

11 A: But that's my answer.

12 Q: The question is, is on the 27th of June, 2009,
13 Roper still had an excess of beds; is that
14 correct?

15 A: Yes. Yes, that's what I said.

16 Q: And on June the 27th, 2009, after your
17 decision, Bon Secours still had an excess of
18 beds, correct?

19 A: Yes.

20 Q: On June the 25th, the day before your decision
21 in 2009, the service area had an excess of 48
22 beds; is that correct?

23 A: Yes.

24 Q: And on June the 27th, 2009, the day after your
25 decision, the service area had an excess of

1 beds, 48 beds, correct?

2 A: Yes.

3 Q: And you still don't believe that approving this
4 application is approval of any application
5 where the applicants requested beds exceed --
6 exceed the beds in the Plan?

7 A: The applicant proposed to transfer beds. They
8 did not add to the bed inventory. That was not
9 the proposal.

10 Q: Let me ask you a few other questions while
11 we're here on this particular section. I think
12 we agreed on this in the deposition. Except
13 for that one section of the competing applicant
14 definition, the rest of the criteria or factors
15 of whether or not you determinè applications to
16 be competing are met in this case; are they
17 not?

18 A: I did agree, but I know I also prefaced the
19 service area part, if you look at my
20 deposition, with what I had conveyed earlier
21 about the fact that they chose a more defined
22 target population.

23 Q: Every time you do that I'm going to ask you the
24 same question. You're not suggesting --

25 A: No, I'm not.

1 Q: -- that service area in this regulation means
2 anything other than service area as defined in
3 the State Plan, correct?

4 MS. BIGGERS: Your Honor, I object. I think that if
5 Ms. Brandt answers the question and then feels
6 that further explanation is necessary, then I
7 don't think that counsel should prohibit her
8 from providing that further explanation, which
9 is what I think Mr. Summer is intending to do.

10 THE COURT: I don't read at it that way. I'm going
11 to overrule your objection. But if that
12 continues, then you may object again.

13 MS. BIGGERS: Thank you.

14 Q: So let's look at the rest of the criteria so we
15 make sure that we're in agreement on this. An
16 application shall be considered competing if it
17 is received by the Department no later than 15
18 days after a Notice of Affected Persons is
19 published in the State Register for one or more
20 applications for similar services and/or
21 facilities in the same service area. You would
22 agree that the Roper application was filed
23 prior to that date for the Trident application,
24 correct?

25 A: Yes.

1 Q: So it would meet that -- these applications
2 meet that criteria; do they not?

3 A: Yes. I mean, that's when they chose to file.

4 Q: All right. "All applications received by the
5 Department within 15 days of publication of
6 Notice of Affected Persons in the State
7 Register for the first application will be
8 considered competing." So that timing
9 component was met by Roper. They did file in
10 time to be deem competing, didn't they?

11 A: They did file in time, but we do look at this
12 section as a whole. I'm not stating for the
13 record that they were competing. I'm just
14 stating that they filed in time to be
15 considered competing.

16 Q: Thank you. "Any applications received by the
17 Department later than the 15th day following,
18 will not be." That doesn't apply in this case,
19 does it?

20 A: Correct. Yes.

21 Q: Okay. So the only factor is whether or not
22 your awarding of those two applications for two
23 50-bed hospitals in the service area, whether
24 that exceeds the need for the facility or
25 service; can we agree on that?

1 A: I can agree that, according to this definition,
2 yes. But again, the need was not exceeded.

3 Q: That's your opinion, correct?

4 A: That's my conclusion, and it's based upon, you
5 know, reviewing the applications.

6 Q: Any idea why the Department did not list you as
7 an expert in this case?

8 A: I did not make that decision.

9 MR. SUMMER: Ms. Biggers, can we stipulate for the
10 record that Ms. Brandt was not offered by the
11 Department as an expert?

12 MS. BIGGERS: I stipulate I did not designate Ms.
13 Brandt as an expert witness.

14 MR. SUMMER: Okay. Thank you.

15 Q: I'm going to ask again, Ms. Brandt, I don't
16 know that I've ever been in a case where the
17 Department did not designate an expert on their
18 staff. Do you know why you were not
19 designated as an expert in health planning in
20 this case?

21 A: I really can't speak to that.

22 Q: I've got a couple of other pages I'd like to
23 ask you about. Let's first start -- first
24 let's turn, if you don't mind, in the Joint 1,
25 which is the Trident record, and I'm going to

1 find that for you, to page 727. You've got
2 Joint 1 in front of you?

3 A: Yes.

4 Q: Thank you very much. If you'd turn to 727,
5 please. You got that page?

6 A: Yes.

7 Q: This is signed by Lisa Sanders. Who is she?

8 A: She was our, I guess, chief reviewer or head
9 reviewer at the time, and she was the primary
10 reviewer of these applications.

11 Q: Did she report to you?

12 A: Yes, she did.

13 Q: Is she currently with the agency?

14 A: No, she's not.

15 Q: Are any of the reviewers that were your
16 subordinates when you took this job in February
17 of 2008 still with the agency?

18 A: Sally Harrell is still there.

19 Q: Hasn't she given her notice?

20 A: Yes, she has. But until Friday, she's a state
21 employee.

22 Q: Every other reviewer has left your employ in
23 that time period, have they not?

24 A: Yes, most of them have moved out of state to
25 pursue other educational opportunities or have

1 moved out of state for other opportunities.

2 Q: Is Ms. Sanders out of state?

3 A: No. I said most. No, she's not, to my
4 knowledge.

5 Q: Is Ms. Tibshrany out of state?

6 A: I had to lay her off because of budget cuts.

7 Q: Would you look at -- first of all, explain to
8 the Court what the purpose of this letter is.
9 This is January 9th, 2009. Is this what you
10 call a "deemed complete" letter?

11 A: Yes, it is.

12 Q: And why do you list these criteria on the top
13 of 727?

14 A: Because the regulations require that we do so.

15 Q: But you picked those criteria that you think
16 are most important?

17 A: Right.

18 Q: And these are the ones that you selected,
19 correct?

20 A: Well, Lisa selected them and I signed off on
21 them.

22 Q: You approved them?

23 A: Yes.

24 Q: Turn, if you would, because I want you to
25 compare to the letter you sent Roper to deem

1 their project complete and list the criteria
2 you were going to evaluate them by. It's on
3 1108, and I think that's Joint 2, isn't it, for
4 them?

5 A: I don't have Joint 2.

6 Q: I'm going to find it for you, how about that.
7 See if we can find page 1108 in there and let's
8 compare them, please.

9 A: I'm sorry, David, what page?

10 Q: 1108 in Joint 2. Are you with me?

11 A: Yes.

12 Q: Would you agree with me that the criteria for
13 evaluation -- let me rephrase the question.
14 Would you agree with me that the criteria that
15 the Department selected to evaluate Roper's
16 application are identical with the criteria the
17 Department selected to evaluate Trident's
18 application?

19 A: Yes, it is. And those are very common criteria
20 that we typically select in a lot of cases.

21 Q: But they're identical in this case, aren't
22 they?

23 A: Yes, they are.

24 Q: They're not competing applications, but they're
25 identical evaluating criteria, correct?

- 1 A: Yes.
- 2 Q: Let's talk about a few of those criteria.
- 3 Where would I find these criteria?
- 4 A: They're described in the regulations.
- 5 Q: And what section would that be?
- 6 A: Well, if I could have a copy of the
- 7 regulations, I could probably answer that
- 8 better.
- 9 Q: Didn't I hand you a copy of the regs when we
- 10 were reading competing applications?
- 11 A: Oh, I'm sorry. I'm not used to looking at it
- 12 in this format.
- 13 Q: If you'd turn to Section 802, that's where the
- 14 criteria are.
- 15 A: Okay. Okay, I'm there.
- 16 Q: Okay. Let's talk first about adverse impact.
- 17 Where is adverse impact discussed in the
- 18 regulations?
- 19 A: Well, as far as the project review criteria,
- 20 it's item 23.
- 21 Q: Let's look at 23. And what is 23?
- 22 A: 23, Adverse Effects on Other Facilities. Would
- 23 you like for me to read it?
- 24 Q: Please, if you don't mind.
- 25 A: Okay. A, the impact on the current and

1 projected occupancy rates or use rates of
2 existing facilities and services should be
3 weighed against the increased accessibility
4 offered by the proposed services.

5 Q: Now, you recall in your deposition you stated
6 that you didn't believe that Trident had
7 provided you with any information regarding the
8 loss of cases or on adverse impact that would
9 occur by Roper building a hospital in Goose
10 Creek; do you recall that?

11 A: I don't recall those being my exact words.

12 Q: Well, how did you define the adverse impact?

13 A: Well, they certainly submitted an analysis of
14 impact, and I concurred with their conclusion
15 that there would not be any material adverse
16 impact upon Trident, or that there would -- I
17 think the wording I used in my decision letter
18 was minimal.

19 Q: Minimal. Didn't you testify in your deposition
20 there would be no lost cases?

21 A: I'd really have to review that. Honestly, I'm
22 not sure about those exact words.

23 Q: I'll let you turn over to page 154 of your
24 deposition. Page 154, line 17, please, ma'am.

25 A: Okay.

1 Q: "Would you agree the admissions will be
2 something less if the Carnes Crossroad
3 property is developed into a hospital?" And
4 what was your answer?

5 A: "I'm not going to agree to a hypothetical."

6 Q: Okay. And then my question was, "You don't
7 know, do you?"

8 A: Do you want me to read my response?

9 Q: Please.

10 A: "I didn't say that. I don't have the facts
11 before me to analyze."

12 Q: But they did tell you that they would lose
13 cases, didn't they?

14 A: They did an impact analysis and I don't -- I
15 would have to look at the analysis.

16 Q: Look on page 143 of your deposition. My
17 question to you -- I'll wait until you get
18 there, the top of the page, line 1. "But you
19 have no idea the total number of lost cases or
20 adjusted admissions to the Trident System as a
21 result of the presence of a Carnes Crossroad
22 hospital, do you?" And what was your answer?

23 A: "Not if Trident hasn't presented us with that
24 information, which they again had the
25 opportunity to do prior to the decision."

1 Q: You referred to the impact, I believe, in your
2 deposition and in your decision letter, as a
3 matter of fact, that the adverse impact would
4 be minimal, is that your word?

5 A: Yes.

6 Q: If you don't mind, if you would turn over to
7 page, if you'll go to Joint Exhibit 1, and
8 turn, please, ma'am, to page 900.

9 A: Okay. I'm there.

10 Q: Now, on page 143 of your deposition, you
11 indicated that Trident hadn't told you anything
12 after project review about lost cases. When
13 was project review in this case?

14 A: I'd have to check my calendar, but I believe it
15 was May 21. I'd have to check my calendar.

16 Q: May 21, 2009, isn't that correct? Is that
17 correct?

18 A: Yes.

19 Q: Thank you. Your decision was on June 26; was
20 it not?

21 A: Yes.

22 Q: This letter is dated filed on page 900. It was
23 received by your agency in your office on June
24 23, 2009; is that correct?

25 A: Yes.

1 Q: Three days prior to your decision?

2 A: Yes.

3 Q: If you look on page 902, Mr. Baehr, he was
4 Trident's consultant, right?

5 A: Yes.

6 Q: And you understood that he was working for
7 Trident?

8 A: Yes.

9 Q: And you understood that this letter was about
10 Trident?

11 A: Yes.

12 Q: And he does give you a decrement of 7,340 total
13 adjusted admissions; do you see that number?

14 A: Yes.

15 Q: Okay. So they really had told you how much
16 they thought they were going to lose, didn't
17 they?

18 A: Yes, and I believe my -- if you look at my
19 deposition, it does reflect my discussion of
20 Mr. Baehr's financial conclusions. So I mean,
21 I was certainly aware that he had done some
22 calculations which were also presented in the
23 project review alleging -- a deficit.

24 Q: At the time of your deposition I asked you if
25 you knew what the word "contribution margin"

1 meant, didn't I?

2 A: Yes.

3 Q: And you had no idea, did you?

4 A: I'd have to look at my deposition, but I
5 believe you're probably correct.

6 Q: You did not know at that time, did you?

7 A: No.

8 Q: All right. Your deposition was taken on
9 November the 2nd of 2011; is that correct?

10 A: That's correct.

11 Q: And that is over two years after you made the
12 decision in this case; is it not?

13 A: Yes.

14 Q: So if you look at the bottom of page 902 and
15 the top of page 903 of Mr. Baehr's letter, he
16 basically states, leaving a contribution margin
17 of \$4,522 per adjusted admission. At the time
18 that you read this letter, assuming that you
19 did, you really didn't know what he meant, did
20 you?

21 A: Well, I concluded that it was a financial
22 impact and that he had stated this financial
23 impact and that it was reflective of alleged
24 lost patients, and if would affect, according
25 to his determination, the bottom line of the

1 financials for these projects.

2 Q: But you didn't know what a contribution margin
3 was, did you?

4 A: Not at the time. But that doesn't mean that I
5 wasn't able to review pro formas in the
6 applications with skill.

7 Q: And so whatever the decrement was in
8 contribution margin, you might not have known
9 what contribution margin was, but you knew that
10 it was minimal? Whatever is going on here is
11 minimal; is that your testimony?

12 A: I knew that, in my opinion, that there was not
13 going to be a material adverse impact upon this
14 project by the Roper project. And I was able
15 to review the pro formas and look at the bottom
16 line figures that they had proposed.

17 Q: Adverse impact also refers to adverse impact in
18 terms of staffing; does it not?

19 A: Yes. But I don't recall staffing ever being an
20 issue raised. As far as -- as far as what was
21 presented in the project review, I personally
22 don't recall that Trident presented that there
23 was going to be staff taken away because of
24 Roper's project.

25 Q: You would agree with me, I hope, that all

1 applicants to construct hospitals or to add
2 beds are going to have to provide you with a
3 manpower plan; is that not correct?

4 A: Yes, that's correct.

5 Q: And you were in -- you were in the courtroom
6 yesterday when Mr. Gallati testified that each
7 of these applicants are going to have to go
8 find 68 registered nurses; were you not?

9 A: Yes.

10 Q: And the manpower budgets are in these
11 applications; are they not?

12 A: That's correct. And they're also required to
13 address how they plan to staff --

14 Q: Right.

15 A: -- in the narrative.

16 Q: So that was an issue that was raised with the
17 Department below; was it not?

18 A: I didn't say that it wasn't. Staffing wasn't
19 proposed to us. I'm stating, to my
20 recollection, it wasn't raised as an issue that
21 contributed to what Trident had stated to be an
22 adverse impact.

23 Q: Turn to page 166 of your deposition, please,
24 ma'am. If you'd go -- I'm sorry.

25 A: Pardon?

1 Q: I'm going to wait on you. Whenever you get to
2 166 you let me know.

3 A: I'm here.

4 Q: If you'll look at line 25, I asked you the
5 following question: "You realize that adverse
6 impact is more than financial?" And what was
7 your answer?

8 A: "I would have to look at how it's spelled out
9 in the regulations. And again, we looked at
10 both projects as a whole in the information
11 that was presented to us."

12 Q: And I handed you 23 and you read 23. And
13 finish your answer. What did you say?

14 A: "I guess you're correct. 23, adverse impact,
15 does speak to staff."

16 Q: Again, I asked you that question on Wednesday,
17 November the 2nd, 2011, some two years after
18 you made the decision in this case and you
19 didn't even know that your own regulations
20 spoke to adverse impact in terms of staffing,
21 did you?

22 A: It wasn't that I didn't know. I was -- I
23 needed to be refreshed. And again, I don't
24 recall that being raised as an issue during the
25 project review.

1 Q: Never looked at the manpower budgets in this
2 case?

3 A: I absolutely did. I never said in my
4 deposition that I didn't look at the manpower
5 budgets.

6 Q: Didn't have any concern that somewhere, somehow
7 these two facilities are going to have to come
8 up to open their doors with 134 new RNs?

9 A: They addressed that in their application.

10 Q: You would agree with me that Trident considered
11 these applications competing? You would agree
12 with that, wouldn't you?

13 A: Yes.

14 Q: And they advocated strongly with you that these
15 were competing applications; did they not?

16 A: At a certain point they did. I don't believe
17 they did in the beginning.

18 Q: Would you agree with me that on June the 9th,
19 2009, when you met with Mr. Gallati, you told
20 him that you had not made up your mind about
21 whether or not these were competing
22 applications; isn't that true?

23 A: I told him that it's our policy not to declare
24 that applications are competing or not until
25 the decision is made.

1 Q: Really?

2 A: That's what we tell everybody. To be quite
3 honest, David, I didn't even recall that
4 meeting until you brought it up, but it's
5 definitely on my calendar.

6 Q: Doesn't the regulation require that you make
7 the decision about whether or not they're
8 competing within the 15 day window after Notice
9 to Affected Persons?

10 A: I don't believe that's what the regulation
11 says.

12 Q: Let's go back and look at it. Let's pick it
13 up.

14 A: If it said that then it would be saying I need
15 to make the decision before the decision, and
16 that wouldn't be appropriate.

17 Q: Well, let's take a look at that definition
18 again. Got the regulation in front of you?

19 A: Okay.

20 Q: All right. "All applications received by the
21 Department within 15 days of publication of the
22 Notice of Affected Persons in the State
23 Register for the first application will be
24 considered to be competing." Now, we know
25 exactly when that date is, when it's published

1 in the Register; is that correct?

2 A: Yes, we do.

3 Q: Just hold that in your hand, but let's take a
4 quick look. You can agree that if we were
5 going to make that determination of whether or
6 not they were competing, it would be based upon
7 whoever filed first, correct?

8 A: Yeah, that's the starting date.

9 Q: Correct. And you and I can agree that Trident
10 filed first; can we not?

11 A: Yes.

12 Q: And if we go back to your deemed complete
13 letter, which is on page, looks like it's on
14 page 726 and 727 of Joint 1, and it is dated
15 January the 9th, 2009.

16 A: Yes.

17 Q: Correct? And then it would have been published
18 in the next State Register, correct?

19 A: Yes, whenever that -- that was, provided they
20 paid their fees.

21 Q: Paid their fees and got published. And we can
22 look over on page 730 -- actually, I think
23 we're going to have to look over on page 732.
24 This is the Notice to Affected Persons, that
25 section from the State Register where affected

1 persons are told hey, we've started the review
2 cycle on this application, correct?

3 A: Yes.

4 Q: And if you want to get batched and deemed
5 competing, you better have your application in
6 by that date, that 15th date from whenever this
7 was published, correct?

8 A: That's the deadline if -- according to the
9 regulations, yes, if you want to be considered
10 to be competing.

11 Q: And we know that Roper had already filed their
12 application before you sent the deemed complete
13 letter on January 9th. They had filed their
14 application in December of '08; had they not?

15 A: Yes, they did.

16 Q: And so they were clearly batched for purposes
17 of being considered a competing application?

18 A: Well, they applied within the deadline.

19 Q: They applied within the deadline. Now, let's
20 look at the rest of that definition. "Any
21 applications received by the Department later
22 than the 15th day will not be considered to be
23 competing." It's that date that determines
24 whether or not you're a competing application.
25 It is that date that the Department must make

1 that determination, isn't it?

2 A: No, I disagree. That's the deadline if they
3 want to be considered competing. You have to
4 look at the definition or this section as a
5 whole. And in order to be determined
6 competing, you've got to look at the definition
7 for competing. And Roper proposed to transfer
8 beds and did not add to the bed need.

9 Q: Is it your sworn testimony that it has been
10 this Department's policy not to make a
11 determination of whether applications are
12 competing until the date of decision; is that
13 your sworn testimony?

14 A: Not publically -- not publically revealed.
15 Obviously we've got to evaluate the
16 applications internally, but the decision
17 letter it is since I have been in this
18 position. It's my understanding that's how
19 things were done in the past as well.

20 Q: Ever been at project review hearings where
21 there are competing applications?

22 A: Well, yes. I mean it depends on how the Plan
23 is worded. Clearly, in the case, for example,
24 the Beaufort Home Health, the Plan clearly
25 indicated that there was only a need for one

1 additional agency, and 11 applications were
2 received at one point in time.

3 Q: And you treated those as competing applications
4 from the day you got them?

5 A: I reviewed them individually based on their
6 individual merits as well.

7 Q: And you treated them at project review as
8 competing cases; did you not?

9 A: The Plan was very clear that only one agency
10 could be approved.

11 Q: So when you testified earlier that you never
12 made this decision until the date of the
13 decision, that wasn't accurate, was it?

14 A: I never made the declaration in writing that
15 they're competing until the decision letter is
16 published.

17 Q: What happened in November of 2007 within the
18 Department of Health and Regulation?

19 A: I'm sure a lot of things happened.

20 Q: Who was your predecessor?

21 A: My predecessor was Joel Grice.

22 Q: How many years of experience did he have in the
23 Certificate of Need program?

24 A: I don't know.

25 Q: It was decades, wasn't it?

- 1 A: I don't know.
- 2 Q: It was over 30 years, wasn't it?
- 3 A: I don't know.
- 4 Q: Who is Albert Whiteside?
- 5 A: He used to work in the CON program as well.
- 6 Q: Wrote the State Health Plan, didn't he?
- 7 A: I'm not sure if he wrote it all by himself. I
- 8 knew he had involvement.
- 9 Q: How many years had he been with the Department?
- 10 A: I don't know.
- 11 Q: Over 30 years he'd been with the Department,
- 12 hadn't he?
- 13 A: I don't know.
- 14 Q: Jerry Paul, do you know who Jerry Paul was?
- 15 A: Yes.
- 16 Q: Okay. Extensive experience in the department
- 17 of Certificate of Need. He'd been with the
- 18 Department for over 30 years, hadn't he?
- 19 A: I don't know.
- 20 Q: You have no idea?
- 21 A: I have no -- I know he had been there for a
- 22 long time, but if you're asking me how many
- 23 years, I don't know.
- 24 Q: They were all TERI'd employees; were they not?
- 25 A: I don't know.

1 Q: How many years do you have to be in service to
2 be a TERI'd employee?

3 A: Well, it depends on if you decide to buy
4 service, but typically, it's 28 years to be
5 eligible.

6 Q: Typically 28 years. All three of those
7 individuals were TERI employees and the
8 Commissioner terminated them all on the same
9 day, didn't he?

10 A: I have no idea. I had no reason to know the
11 answer to that question.

12 Q: You previously testified your office is right
13 next to the CON department when you were in
14 disaster preparedness, correct?

15 A: My office was along there's.

16 Q: And you don't recall the day that the
17 Commissioner terminated Mr. Grice?

18 **MS. BIGGERS:** Objection. Objection, his question
19 calls for facts that are not in the record.
20 Ms. Brandt just testified that she has no idea.

21 **THE COURT:** I sustain that objection.

22 Q: Isn't it true that the Commissioner terminated
23 those three individuals because they would not
24 comply with his political directives?

25 **MS. BIGGERS:** Same objection.

1 MR. SUMMER: She can answer whether or not she knows
2 that.

3 MS. BIGGERS: His question assumed that they were
4 terminated. Ms. Brandt has previously
5 testified she does not know whether that was
6 true or not. That was the basis of my previous
7 objection. Same objection.

8 THE COURT: I think that's a proper questions, Ms.
9 Biggers. I'm going to --

10 MR. SUMMER: Let me restate it for the record, Your
11 Honor.

12 THE COURT: Please do.

13 Q: Isn't it true that those three individuals were
14 terminated in one afternoon because they would
15 not kowtow to the Commissioner's political
16 whims and decision making; isn't that true?

17 A: I have absolutely no idea.

18 MS. BIGGERS: Same objection for the record.

19 THE COURT: She's answered the question she has no
20 idea.

21 Q: Okay. You replaced Mr. Grice; is that correct?

22 A: Well, I was hired after he left.

23 Q: Did he hold the same job as you hold?

24 A: Yes, he did.

25 Q: Did anyone take that position in the interim

1 between his termination in November of 2007 and
2 you starting that job in February 2008?

3 A: Yes.

4 Q: Who held that position?

5 A: The interim person was Mary Fechtel. She held
6 two jobs, assistant deputy commissioner and she
7 also filled in in that position.

8 Q: Other than the interim, was there anybody
9 between you and Mr. Grice who held that
10 position?

11 A: No.

12 Q: Okay. Let's go back to our criteria. Do you
13 recall when I took your deposition you did not
14 know how to determine what -- how you could
15 determine if an area or population was
16 medically underserved? Do you remember that?

17 A: I remember that we later on read in the
18 regulations about that. And I just wanted to
19 go back and clarify that a little bit, if I
20 may. I believe I was probably confused,
21 because there's also a federal designation of
22 medically underserved, and perhaps I was
23 confusing those in my mind, because they are
24 different designations. But we also later on
25 read in the project review criteria there were

1 areas within the project review criteria that
2 addressed medically underserved, and I believe
3 my deposition does reflect that I did discuss
4 at some point about perhaps indigent
5 populations and so forth.

6 Q: Prior to us looking at the regulation in your
7 deposition, go to page 146 in your depo,
8 please, ma'am.

9 A: Okay.

10 Q: Go to line 16.

11 A: Okay.

12 Q: I asked you the question, "How does one
13 determine if an area is medically underserved?"
14 And what was your answer?

15 A: "I'm not sure how one would." But as I just
16 explained that we went on to discuss it in the
17 regulations --

18 Q: Right.

19 A: -- as well. And I know that there's a
20 designation that's capital letters that's
21 totally different. There's a map of South
22 Carolina that shows that and perhaps, that's
23 where my confusion lay.

24 Q: Well, you didn't know whether or not the
25 northern part of Berkeley County was medically

1 underserved, did you?

2 A: Well, again, if you look at the federal
3 designation map as opposed to what the
4 regulations say, then there's certainly a
5 difference.

6 Q: Well, let's look at what you were supposed to
7 be looking at when you evaluated this
8 application. On page 727, do you see the topic
9 which has rated number two entitled
10 "Distribution and Accessability." You see
11 that?

12 A: Yes.

13 Q: Okay. Let's look first at 3(b).

14 A: Okay.

15 Q: What does your regulation require that you look
16 at?

17 A: 3(b) states, "The proposed service should be
18 located so that it may serve medically
19 underserved areas or an underserved population
20 segment and should not unnecessarily duplicate
21 existing services or facilities in the proposed
22 service area."

23 Q: You didn't know if Moncks Corner and the
24 northern part of Berkeley County was a
25 medically underserved area in your deposition.

1 Do you have a different opinion today?

2 A: Well, my response would be I know perhaps I
3 didn't give an appropriate response during my
4 deposition, but that's not reflective of the
5 fact that -- which is not reflective of the
6 fact that I did thoroughly review the
7 applications.

8 Q: What does medically underserved mean to you?

9 A: It means populations that perhaps they don't
10 have access to primary care services. It could
11 mean an elderly population or an indigent
12 population or a minority population that
13 doesn't have adequate access.

14 Q: What do your regulations say? What does --

15 A: Would you like for me to read those again, sir?

16 Q: I would like for you to read 3(f). What is
17 3(f)?

18 A: The applicant should address the extent to
19 which all residents of the area, and in
20 particularly, low income persons, racial and
21 ethnic minorities, women, the elderly,
22 handicapped persons and other medically
23 underserved groups are not likely to have
24 access to those services being proposed, which
25 is just what was reflected in my testimony

1 previous to you asking me to read this, though
2 I may not have said it that eloquently.

3 Q: It's part of your regulations, but again, you
4 didn't have a definition for it when I took
5 your deposition on Wednesday, November 2nd,
6 2011, did you?

7 A: I did not respond well to your inquiry. No,
8 sir, I did not.

9 Q: And you would agree with me that your
10 deposition was taken over two years after you
11 made the decision in this case?

12 A: Yes, I would agree to that.

13 Q: How do you -- under what section of the Plan
14 does Roper get to create a hospital? I've
15 referred to it as a cow pasture. Mr. Long
16 refers to it as a greenfield. But how do they
17 get to do it?

18 A: Well, if you could provide me with the Health
19 Plan I could show you that provision.

20 Q: Sure. If I didn't give you one earlier, I
21 apologize.

22 A: Unless it's buried in the joint exhibits.

23 Q: It is in one of the joints. Where's '08,
24 Number 4. I'm going to be trained before this
25 is over with look for Joint 4. Let's see if we

1 don't have that here. There we go.

2 A: There is a section in the Plan that I guess we
3 finally refer to as the bed transfer provision,
4 that's --

5 Q: And could you give me a page number when you
6 get to it, please, ma'am.

7 A: I'm trying to find the page number.

8 Q: Thank you, ma'am.

9 A: It starts on the bottom of Roman Numeral II-9,
10 Joint Exhibit 004-0017.

11 Q: Right. And goes through where?

12 A: Well, there's eight items that are on the
13 following page.

14 Q: And is it your testimony that Roper complies
15 with all eight of these items?

16 A: Yes, it is, as applicable. I believe --

17 Q: As applicable. First off, who on your staff is
18 in charge of promulgating the State Health
19 Plan?

20 A: Well, Les Shelton is responsible for receiving
21 the comments and basically implementing the
22 Plan, you know, after the planning committee
23 and the board have finalized it. He also
24 disseminates the draft and schedules public
25 hearings and so forth.

1 Q: I'm not going to go through all that process
2 with you; I'll do it with Mr. Shelton. I just
3 want to make sure your position has not changed
4 since your deposition. I asked you this
5 question. "Would you consider Mr. Shelton more
6 knowledgeable about the State Health Plan and
7 the planning process than you are?" And you
8 said the following, "I would concede that he
9 has great institutional knowledge and he's been
10 doing this for a long time, and obviously, if
11 I'm asking him questions, then he has more
12 knowledge than I, which doesn't mean that I'm
13 not knowledgeable and capable of reviewing the
14 applications or running the program." Okay.
15 Do you still agree with that statement?

16 MS. BIGGERS: Could you let me know what page you're
17 on.

18 MR. SUMMER: I apologize, page 172.

19 MS. BIGGERS: Thank you.

20 MR. SUMMER: And I started at line 4; her answer
21 went through line 12.

22 Q: Do you still agree with that statement here
23 today?

24 A: Yes. He definitely has more experience with
25 the Health Plan. And again, I would qualify

1 that by saying it doesn't mean that I'm not
2 knowledgeable.

3 Q: The other thing that I had asked you during the
4 course of your deposition, I asked you if you
5 had read Mr. Shelton's deposition, and you'd
6 responded that you had; is that correct?

7 A: Yes.

8 Q: And you stated that you had no dispute with
9 anything that he had said in his deposition; is
10 that correct?

11 A: I'd have to check that in my deposition to see
12 and --

13 Q: Let's go to 172 in your deposition. 172 line
14 13, please, ma'am. Let me know when you're
15 there.

16 A: 172 line 13?

17 Q: Yes, ma'am. I asked you the following
18 question: "As we sit here today, are there any
19 assertions that he made in his deposition that
20 you would disagree with or dispute?" And what
21 was your answer?

22 A: "No, not that I recall."

23 Q: Okay. Thank you. Is that still the case here
24 today?

25 A: Yes.

1 Q: Thank you. So let's go back to the Plan then,
2 and let's take --

3 MR. SUMMER: Your Honor, this is going to be a
4 rather lengthy set of questions. It may be a
5 good time for a break if everybody needs one.

6 THE COURT: That's fine with me. Ten minutes.

7 MR. SUMMER: Fine. Thank you, Your Honor.

8 (Break from 3:53 p.m. until 4:08 p.m.)

9 Q: Just before the break, Ms. Brandt, we were
10 starting to look at the section of the State
11 Health Plan that began with the 2008-2009 State
12 Health Plan that begins on Roman Numeral II-9,
13 and you had indicated that beginning at Section
14 J and then through J(8) would have been what
15 you relied upon to make the determination that
16 Roper should be allowed to establish a new
17 hospital in Goose Creek; is that correct?

18 A: Yes.

19 Q: Just so we get this right. Who made the
20 decision to grant Roper's application?

21 A: It was my decision.

22 Q: Your decision? It wasn't Ms. Sanders'
23 decision?

24 A: No.

25 Q: Wasn't Mr. Shelton's decision?

1 A: No.

2 Q: You and you alone made the decision in this
3 case?

4 A: Yes.

5 Q: Now, let's start with J. And I want I want to
6 do is very similar to what we did in the
7 deposition in terms of looking at the plain
8 English language in this section of the State
9 Health Plan. First off, it says, "Changes in
10 the delivery system due to healthcare reform
11 have resulted in the consolidation of
12 facilities, and the establishment of provider
13 networks." What's the delivery system; what
14 does that mean?

15 A: As far as changes in the delivery system due to
16 healthcare reform, in other words, how are the
17 services delivered.

18 Q: And what is the delivery system? What do you
19 consider to be the delivery system?

20 A: Well, it could be the facility itself.

21 Q: A facility?

22 A: In other words, they're providing inpatient
23 services or outpatient services. It could be
24 -- whatever provides the service. It could be
25 an ambulatory surgical facility providing

1 services.

2 Q: Well, who are the participants in the delivery
3 system? Can you give me some ideas?

4 A: Well, different types of healthcare facilities.
5 And it could be, I guess it could probably
6 include insurance companies. But this
7 specifically references provider networks and
8 facilities.

9 Q: Okay. Consolidation of facilities. Give me an
10 example of consolidated facilities. Who have
11 recently consolidated, or do you know who's
12 consolidated?

13 A: I know we've had, and this wouldn't be
14 applicable to hospitals. I'll have to think
15 about a hospital. I know we've had some
16 nursing homes consolidate. I'm trying to think
17 of some recent applications. But basically, it
18 would mean, say if there's hospital X and
19 hospital Y, that they consolidate into perhaps
20 hospital Z. I mean that's one example.

21 Q: How about the Palmetto COPA; would that be an
22 example?

23 A: Yeah. Yeah, that's quite old. I think it's 12
24 years old or so, but yeah, that would be.

25 Q: This language is quite old in this Plan, isn't

1 it?

2 A: Yeah. Yeah, they didn't necessarily physically
3 consolidate, but their services have
4 consolidated.

5 Q: Well, you want to explain to the Court what the
6 Palmetto COPA is.

7 A: COPA stands for Certificate of Public
8 Advantage, and it's a legal means for
9 facilities to combine. And it can be, like in
10 the case of the one in the Spartanburg area,
11 it's a hospital and a physician network. But
12 it's a way that they can legally combine so
13 that it doesn't appear that they're breaking
14 any anti-trust laws or establishing a monopoly.
15 So there's some real distinct requirements and
16 regulations. The big one for us involves
17 auditing, and every five years we have a
18 request for proposal for an accounting firm
19 that goes through and audits their financial
20 reports. And one of the big stipulations is
21 they have to give back to the community; it's
22 called the tithe. And so they give back
23 basically ten percent in community service
24 projects or other things. And when they meet
25 these criteria then they are allowed to

1 consolidate or combine, such as Richland
2 Memorial and Baptist combined to form Palmetto
3 Health. And the only other COPA that exists in
4 South Carolina is called Regional Health Plus.
5 And that's a relatively new one, and it's
6 Spartanburg Regional with some physician
7 groups. Those are the only two in the state.
8 I don't believe that there's been many formed
9 nationwide. It doesn't seem to be a trend as
10 they thought at one point. But it is regulated
11 under my program as well.

12 Q: So let's talk about Baptist and Richland.
13 They're now under the same ownership, correct?

14 A: Yes, they're the same licensee, Palmetto
15 Health.

16 Q: So they can utilize this section to transfer
17 beds from Baptist to Richland, right?

18 A: They could, but they did use this provision in
19 the formation of the Parkridge Hospital.

20 Q: But they could use this to transfer beds from
21 the Baptist campus to the Richland campus,
22 couldn't they?

23 A: Yes, theoretically they could.

24 Q: If we look at the CareAlliance down in
25 Charleston, that's Bon Secours St. Francis and

1 that's Roper Hospital and that's Roper Mount
2 Pleasant, right?

3 A: Yes.

4 Q: And they could use this section to move beds
5 among their three facilities, couldn't they?

6 A: They could if they deemed it appropriate.

7 Q: The next sentence is, "These consolidations and
8 agreements may lead to situations where
9 affiliated hospitals may wish to transfer beds
10 between themselves in order to serve their
11 patients in a more efficient manner," right?

12 A: Right, that's what it says.

13 Q: Just like we were talking between Baptist and
14 Richland, correct?

15 A: Correct.

16 Q: Okay. "A proposal to transfer or exchange
17 hospital beds requires a certificate of need
18 and must comply with the following criteria."
19 So they've got to file a CON application, don't
20 they?

21 A: Yes.

22 Q: And you have to approve it?

23 A: Yes.

24 Q: And then they have to meet one through eight?

25 A: Yes.

1 Q: Let's stay with the Baptist and the Palmetto
2 analogy. Both of them have psych beds, right?

3 A: Yes.

4 Q: So if Baptist wanted to take some off of eighth
5 floor, let's say they want to take ten psych
6 beds off of the eighth floor and put them over
7 at Richland Springs, they could file a
8 certificate of need application under this
9 section to move beds, couldn't they?

10 A: Yes.

11 Q: Let's leave it acute care beds. Let's just say
12 that they've got extra acute care beds at
13 Baptist and they want to move ten over to
14 Palmetto. So let's look at criteria number one
15 under that scenario. "A transfer or exchange
16 of beds may be approved only if there is no
17 overall increase in the number of beds." So if
18 we're moving a few beds from Baptist over to
19 Richland, there's not going to be an increase
20 in inventory, is there?

21 A: No..

22 Q: Number two, "Such transfers may cross county
23 lines." That's not going to happen here, is
24 it?

25 A: I'm sorry?

1 Q: That wouldn't happen in this scenario that
2 we're talking about right now, would it,
3 crossing a county line?

4 A: With Baptist and Richland?

5 Q: Yes.

6 A: No, they're both in Richland County.

7 Q: "However, the applicants must document with
8 patient origin data the historical utilization
9 of the receiving facility by the residents of
10 the county giving up beds." Okay. Look at
11 number three, "Should response to criteria two
12 fail to show a historical precedent of the
13 residents of the county transferring the bed
14 utilizing facility, the applicants must
15 document why it is in the best interest of
16 these residents to transfer the beds," correct?

17 A: That's what it says, yes.

18 Q: "The applicants must explain the impact on
19 transferring the beds on the healthcare
20 delivery system of the county from which the
21 beds are to be taken. Any negative impacts
22 must be detailed along with the perceived
23 benefits of such an agreement," correct?

24 A: Yes.

25 Q: "The facility receiving the beds must

1 demonstrate the need for the additional
2 capacity based on both historical and projected
3 utilization patterns," correct?

4 A: Yes.

5 Q: Number seven, "A written contract or agreement
6 between the governing bodies of the affected
7 facilities approving the transfer or exchange
8 of beds must be included in the certificate of
9 need application," right?

10 A: Yes.

11 Q: "And each facility giving up beds must
12 acknowledge that this exchange is permanent.
13 Any further transfers would be subject to the
14 same process," correct?

15 A: Yes.

16 Q: In our scenario we were discussing, there's an
17 existing Baptist hospital and an existing
18 Richland hospital, right?

19 A: Yes.

20 Q: In the case at hand with Roper, you would agree
21 with me that there is no facility at Carnes
22 Crossroads, correct?

23 A: I would agree that there's no bricks and mortar
24 facility, but our interpretation of this bed
25 transfer provision is that the receiving

1 facility is the applicant.

2 Q: Your department has taken a position, or has an
3 interpretation that the receiving facility does
4 not need to exist in order to approve a bed
5 transfer; isn't that correct?

6 A: Yeah, it does not have to exist in a bricks and
7 mortar capacity.

8 Q: That's your department's interpretation?

9 A: Well, that was also upheld by the
10 Administrative Law Court.

11 Q: In the Parkridge case?

12 A: Yes.

13 Q: Court of Appeals ever looked at this?

14 A: I don't believe it went that far.

15 Q: It settled, didn't it?

16 A: To my knowledge, yes.

17 Q: Newberry got \$6.25 million to go away, didn't
18 it?

19 A: I'm not going to say they got it to go away.
20 All I know is that Parkridge was created
21 through bed transfer. I can't really comment
22 on going away. I don't think I have that
23 knowledge.

24 Q: Well, the Department was aware of the fact that
25 there was a settlement, correct?

1 A: Yes.

2 Q: And the Department is aware of the fact that
3 Newberry received \$6.25 million to withdraw its
4 appeal, correct?

5 A: Yes, I believe that's the term of the
6 settlement.

7 Q: Let's try to apply this language in this
8 situation not to a Baptist and a Richland, but
9 let's try to apply this language as it's
10 written in plain English between Roper Downtown
11 and the greenfield or the cow pasture. Okay.
12 We can agree and you testified in your
13 deposition that there's nothing at Carnes
14 Crossroads right now but grass and trees,
15 agreed?

16 A: Yes.

17 Q: And we've got to be able to read this language
18 to be able to approve the transfer of beds to
19 that site, agreed?

20 A: Well, we have to be able to read it and apply
21 it appropriately.

22 Q: Okay. Would you agree with me that there is
23 not affiliated hospitals, plural, in the case
24 of Roper? If you look at J, these
25 consolidations and agreements may lead to

1 situations where affiliated hospitals, Baptist,
2 Richland are affiliated, but there's no
3 affiliation between Roper and an existing
4 hospital at Carnes Crossroads, agreed?

5 A: There's no bricks and mortar facility at Carnes
6 Crossroads, but our interpretation is that this
7 bed transfer policy is appropriate and the
8 receiving facility is the applicant.

9 Q: Okay. You can restate that policy every time
10 and I'm fine with that. I'm just asking about
11 the English. And I'm accepting for purposes of
12 your testimony your statement of what your
13 department's position is. But is hospitals a
14 singular or plural noun?

15 A: In this case it does have an S, so it is
16 plural.

17 Q: Plural in the English language, is it one or
18 more than one?

19 A: In the English language it's more than one.

20 Q: More than one.

21 A: But as we apply the bed transfer provision
22 appropriately and according to --

23 Q: I'm willing to accept that there's DHEC
24 language and there's English language. My
25 questions are just about the English language.

1 A: Okay. I can comment that the word on this page
2 is plural, yes.

3 Q: And it contemplates more than one hospital;
4 does it not?

5 A: Well, it is plural. I can't say it's -- to
6 what is contemplated. I can say as to what is
7 -- how it is applied.

8 Q: You agree that hospitals means more than one?

9 A: Yes.

10 Q: And affiliated means that there's some kind of
11 either joint ownership or provider network
12 agreement between hospitals; isn't that what
13 affiliated means?

14 A: Right, and the licensee will be the same
15 facility for the proposed Roper St. Francis.

16 Q: Right. But when we look at this language, it's
17 referring to more than one hospital and that
18 those two or more hospitals have some kind of
19 relationship; they're affiliated in some way,
20 correct?

21 A: Yes.

22 Q: Let's go to number one. "The transfer or
23 exchange of beds may be approved only if
24 there's no overall increase in the number of
25 beds." We've agreed that there's no overall

1 increase in Roper's bed excess, right? Their
2 bed excess, remember that testimony, it was the
3 same on the 25th as it was on the 27th, right?

4 A: Well, I'll agree that there's a transfer of
5 beds that doesn't increase the overall number
6 of beds in the inventory. This doesn't mention
7 anything about an excess.

8 Q: Where's the word "inventory"?

9 A: The number of beds. We're referring to when it
10 says there is no overall increase in the number
11 of beds.

12 Q: Number of beds for hospital A or hospital B?
13 Total number of beds for hospitals combined?
14 Total number of beds in the inventory?

15 A: Well, when I refer to inventory, I refer to the
16 hospitals, St. Francis' inventory. The total
17 number of beds.

18 Q: Not the health planning region inventory?

19 A: Well, it won't increase -- either way you look
20 at it, there's not an increase in beds with
21 this project.

22 Q: Let's look at number two. "Such transfers may
23 cross county lines." Is that going to occur in
24 this case?

25 A: Yes.

1 Q: "However, the applicants," is that a singular
2 or plural noun?

3 A: The word as it's written is plural.

4 Q: And plural, is that one or more than one in the
5 English language?

6 A: It's more than one.

7 Q: "Must document with patient origin data the
8 historical utilization of the receiving
9 facility." Right?

10 A: That's what it states.

11 Q: Is there a receiving facility with historical
12 utilization at Carnes Crossroads today?

13 A: We interpret the receiving facility to be Roper
14 St. Francis and there is a established
15 utilization data and patient origin data for
16 that particular area that they propose to
17 serve.

18 Q: Area and facility, are those synonyms in a
19 thesaurus?

20 A: Well, I don't have one available, but I'd have
21 to look.

22 Q: Do you really think that area and facility
23 would be synonyms; is that your testimony here
24 today?

25 A: No, it's not.

1 Q: Okay. So let's go back, not DHEC language,
2 English language, receiving facility, that
3 contemplates there's something there. Wouldn't
4 you agree with me that facility means there's
5 something there?

6 A: Yes.

7 Q: Okay. And you would agree with me that there's
8 nothing there, correct?

9 A: Not physically, but there is an application and
10 according to the way we interpret it, not --
11 I'm not talking about plain language, the
12 receiving facility is the applicant.

13 Q: When we use the word "facility" in the hospital
14 bed section, the hospital bed section of the
15 State Health Plan, what does that mean?

16 A: I'll have to look at the section.

17 Q: Well, you're in it. This is the hospital bed
18 section of the State Health Plan. What does
19 the word "facility" mean?

20 A: Are you talking about our interpretation or the
21 plain language?

22 Q: I mean as a facility -- does it mean ambulatory
23 surgery facility?

24 A: It's not in the hospital section.

25 Q: So it must mean a hospital facility; would you

1 agree with me on that?

2 A: Yes.

3 Q: And that's a healthcare facility as defined
4 under Regulation 61-15, right?

5 A: Yes.

6 Q: And you would agree with me that there is no
7 hospital facility physically located at Carnes
8 Crossroads today?

9 A: There is not.

10 Q: You would also agree with me that there is no
11 historical utilization of a hospital at Carnes
12 Crossroads today, correct?

13 A: Well, not for a facility that exists here in
14 bricks and mortar fashion. But as I previously
15 testified, there is definitely historical
16 utilization from Roper St. Francis.

17 Q: Not DHEC language, English language, we agree
18 that there is no hospital facility there today,
19 correct?

20 A: Yes.

21 Q: And under the English language, if there's no
22 hospital facility there today, under the
23 English language, there's no historical
24 utilization of a facility because it doesn't
25 exist there today, correct?

1 A: According to the plain language, but again,
2 that's not the interpretation that's been
3 upheld by the court systems.

4 Q: Fine. That's -- I am all right with you saying
5 that yes, the plain language says that but DHEC
6 doesn't. I am okay with that response. So we
7 can agree on that?

8 A: Yes.

9 Q: The plain language says that, but DHEC does not
10 agree, correct?

11 A: It's an interpretation. I'm not saying we
12 don't agree.

13 Q: But the plain language says that?

14 A: Yes.

15 Q: Thank you. Let's take a look at number three.
16 "Should the response in number two fail to show
17 historical precedence of residents of the
18 county transferring the beds utilizing the
19 receiving facility, the applicants," is that a
20 singular noun or a plural noun?

21 A: It's a plural noun.

22 Q: And under the English language, is that more
23 than one applicant?

24 A: Yes.

25 Q: So it would be two or more applicants under the

1 English language?

2 A: Yes.

3 Q: That is the plain meaning of that language in
4 English?

5 A: Yes.

6 Q: Thank you. In this case, there's only one
7 applicant? There's only one Roper, correct?

8 A: Yes, the licensee.

9 Q: "The applicants," plural, "must document why it
10 is in the best interest of these residents to
11 transfer the beds to a facility with no
12 historical affinity for them." And in number
13 two we agreed there is no facility at Carnes
14 Crossroads, correct?

15 A: There is no bricks and mortar facility, you're
16 correct.

17 Q: So there is no way to demonstrate whether or
18 not there is a historical affinity for those
19 residents, can we? It doesn't exist, correct?

20 A: Reading the plain language. However, we've
21 agreed upon the interpretation.

22 Q: Plain language, I'm correct, but DHEC
23 interprets it otherwise, correct?

24 A: It's not just DHEC that interprets it that way.

25 Q: DHEC's Board and the ALJ, how about that?

1 A: Yes, thank you.

2 Q: In one decision by Judge Durden, correct?

3 A: Well, historically we've done a lot of, create
4 a lot of hospitals through transfers.

5 Q: Other than the Parkridge decision, which was a
6 summary judgment decision, other than that
7 decision, is there any other adjudication of
8 that language that you're aware of?

9 A: No. No, just historical precedence.

10 Q: Number four, "The applicants must explain the
11 impact." Now, applicants, again, not DHEC
12 language, the English language, is applicants
13 singular or plural?

14 A: Plural.

15 Q: Is plural one or more than one?

16 A: Yes, more than one.

17 Q: More than one. So applicants contemplates,
18 plain English language, two or more applicants,
19 correct?

20 A: Yes.

21 Q: Now, applicants must explain the impact of
22 transferring the beds on the healthcare
23 delivery system of the county from which the
24 beds are to be taken, agreed?

25 A: Yes.

1 Q: "Any negative impacts must be detailed along
2 with the perceived benefits of such an
3 agreement," correct?

4 A: Yes.

5 Q: Let's go to number five. "The facility
6 receiving the beds." Right now there's a cow
7 pasture that's going to receive these beds, we
8 are in agreement that under the plain English
9 language, there is no facility existing at
10 Carnes Crossroads today to receive those beds,
11 correct?

12 A: Yes.

13 Q: "The facility receiving the beds must
14 demonstrate the need for the additional bed
15 capacity based on both historical and projected
16 utilization patterns." Again, we can agree
17 because there's no physical facility existing
18 at Carnes Crossroads, Carnes Crossroads cannot
19 demonstrate historical and projected
20 utilization patterns, correct?

21 A: Correct, but the applicant can and did.

22 Q: Roper did?

23 A: Yes.

24 Q: But not the receiving facility, correct?

25 A: Roper did in its application.

1 Q: Correct. But we've agreed in plain English
2 there's no receiving facility, correct?

3 A: In plain English.

4 Q: Right. And if in plain English there's no
5 receiving facility, it can't have historical
6 utilization patterns? It's never delivered a
7 baby, it's never taken an ER visit, it's never
8 performed a surgery, correct?

9 A: Correct.

10 Q: And I'm only going to get historical
11 utilization as a healthcare facility if I
12 deliver services, perform surgeries, take care
13 of inpatients, so this can't be done by a
14 facility that does not yet exist in the plain
15 English language, correct?

16 A: In the plain English language.

17 Q: Thank you. Let's go next to number six. "The
18 facility giving up the beds may not use the
19 loss of these beds as justification for a
20 subsequent request for the approval of
21 additional beds." This contemplates an event
22 in the future, right?

23 A: Well, in covers all the bases in the event,
24 yes.

25 Q: But it contemplates something happening in the

1 future, correct?

2 A: It could.

3 Q: Right. I mean -- okay. Number seven, "A
4 written contract or agreement between the
5 governing bodies." Is bodies a singular or
6 plural noun in the English language?

7 A: Plural.

8 Q: Is plural one or more than one?

9 A: More than one.

10 Q: Great. Of the affected facilities, is that in
11 the English language singular or plural?

12 A: Plural.

13 Q: Is plural one or more than one?

14 A: More than one.

15 Q: Approving the transfer or exchange of beds must
16 be included in the certificate of need
17 application. There is only governing body
18 certification in this application, correct?

19 A: The licensee is Roper, but in the application
20 they did submit a resolution, I believe -- I'm
21 not sure exactly the name of the document, that
22 their board -- their board created and signed
23 documenting the transfer.

24 Q: Right. Roper has done that, correct?

25 A: Yes.

1 Q: But because there is no existing licensed
2 facility at Carnes Crossroad, there's no
3 receiving facility board resolution or board
4 agreement or board statement on authority, is
5 there?

6 A: If you're looking at the plain language, there
7 isn't. But again, as we've discussed, that's
8 not how it was done.

9 Q: In plain English language, it doesn't exist,
10 but in DHEC language, it does, correct?

11 A: Yes.

12 Q: Thank you. And then number eight, "Each
13 facility giving up beds must acknowledge in
14 writing that this exchange is permanent. Any
15 further transfers would be subject to the same
16 process." Right?

17 A: Right.

18 Q: Is it fair --- it's a fair statement, isn't it,
19 that you made this decision because you were
20 told that is the DHEC policy is to allow this
21 to occur?

22 A: I concurred with that.

23 Q: So you concur with the DHEC policy to do that,
24 correct?

25 A: Yes.

1 Q: That's the only way Roper can do what it's
2 trying to do, isn't it?

3 A: Well, that's how their application proposed
4 that they perform a transfer.

5 Q: There's no other mechanism in the Plan that
6 would allow a hospital with excess beds to
7 create a new hospital; can we agree on that?

8 A: Yes.

9 Q: This is the only way they can do it, correct?

10 A: Yes.

11 Q: Now, you would agree with me that the Plan is
12 promulgated every year or two, right?

13 A: Yes.

14 Q: Okay. And you would agree with me that there
15 could be a whole section entitled establishment
16 of new hospitals?

17 A: Well, there could be but nobody's made that
18 suggestion.

19 Q: Thirty-year-old program and nobody's ever
20 thought about should we have criteria to
21 establish new hospitals. Don't you find that
22 a bit illogical?

23 A: I'm not sure what people think, but I know that
24 this issue has come up and historically, we
25 allow the creation of new hospitals through bed

1 transfers. And the Board and the
2 Administrative Law Court upheld the language as
3 it exists.

4 Q: In one instance?

5 A: But again, there -- if people don't like
6 language, they're free to suggest changes
7 during the comment period for the Health Plan.

8 Q: So what you're telling me is that unless
9 somebody makes a suggestion, staff's not going
10 to sua sponte fix this problem?

11 A: Nobody has identified it as a problem.

12 Q: We've been litigating over satellite hospitals
13 for almost two decades.

14 A: Perhaps the creation, the fact that an
15 application proposes one, but I don't know that
16 the litigation was confined to the bed
17 transfer policy. And when it was litigated, it
18 was upheld.

19 Q: Doesn't the ambiguity and the uncertainty of
20 this provision allow you the flexibility to do
21 whatever you want to do?

22 A: No, it doesn't.

23 Q: Remember when I took your deposition and we saw
24 where -- I think this has been stipulated to by
25 counsel for -- on June 16th, 2009, about 13

1 days, or about actually ten days before your
2 decision, Earl Hunter had a meeting on the
3 Capitol Complex with Senator Paul Campbell,
4 didn't he?

5 A: I have no idea. I know what may have come up
6 during --

7 **MS. BIGGERS:** Objection, Your Honor. I object to
8 the characterization that we stipulated to this
9 meeting. I agree -- I recall agreeing that we
10 stipulated that we provided the petitioner with
11 a copy of Commissioner Hunter's calendar
12 pursuant to his discovery requests; however,
13 there were no stipulations as to what the
14 content was or meant.

15 **MR. SUMMER:** This is an email I got from Kristin
16 that says, "To follow up on your request from
17 Wednesday's deposition, we have confirmed that
18 the 2009 day planner appearing on pages 53 and
19 59 of Exhibit One is that of Earl Hunter."

20 **MS. BIGGERS:** Which is exactly what I just said, we
21 stipulated that the calendar provided was the
22 calendar belonging to Commissioner Hunter.
23 There were no further stipulations as to
24 content.

25 **THE COURT:** All right. So what ruling do you expect

1 from me?

2 **MS. BIGGERS:** I just objected to his statement in
3 the record that we had stipulated that Mr.
4 Hunter had a meeting with the person he named.
5 We did not stipulate to that.

6 **MR. SUMMER:** I'll withdraw that question and ask it
7 a different way.

8 **THE COURT:** Thank you.

9 Q: Isn't it true that Earl Hunter had a meeting on
10 Tuesday, June 16, 2009, at 10:00 with Senator
11 Paul Campbell?

12 A: I don't know. I know what we have said his
13 calendar says. I have no way of knowing if the
14 meeting transpired.

15 Q: Do you recall in your deposition that your
16 testimony is you don't recall whether or not
17 you discussed the certificate of need
18 application with Earl Hunter?

19 A: Yes.

20 Q: You have no -- you don't recall? You said you
21 might have or you might not have, but you just
22 don't know; is that true?

23 A: Yes. I don't -- I don't recall that I did.

24 Q: But you can't swear you didn't?

25 A: I'd have to look at my testimony, but I may --

1 I believe I testified that I had discussed it
2 with Pam at some point prior to the decision,
3 but I didn't recall ever having discussed it
4 with Mr. Hunter.

5 Q: Who does Pam report to?

6 A: Mr. Hunter.

7 Q: Let's look on page 67 of your deposition.

8 A: Okay.

9 Q: First of all, before we leave Pam. Pam is a
10 direct report to Earl Hunter, correct?

11 A: Yes.

12 Q: Pam is Pam Dukes, correct?

13 A: Yes.

14 Q: Now let's go to 67. After many questions about
15 Mr. Hunter, I asked you the following at number
16 8, I say, "Okay. So can you say with a
17 certainty that the Commissioner never spoke to
18 you before you made your decision in this case
19 about approving both hospitals?" What was your
20 response?

21 A: Was, "I don't recall, but I can say with
22 certainty about any project that I've ever
23 spoken to the Commissioner about that he's
24 never directed me in any way to -- as to what
25 decision to make."

1 Q: Now, the next question to you is, "Okay. So
2 your testimony is you may have spoken with him
3 about these applications but you don't recall?"
4 Was that your testimony?

5 A: "I don't recall," was my testimony.

6 Q: "But you may have spoken to him?"

7 A: "Possibly, but I don't recall."

8 Q: Approving both of these was kind of the easy
9 way out on this, wasn't it?

10 A: We reviewed the applications thoroughly and
11 completely and made a decision that complied
12 with the Health Plan and the purposes of CON.
13 I don't think I would characterize it as taking
14 the easy way out. I take my position and my
15 job very seriously and always give a thorough
16 and objective review of the applications.

17 Q: When we were looking at our prior example of if
18 Palmetto wanted to move beds between Baptist
19 and Richland, okay, that's simply a bed
20 transfer, correct?

21 A: Well, I don't know that I would characterize it
22 as simple. I mean I would have to look at the
23 merits of the application.

24 Q: Would you agree that this section contemplates
25 the transfer of beds, right?

1 A: Are we talking about the plain English
2 language?

3 Q: Plain English language. It contemplates the
4 transfer of beds?

5 A: I think that it could, yes.

6 Q: Well, does it -- does it mention the word MRI
7 anywhere?

8 A: No, it does not.

9 Q: Does it mention the word nursery anywhere?

10 A: No.

11 Q: Does it mention the word OB services or OB beds
12 anywhere?

13 A: No, it speaks to the hospitals.

14 Q: Does it mention operating rooms anywhere?

15 A: No, it speaks to hospitals.

16 Q: It only speaks to the word "beds," right?

17 A: In the context of hospitals, yes.

18 Q: But it only talks about a bed transfer?

19 A: Yes, but item J is about hospitals as well.

20 Q: Beds between themselves. Does it say anything
21 about switching or moving your MRI?

22 A: No, it doesn't.

23 Q: Does it say anything about moving your nursery?

24 A: No, it doesn't.

25 Q: Does it say anything about moving operating

1 rooms?

2 A: It doesn't.

3 Q: Not only does it contemplate having two
4 existing facilities, it only contemplates
5 moving beds from one place to another, right?

6 A: Yes. But you wouldn't have a hospital if you
7 didn't have beds.

8 Q: Where does it say in this section in order to
9 create a hospital?

10 A: In the plain language, it doesn't use those
11 specific words.

12 Q: It does not talk about creating a hospital
13 anywhere in that language, does it?

14 A: No, but again, that's not how it's been
15 historically used.

16 Q: Right. Do you understand what the word
17 "arbitrary" means?

18 A: Yes, I do.

19 Q: Don't you think it's arbitrary when you've
20 testified plain language says one thing but we
21 do another? Half a dozen times I've asked you
22 plain language and you've conceded plain
23 language, but we do another thing. Isn't that
24 arbitrary?

25 A: No, I don't think so. We have historical

1 precedence for the creation of new hospitals by
2 the transfer of beds. And so we consistently
3 apply that to the creation of new hospitals.
4 So I don't believe that's arbitrary at all.

5 Q: You agree with me it doesn't speak to
6 nurseries, does it?

7 A: No.

8 Q: And there's specific standards regarding
9 nurseries in the State Health Plan, isn't it?

10 A: Yes.

11 Q: Okay. Yet you let Roper create a new nursery
12 with this section, agreed?

13 A: It is within the context of their application.

14 Q: It will be a new nursery? There's no nursery
15 at Carnes Crossroads today, is there?

16 A: No.

17 Q: And you're going to let them create a nursery?

18 A: It's not me individually. It's the precedent
19 that's been set by the Department and upheld.

20 Q: The Department is going to allow them to create
21 a new nursery; are they not?

22 A: Within the confines of a hospital.

23 Q: Okay. How about operating rooms? Are they
24 going to create new operating rooms that do not
25 exist in the service area?

1 A: Yes, there's not standards in the Plan for
2 hospitals and OR's.

3 Q: You let hospitals increase capacity for
4 operating rooms with no certificate of need?

5 A: No. It's usually done via a capital
6 expenditure or some type of expansion.

7 Q: Some kind of CON?

8 A: Well, yes.

9 Q: Give me -- pardon?

10 A: Yes.

11 Q: All right. Take a look, if you would, I'm just
12 trying to -- I'm trying to look at this
13 logically. Go to Roman Numeral II-77.

14 A: Okay.

15 Q: Roman Numeral II-77, this is about ambulatory
16 surgery centers and outpatient surgery, right?

17 A: Yes.

18 Q: And number 10 on Roman Numeral II-77 in the
19 very same Health Plan that you created a new
20 hospital with says the following, "In no case
21 can more than one new ambulatory surgery center
22 in a county be approved at a single time. The
23 approval of a new ambulatory surgical facility
24 in a county does not preclude an existing
25 facility from applying to expand its number of

1 operating rooms and endoscopy suite." But look
2 at that first sentence, "In no case can more
3 than one new ambulatory surgical facility in a
4 county be approved at a single time," and you
5 approved \$215 million worth of new hospitals in
6 one day, didn't you?

7 A: Well, actually this Plan is outdated regarding
8 that provision and ambulatory surgical
9 facilities are very specific types of
10 facilities. And regardless, you know, my
11 position is and will remain that the bed
12 transfer provision has got historical
13 precedence, was upheld by the Board and upheld
14 by the Administrative Law Court. And that's my
15 position.

16 Q: Let's talk about the historical precedence of
17 this section. You agree that this is the valid
18 ambulatory surgical facility standards in the
19 State Health Plan, the same Plan under which
20 you approved Roper's hospital, right?

21 A: Yes.

22 Q: It was valid on June the 26th, 2009, when you
23 made your decisions, right?

24 A: This is what the Plan said, yes, that's
25 correct.

1 Q: This is what the Plan said. In no case can
2 more than one new ambulatory surgical facility
3 in a county be approved at a single time. The
4 longstanding historical precedent for that
5 section was we were worried about creating too
6 much capacity, and we required facilities to go
7 one at a time to open up and to operate before
8 we approve another; isn't that true?

9 A: Yes.

10 Q: And we did that in order to have an established
11 policy for an organized way to develop
12 ambulatory surgery centers, correct?

13 A: Yes.

14 Q: Typical ambulatory surgery center has about two
15 OR's in it, doesn't it?

16 A: Usually.

17 Q: On June the 26th, 2009, you approved seven new
18 operating rooms in one county. Do you not
19 consider that counterintuitive?

20 A: No, I don't. And you also have to consider
21 certainly the Health Plan is very significant,
22 very important, but when somebody applies for
23 a certificate of need, there's at least
24 approximately 40 other criteria that's defined
25 in the regulations that they have to address.

1 So we've got to take the project as a whole,
2 and Roper demonstrated adequately to the
3 Department that the transfer of their beds was
4 appropriate, and it was approved.

5 Q: I'm not talking about beds anymore. Now I'm
6 talking about services. If we go back to the
7 language -- if we go back to the language of
8 competing applicants in Regulation 61-15,
9 competing applicants means two or more persons
10 and/or healthcare facilities as defined in this
11 regulation who apply for certificates of need
12 to apply similar and/or facilities. It's not
13 just beds; it's services, too, isn't it?

14 A: Yes. You're absolutely right. And the
15 applications were real clear that they were
16 proposing to serve existing, current patients.
17 So Trident's application was geared towards
18 their patients, and Roper's application was
19 primarily geared toward serving their patients.

20 Q: You would agree that both Roper and Trident are
21 going to have nurseries in their hospitals,
22 aren't they?

23 A: Yes.

24 Q: So they will be competing for the delivery of
25 nursery care; will they not?

1 A: I didn't say that. I said these -- these
2 applications were established to serve their
3 referrals, their patients.

4 Q: What analysis did you make about what excess
5 capacity is going to be created for nurseries
6 in the service area by creating two new
7 hospitals with nurseries?

8 A: I read the applications and studied the
9 applications. And again, the purpose of these
10 different applications were to serve different
11 communities.

12 Q: You realize that there are nursery standards
13 under the Plan, right?

14 A: Yes.

15 Q: But you didn't evaluate whether or not this
16 duplication would create an excess for that
17 nursery service; you did not make that
18 determination, did you?

19 A: I didn't say that. I said these applications
20 were proposed to serve and meet the needs of
21 their existing patients.

22 Q: Did you make an analysis, did you make a
23 conclusion, did you study at all whether or not
24 creating two nurseries in the service area, two
25 brand new nurseries would create excess

1 capacity? Did you determine that?

2 A: I concluded that it did not because, again, the
3 applications were geared toward serving
4 specific areas and specific patients.

5 Q: How about OB beds; there are specific standards
6 for OB beds in the Plan, aren't they?

7 A: There are specific standards for NICUs. I
8 would have to look, I know that they're
9 mentioned in the Plan. I'm not sure that
10 there's necessarily specific standards.

11 Q: Is that your testimony?

12 A: If you would please give me a few minutes, I
13 would be glad to look in the Plan.

14 Q: Would you like the page number?

15 A: Yes, that would be nice. Thank you.

16 Q: It is provided for in your State Health Plan at
17 Roman Numeral II-31, please. Do you see it?

18 A: This is referring to NICUs, and that's what I
19 said.

20 Q: I'm looking at obstetrical beds on Roman
21 Numeral II-31.

22 A: There is a listing --

23 Q: For OB beds.

24 A: It says obstetrical service.

25 Q: The need for obstetrical beds, not nursery

- 1 beds, obstetrical beds.
- 2 A: Oh, I was reading the relative importance of
- 3 project review criteria about obstetrical
- 4 services.
- 5 Q: What does it say about obstetrical beds? This
- 6 is your Plan, Roman Numeral II-31.
- 7 A: Based upon -- based on information applied by
- 8 the Joint Annual Report of Hospitals and other
- 9 sources.
- 10 Q: Okay. Now, did you do that in this case? Did
- 11 you look at the Joint Annual Report of
- 12 Hospitals for OB services?
- 13 A: If it was contained in the application, I did.
- 14 Q: But you didn't compare the need for OB services
- 15 when you rendered your decision, did you?
- 16 A: At this point in time, I honestly don't recall.
- 17 If it was in the application then I reviewed
- 18 it, and I do believe that it was addressed
- 19 because there were utilization projections, I
- 20 do believe.
- 21 Q: Two minutes ago you didn't know that these
- 22 standards were in the Plan.
- 23 A: Well, I apologize for that mistake. That was
- 24 an error on my part.
- 25 Q: If you didn't know the standards were in the

1 Plan, how could you have applied them two years
2 ago? If you didn't know they exist, how could
3 you have applied them in evaluating these
4 competing OB services?

5 A: Mr. Summer you can sit here and criticize me
6 for a lack of memory and I apologize that I
7 didn't remember that, but I'm being asked to
8 define and remember a lot of things.

9 Q: Isn't it fair to say that you did not evaluate
10 whether or not the creation of two OB programs
11 would create excess capacity in the service
12 area?

13 A: I evaluated the applications. I have not
14 looked at every single page of that application
15 in two years. If you would like for me to go
16 through the application right now and look at
17 how they addressed that, I will be glad to do
18 it.

19 Q: Would you agree with me that it is your job in
20 reviewing a certificate of need application to
21 evaluate that application under Regulation 61-
22 15?

23 A: Yes, it is.

24 Q: Would you agree with me when you are evaluating
25 the certificate of need application, it is your

1 job to apply the standards that exist in the
2 State Health Plan that is in effect on the date
3 that the application is received by your
4 department?

5 A: Yes, it is.

6 Q: Would you agree with me that when Roper filed
7 its application on December of 2008 that the
8 2008-2009 State Health Plan was in effect?

9 A: Yes.

10 Q: Would you agree with me that you did not make
11 any analysis regarding the Roper application
12 compared to the Trident application as it
13 pertains to the standards set forth on page
14 Roman Numeral II-31 of the Plan?

15 A: The applications were reviewed as separate
16 applications. I did not compare the
17 applications. And also, just for the record,
18 and I'm not conceding that I'm not responsible
19 for this program and this decision because I
20 am, but the initial review was done by another
21 reviewer. She asked the first two rounds of
22 questions and then when it got to the point of
23 project review, then yes, I did review the
24 applications at some point.

25 Q: So you don't know if any comparison was ever

1 done, do you?

2 A: These were two separate applications. They
3 were not -- I don't know if Ms. Sanders put
4 them side by side. But --

5 Q: So you don't -- you don't know?

6 A: -- at a certain point, we certainly looked
7 both. They were reviewed around the same time
8 frame.

9 Q: You don't know, do you?

10 A: No, I didn't say that.

11 Q: You don't know --

12 A: I don't know what Ms. Sanders did.

13 Q: So you don't know if anyone ever did a
14 comparison of the two OB services in these
15 applications?

16 A: I'm sure we did. I'm sure there were
17 projections and I'm sure that I looked at the
18 projections. I cannot recall the intricacies
19 of what they say.

20 Q: Projections, would these have been projections
21 that you generated or your staff generated?

22 A: No, in the application.

23 Q: How about emergency room services? Are they
24 both going to provide emergency room services?

25 A: Yes.

- 1 Q: Okay. You would agree with me that the
2 language that we initially looked at, Roman
3 Numeral II-9 and II-10, do not reference the
4 words "emergency services," do they?
- 5 A: No, they do not.
- 6 Q: They do not reference obstetrical services, do
7 they?
- 8 A: No, they do not.
- 9 Q: But both applicants will be providing
10 obstetrical services, won't they?
- 11 A: Yes, within the confines of their hospitals.
12 And Item J mentions hospitals. And again, you
13 can't have a hospital without services and
14 beds.
- 15 Q: Right. Like they have at Carnes Crossroads,
16 right?
- 17 A: I'm sorry?
- 18 Q: Like the hospital at Carnes Crossroads?
- 19 A: I didn't say that.
- 20 Q: I want to talk to you a little bit about this
21 notion of whether or not Roper's going to
22 redirect any patients. Remember we were
23 talking about that in your deposition?
- 24 A: Yes, I do seem to recall there was some
25 questions about that.

- 1 Q: Look if you would with me, please, in Roper's
- 2 application, which I believe is Joint Exhibit
- 3 Number 2, then it's page 24.
- 4 A: Could you repeat the page again, please?
- 5 Q: Yes, ma'am. It's on page 24 of Joint Number 2.
- 6 A: Okay.
- 7 Q: First of all, it's Roper's contention that
- 8 they're really only doing this to take care of
- 9 their own patients, right?
- 10 A: I said primarily. I didn't say completely.
- 11 Q: Fair statement. Let's take a look at this
- 12 market share information that we were looking
- 13 at yesterday. These are the primary zip codes
- 14 that the Carnes Crossroad hospital is going to
- 15 serve; do you see that?
- 16 A: Yes.
- 17 Q: And when we look at the market share data that
- 18 we were discussing yesterday with Mr. Gallati
- 19 and that Mr. Rardin also testified about, the
- 20 overwhelming majority of the patients in these
- 21 zip codes are treated by hospitals other than
- 22 Roper St. Francis; would you agree with that?
- 23 A: Yes, I would agree, yes, the majority.
- 24 Q: Would you also agree with me that based on
- 25 market share percentages, MUSC could make a

1 better case for going to Berkeley County to
2 take care of its patients than Roper could?

3 A: I don't agree. I would have to review an
4 application.

5 Q: How about this, we can agree that MUSC has more
6 market share in these zip codes, taken as a
7 whole, than Roper does?

8 A: I would have to add up the numbers, but they
9 have more for the Goose Creek zip code and more
10 for the Ladson. But Roper has more for Moncks
11 Corner.

12 Q: I think Moncks Corner is the only place they
13 beat them out, isn't it?

14 A: Yeah. But again, I'd have to add the numbers
15 up.

16 Q: So Moncks Corner is the only place they beat
17 them out, and at Moncks Corner they have a
18 standalone ER, right?

19 A: Yes.

20 Q: So MUSC could make a good case for going to
21 Berkeley County, too, couldn't they?

22 A: If they wanted to but they didn't apply.

23 Q: I understand. They did however give a letter
24 of support for Trident, didn't they?

25 A: Oh, I'm not arguing that. Yes, they did.

1 Q: MUSC did not give a letter of support for
2 Roper, did they?

3 A: No, they didn't.

4 Q: Okay. You'd also agree that in these market --
5 this market share, the primary provider for
6 care in these zip codes are the Trident
7 hospitals? Whether it's non-tertiary care or
8 tertiary care, the primary hospital provider
9 has the largest share by two to one over number
10 two are the Trident hospitals, agree?

11 A: Well, again, I don't know if it's two to one,
12 but it's certainly the majority.

13 Q: I'm just looking at it. Can you show -- tell
14 me one that's not two to one? Pick one.

15 A: For Trident? You mean adding MUSC and Roper
16 together?

17 Q: Would you agree with me that in every zip code,
18 Trident sees at least twice as many patients,
19 has twice as much market share as MUSC?

20 A: Well, there's only one column that contains
21 patients. But I'm agreeing that the
22 percentages show that the Trident hospitals, as
23 a total the percentages are greater than the
24 MUSC percentages and the percentages are
25 greater than the Roper percentages.

1 Q: Roper is a distance third in terms of market
2 share in these service areas, right? I mean in
3 these zip codes, right?

4 A: Well, they appear to be third, but again, if
5 you look at the market share, it encompasses
6 Summerville and that's where Trident currently
7 exists.

8 Q: Right. But they're going to build a hospital
9 just for their patients or predominantly
10 primarily for their patients; that's their
11 position, correct?

12 A: Right. I believe that somewhere in their
13 application they had mentioned around an
14 average of 22 or 23 percent market share for
15 that area, people of the county, or for
16 Berkeley County actually.

17 Q: On page 24 they refer to an additional ten
18 percent. Do you remember talking about this
19 ten percent in your deposition?

20 A: Vaguely. I know that there's -- we did talk
21 about a ten percent. I'm not sure if it was
22 redirection or exactly in what context.

23 Q: Well, didn't you tell me that that's a minimal
24 impact? That if those ten percent came from
25 Trident it would be a minimal impact?

1 A: I'd have to review my deposition, but that
2 sounds familiar.

3 Q: Sounds familiar. Look on page 137. I think
4 what you basically said was it seemed
5 plausible, that this notion of ten percent
6 redirection seemed plausible.

7 A: Page 137?

8 Q: 137, start at line 5 and just tell me whether
9 or not --

10 A: You want me to read your question?

11 Q: No, I just want you to make sure that I'm
12 characterizing it that you said that basically
13 this concept appeared plausible.

14 A: It says they presented information that seemed
15 plausible.

16 Q: Okay. How are we going to decide or stop any
17 more than ten percent from being redirected?

18 A: We being who?

19 Q: Isn't the ten percent just an arbitrary number?

20 A: I wouldn't say that it's arbitrary. It was
21 calculated in some manner.

22 Q: Well, what --

23 A: But it's an estimate. I mean, it could be 11
24 percent, it would be 12 percent, it could be
25 eight percent. I mean it's just an estimate.

1 Q: Why do you believe it's plausible? Why do you
2 think that's accurate?

3 A: The ten percent?

4 Q: Yes.

5 A: Because they performed an analysis.

6 Q: They performed an analysis. The analysis --

7 A: I mean, if they had said 50 or 60 percent, then
8 a red flag would have gone up. But that didn't
9 strike me as being unusual.

10 Q: Take a look over on page, I think it's on page
11 30 of Number 2. Look at the redirected
12 discharges. Ten percent is 1,188; do you see
13 that? Page 30 of Joint 2.

14 A: Redirected discharges?

15 Q: In 2015, Roper St. Francis Berkeley Hospital,
16 here are their volume numbers, 1,188, ten
17 percent market capture of total non-Roper St.
18 Francis patients. That's the same ten percent
19 that they were talking about on page 24, isn't
20 it?

21 A: They don't call it the same thing, but perhaps
22 it is, yes.

23 Q: Do you know?

24 A: Well, if you would -- I'm trying to study the
25 application real quick to see if --

1 Q: Okay. Take your time.

2 A: They had made a reference the next page about
3 the non-Roper St. Francis -- I'm sorry, non-
4 aligned Roper St. Francis patient pool is ten
5 percent and -- and this talks about non-Roper
6 St. Francis patients, so I believe that's what
7 they're referring to.

8 Q: What's the basis for the assumption that after
9 1,188 patients have been discharged, Roper
10 won't admit anybody else that's not carrying a
11 Roper card?

12 A: They didn't say that in their application.
13 That's not what this says.

14 Q: That would be illogical, wouldn't it?

15 A: This is an estimate.

16 Q: It would be illogical to assume that they're
17 somehow going to stop at 1,188 patients?

18 A: That's not what they're proposing to do.

19 Q: It would be illogical to think that, wouldn't
20 it?

21 A: No, and that's not what they propose to do.

22 Q: It would be illogical to think that, wouldn't
23 it?

24 A: Yes.

25 Q: They'll see whoever shows up, correct?

- 1 A: This is talking about discharges.
- 2 Q: Well, you've got to be admitted to be
- 3 discharged; can we agree on that one?
- 4 A: It depends upon how they get there, if it's via
- 5 ambulance or physician referral.
- 6 Q: You would agree with me that in order to be
- 7 discharged, you've got to be admitted?
- 8 A: Yes, there's different mechanisms for being
- 9 admitted.
- 10 Q: Correct.
- 11 A: As far as how the patient gets there.
- 12 Q: Right. EMS could bring them, right?
- 13 A: Correct.
- 14 Q: EMS generally is going to go to the closest
- 15 hospital, right?
- 16 A: The patient has a choice as to where they go.
- 17 Q: Okay. I mean, we can check -- your department
- 18 regulates EMS, right?
- 19 A: Yes.
- 20 Q: So we can check with those policies, can't we?
- 21 A: There's very specific protocols, but unless
- 22 there's some other extenuating circumstance,
- 23 the patient can say I want to go to Trident.
- 24 Q: You would agree with me that it's common policy
- 25 for EMS to go to the closest hospital unless

1 the patient directs them otherwise; isn't that
2 pretty much the rule?

3 A: And unless they need trauma center attention.
4 I mean, they have to evaluate the patient.

5 Q: How's the other way you get in the hospital?

6 A: Physician referral.

7 Q: That's the only other way to get in the
8 hospital, isn't it?

9 A: Yes.

10 Q: You can either do that or self-present at an
11 ED?

12 A: Yes, or you're transported to the ED.

13 Q: So bottom line is this ten percent number is
14 purely arbitrary? There's no basis in fact for
15 that ten percent number. We have no idea what
16 that number is going to be?

17 A: They gave us that number. They didn't pull it
18 out of the air. They had a basis in their
19 analysis for capturing or designating this ten
20 percent market capture. But you're correct, if
21 they were built, it could be nine percent, it
22 could be eight percent, it could be ten
23 percent. This is --

24 Q: Could be 30 percent?

25 A: -- it is an estimate.

1 Q: It could be 30 percent?

2 A: Well, it's based upon currently existing. The
3 referral patterns is part of the analysis.

4 Q: Well, we -- the bottom line is is that ten
5 percent is simply an arbitrary number, isn't
6 it?

7 A: No, I don't agree.

8 Q: You thought it was plausible, right?

9 A: Right.

10 Q: It's plausible, so you approved the
11 application?

12 A: No. The applications were approved for a
13 variety of reasons, not just one line on one
14 page.

15 Q: Do you recall I asked you in your deposition
16 whether or not you knew what an adjusted
17 admission was?

18 A: Yes, and I did provide a response.

19 Q: You weren't really sure, were you?

20 A: But I believe that what I said was pretty much
21 accurate.

22 Q: You weren't sure, were you?

23 A: Not 100 percent, no.

24 Q: Okay.

25 A: But again, I believe I was primarily accurate

1 in the description.

2 Q: The reason I asked you what an adjusted
3 admission was was because that's what Mr. Baehr
4 was talking about on page 902 of Joint Exhibit
5 1, right?

6 A: Well, I'll have to find it.

7 Q: Okay.

8 A: I'm there.

9 Q: Okay. He's referring to adjusted admissions,
10 right?

11 A: Yes, those figures are.

12 Q: And then he used those adjusted admissions to
13 then use that as the basis -- he dollarizes
14 that and comes up with a contribution margin
15 number, which was on page 903, correct?

16 A: Yes.

17 Q: And when I deposed you on November 2nd, 2011,
18 you weren't really sure what an adjusted
19 admission was, were you?

20 A: I wasn't 100 percent sure, no.

21 Q: That's almost two and a half years after you
22 made the decision in this case. How could you
23 have comprehended what Mr. Baehr was talking
24 about if you didn't know what a contribution
25 margin was and you weren't sure what an

1 adjusted admission was? How could you have
2 qualified or quantified or understood what he
3 was talking about?

4 A: I understood within the context of his
5 explanation, you know, how it translated to
6 dollars and cents. I can't say that I
7 understood the intricacies of every formula,
8 but I understood what he was trying to present
9 at project review with his tables and his math.

10 Q: Turn if you would back to the DHEC Regulation
11 61-15.

12 A: Okay.

13 Q: If you would, just read into the record for me
14 Section 101, which also appears in the statute,
15 and it is the purpose of both the Act and the
16 reg. Could you read that into the record for
17 me, please, ma'am.

18 A: Yes. "Section 101, Purpose. The purpose of
19 these regulations is to promote cost
20 containment, prevent unnecessary duplication of
21 healthcare facilities and services, guide the
22 establishment of health facilities and services
23 which will best serve public needs, and ensure
24 that high quality services are provided in
25 health facilities in this state."

1 Q: Do you believe in that?

2 A: Yes, I do.

3 Q: And do you also believe that when we make these
4 decision we want to get them right?

5 A: Yes, I do, and like I said before, I put a lot
6 of thought into my decisions and take this
7 matter very seriously.

8 Q: Would you also agree with me that you've
9 learned an awful lot since you started in this
10 position in February of 2008, haven't you?

11 A: Well, yes, but I knew a lot coming into the
12 position as well. I had a lot of skills that
13 transferred and would transfer in any
14 situation.

15 Q: You agree with me that you learned a lot more
16 today, know more today about CON, about health
17 planning, about the State Plan, about the
18 regulations, you know more today than you did
19 in February of 2008, don't you?

20 A: Well, I would agree to that. But I would also
21 stipulate that I had an outstanding staff, a
22 knowledgeable staff, an experienced staff. And
23 Ms. Sanders who initially did the review was a
24 seasoned reviewer and I was trained well. I
25 caught on. In fact, by the time these

1 applications' came along, I had also taken on
2 the Georgetown replacement hospital, the
3 Georgetown open heart, Millenium Hospital and
4 some other projects. So I feel that I was well
5 qualified to make the decision that I made.
6 And again, I had well qualified staff. Any
7 good manager, you know, knows where their
8 resources are and taps into those resources.

9 Q: You want to get it right, don't you?

10 A: Yes, I do.

11 Q: And if this Court were to remand this case back
12 to you and your department, you'd want to get
13 it right? Whatever the Court's instructions
14 were, you'd want to get it right, wouldn't you?

15 A: Yes, I would.

16 Q: And do you feel like now sitting here today
17 you've got a better base of knowledge to
18 evaluate these applications if they're
19 competing than you did in 2008?

20 A: Well, I will still conclude that they're not
21 competing, and I will still conclude that my
22 decision would be my decision today and it was
23 an appropriate decision.

24 Q: Can you think of under these regulations and in
25 your job any more important decision than in

1 the establishment of a new hospital?

2 A: That is a very important decision and I do take
3 it very seriously. And I determined and still
4 feel that the citizens of Moncks Corner deserve
5 a hospital, and that the citizens in the Carnes
6 Crossroad area deserve a hospital, and that --
7 and everything contained in these applications
8 are very important and should be reviewed
9 carefully. But I also, you know, realize that
10 behind every number is a human being in need of
11 healthcare services and I do take it quite
12 seriously.

13 Q: But you agree with me that there's no bigger
14 application that you get in terms of dollars
15 and services provided than a new hospital
16 application?

17 A: I would say historically, that's correct. But
18 there's a lot of certainly other applications
19 that have substantial impacts, such as linear
20 accelerator facilities, that reach out to a
21 large population as well.

22 Q: Thank you very much for your time and attention
23 and I'm sure that counsel will have questions
24 for you.

25 A: Thank you.

1 MS. BIGGERS: Well, Your Honor, considering it's
2 5:30 p.m. and I expect that my questions will
3 be lengthy, I would request that we recess for
4 the day.

5 THE COURT: Any objection to that?

6 MR. SUMMER: No objection as long as everybody is
7 reminded of the rule that if they're under oath
8 they can't talk.

9 MS. BIGGERS: Yes, Your Honor.

10 THE COURT: We will recess until 9:30 in the
11 morning.

12 MS. BIGGERS: Thank you.

13 (There being nothing further, the hearing recessed at
14 5:26 p.m.)

15 DAY 4 - THURSDAY, FEBRUARY 2, 2012

16 THE COURT: Everyone be seated, please.

17 MR. LONG: Your Honor, before we get started today,
18 could we kind of just talk scheduling for a
19 second.

20 THE COURT: Yes, sir.

21 MR. LONG: I think actually, believe it or not,
22 we're making pretty good progress on this case.
23 And I think we're certainly going to finish
24 within the 15 days provided. I feel
25 comfortable about that today, but you know,

1 every day affects it. Monday is, you know,
2 there's an interesting thing going on Sunday
3 night that a lot of people might be interested
4 in, and we were wondering if maybe on Monday we
5 could start about 1:00 as opposed to 9:30?

6 **THE COURT:** Whatever the lawyers want.

7 **MR. THOMAS:** We're amenable to that, Your Honor.

8 **THE COURT:** I can certainly use that extra time to
9 good effect. Okay. So on Monday 1:00 p.m.

10 **MR. THOMAS:** And also if we could break at 3:45
11 tomorrow, my expert, Mr. Baehr, who we hope is
12 going to be on the stand tomorrow, has to catch
13 a flight back to Chicago.

14 **MR. LONG:** The way this is shaking out, I agree that
15 he'll be on the stand and we don't have any
16 objection to that, that he will be able to
17 leave and catch that flight.

18 **THE COURT:** 3:45, make a note of that, please.

19 **MS. BIGGERS:** Your Honor, I'm ready to present DHEC's
20 examination of Ms. Brandt. And as I spoke with
21 the attorneys about prior to this case, rather
22 than call Ms. Brandt in DHEC's case in chief
23 after Petitioner rests, we've agreed to just go
24 ahead and present our questions to Ms. Brandt
25 now as if I were directing her, if that's

1 amenable to everyone.

2 **THE COURT:** This will be direct examination as
3 opposed to cross examination?

4 **MS. BIGGERS:** By DHEC. Rather, than me calling her
5 again in my case.

6 **THE COURT:** I understand what you mean. Sure.
7 That's fine.

8 **MS. BIGGERS:** Thank you.

9 **MS. BRANDT - CROSS EXAMINATION BY MS. BIGGERS:**

10 **Q:** Okay. Ms. Brandt, I would like to spend some
11 time today talking about your decisions in this
12 case. But before we do, could you start by
13 telling us what your role was with regard to
14 the two applications, Roper Berkeley and
15 Trident Berkeley Medical Center?

16 **A:** I was the person that made the decision. And
17 I was certainly involved at the project review
18 level, even though I wasn't the initial
19 reviewer, I became very involved during the
20 springtime with these projects. And I
21 ultimately made the decision to approve both
22 projects.

23 **Q:** Who was the initial reviewer?

24 **A:** Lisa Sanders.

25 **Q:** And what was Ms. Sanders' job role at the time

1 of the decisions, or at the time that she was
2 reviewing them?

3 A: I would consider her the senior reviewer at
4 that point in time.

5 Q: Okay. Can you tell us what the difference is
6 between the role of a senior reviewer and your
7 role as the decision maker?

8 A: She's responsible for reviewing applications,
9 and, you know, she assisted me with other
10 things such as the intakes of the applications
11 and basically just keeping things organized.
12 And so she did a lot of the background
13 information. We did, however, work jointly on
14 the project review summaries and -- but I did
15 the final analysis, and, you know, drafted the
16 approval letter, So I did make the ultimate
17 decision.

18 Q: Okay. Can you give us some background. Can
19 you just explain for us in general what the
20 process is when a CON application comes through
21 the door at DHEC through decision making?

22 A: Okay. First of all, there's some items, and if
23 I get too lengthy, let me know, because it is
24 a long process. But we have to accept the
25 application when it comes in the door, and that

1 typically means three things. There has to be
2 a non-refundable \$500 filing fee. We check to
3 make sure that there is an ad that's been
4 posted in a daily newspaper for three
5 consecutive days, and it has to have the
6 appropriate verbiage, such as they're applying
7 for a CON and the total project cost and the
8 nature of the project. And the application has
9 to be received within 20 days of the first of
10 the three days, consecutive days posting. So
11 we have check, basically check those off to
12 ensure that we can even accept the application
13 on that basis. And then typically we let Les
14 Shelton glance over it to determine if there's
15 any issues with compliance with the Plan, you
16 know, any red flags that stick out.

17 Q: Can you just explain who Les Shelton is?

18 A: He's a senior planner and he's responsible for
19 getting the South Carolina Health Plan drafted.

20 Q: Okay. Go on.

21 A: So once that happens, we have some internal
22 documents that we draft. We call them blue
23 sheets because they're blue, and it's basically
24 where we start our chronology of the file, you
25 know, such as when responses are due and we ask

1 for responses and deem complete and decision.
2 I mean, it's just we fill in blanks for the
3 chronology. So once we start that going, at
4 least the initial part of the blue sheet, then
5 it's my decision as to who will review the
6 application. So that's assigned for a
7 reviewer, then they take on that responsibility
8 to keep up with deadlines and ask questions.
9 And then initially, the application is
10 published in the State Register under
11 notification of filing, which basically lets
12 the public know, via the State Register, that
13 the application's been received and we're in
14 the process of beginning the review stages.
15 Then we have an opportunity to ask two sets of
16 questions, sometimes we do, most of the time we
17 do, sometimes we don't. And upon that, then we
18 can deem the application complete. Then it's
19 published in the State Register under
20 Notification of Affected Persons. And then
21 that's kind of the -- starts the 15-day window
22 where, first of all, they have to pay the
23 application fee, you know, provided they're
24 assessed one. And then that gives people an
25 opportunity to potentially file other

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1 applications that, you know, may at some point
2 be deemed competing. You know, there are
3 certainly glitches that can happen along the
4 way. You know, if somebody requests a public
5 hearing, we typically schedule that after the
6 application's deemed complete. And there's a
7 specific statutory process you have to use for
8 that, and that rarely happens. But if there's
9 parties that have -- excuse me, filed as
10 affected persons, then our staff makes the
11 determination, and I make the final
12 determination, as to whether or not it's
13 appropriate to conduct a project review. More
14 than likely we will because the purpose of a
15 project review is to help us gather additional
16 information to make the best decision possible.
17 So in a perfect world, it would probably take
18 five or six months to get an application
19 approved. But with staff shortages, I
20 typically tell people six months. So again,
21 there are glitches that can happen along the
22 way. But typically, if the application is
23 deemed complete, then it has to sit out for 30
24 days, and on the 31st day we can conceivably
25 make a decision. But we have -- with the

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1 changes in our statute that were effective July
2 2010, we have up to 120 days to make a
3 decision, unless there's a public hearing. So
4 we can conceivably make the decision in what
5 appears to be a lengthier period of time. And
6 then once the decision's been made, then we
7 have a 15-day window that's an opportunity for
8 affected persons to appeal. And if there's no
9 appeals, then on the 16th day we issue the
10 certificate of need and we bill the applicant
11 again for an issuance fee, and they must pay
12 that within 15 days or we can void the CON.

13 Q: And the deadlines that you mentioned for when
14 you can first make a decision and then the end
15 point by that you must make a decision, are
16 those in the statute?

17 A: Yes, they are.

18 Q: Now, in this particular case, which of the two
19 applications came in first?

20 A: The Trident application was received first.

21 Q: Okay. When was that received by the
22 Department?

23 A: It was received in December of 2008, I believe.
24 I would have to look at the exhibits to be able
25 to tell you the exact date.

1 Q: Let's pull up Joint Exhibit 1. We'll go ahead
2 and --

3 A: I'm sorry --

4 Q: -- if you I could look at the paper copy and
5 then we'll meanwhile be getting set up to pull
6 it up on screen as well.

7 A: Okay. I'm sorry. It's August 13th, 2008.

8 Q: Okay. And what page are you looking at on
9 Joint Exhibit 1?

10 A: It's Bates stamped 1.

11 Q: Okay. And if you turn over to, and I believe
12 we have put, you should have the --

13 **MS. BIGGERS:** Your Honor, should have the paper copy
14 up there already of Joint Exhibit 1, which is
15 Trident's Berkeley Medical Center CON
16 application.

17 Q: Now, when -- is there anyone in particular on
18 behalf of an applicant who is responsible for
19 submitting the application to the Department?

20 A: Well, that's whomever the applicant designates.
21 Typically, there is what we call a proposal
22 page. And that's prepared by our primary
23 contact person, unless they designate somebody
24 else to be a contact.

25 Q: In looking at Joint Exhibit 1 for Trident, if

1 you'll turn to Bates stamp page 3. Who was the
2 primary contact person for Trident for the
3 Berkeley Medical Center application?

4 A: Jim Rardin.

5 Q: Okay. And you see the language above the
6 signature line on page 3?

7 A: Yes.

8 Q: Can you read aloud for us what that language
9 says.

10 A: It says, "This applicant hereby certifies that
11 the information contained in this application,
12 including all assurances and attachments, are
13 correct to the best of applicant's knowledge
14 and belief."

15 Q: What is the significance of that language right
16 there to you as the decision maker?

17 A: Well, they're attesting to the accuracy of the
18 information that's been submitted to us.

19 Q: Do you rely upon the applicant to provide you
20 what information you need to make a decision?

21 A: Yes, we do.

22 Q: And do you rely upon the applicant to provide
23 accurate information?

24 A: Yes, we do.

25 Q: Let's turn to the next page, page 4. And if

1 you can just tell us, what is the proposed
2 facility name and proposed licensee for this
3 application?

4 A: The proposed facility name is Berkeley Medical
5 Center, and the proposed licensee is Trident
6 Medical Center, LLC.

7 Q: Do you know if Trident Medical Center, LLC, is
8 the licensee of any other existing entities?

9 A: Yes.

10 Q: And what would those be?

11 A: Those would be Summerville Medical Center and
12 probably their ambulatory surgical facility or
13 freestanding ED. I would have to look at those
14 individually.

15 Q: What about the Trident Medical Center that's
16 located in North Charleston?

17 A: Oh, yes.

18 Q: So then with this proposed licensee for
19 Berkeley Medical Center, is that the same -- if
20 this is approved, would that be the same
21 licensee then as Trident Health Systems' other
22 two hospitals in South Carolina?

23 A: Yes.

24 Q: Okay. Now, if you'll turn over to page 8. And
25 actually before I go further, can you just tell

1 me, is the application required to be in any
2 particular format?

3 A: Yes, it is. We have at the beginning the
4 questionnaire that's actually at the end of our
5 regulations, and they have to complete the Part
6 A questionnaire. In addition to that, the
7 regulations have very distinct items that must
8 be addressed. And that's reflected in this
9 application. They individually address each of
10 the items.

11 Q: Okay. So for instance, on page 8, if you look
12 at the top and you see the bold language for 2,
13 that bold language, is that from the applicant
14 or from the Department?

15 A: That's from the Department, from regulations.

16 Q: Okay. And then the language underneath that
17 that's not in bold?

18 A: That would be the applicant's response.

19 Q: Okay. What was the described site location for
20 the Berkeley Medical Center application?

21 A: It states that it will be constructed on a 21-
22 acre site adjacent to the existing Moncks
23 Corner Medical Center site located on North
24 Live Oak Drive in Moncks Corner.

25 Q: What is the Moncks Corner Medical Center?

- 1 A: It's a medical center that's owned by Trident.
- 2 Q: And do you know what is located there?
- 3 A: Well, they -- it's a medical facility.
- 4 Q: And does Trident explain what their plans will
- 5 be for the Moncks Corner Medical Center should
- 6 this CON application be granted?
- 7 A: Yes, they're going to convert it to a medical
- 8 office building.
- 9 Q: Now, what was the South Carolina Health Plan in
- 10 place at the time DHEC received the Berkeley
- 11 Medical Center application?
- 12 A: It was the 2004-2005 Plan.
- 13 Q: Do you know if the 2004-2005 showed a facility
- 14 specific bed need for Trident?
- 15 A: Yes, it did.
- 16 Q: And do you know what that was?
- 17 A: The facility specific need was 42 beds. But
- 18 they had recently received a CON to convert 25
- 19 of the skilled nursing beds to acute care beds,
- 20 so that left a difference of 17 beds. So they
- 21 were going to use that 17-bed difference to
- 22 create a 50-bed economical unit in Moncks
- 23 Corner.
- 24 Q: And is there a plan in the -- a provision in
- 25 the State Health Plan that addresses that

1 ability to seek up to 50 beds if your facility
2 specific bed need is less than 50 beds?

3 A: Yes, that's in accordance with the Plan. You
4 can go up to 50 beds.

5 Q: And if you'll look at page 9. Can you tell us
6 what is -- essentially what has Trident spelled
7 out here under the need for a hospital? If
8 you'll look down, you'll see there are various
9 bullet points. Can you tell us what that is?

10 A: Well, they've described what services that they
11 plan to offer at the Berkeley Medical Center.
12 And then they also have some bullet points for
13 the ancillary services they plan to offer.

14 Q: And in your experience reviewing CON
15 applications at DHEC, do these appear to be
16 basic services that go along with a typical
17 hospital CON application?

18 A: Yes, this would be typical of a community type
19 hospital.

20 Q: If you'll turn over to pages 10 and 11 and tell
21 us what is on those two pages.

22 A: On page 10 it's what we call B(3). It's a
23 summary of the total project cost and how that
24 was derived. And it's divided up into land
25 costs, construction costs, fees, equipment,

1 financing, and so forth.

2 Q: Did you find the project cost laid out on pages
3 10 and 11 of the Berkeley County Medical Center
4 application to be reasonable, in your opinion?

5 A: Yes, I did.

6 Q: Okay. And then let's turn over to what's
7 called the B(11) question, which begins on page
8 23 of the Berkeley Medical Center application.
9 And can you tell us in general what the B(11)
10 question is?

11 A: The B(11) is what we call the need analysis.
12 And it requires the applicant to submit a
13 variety of specific items. And to read from
14 B(11) it states, it's to demonstrate the
15 proposed project is needed or projected as
16 necessary to meet and identify the need of the
17 public. And that's to include, as a minimum,
18 identification of the target population, the
19 degree of un-met need, projected utilization of
20 the proposed facility or service, utilization
21 of existing facilities and services, past
22 utilization of existing similar services within
23 the facility, justification that the proposed
24 project will not unnecessarily duplicate
25 existing entities. And then it also specifies,

1 the applicant must show all assumptions, data
2 sources, and methodologies used. And they also
3 must use population statistics consistent with
4 those generated by the state demographer at the
5 Budget and Control Board.

6 Q: Is the B(11) question important to you in your
7 decision making process for a CON application?

8 A: Yes, it's very important.

9 Q: Why is it important to you in your process?

10 A: Because it's their demonstration of need or
11 analysis of need.

12 Q: Do you place much weight on an applicant's
13 answer to a B(11) question in reaching your
14 ultimate decision?

15 A: Yes, I do.

16 Q: Now, what is the actual Plan service area for
17 Trident's proposed Berkeley Medical Center?

18 A: According to the Health Plan, there's a three-
19 county service area, and that's Charleston,
20 Berkeley, and Dorchester.

21 Q: Is there any difference between the terminology
22 of if I were to refer to the Plan's service
23 area and then if I were to refer also to the
24 applicant's proposed primary service area; is
25 there any distinction between those terms?

1 A: It's usually what the applicant will
2 additionally propose, kind of drills down and
3 is more specific. It may be done via zip codes
4 or some other manner. In this case, Trident
5 specified zip codes, and they also described in
6 narrative the area that they propose to serve.

7 Q: What is the proposed primary service area that
8 Trident proposes to serve for the Berkeley
9 Medical Center?

10 A: Let me see how they worded it.

11 Q: And if you'll tell us what page you're looking
12 at when you find it.

13 A: If you'll look on Bates stamp 24, they discuss
14 the target population, and they mention a map.
15 But they also said it illustrates the primary
16 service area of the proposed Berkeley Medical
17 Center. And it says the map indicates the
18 service area, includes the zip codes in
19 northern Berkeley County that surround Lake
20 Moultrie, as well as zip code 29483 in
21 Dorchester County. And it goes on to say zip
22 code 29483 is also served by Summerville
23 Medical Center, but a significant portion of
24 the population is located in Berkeley County
25 and is as close, if not closer, to Monks Corner

1 as it is to Summerville.

2 Q: If you look on that next page following where
3 you were just reading from on page 25. And can
4 you tell us what Table A at the top of this
5 page is?

6 A: Table A is a listing of projected populations
7 for each county individually within the three-
8 county service area.

9 Q: What is the source of the data used in Table A
10 on page 25?

11 A: The South Carolina Budget and Control Board
12 Office of Research and Statistics, we typically
13 call it ORS. And this table also does present
14 the historical population for 2005. The other
15 populations appear to be projections.

16 Q: And if you would read for us aloud the language
17 in the two paragraphs on page 25 underneath
18 Table A.

19 A: It states, "These population projections
20 demonstrate several important facts that are
21 relevant to the review of this application.
22 First, Berkeley County, which currently has no
23 acute care hospital, is expected to have over
24 183,000 residents by 2020. While it is true
25 that hospitals on the periphery of Berkeley

1 County, including Trident Medical Center and
2 Summerville Medical Center, have provided all
3 and will continue to provide acute care
4 services to the residents of southern Berkeley
5 County, it is equally clear that if the
6 county's population moves north, the residents
7 of northern and central Berkeley County will
8 face increasingly difficult access and
9 availability to basic acute care hospital
10 services. Second, total service area growth is
11 expected to be substantial over the projection
12 period. There will be enough population growth
13 in all three counties to permit all of the tri-
14 county areas existing and approved acute care
15 hospitals to maintain healthy levels of
16 inpatient utilization."

17 Q: Was this language on page 25 important to you,
18 or did you place any weight on it in making
19 your decision on Trident's Berkeley Medical
20 Center application?

21 A: Yes, it was important because this information
22 illustrated the population growth. And plus,
23 Trident specifically stated that there is
24 enough growth to support the existing hospitals
25 and the acute care hospital that they've

1 proposed.

2 Q: And can you tell from the application what was
3 the latest year that Trident had census
4 information available to it upon which it based
5 its population estimates?

6 A: Well, the last year for protected population
7 was the year 2020.

8 Q: I'm sorry, the actual source of the data from
9 which they got those --

10 A: Oh, I'm sorry, it was ORS.

11 Q: Okay. And if you look at Table B, the language
12 at the bottom of page 25.

13 A: It's the -- I'm sorry.

14 Q: The reference to Table B at the bottom of page
15 25.

16 A: The US Census.

17 Q: And what was that latest year that they had
18 looked at, that Trident looked at for its
19 population estimates?

20 A: Well, they presented the 2005 census estimates.

21 Q: And so the 2005 US Census estimates, would that
22 be estimates by the US Census from their most
23 recent census prior to 2005?

24 A: Yes.

25 Q: And since the time of these applications, are

1 you familiar with the 2010 US Census that has
2 come out?

3 A: Yes, the 2010 Census has been published, and
4 there have been tables produced that compare
5 the projected 2010 population to the actual
6 2010 population.

7 Q: And what do those comparisons show?

8 A: If you look at a county by county comparison,
9 some populations are greater than expected and
10 some are less.. But in particular, Berkeley
11 County was greater than even what had been
12 projected.

13 Q: Did seeing the results of the 2010 Census,
14 especially now coming here today to testify,
15 did that have any weight or influence on your
16 decisions in this matter?

17 A: Well, at the time the decision was made, those
18 figures had not been published. But since
19 we've been going through this process they have
20 been so that just to me reinforces the fact
21 that there is adequate population growth to
22 support both projects.

23 Q: Okay. Now, let's move on to page 30 of the
24 application. And can you tell us what is
25 addressed here beginning on page 30?

- 1 A: On page 30 it's entitled Utilization of Trident
2 Health System Acute Beds. And Table F states
3 to be an acute care bed inventory and inpatient
4 utilization for the tri-county area, and they
5 have it divided up into the existing hospitals.
- 6 Q: And, do they have it divided by county here on
7 page 30 in the Table F?
- 8 A: Yes, the facilities within each county.
- 9 Q: And under Berkeley County, what's the number of
10 licensed beds listed there in Trident's Table
11 F?
- 12 A: Zero.
- 13 Q: And if you'll look over to page 31. And what
14 is Table G?
- 15 A: Table G is for a different year. Table F is
16 for 2003, and Table G is statistics or market
17 share information for 2006.
- 18 Q: And once again, under Berkeley County the
19 number of licensed beds, what has Trident
20 indicated?
- 21 A: Zero.
- 22 Q: Now I would like to bring your attention to the
23 language in the middle paragraph of this page
24 underneath Table G. And if you could read that
25 paragraph out loud for us, please.

1 A: "As these data demonstrate, the substantial
2 increase in Trident's acute care, excuse me,
3 acute bed inventory is needed and is needed
4 soon. In addition, all of the other hospitals
5 in the tri-county service area are located in
6 Charleston County with the vast majority of the
7 beds located in downtown Charleston at MUSC and
8 Roper Hospital. These two hospitals are not
9 conveniently accessible to most of the
10 residents of Berkeley and Dorchester counties
11 now and they will be even less so in the future
12 as the population centers of those two counties
13 move to the north and west."

14 Q: What, if any, impact did that language, that
15 information from Trident's application have on
16 your decision in this matter?

17 A: I think that it was very important in the fact
18 that it demonstrates that there is an increase
19 in need, and that it also captures the fact
20 that the population is growing in different
21 areas and that that would also support a need
22 in those areas.

23 Q: And if you'll turn to the next page, 32. And
24 I would like for you to read in particular the
25 language at the top beginning about halfway

1 through this paragraph, in short.

2 A: "In short, the additional beds that Trident is
3 requesting in its application are needed to
4 meet the growing demands of Trident's existing
5 service area. As stated before, this proposal
6 has never been premised on the diversion of
7 utilization or a shift in market share from
8 other service area providers in the Trident
9 System."

10 Q: Did that language, that information have any
11 particular meaning or impact to you in your
12 decision making?

13 A: Yes, it was very important in that they stated
14 that the demands or the projects proposed to
15 serve their existing demand and doesn't take
16 into account any market shifts or other means
17 to add, you know, the population is going to,
18 you know, be the patient population for the
19 project. It's entirely based upon Trident's
20 needs.

21 Q: Did Trident provide protected utilization for
22 its proposed Berkeley Medical Center?

23 A: Yes, they did.

24 Q: And where is that in the application?

25 A: Well, it's under the B(11). And they provided

1 projected utilization for both inpatient and
2 outpatient. And the inpatient is addressed on
3 page 33, or begins to be addressed on page 33.

4 Q: And does that continue on beyond page 33?

5 A: Yes.

6 Q: And I'd like to draw your attention to page
7 34. And if you could, tell us what is in this
8 chart on page 34? What does that information
9 represent?

10 A: They presented several tables that had
11 different reiterations. And this particular
12 one is, it says it's based on the Claritas
13 population projections presented in it. And
14 this addresses the entire Trident system, even
15 though they did provide an incremental average
16 daily census for the projected project.

17 Q: And will you read, in particular, the language
18 immediately underneath the chart on page 34.

19 A: "These projections show incremental demand for
20 inpatient services and the Trident Health
21 System will be sufficient for a new 50-bed
22 hospital to achieve a high level of occupancy
23 by 2015."

24 Q: And what, if any, weight did you give to that
25 information in your decision?

1 A: I thought it was very important.

2 Q: And continuing onto page 35, what is that
3 information under the chart on page 35?

4 A: This chart specifies projections for, this is
5 non-speciality and non-tertiary patient days,
6 and it's projected out to the year 2016. And
7 the bottom line is the incremental average
8 daily census.

9 Q: And can you read that language directly below
10 the chart on page 35.

11 A: "As these figures show, the incremental
12 utilization expected for discharges in patient
13 days appropriate to a satellite facility were
14 sufficient to justify approval of the 50-bed
15 facility proposed in this application."

16 Q: And what, if any, weight did you give to this
17 data and narrative here on page 35?

18 A: Again, it was a very important forecast in that
19 it shows, and the narrative states that, you
20 know, basically it's sufficient to justify
21 approval of this project that they would have
22 sufficient census to support the project.

23 Q: And then if you'll look further down on page
24 35, would you read aloud the three bullet
25 points under the assumptions that were

1 employed.

2 A: Yes. "Future inpatient utilization by zip code
3 is forecast to equal 2007 utilization increase
4 to reflect population growth as forecast by
5 Claritas. The Trident system maintains its
6 current market share in each zip code at 2007
7 levels. Utilization attributed to the proposed
8 Berkeley Medical Center is achieved by
9 redirecting utilization only from one or
10 another of the two existing Trident Health
11 System Hospitals."

12 Q: Were these assumptions particularly meaningful
13 to you in your decision making?

14 A: Yes, it was. Because again, these assumptions
15 support that the hospital would be successful
16 based on the current utilization by the Trident
17 patients.

18 Q: Did Trident address any adverse impact analysis
19 in this Berkeley Medical Center application?

20 A: At the bottom of the page, it starts with the
21 statement that the analysis tests whether the
22 proposed project can be implemented without
23 adverse impact on existing providers that are
24 not part of the Trident System. And it says
25 under the assumptions utilized, all non-Trident

1 providers will not only maintain their current
2 levels of utilization, they will also maintain
3 their current market shares in competing for
4 the incremental utilization to be generated in
5 the Berkeley Medical Center service area during
6 the forecast period.

7 Q: And what, if any, impact did Trident's analysis
8 of adverse impact have in your decision?

9 A: Well, they stated that there wouldn't be
10 adverse impact. And so I thought it was
11 important that they reached that conclusion.

12 Q: If you'll look over to page 38. And can you
13 explain for us what this chart on page 38 under
14 outpatient?

15 A: Again, it's a forecast of outpatient
16 utilization that it states in connection with
17 the Berkeley Medical Center proposal. So here
18 they kind of laid out their projections for ER
19 visits, ambulatory surgery procedures and other
20 outpatient visits.

21 Q: And what is Trident's conclusion or projection
22 with regard to this chart on page 38?

23 A: Well, they concluded in the paragraph below,
24 and it states, "No existing provider outside of
25 the Trident system is projected to lose market

1 share and all are expected to benefit from
2 future population driven increases and demand
3 for services consistent with the current 2007
4 market shares."

5 Q: And then can you go ahead and read for us the
6 language in that next paragraph on the bottom
7 of page 38.

8 A: Yes. It states, "This point merits additional
9 discussion. In some certificate of need
10 applications, applicants contend that if total
11 service area growth is sufficient to maintain
12 existing providers at their existing levels of
13 service while at the same time permitting the
14 proposed facility to achieve needed volume,
15 then the issue of adverse impact can be
16 dismissed. The existing providers will not
17 under this scenario experience a material
18 adverse impact."

19 Q: And going on to the top paragraph of page 39,
20 please.

21 A: It states, "The proposed project passes an even
22 more rigorous adverse impact test. As shown
23 above, the existing providers will maintain
24 their current market shares and they will be
25 able to enjoy the same benefits of service area

1 population growth that they historically have
2 done."

3 Q: Did you find these statements made by Trident
4 in the Berkeley Medical Center CON application
5 to be reasonable based upon the data and
6 analysis they've given you in the B(11)
7 question?

8 A: Yes, they certainly supported their statistical
9 information in what they have stated.

10 Q: And did you place any particular weight on this
11 in your final decision?

12 A: Yes, it's important that they again said they
13 there would not be adverse impact to existing
14 providers. And it certainly gave confidence
15 that the project was reasonable and achievable.

16 Q: Okay. Now, turn to page 40. And I'd like to
17 draw your attention down to the second
18 paragraph under the caption of Utilization of
19 Existing Facilities and Services. Can you read
20 just the first sentence of that second
21 paragraph.

22 A: "Based on occupancy of Trident's existing acute
23 hospitals, the proposed new hospital is
24 justified."

25 Q: Based on your review of the Berkeley Medical

1 Center application, do you believe that
2 statement to be accurate?

3 A: Yes.

4 Q: Okay. And if you'll look further down to the
5 next paragraph. And if you'll go ahead and
6 read that paragraph for us.

7 A: "The population to be served by the proposed
8 Berkeley Medical Center will reside primarily
9 in Berkeley and Dorchester counties. Except
10 for certain tertiary services, such as open
11 heart transplant and neonatal intensive care,
12 MUSC Medical Center and Roper Hospital are not
13 optimal destinations for patient resident in
14 Berkeley and Dorchester counties. Patients are
15 generally best served in acute care facilities
16 that are reasonably proximate to their own
17 homes and to the homes of their families. As
18 the population centers of Berkeley and
19 Dorchester Counties continue to move to the
20 north and west, acute facilities in downtown
21 Charleston and Charleston County will become
22 increasingly difficult to access, especially
23 with the increased traffic congestion that can
24 be expected to accompany population growth."

25 Q: Okay. And if you'll just stop right there and

1 let me know, do you agree with the statements
2 made there by Trident after reviewing their
3 analysis in the B(11) question?

4 A: Yes, I do.

5 Q: And then if you'll skip down to the bottom
6 paragraph beginning "finally" and read that
7 paragraph for us.

8 A: "Finally there is sufficient population driven
9 growth in the demand for inpatient services
10 throughout the tri-county area that Roper St.
11 Francis Healthcare, MUSC, and East Cooper
12 Regional Medical Center can anticipate
13 significant and sustained growth in their
14 inpatient and outpatient utilization from the
15 population groups and geographic areas that
16 they already serve."

17 Q: Did you place any particular weight upon that
18 language in your decision making?

19 A: Yes, it's important in that they again repeat
20 that the growth was sufficient, and that,
21 basically, the other facilities would not be
22 affected.

23 Q: And based upon their analysis and the data they
24 have provided to you on B(11), do you believe
25 that to be a reasonable and accurate statement?

1 A: Yes, I do.

2 Q: Okay. Based on your review of the B(11)
3 analysis provided in the Berkeley Medical
4 Center, did you come to any conclusion as to
5 whether or not there is a need for the Berkeley
6 Medical Center?

7 A: Yes, their B(11) did support the need for an
8 acute care hospital to be located in Moncks
9 Corner.

10 Q: Okay. And then I'm going to have you skip over
11 to B(12), which begins at page 129. And when
12 you get there, if you'll just tell us in
13 general what the B(12) question is.

14 A: B(12) is the opportunity for the applicant to
15 discuss alternatives that they considered. And
16 they have to describe the advantages and
17 disadvantages of each alternative and also why
18 that particular alternative wasn't adopted.

19 Q: Did you agree with Trident in their analysis of
20 the alternatives that they considered and
21 rejected and their final alternative that they
22 accepted on page 130?

23 A: Well, their final alternative was certainly
24 reasonable.

25 Q: And will you just read that last paragraph

1 under the final alternative, the one they
2 accepted on page 130.

3 A: "Construction of a freestanding acute care
4 hospital in Berkeley County is the next logical
5 step in Trident Health Systems fulfillment of
6 its mission to provide healthcare services to
7 Berkeley County and is the best solution for
8 the people of its service area. There is no
9 reasonable generic alternative to inpatient
10 hospital services or beds. While many minor
11 medical and surgical procedures and diagnostic
12 tests can be and are routinely performed in
13 outpatient or physician office settings, there
14 nevertheless remains and will remain need for
15 the structured comprehensive care that can only
16 be provided in an acute care hospital."

17 Q: Okay. And if you'll go ahead and look then at
18 the next page and tell us what is the B(13)
19 question?

20 A: B(13) states that they have to discuss any
21 serious problems, such as cost, availability,
22 or accessibility in obtaining care of the type
23 proposed experienced by patients in the absence
24 of this project.

25 Q: And can you describe for us the problems that

1 Trident addressed and their answer to the B(13)
2 question?

3 A: Well, they addressed several issues. But they
4 start out by stating, "In absence of this
5 project, residents of the service area will
6 experience progressive deterioration in their
7 access to timely medical care." And it states
8 they're already disadvantaged. There's no
9 acute care hospitals in Berkeley County, and
10 that the residents must travel to Charleston,
11 Dorchester, or other areas to obtain services.
12 And it says that the current model of patient
13 migration will become increasingly unworkable
14 in the future for several reasons. And then
15 they expand on those reasons after having
16 stated them.

17 Q: Okay. And without reading aloud the whole rest
18 of the page, could you just kind of point out
19 a couple of the other issues that they mention
20 in their B(13) answer.

21 A: Well, they do mention that the existing
22 facilities are enjoying high levels of
23 utilization, and in the future they could
24 experience some capacity constraints. And they
25 also state that now is the time for the

1 residents of Berkeley County to have their own
2 hospital. They also address the planned growth
3 in that area and access and the time it would
4 take to go downtown or to Dorchester County.
5 And then they also talk about geographic access
6 affecting the cost of care as well.

7 Q: What, in particular, does Trident say about
8 driving times?

9 A: Well, they mentioned, you know, the congestion
10 and the traffic and, you know, as there is
11 development, then the speed limits are lowered.
12 And they said that increasing driving times
13 will also affect access and quality, and it
14 says particularly in emergent cases.

15 Q: And what was Trident's point about the
16 geographic access affecting cost of care that
17 you mentioned?

18 A: It states that -- and again, I can certainly
19 read this. It says, "Patients who obtain
20 initial assessments and treatment through
21 freestanding emergency units often have to be
22 transferred by ambulance to acute care
23 hospitals. In addition, the absence of an
24 acute care facility in the community can
25 depress the physician population, especially in

1 certain sub-specialties; thus not only, do
2 patients lack reasonable geographic access to
3 acute care services, they lack reasonable
4 access to many specialized physician services.
5 These access issues may deter timely access to
6 care and result in higher costs of treatment
7 later."

8 Q: What, if any, impact did this have on your
9 decision in this matter?

10 A: Well, you know, these are all important points.
11 And certainly, the last one is, too, that if
12 patients are in need of care they need to have
13 it on a timely and reasonably and having a
14 hospital in that area would alleviate that.

15 Q: Okay. Now, I'd like move us forward to where
16 the Department asks additional information,
17 which is going to -- let's turn first to page
18 663. Okay. What is this document beginning on
19 page 663?

20 A: It is a response to the request for additional
21 information.

22 Q: Who actually asked for the additional
23 information?

24 A: Lisa Sanders.

25 Q: And is that part of her typical role as the

1 main reviewer of the application?

2 A: Yes, it is.

3 Q: Okay. I'd like to draw your attention to pages
4 666 and 667 and Trident's answer or response to
5 question B. Can you tell us what this
6 addresses?

7 A: They were requested to address the impact that
8 Berkeley Medical Center would have on the
9 existing Trident Health System facilities. In
10 response -- in their response, they provided
11 inpatient admission data, and they also say,
12 let's see, they presented various tables as
13 well..

14 Q: What is the table on page 667?

15 A: There's tables that individually address
16 Trident Medical Center. One addresses
17 Summerville Medical Center and the other is
18 combined. And it's their projections for
19 patient days and it's compared with 2007
20 actual.

21 Q: Can you read for us that first sentence
22 underneath the charts on page 667.

23 A: Yes. "As shown in these tables, Trident
24 Medical Center will experience a modest decline
25 in patient days during the years 2013 through

1 2015 relative to its 2007 experience."

2 Q: Okay. Now, I'd like you to turn over to page
3 668 and tell us what the chart is at the top of
4 668, and then Trident's discussion below that
5 chart.

6 A: The chart at the top, again, it's projections
7 and patient days. And it's for each individual
8 facility, including the Berkeley Medical
9 Center, and then it's a combined total. And
10 then it compares with the 2007 patient days and
11 the difference. And each column would be an
12 increase in patient days over the 2007 figures.
13 And it states in the paragraph below, "As this
14 combined presentation demonstrates, Trident
15 Health System will experience significant
16 growth between 2007 and 2016. The development
17 of Berkeley Medical Center will provide a local
18 site for patients of Trident Health System who
19 are residents of Berkeley County to obtain
20 care. This improved access for the residents
21 of Berkeley County justifies the modest and
22 temporary decline in utilization forecasts for
23 Trident Medical Center."

24 Q: Now, the information that we've gone over in
25 the initial application and this additional

1 information, is all of this information
2 received before you conduct your project review
3 meeting?

4 A: Yes. The project review meeting is always
5 conducted after the project is deemed complete.

6 Q: And in this case, when was the project review
7 meeting for Trident's application conducted?

8 A: I believe it was May 21st, 2009.

9 Q: And I can just draw your attention to page 750
10 of the application. And can you tell us what
11 that is on 750?

12 A: Yes. It's actually a memorandum that Lisa
13 prepared for my signature that notifies
14 everybody about the project review.

15 Q: Okay. And if you'll tell us what the document
16 is beginning on 751, the very next page, 751
17 through 753.

18 A: Those are actual summaries that were prepared
19 based on the information in the application.
20 And we typically prepare these prior to the
21 project review for the committee that consists
22 of our staff. And then we always invite other
23 staffs in our building, because our building
24 houses certification and licensing and health
25 facilities, construction and rad health, so

1 they're always invited to the project review
2 meetings. And these are also made available
3 the day of the project review.

4 Q: So this document, 751 through 753, is this a
5 DHEC document?

6 A: It's a DHEC document generated by DHEC, but
7 it's based upon information provided by the
8 applicant.

9 Q: Okay. So when you say based upon, are you
10 talking about the content? Where did you pull
11 the content?

12 A: Yes. The content, a lot of the content came
13 from some of the areas we had gone over in the
14 beginning, the summary and the B(11), and also
15 the financial portion of the application and
16 the staffing portion.

17 Q: And was the actual project review meeting that
18 was conducted on May 29, 2009, or was that a
19 joint meeting with both Trident's application
20 and Berkeley's application?

21 A: Yes, May 21st. Yes, it is. They were both
22 affected persons for each other's projects.
23 And it just seems, it has always seemed logical
24 and reasonable to me to conduct the project
25 review with any parties involved because it

1 certainly saves the parties time and effort,
2 particularly when they have to travel.

3 Q: Okay. Well, before I ask you questions about
4 the project review meeting itself, I'd like to
5 just go through some of this same information
6 in the Roper application. So if you'll turn
7 now to Joint Exhibit 2. And let's just start
8 off with page 1 and just tell us when you
9 received Roper's application.

10 A: Page 1 indicates December 10, 2008.

11 Q: And who was the contact person for Roper's
12 application for Roper St. Francis Berkeley?

13 A: Shannon Cantwell.

14 Q: And does Ms. Cantwell make the same
15 certification on behalf of the Roper
16 application as Trident had made regarding the
17 accuracy of the content of the application?

18 A: Yes, she does.

19 Q: And then look on page 2. Can you tell us the
20 name of the facility and the name of the
21 proposed licensee?

22 A: Roper St. Francis Hospital Berkeley. And the
23 licensee is indicated to be Roper St. Francis
24 Hospital Berkeley, Inc.

25 Q: Do you happen to know if both or St. Francis

1 Hospital Berkeley, Inc. is the current licensee
2 of any existing licensed facilities?

3 A: Well, if you look over, I believe in the
4 ownership it's Roper St. Francis Healthcare.

5 Q: Okay.

6 A: And they are the owners, if you will, of the
7 other hoper Hospitals.

8 **THE COURT:** Excuse me a minute. I have Joint
9 Exhibits 3 through 16, but I don't have 2, I
10 believe.

11 **MS. BIGGERS:** I'm sorry. I've got it right here for
12 you.

13 **THE COURT:** Thank you, ma'am.

14 **MS. BIGGERS:** You're welcome.

15 **THE COURT:** What page are you on?

16 **MS. BIGGERS:** Page 2.

17 Q: So if Roper's application for Roper St. Francis
18 Hospital Berkeley is approved, will this be a
19 new licensee, Roper St. Francis Hospital
20 Berkeley, Inc.?

21 A: Yes, it will. But they're also affiliated with
22 the Roper St. Francis Healthcare System.

23 Q: Okay. And if you'll look at page 5 and look at
24 the answer to B(2).

25 A: Yes.

1 Q: And can you tell us what is the site of the
2 proposed Roper St. Francis Berkeley?

3 A: It states Goose Creek in Berkeley County.

4 Q: And what is the proposal, essentially, that
5 they're making here?

6 A: They propose to transfer beds from downtown
7 Charleston to Goose Creek.

8 Q: And you see the list of standard services on
9 page 5?

10 A: Yes.

11 Q: Do these appear, in your experience, to be
12 pretty standard services to go along with a
13 hospital CON application?

14 A: Yes, they are.

15 Q: And I would like to take us straight to the
16 B(11) analysis provided by Roper, and this
17 begins on page 15 of Joint Exhibit 2.

18 A: Okay.

19 Q: Can you tell us what is the target population
20 for Roper St. Francis Berkeley? And if you
21 don't see it right away, we might get to it.
22 If you could, just kind of tell us from your
23 memory?

24 A: Oh, okay. Well, it's designed to primarily
25 serve the residents of Berkeley County. And it

1 also states that, I believe that's expected to
2 generate 90 percent of their volume would be
3 from the Berkeley County area. And at some
4 point, I'd have to find the page for comparison
5 purposes, they go on to talk about a seven-mile
6 radius just for kind of population comparison
7 purposes, too. But it's certainly designed to
8 serve the residents in Berkeley County.

9 Q: Okay. And just starting on page 15 with the
10 overview, could you read just the first couple
11 of sentences of the overview on page 15.

12 A: Yes. "The proposed bed relocation from
13 downtown Charleston to Goose Creek will have no
14 impact on the operations or access and
15 availability of care at Roper Hospital. The
16 proposed relocation will, however, provide a
17 significant positive impact to the residents of
18 the Goose Creek and Berkeley County area by
19 establishing a community based not for profit
20 hospital in Goose Creek, thereby, significantly
21 enhancing access to hospital services in
22 Berkeley County." And they go on to say it has
23 a huge population base, it says ninth largest
24 population in 2008, and is by far the largest
25 county in South Carolina without an acute care

1 hospital. And it goes on to state that
2 Berkeley County is one of the fastest growing
3 counties in the state.

4 Q: Okay. Did this information that you just read
5 over on page 15, did this have an impact upon
6 your ultimate decision in this matter?

7 A: Yes. Again, it shows significant growth for
8 the Berkeley County population and also the
9 emphasis on the fact that Berkeley County does
10 not have a hospital.

11 Q: Okay. And turning to page 17, if you'll read
12 the first couple of sentences at the top of the
13 page.

14 A: It states, "Their proposed hospital will bring
15 a new enhanced local access to this large and
16 growing population and will ensure that local
17 residents are able to obtain readily accessible
18 local inpatient care to meet the majority non-
19 tertiary portion of their healthcare needs.
20 Further, the proposed new project will bring
21 enhanced access to Roper St. Francis aligned
22 patients residing in the Goose Creek/Berkeley
23 County area who currently travel out of the
24 local area for inpatient care."

25 Q: And go ahead and read that next sentence too,

1 please.

2 A: "During 2006, based on ORS discharge data,
3 there were 3,861 total Berkeley County
4 residents, 24 percent of total Berkeley County
5 inpatients who traveled to Roper St. Francis
6 facilities to obtain inpatient care."

7 Q: Okay. And if you'll go down to the next
8 paragraph and read that paragraph for us
9 starting with "in addition."

10 A: "In addition, with the proposed project,
11 basically a repositioning of currently licensed
12 acute care beds from an area of limited growth,
13 downtown Charleston with Charleston County
14 forecast to grow by only 2.6 percent 2008 to
15 2013, to an area of strong vibrant growth;
16 Berkeley County with 6.7 percent forecasted
17 2008 to 2013 population growth in the seven-
18 mile radius Goose Creek area with a forecasted
19 12.1 percent growth 2008 to 2013. The project
20 will have no impact on the tri-county's bed
21 count or bed need. Further, the proposal is
22 consistent with general health planning goals
23 of maximizing the usage of existing resources
24 and positioning and repositioning
25 underutilized resources in areas of strong

1 volume and population growth. "

2 Q: Now what, if any, importance did you place upon
3 that information in making your ultimate
4 decision on Roper's application?

5 A: It's important because not only did they
6 demonstrate the population growth, they
7 demonstrated that the growth was faster in
8 Berkeley County and that it made good health
9 planning sense to reposition resources to where
10 they're needed and would be used most.

11 Q: And does that seem reasonable to you?

12 A: Yes, it does.

13 Q: Okay. And let's go over to page 18. And now
14 I think you'll find here on page 18 Roper's
15 statement about their primary service area that
16 they'll be serving with their application.

17 A: Yes, it states, "Proposed service area
18 definition. The proposed new hospital is
19 anticipated to primarily serve the residents of
20 Berkeley County with expected additional
21 patients originating from adjacent geographic
22 areas within Charleston and Dorchester
23 counties. The primary service area is expected
24 to generate 90 percent of the facility's total
25 inpatient volume," excuse me, "total patient

1 volume with the remaining ten percent of
2 patients originating largely from adjacent
3 areas within Charleston and Dorchester
4 counties."

5 Q: Okay. And if you'll look over at the next
6 page, couple pages, page 20 and 21. And can
7 you tell us about Roper's narrative addressing
8 population projections?

9 A: Again, they have a table that -- actually two
10 tables, to illustrate population growth. The
11 first one is divided up into each county,
12 Berkeley, Charleston, and Dorchester, and it
13 shows the growth, particularly you know,
14 comparatively with Berkeley and Dorchester
15 versus Charleston County for the 2008 to 2015
16 growth. And then the second table breaks down
17 the population by age cohorts. And so
18 certainly, it's expected the 65 plus age
19 population is projected to expand more rapidly
20 than the other population groups, so this shows
21 Berkeley, Charleston, and Dorchester County
22 growth.

23 Q: What particular area of Berkeley County does
24 Roper propose to place Roper St. Francis
25 Berkeley?

1 A: It's commonly known as the Carnes Crossroad
2 area, but it's that area of Goose Creek.

3 Q: Okay. And if you'll turn over to page 22. Can
4 you tell us what information Roper provided
5 about the Goose Creek Community, in particular?

6 A: Well, they do go on to describe the community.
7 And they also state that there is, first of
8 all, there's two major communities within
9 Berkeley County, Moncks Corner and Goose Creek,
10 and describes the currently existing services.
11 But it also talks about the Goose Creek
12 community. It states it is a relatively new
13 area of economic and population growth within
14 Berkeley County with the Goose Creek area
15 today, the leading population and population
16 growth sector of Berkeley County. And it
17 states there's no comprehensive ambulatory
18 service providers located within that area.

19 Q: What do they say about the Goose Creek
20 population growth in comparison to Moncks
21 Corner in that third paragraph on page 22?

22 A: Well, according to this, the population
23 statistics, the City of Goose Creek is growing.
24 The growth from 2000 to 2007 is around 18.1
25 percent, and the Moncks Corner area is less,

1 but it's certainly growing.

2 A: And if we look over at page 23 at the top. And
3 I think there's some mention of the seven-mile
4 radius that you mentioned a few moments ago.
5 If you could tell us what they say about the
6 seven-mile radius?

7 A: It states here, "The use of a seven-mile radius
8 in the CON analysis is important. It is the
9 seven-mile radius approximate of 15 minute
10 travel time for ambulatory travel to the
11 proposed new hospital. While the proposed
12 Roper St. Francis Hospital Berkeley will serve
13 all of Berkeley County, this local 15 minute
14 travel population will obtain the maximum
15 access benefit from the new facility."

16 Q: What, if any, weight did you place upon that
17 information when you were making your ultimate
18 decision in this matter?

19 A: Well, they used it to compare the levels of
20 growth and population. So it was important to
21 note that basically that concentration of
22 population immediately surrounding the proposed
23 hospital.

24 Q: And then let's turn over to the projected
25 market-based volume forecast starting on page

1 24. And if I can draw your attention in
2 particular to the two bullet points at the top
3 of page 25. Could you read those for us?

4 A: It says, "Half of the 2015 Roper St. Francis
5 aligned non-tertiary, non-specialty volume
6 forecasted to be generated by service area
7 population is expected to seek here at the
8 Roper St. Francis Hospital Berkeley. Market
9 share capture for the non-aligned Roper St.
10 Francis patient pool is expected to be ten
11 percent by 2015, the third year of operation."

12 Q: Okay. And what did this information, along
13 with the other information surrounded around it
14 with the other bullet points, what did this
15 mean to you in terms of reviewing Roper's
16 application?

17 A: Well, I mean it certainly looked like they made
18 a very deliberate effort to, you know, forecast
19 the market and the projected bed need. And
20 they talked about the function of the
21 population growth, and they talked about, you
22 know, how they came up with their projections.
23 And they talked, towards the end, about
24 financial viability.

25 Q: And if you look down at the bottom of page 25,

1 what are their actual volume forecasts for the
2 first few years?

3 A: The last bullet states, "Volume forecasts for
4 year one and year two of the proposed facility
5 are set assuming a slow volume build up with
6 year one volume set at 50 percent of year three
7 volume, or 35 percent occupancy, and year two
8 volume set at 85 percent of year three volume,
9 60 percent occupancy."

10 Q: And based on your review of the overall
11 application, do you find this forecast to be
12 reasonable?

13 A: Yes. It seems to be a reasonable incremental
14 buildup, yes.

15 Q: And let's turn over to page 28 and the
16 discussion about market share. And can you
17 describe for us Roper's predictions or
18 projections regarding market share?

19 A: Well, they talk really at length with
20 statistical information. But it says in the
21 first paragraph that the redirection market
22 share capture levels for the proposed facility
23 are estimated to be such that by 2015, year
24 three of operation, one-half of the Roper St.
25 Francis non-tertiary, non-specialty volume

1 originating from Berkeley County will be
2 redirected to the new facility, and that ten
3 percent of the non-Roper St. Francis volume
4 from the Berkeley County service area will be
5 served at the proposed new hospital. Again,
6 they talk about, you know, redirection and then
7 the forecast of the market.

8 Q: And if you'll go down about halfway through the
9 second paragraph on page 28, the sentence
10 beginning, "these redirection," could you read
11 that for us.

12 A: "These redirection market share capture levels
13 produce the situation where the proposed volume
14 for the new Roper St. Francis Hospital Berkeley
15 will be 60 percent generated from redirection
16 of Roper St. Francis aligned non-tertiary, non-
17 specialty patients originating from Berkeley
18 County."

19 Q: And go on to the next sentence.

20 A: "Only 40 percent of the forecasted patient
21 volume is expected to originate from the non-
22 Roper St. Francis patient pool, a small number
23 of patients that will be completely offset by
24 Berkeley County population growth."

25 Q: And does that seem reasonable to you?

1 A: Yes. Because even though they were obviously
2 planning to serve a majority of their own
3 patients through the transfer of the beds, they
4 do discuss the capture of patients from other
5 areas, but that it would be of such a volume
6 that it wouldn't be, I guess, significant and
7 that the population growth will offset any of
8 that market capture.

9 Q: And what did Roper talk about with regard to
10 any potential adverse impact on existing
11 providers in their B(11) analysis?

12 A: Well, they certainly talk about at this point,
13 relative to a redirection in market share
14 capture, that that would be offset by the
15 population growth.

16 Q: Does that seem reasonable to you based upon the
17 information and data that they have provided
18 regarding, in particular, the population data
19 that you reviewed earlier with us?

20 A: Yes. And they do go on to specifically address
21 adverse impact in its own heading, but yes, it
22 does seem reasonable to me.

23 Q: And look at page 31 and going on to page 32.
24 Does Roper predict that they'll have any
25 material adverse impact on existing providers

1 in the area?

2 A: Well, the paragraph at the bottom of page 31
3 states that based on the expectation that 60
4 percent of the new hospitals proposed 2015
5 patient volume would be repositioning of Roper
6 St. Francis Berkeley County residents to
7 Berkeley County located facility. The
8 remainder of patients served will have no
9 material adverse impact on any other existing
10 healthcare provider. In fact, no material
11 adverse impact is expected on other local
12 providers as population growth alone and the
13 resulting increase in market size is
14 anticipated to offset any possible patient
15 volume reductions.

16 Q: Based on the information provided by Roper in
17 their application, do you find that statement
18 to be reasonable?

19 A: Yes, I do.

20 Q: And what weight, if any, did you place upon
21 that in making your ultimate decision?

22 A: I mean, it's certainly huge because, again, you
23 know, they state the repositioning of their
24 current patients, and then they have analyzed
25 what will occur to the patients that aren't

1 currently Roper aligned patients.

2 Q: Now, let's turn over to the discussion about
3 the State Health Plan, which begins on page 35.
4 And first tell us what the State Health Plan in
5 effect at the time that Roper filed its CON
6 application for Roper St. Francis Berkeley?

7 A: The 2008-2009 Plan.

8 Q: And what specific provisions in the hospital
9 bed section did Roper rely upon for the Roper
10 St. Francis Berkeley application?

11 A: Well, they relied upon what we refer to as the
12 bed transfer provision.

13 Q: And let's go ahead and talk about the bed
14 transfer provision. And can you tell us how --
15 historically how has that provision been
16 applied, historically in prior CON
17 applications?

18 **MR. SUMMER:** Your Honor, I'm going to have to object
19 because that would predate her having any
20 knowledge as to the certificate of need
21 program. I don't have a problem with her
22 testifying about what she's done since 2008,
23 but she has no firsthand knowledge of what the
24 Department has done previously because, number
25 one, she didn't hold the position until

1 February of 2008; and number two, she'd never
2 seen a State Health Plan and never seen
3 Regulation 61-15 before taking this job.

4 **THE COURT:** Your response?

5 **MS. BIGGERS:** Well, Your Honor, I'm fine with
6 beginning my discussion with her about it was
7 2009 when she certainly was with DHEC.

8 **THE COURT:** Well, I'm not sure it's necessary for me
9 to overrule because maybe he's misapprehended
10 the starting points, so continue with 2009.

11 **Q:** Since you've been with DHEC, what is your
12 knowledge of how the DHEC CON program has
13 applied the bed transfer provision?

14 **A:** My knowledge is historically that's been
15 allowed for the creation of new hospitals. In
16 other words, an existing hospital can transfer
17 their existing beds for the creation of a new
18 hospital, and that's been done in a lot of
19 cases. And also while I was at the Department
20 was when we went before the Board and I was
21 present when there was -- based on Parkridge
22 case, the same bed transfer provision was
23 brought up before the Board and then before the
24 ALC. So I was present at the time to have
25 knowledge of the 2008-2009 Health Plan, even if

1 I wasn't present when it was effective.

2 Q: Okay. Actually, let's turn to the Board order
3 in Parkridge at this time. This is Joint
4 Exhibit 16. Joint Exhibit 16 and this will be
5 on the notebook that's up on your left right
6 there. And first, can you tell us, were you
7 actually present at the Board hearing on this
8 particular matter that we're looking at that's
9 the subject of Joint Exhibit 16?

10 A: Yes, I was.

11 Q: And can you tell us, what is your knowledge
12 about the purpose of that particular Board
13 hearing?

14 A: And it actually states here, there was a remand
15 from the ALC to determine whether the transfer
16 provision could be used for the establishment
17 of a new hospital. And so there was debate
18 about that. Of course, the Department
19 maintained that it was appropriate to use the
20 bed transfer provision to create a new
21 hospital, and in this case it was Parkridge.

22 Q: Okay. And let's look at the actual order. Do
23 you know who the Department witnesses were who
24 actually testified before the Department Board
25 that day?

1 A: I know one was Mary Fechtel, and I believe the
2 other was Les Shelton. I believe that was it,
3 in addition to our attorney.

4 Q: Okay. And let's turn to page 5 of the opinion.
5 And could you read just that first full
6 paragraph for us on page 5.

7 A: Starting with Mr. Shelton?

8 Q: Right.

9 A: "Mr. Shelton further stated that standard
10 G(1)(A)(4)(h) Plan, pages II-8 and 9,
11 incorporated into an amended version of the
12 1994 South Carolina Health Plan and contained
13 in each Plan thereafter to the present
14 addresses the transfer or exchange of beds
15 between affiliated facilities. The standard or
16 a Plan transfer standard was added to create
17 more flexibility in the CON process, in
18 particular, to allow affiliated facilities
19 which might otherwise be denied a CON under the
20 Plan to transfer beds or services across county
21 or service area lines. He added that although
22 the Department had not made CON approval for a
23 new hospital contingent on this bed transfer
24 standard, Palmetto referenced the standard in
25 its CON application. New hospitals have

1 approved both before and after the 1994 Plan.
2 And no Plan has prohibited the transfer of beds
3 to establish a new hospital."

4 Q: And now if you'll turn over to the last page,
5 page 8. And read that very last paragraph for
6 us.

7 A: "Accordingly, the Board has determined that the
8 2004-2005 South Carolina Health Plan, which
9 includes the Plan transfer standard, allows for
10 approval of a CON application for the transfer
11 of licensed general acute care hospital beds to
12 establish a new hospital."

13 Q: Who signed this board order?

14 A: Paul C. Aughtry, III, Chairman of the Board.

15 Q: And what was the date?

16 A: May 8, 2009.

17 Q: Who actually adopts the State Health Plan when
18 it is -- after the drafts have been finalized?

19 A: Well, after the committee produces a final
20 version, then the DHEC Board is charged with
21 officially adopting the Plan.

22 Q: Okay. What, if any, importance do you place
23 upon this particular Board order in the
24 Parkridge when reviewing CON applications that
25 utilize the bed transfer provision?

1 A: It says to me that it's an appropriate way to
2 allow the creation of a new hospital.

3 Q: And do you see this as providing you guidance
4 as to the Board's interpretation of the Board's
5 document?

6 A: Yes, absolutely.

7 Q: What determination did you make regarding
8 Roper's compliance with the 2008-2009 bed
9 transfer provision?

10 A: I determined that there application was
11 compliant.

12 Q: And what is the facility that is transferring
13 the beds pursuant to the Roper St. Francis
14 Berkeley application?

15 A: The transfer facility is Roper.

16 Q: What is the receiving facility?

17 A: The receiving facility is Roper St. Francis
18 Berkeley.

19 Q: And Roper, I think you testified earlier that
20 Roper Downtown and Roper St. Francis Berkeley
21 are actually two different licensees -- well,
22 a licensee and proposed licensee?

23 A: Yes.

24 Q: In making your decision in this matter, did you
25 feel that the application demonstrated a

1 historical utilization of beds in the
2 application to go to the receiving facility?

3 A: Yes, I felt that it did. They provided
4 statistical information.

5 Q: And can you explain that a little further for
6 us?

7 A: In other words, they were able to provide
8 information on the market share for that area.
9 And typically, that type of information is
10 based on discharge data. So they had the
11 statistics to back up that there were patients
12 coming from this area, and logically, they
13 decided to transfer the beds to an area where
14 they would be highly utilized in their
15 proposal.

16 Q: And when you say patients coming from this
17 area, are you referring to Roper patients
18 specifically?

19 A: Yes, Roper aligned patients.

20 Q: Based on your review of the Roper St. Francis
21 Berkeley application, do you feel that Roper
22 justified the need to transfer 50 beds from
23 downtown Charleston to the Goose Creek area?

24 A: Yes, I do.

25 Q: And can you explain further your basis for that

1 conclusion?

2 A: Again, they're transferring existing beds from
3 an area that's not as highly utilized and
4 that's not projected to have nearly as much
5 growth as the area in Berkeley County. So
6 again, they're wisely choosing to serve their
7 own patients in an area where they exist and it
8 certainly creates better accessibility for
9 their patients.

10 Q: And pursuant to the bed transfer provision, is
11 the facility that proposes to relocate the
12 beds, are they required to give some assurances
13 regarding that they won't use that loss of beds
14 to justify future need?

15 A: Yes, they're required to attest to the
16 permanent transfer, and I believe they
17 mentioned that at least in a half a dozen
18 places in this application.

19 Q: So did Roper address that to your satisfaction
20 for you to conclude that they met that?

21 A: Yes, they did. And clearly they didn't take
22 the proposal lightly, you know, they did their
23 analysis that supported the need to reposition
24 these beds in a different area.

25 Q: And let's look at page 36. And can you go

1 ahead and read for us, specifically Roper's
2 justification under number 4 on page 36 for the
3 transfer of the beds? And this is back in
4 Joint Exhibit 2.

5 A: What was that page again, please?

6 Q: This is page 36 of Joint Exhibit 2.

7 A: And where would you like me to read, number 4?

8 Q: Under number 4, if you could read Roper's
9 justification for, number 4 on page 36.

10 A: Okay. And I'll start out in its entirety?

11 Q: Yes, please.

12 A: Okay. "The transfer of beds from downtown
13 Charleston in an area of limited growth to
14 Berkeley County, an area of strong historical
15 and future growth would improve access to
16 inpatient healthcare services in Berkeley
17 County and will enhance the overall
18 distribution of inpatient healthcare services
19 within the larger tri-county area. Specific to
20 the impact on Roper St. Francis, this proposed
21 project will redistribute Roper St. Francis
22 assets to an area of strong growth and to an
23 area where Roper St. Francis aligned patients
24 currently do not have reasonable access to
25 Roper St. Francis inpatient care. The proposed

1 project will ensure that current and future
2 Roper St. Francis patients in the Berkeley
3 County area have close access to Roper St.
4 Francis care and will ensure that a community
5 based, not for profit, provider is available to
6 meet community needs. The bed transfer will
7 not negatively impact the healthcare delivery
8 system within Charleston County. Four of the
9 five hospitals located within Charleston County
10 show excess bed capacity in the State Health
11 Plan resulting in the tri-county area overall
12 having in excess of 48 beds. Both the
13 justification and benefits for the proposed bed
14 transfer from Charleston County to Berkeley
15 County are detailed in the response above. It
16 should be noted that Roper Hospital will
17 continue to be able to provide all needed care
18 in its current downtown facility even with the
19 proposed bed transfer. As discussed in detail
20 in the B(14) response which follows, when the
21 combined bed relocation and associated
22 inpatient daily positioning occurs, Roper will
23 remain fully able to provide needed inpatient
24 care in its remaining inpatient bed capacity.
25 This ability will be specifically reinforced by

1 Roper's ability to provide appropriate care to
2 ambulatory and other non-admitted, non-
3 inpatient patients in non-licensed bed areas
4 within the hospital. With the bed transfer and
5 ultimate delicensing of 148 licensed beds at
6 the downtown Roper facility, 13 to St. Francis,
7 15 to Mount Pleasant --" -- I'm sorry.

8 Q: Would you read that number from Mount Pleasant
9 again?

10 A: I'm sorry, "85 to Mount Pleasant, 50 to
11 Berkeley, this licensed bed shift will allow
12 Roper to use its previously licensed acute care
13 bed capacity for expanded non-inpatient, non-
14 admitted usage, thereby allowing Roper to focus
15 inpatient care on its inpatient bed capacity."

16 Q: What weight did you place upon this narrative
17 and explanation to number 4 on pages 36 and 37
18 in making your decision?

19 A: Well, it showed that they deliberately planned
20 for the results of permanently transferring
21 beds, that it was thought out and analyzed and
22 that they deemed that this was a viable
23 project. And clearly they had planned
24 carefully for this proposal.

25 Q: And then will you go ahead and read for us

1 Roper's narrative under number 5 on page 37.

2 A: "There are no existing inpatient facility
3 resources currently located in Berkeley County,
4 so an assessment of historical utilization
5 patterns for the Berkeley County facility is
6 not applicable. We have demonstrated the need
7 for the proposed 50 beds in Berkeley County.
8 The response to B(11) details historical
9 utilization generated by residents of Berkeley
10 County based on state ORS discharge data and
11 projects future utilization levels sufficient
12 to document need and to ensure the project's
13 financial feasibility. Information presented
14 previously in this section also clearly
15 documents that the proposed Goose Creek site is
16 the best location for a new hospital within
17 Berkeley County. Based upon current population
18 distribution and forecasted population growth
19 within distinct areas of Berkeley County and
20 based upon the concentration of healthcare
21 services in the Moncks Corner area, the
22 establishment of hospital services in the Goose
23 Creek area is clearly the best development
24 option for Berkeley County residents today and
25 into the future."

1 Q: And what weight, if any, did you place upon
2 that narrative in making your decision?

3 A: You know, I felt that it was important because,
4 you know, based upon the information that they
5 captured and analyzed, that for Roper, it was
6 better to position their resources in this area
7 to serve the local patients.

8 Q: And based upon your review of Roper's entire
9 B(11) analysis, what was your conclusion as to
10 whether or not there was a justified need for
11 Roper St. Francis Berkeley and the transfer of
12 the 50 beds?

13 A: I felt that based upon the information they
14 provided that it was a viable and needed
15 project.

16 Q: Now, you also -- did you receive additional
17 information from the applicants through the
18 project review meeting process?

19 A: Yes, I believe we also asked some additional
20 questions in the other process, but then
21 certainly we did receive information during and
22 after the project review.

23 Q: And let's go ahead and turn to the project
24 review information. And, first of all, just
25 like we looked at your memo for the Trident for

1 the Berkeley Medical Center application, if
2 you'll look at page 1136 of Joint Exhibit 2, is
3 this also a DHEC document?

4 A: Page 1136. Yes, it is. It's generated by
5 DHEC, but was based upon the information in
6 their application.

7 Q: And then looking at page 1139, and I'm going to
8 tell you that document ends at 1175, can you
9 tell us what that document is?

10 A: This is a PowerPoint presentation that was
11 given during the project review meeting. And
12 this particular presentation is for the
13 Berkeley Regional Medical Center in Moncks
14 Corner.

15 Q: Okay. And then the document that begins on
16 page 1176 and ends on page 1210, can you tell
17 us what that document is?

18 A: This is a reproduction of the project review
19 presentation presented for Roper St. Francis
20 Hospital Berkeley.

21 Q: What impact did the presentations by the two
22 applicants have upon you in your decision
23 making after the project review committee
24 meeting?

25 A: I feel that the presentations along with the

1 follow-up information were very important in
2 that it gave each applicant the opportunity to
3 really provide us with a concise presentation
4 of what they felt were the most important
5 points and criteria we needed to consider in
6 decision. So it was a way of really taking a
7 huge document and creating a real clear and
8 useful and concise document for review.

9 Q: And then do you ask for or accept any
10 additional information from the applicants
11 following up on a project review presentation?

12 A: Yes, we did.

13 Q: And let's look at page 1213. And can you tell
14 me what this document is which goes through
15 page 1235?

16 A: This is a document generated by Mr. Richard
17 Baehr on behalf of the Trident Health System
18 post project review.

19 Q: Okay. And then the document beginning on page
20 1236, which goes through only 1250, can you
21 tell us what that document is?

22 A: This is a letter from Roper, and I'll have to
23 see who exactly signed it, Doug Bowling signed
24 it. And again, it's their response to the
25 information presented during the project

1 review.

2 Q: And what weight, if any, did you give the post
3 project review follow-up comments from the two
4 applicants?

5 A: Again, I think it's really huge because it gave
6 each applicant an opportunity to critique and
7 comment on information, you know, presented so
8 they could have an opportunity to dispute, or
9 potentially dispute the other presentation's
10 information or reinforce or reconfirm their own
11 information.

12 Q: When you conclude a project review
13 presentation, do you generally request that the
14 parties submit any additional comments by a
15 certain timeline?

16 A: Yes, it's certainly their option as to whether
17 or not to submit anything, but we mutually
18 agree upon a deadline to receive the comments,
19 and then that's the date that really the clock
20 starts ticking in order to get the decision
21 made in a timely manner.

22 Q: And how much time do you typically take between
23 when you've asked that they submit their last
24 comments and when you will issue a decision?

25 A: Typically, it's three days.

1 Q: Do you know if it was that in this case?

2 A: Well, yes, it was.

3 Q: And then I want to turn your attention to two
4 other documents. One begins on page 1252, and
5 can you tell us what this is?

6 A: This is a document dated June 23 from Parker
7 Poe on behalf of Trident Medical Center and
8 it's additional discussion, and I believe it
9 also is an analysis from Mr. Baehr.

10 Q: And then if you'll look at page 1258, can you
11 tell us what that document is at page 1258?

12 A: That's a document generated by Mr. Baehr on
13 behalf of Trident Health System.

14 Q: So did those two documents come out on the same
15 day?

16 A: Yes.

17 Q: And how many days was that prior to the date
18 that you issued your decision?

19 A: Well, the decision was issued on the 26th of
20 June.

21 Q: So would those two comments, those two letters
22 dated June 23rd, would they have come in before
23 or after you would have notified the parties
24 that you would have requested their last
25 submission of information?

1 A: Well, it came in afterwards.

2 Q: Okay. And then on June 26, 2009, can you tell
3 us what the decisions were that you made and
4 issued on June 26, 2009, with regard to the two
5 applications?

6 A: The decision was to approve both applications:
7 One, the Roper application based on the
8 transfer of the beds, and then the Trident
9 application based upon the bed need.

10 Q: Let's look at page 1262 and Joint Exhibit 2,
11 and can you tell us what this document is?

12 A: This document is the decision letter for Roper
13 St. Francis Hospital Berkeley that was issued
14 to Ms. Shannon Cantwell.

15 Q: Okay. And then if you'll look at the document
16 that begins on page 1266 and continues through
17 1274. Can you tell us what that document is?

18 A: This document was generated by me, and it's a
19 description of the project and it's entitled,
20 Certificate of Need Summary of Department's
21 Findings. And it's basically a summary and an
22 analysis.

23 Q: And is there a similar decision letter and
24 summary of Department findings with regard to
25 Trident's application and the Joint 1 Exhibit,

1 Trident's Berkeley Medical Center application?

2 A: Yes, there is.

3 Q: And can you go ahead tell us what you concluded
4 with regard to the issue of whether these were
5 competing applications?

6 A: I concluded and clearly stated in my decision
7 letter that I determined they were not
8 competing because one was a transfer of
9 existing resources and the other was basically
10 generated by the bed need.

11 Q: Now, you have a definition that you apply from
12 the CON Act and regulation when you determine
13 whether or not an application is competing,
14 don't you?

15 A: Yes, I generate the definition.

16 Q: Okay. And if you'll look on the decision
17 letter on page 1262 --

18 A: Well, actually I --

19 Q: -- you cite to the definition.

20 A: Yeah.

21 Q: -- but could you generally tell us what the
22 definition is for competing applications?

23 A: Well, basically it states that if there's more
24 than one application for the same proposed
25 service area and for similar projects and if

1 both were approved, the need would be exceeded.
2 You know, there's several criteria that a
3 project would have to meet to be considered
4 competing.

5 Q: And why specifically did you conclude that
6 these two applications did not meet that
7 definition?

8 A: Primarily because the Roper project was a bed
9 transfer and not an addition to the service
10 area.

11 Q: So did you find it a part of the -- and we can
12 look at the CON Regulation. I have a copy
13 here, although if we could pull it up on the
14 screen, to the competing application's
15 definition, which is 1036. And if you'll go
16 ahead and start reading where it starts right
17 there on your screen and then we'll shift to
18 the second part which goes onto the next page.

19 A: "Competing applicants means two or more persons
20 and/or healthcare facilities as defined in this
21 regulation who apply for Certificates of Need
22 to provide similar services and/or facilities
23 in the same service area and whose
24 applications, if approved, would exceed the
25 need for this facility or service."

1 Q: Is there any particular part of that definition
2 that you just read that you found was not met
3 with regard to Roper and Trident's
4 applications?

5 A: Well, again, the approval -- it was a transfer,
6 so the need would have not been exceeded by the
7 approval of both.

8 Q: Why, in your opinion, would approval of both
9 not exceed the need based on the transfer
10 reason that you just gave? Could you just
11 explain that further for us.

12 A: Well, Roper was proposing to basically
13 reposition existing beds, so they were just
14 moving beds from one location to another, they
15 weren't adding to the beds.

16 THE COURT: Ms. Biggers?

17 MS. BIGGERS: Yes, sir.

18 THE COURT: May I ask a question at this point?

19 MS. BIGGERS: Oh, yes, sir.

20 THE COURT: I think it's in line with where you're
21 going. But suppose that Roper wanted to build
22 a hospital right next to the proposed Berkeley
23 site and transfer the beds up there, would it
24 still be non-competing? Is distance not a
25 component?

1 MS. BRANDT: Well, yes, sir. I think my letter goes
2 on to additionally state that the proposed
3 projects were quite a few miles away and that
4 they were serving different populations. The
5 population in Goose Creek --

6 THE COURT: Well, is there any standard in the
7 regulations or in the statutes as to how many
8 miles away you have to be before it gets
9 competing or not competing?

10 MS. BRANDT: No, sir. You basically just have to
11 weigh the merits of the application upon the
12 contents of the application and look at each
13 one individually.

14 THE COURT: Thank you.

15 Q: Well, two things that you just mentioned there
16 I'd like you to follow up on. What was it
17 about the geographical distance that weighed in
18 on your decision regarding these not being
19 competing applications?

20 A: Well, it was quite a distance. I believe it
21 was around 14 miles, and I had personally
22 driven that distance and looked at the lay of
23 the land.

24 Q: When did you do that in the process of your
25 review?

1 A: Well, it was prior to issuing the decision. I
2 honestly don't recall the exact date.

3 Q: Did you go by yourself or did someone else go
4 with you?

5 A: No, Lisa Sanders was with me.

6 Q: And remind us again who she is.

7 A: She was the senior reviewer for this project.

8 Q: And what were your impressions from that site
9 visit that you conducted regarding the two
10 different geographical communities that these
11 proposed facilities would be located in?

12 A: Well, I felt like they were distinct, certainly
13 geographically, and then just the attributes of
14 the area. The Carnes Crossroad area was
15 basically an area where there was supposed to
16 be a lot of, you know, build up community and
17 residences and so forth. And then driving out
18 to Moncks Corner, it was a pretty well
19 established community. There's a huge Santee
20 Cooper plant. You know, it was a thriving
21 little community. There's one thing I had said
22 in my deposition that impressed upon me that
23 there was a Doctors Care under construction,
24 you know, so there was growth in that area as
25 well. So I just felt like they were distinct

1 populations.

2 Q: And another thing that you mentioned a moment
3 ago was different -- serving different
4 populations. Could you expound upon that
5 further for us?

6 A: Well, the Trident application is clear that
7 they want to serve their patients. And as
8 well, the Roper application, for the most part,
9 they proposed to serve their own patients as
10 well. So there's not in the way of overlap
11 that, you know, nothing that's significant. So
12 they're distinct communities serving distinct
13 patients.

14 Q: And the different patient populations that you
15 just mentioned, mentioned in the two
16 applications, was that -- did you place much
17 weight on that in your ultimate determination
18 that approving both would not exceed the need?

19 A: Yes, again, I thought that was very important
20 in my decision.

21 MS. BIGGERS: Your Honor, I think I'm very close to
22 finished. But perhaps if we could take a short
23 break I could just see if I had any further
24 questions.

25 THE COURT: That will be fine, ten minutes.

1 MS. BIGGERS: Thank you.

2 THE COURT: Recess for ten minutes.

3 (Break from 11:19 a.m. until 11:32 a.m.)

4 THE COURT: Back on the record, please.

5 MS. BIGGERS: I have no more questions.

6 THE COURT: Thank you. Mr. Long?

7 MR. LONG: Thank you, Your Honor. I apologize, Your
8 Honor, we'll be ready to go in a second. May
9 it please the Court?

10 THE COURT: Yes, sir.

11 MS. BRANDT - CROSS EXAMINATION BY MR. LONG:

12 Q: Ms. Brandt, I know you've been answering a lot
13 of questions, but let me go over a couple of
14 things, hopefully, that Ms. Biggers has not
15 covered already this morning. Let's go back to
16 where you had just finished up when you talked
17 about some of the reasons as to why the
18 approval of both of these applications does not
19 exceed the need, because that's the standard
20 for you, right, the approval of both
21 applications cannot exceed the need, right?

22 A: Yes.

23 Q: And one of the reasons, of course, as you said
24 in your decision letter is that this is a bed
25 transfer by Roper, so there's no increase in

1 beds in the service area, right?

2 A: Correct.

3 Q: And then the other reason you gave is that
4 these applications are a pretty good distance
5 from each other, right?

6 A: Yes.

7 Q: Another reason is they are, by the way their
8 language is drafted and where they're located,
9 they're designed to serve different
10 communities, right?

11 A: Yes.

12 Q: The Trident facility is designed to focus in
13 the northern part of Berkeley County, correct?

14 A: Yes.

15 Q: The Roper St. Francis Hospital at Carnes
16 Crossroads is designed to serve more of the
17 southern area of Berkeley County, right?

18 A: Yes.

19 Q: And they're also designed to serve patients who
20 are traditionally aligned with each one of
21 their systems, right?

22 A: Yes.

23 Q: So the Roper Hospital is more focused on
24 repositioning and serving patients who are
25 aligned with the Roper St. Francis System,

1 correct?

2 A: Correct.

3 Q: And the Trident Moncks Corner Hospital is
4 focused on patients who are aligned with the
5 Trident Health System?

6 A: Correct.

7 Q: Particularly in the north, right?

8 A: Yes.

9 Q: Also, one reason why the approval of both would
10 not exceed the need is the fact that there is
11 no hospital in Berkeley County, right?

12 A: That's correct.

13 Q: And putting 100 beds in Berkeley County is not
14 that dramatic, is it?

15 A: No, I don't believe so.

16 Q: When you look around the state of South
17 Carolina at other counties that have similar
18 populations to Berkeley, they have a lot more
19 than 100 beds, don't they?

20 A: Yes.

21 Q: And the counties who don't have any beds right
22 now, McCormick, Lee, I forget the other one,
23 maybe it will come back to me, Saluda, I think
24 those are very small counties, aren't they,
25 especially in population, right?

1 A: Yes, they are.

2 Q: I think McCormick has the lowest population of
3 any county in South Carolina, and the other
4 counties are, basically less than 20,000
5 people, right?

6 A: Yes.

7 Q: So they're pretty dramatically different than
8 Berkeley County, aren't they?

9 A: Yes, they are.

10 Q: Another reason why there might not be a need,
11 why it would not exceed the need, is all the
12 population growth, right?

13 A: Yes, that's correct.

14 Q: More people moving into the county, more
15 patients, right?

16 A: Yes.

17 Q: And these facilities aren't built for just one
18 year or two years or three years, are they?

19 A: No, they're not.

20 Q: I mean, they're supposed to last a pretty long
21 time, aren't they?

22 A: Yes, they are.

23 Q: Trident's Medical Center is 40 years old,
24 right?

25 A: I believe so, yes.

1 Q: Roper Downtown is about a 150 years old, okay.
2 All right. And so when you put these hospitals
3 here, you're making a commitment, not just for
4 the first couple of years afterwards, but
5 really for decades, right?

6 A: Yes.

7 Q: All those reasons that these applications would
8 not be competing, aren't they?

9 A: Yes.

10 Q: Now, let me show you a contrast to a different
11 service line, because I know there were some
12 questions yesterday from Mr. Summer about home
13 health. All right. Let's look at page II-126
14 in the '08-'09 Health Plan. II-126.

15 **MR. LONG:** Can we blow that up just a little bit at
16 the top so at least we get the Aiken County in
17 there. Okay.

18 Q: Now, you and I, actually, I was involved in a
19 case last year where you and I already talked
20 about home health a little bit, right?

21 A: Yes.

22 Q: Okay. This is the Home Health Section of the
23 State Health Plan, right?

24 A: Yes, it is.

25 Q: Okay. Under the '08-'09 Plan. And it says in

1 the Health Plan, clearly, the maximum number of
2 agencies per county is listed there, and for
3 Aiken it's six, right?

4 A: Yes.

5 Q: And the number of existing home health agencies
6 in Aiken is five, right?

7 A: Yes.

8 Q: And so it says, can you approve another one,
9 yes, right?

10 A: Yes.

11 Q: Now, in our case we debated about whether there
12 was really how many there were there, okay, but
13 the -- how many existing were actually there.
14 But under that Plan there's no doubt that you
15 could only approve one if there were five that
16 were there and six is the maximum number,
17 right?

18 A: Correct.

19 Q: So if three people, three agencies apply,
20 you're limited, right? Because there can't be
21 more than six, right? These provisions in the
22 general hospital section, there's nothing like
23 that that gives you any sort of limitation,
24 does it?

25 A: No, not to this manner at all.

1 Q: Okay. So on some service, aligned services
2 when they come in the door you pretty much know
3 that it's going to be competing because the
4 Health Plan tells you that they have to be
5 competing, right?

6 A: Correct. I mean, mathematically there's only
7 a provision for one additional agency.

8 Q: But most services, whether it's hospitals or
9 other services, maybe linear accelerators or
10 whatever, there is no prohibition like this,
11 right? This is kind of rare to have a number
12 that says this is the maximum number, isn't it?

13 A: Well, this is very specific, yes.

14 Q: Right. Okay. Now, in your position as the
15 director of the CON program, would you agree
16 with me that your job is to apply the CON Act,
17 the State Health Plan, and the Regulations to
18 the CON applications that you review, right?

19 A: Yes, it's in regulation.

20 Q: And the CON Act and the Regulations say that
21 the application, the CON application shall not
22 be approved unless it complies with the State
23 Health Plan, right?

24 A: Right.

25 Q: And so that's one of the big questions that you

1 have during the review process is is this
2 application, is it in compliance with the
3 Health Plan, right?

4 A: Right, yes.

5 Q: Because ultimately, you're trying to apply --
6 now, is it -- when you're looking at this
7 question of compliance with the State Health
8 Plan, is it important to look at the entire
9 section that the application would fall under?

10 A: Yes. In fact, in the beginning of the Plan, it
11 directs that.

12 Q: So you're not looking at just like isolated
13 phrases or words? You're looking at this
14 entire section that's set out to determine
15 whether it complies, right? And the whole Plan
16 itself, if necessary, right?

17 A: Yes. Certainly, each section as a whole.

18 Q: And your goal in trying to determine whether
19 the application complies with the State Health
20 Plan, you've got to look at what the intent of
21 the Plan is; what it's trying to tell you to do
22 in the Plan in regards to how to analyze these
23 services, right?

24 A: Yes.

25 Q: All right. Now, the intent -- the State Health

1 Plan is the DHEC Board's document, right?

2 A: Yes, it is. They are the ultimate approval of
3 the Plan.

4 Q: There's a committee, a health planning
5 committee that helps put it together every
6 other year, right?

7 A: Yes.

8 Q: Different people serve on that, correct?

9 A: Yes.

10 Q: You don't serve on that, though, do you? That's
11 not your responsibility as director?

12 A: No, I'm not. They're appointed.

13 Q: And Mr. Shelton is actually the person with the
14 Department who's kind of the liaison person
15 with the committee, right?

16 A: Right. He puts everything together.

17 Q: For their benefit. And then when the committee
18 makes the recommendation, it goes to the DHEC
19 Board and they approve it and they can change
20 it if they want to, right?

21 A: Right. They go section-by-section.

22 Q: And it doesn't go to the legislature, right?

23 A: No, it does not.

24 Q: And then once it's approved, then you as the
25 director of the program apply it to these

1 applications, right?

2 A: Right.

3 Q: Okay. Let's look at one other section, another
4 page in the '08-'09 Health Plan, page II-77.
5 This one came up yesterday also. This
6 is the Ambulatory Surgery Facility Section that
7 Mr. Summer asked you about.

8 MR. LONG: And I ask you to blow up, if you would,
9 Bonnielyn, the paragraph 10. Okay.

10 Q: Let's look at the language on the first
11 sentence of that, in no case can more than one
12 new ASF, that stands for ambulatory surgery
13 facility, right?

14 A: Yes.

15 Q: "In no case can more than one new ASF in the
16 county be approved at a single time," that's
17 what it says, right?

18 A: Right.

19 Q: That's an absolute prohibition, isn't it?

20 A: Yes. It's pretty clear.

21 Q: Under no circumstances are you permitted under
22 the Health Plan to approve two ambulatory
23 surgery facilities in a county at the same
24 time, right?

25 A: Right.

1 Q: That's very clear language, isn't it?

2 A: Yes, it is.

3 Q: You might even say it's plain language, right?

4 A: Yes.

5 Q: Now, let's look over at Section II- -- let's
6 look over at II-9, which is the bed transfer
7 provision that we've spent a lot of time on the
8 last few days, of the Health Plan, which
9 starts, I guess, on the bottom of page II-9;
10 Section J and then continues on to the other
11 page, okay?

12 A: Okay.

13 Q: Looking at that paragraph there on II-9 of the
14 '08-'09 Plan, there is no prohibition in that
15 part of the page regarding the transfer of beds
16 to create or construct a satellite hospital, is
17 there?

18 A: No, there's no prohibition.

19 Q: Okay. Looking over to the second page, II-10,
20 these are all the sections that deal with it,
21 right?

22 A: Yes.

23 Q: One through F. Look at eight, I'm sorry. And
24 in those sections, there's no prohibition, is
25 there?

1 A: No, there's not.

2 Q: So it's very different from ambulatory surgery
3 facility language we just looked at, isn't it?

4 A: Yes, it is.

5 Q: Okay. Now, and, of course, your goal is to --
6 your question is, does it comply with the
7 Health Plan, right?

8 A: Yes.

9 Q: Now, let's also look at that page there,
10 nowhere on that page does it say that the
11 receiving facility has to be existing, does it?

12 A: No, it does not.

13 Q: That word is not in there at all, is it?

14 A: No, it's not.

15 Q: Look over on the other page, it's not on there
16 either, is it? It doesn't say the receiving
17 facility has to be existing, does it?

18 A: No, it doesn't.

19 Q: All right. So no prohibition, nowhere does
20 that -- by the plain language it never says
21 that the receiving facility has to be in
22 existence?

23 A: No, it doesn't.

24 Q: Now, you would also agree with me that if
25 there's going to be a transfer of beds from one

1 facility to another facility, whether it's the
2 situation that Mr. Summer talked about
3 yesterday, which was Palmetto and Baptist may
4 be transferring beds, or the situation we have
5 here where Roper Downtown is transferring beds
6 to Carnes Crossroads, the Carnes Crossroads
7 facility, it's one application, right?

8 A: Yes.

9 Q: I mean, Palmetto wouldn't have to file an
10 application to transfer some beds and pay you
11 a lot of money for an application fee, and then
12 Baptist filed a separate application to receive
13 the beds and pay you another fee, right?

14 A: No, they would not.

15 Q: It would be one application, two facilities,
16 right?

17 A: Correct.

18 Q: You've got a transferring facility and a
19 receiving facility; you agree with me?

20 A: Correct.

21 Q: Okay. Now, Roper Downtown and Roper Berkeley
22 at Carnes Crossroads are affiliated because
23 they have the same owner, right?

24 A: Correct.

25 Q: And that's just like Baptist and Richland?

1 A: Right.

2 Q: You agree with me on that?

3 A: Yes.

4 Q: Okay. Now, there was a little bit of testimony
5 this morning, and I just want to clarify. Now,
6 Trident Health System, they operate all their
7 facilities under the same license, right?

8 A: I believe so, yes.

9 Q: But Roper does not propose to operate all their
10 facilities under the same license. This
11 facility in Carnes Crossroads will have a
12 separate license, won't it?

13 A: Yes. Yes, it will.

14 Q: We went over that this morning, right?

15 A: Yes.

16 Q: And Roper Downtown has a separate license,
17 right?

18 A: Right.

19 Q: Now, who's the transferring facility under the
20 provision?

21 A: Well, Roper is transferring beds to create a
22 new hospital.

23 Q: Okay. And Roper Berkeley then would be the
24 receiving facility, right?

25 A: Correct.

1 Q: All right. Let's look at some of those. Let's
2 go to the next page and look at a couple of the
3 different paragraphs here. Okay. There's no
4 doubt that the transfer does not increase the
5 number of beds, right?

6 A: Correct.

7 Q: All right. And clearly in paragraph two,
8 transfers can cross county lines, right?

9 A: Correct.

10 Q: And you were provided utilization information
11 in the Roper application as to where the
12 patients live, right?

13 A: Yes.

14 Q: You've got zip code information, county
15 information showing discharges and market share
16 and population; all that's in the application,
17 right?

18 A: Yes, it is.

19 Q: And they clearly identified to you where they
20 expected their patients to come from at the
21 Carnes Crossroads facility, right?

22 A: Yes, they did.

23 Q: And wouldn't you agree with me that they show
24 why it was in the best interest of the patients
25 for the transfer to occur?

1 A: Yes.

2 Q: Because one of the things that both applicants
3 talked about is for a general acute care
4 hospital, it's helpful for the patients to move
5 the hospital close to the patients, right?

6 A: Yes, it is.

7 Q: You don't want them to drive a long way to a
8 hospital, especially an acute care hospital,
9 right?

10 A: Correct.

11 Q: Like these, community hospitals need to be in
12 a communities, right?

13 A: Yes.

14 Q: Okay. And so it's in the best interest of not
15 only just Roper St. Francis to transfer these
16 beds to Berkeley County, but it's also in the
17 best interest of the people living in Berkeley
18 who use their services?

19 A: Yes.

20 Q: And it shows you that in the application,
21 right?

22 A: Yes.

23 Q: Now, look at number five. It says, "The
24 facility receiving the beds must demonstrate
25 the need for the additional capacity based on

1 both historical and projected utilization
2 patterns." Did Roper Berkeley at Carnes
3 Crossroads do that?

4 A: Yes, they did.

5 Q: Exactly, right. They showed the patterns of
6 utilization. When you talk about utilization,
7 what are you talking about there? That's kind
8 of a healthcare word we use a lot.

9 A: In other words, they, and if you're talking
10 about inpatient utilization, then it's how many
11 patients were basically admitted or discharged.
12 In other words, they typically determine what
13 particular area the patients are coming from
14 that utilize the services.

15 Q: And applicants use things like zip code data
16 and population data and discharge data to show
17 what the patterns of that utilization are;
18 isn't that correct?

19 A: Yes.

20 Q: You see that pretty commonly in all of your
21 applications, don't you?

22 A: Yes.

23 Q: Now, I know Ms. Biggers went through these with
24 you. Any doubt in your mind as to whether
25 Roper, whether the application, the Roper

1 application complied with all eight of these
2 criteria?

3 A: No, there was no doubt.

4 Q: Now, that DHEC Board decision in Joint 16, that
5 was issued about a month before your decision
6 in this case, right?

7 A: Yes, I believe so.

8 Q: Yes, it was May of '09. And you made the
9 decision in this case in June of '09, right?

10 A: Yes.

11 Q: So when the DHEC Board spoke on this provision,
12 from your mind, was the issue over as to
13 whether it was allowed or not?

14 A: Oh, yes, absolutely.

15 Q: Okay. Now, let me talk to you about another
16 provision. Let's go to the '04-'05 State
17 Health Plan. Have you got that up yet? Okay.
18 Can we go to page II-7. Now, Trident, of
19 course, did not apply under the bed transfer
20 provision, did they?

21 A: No, they did not.

22 Q: They applied under this section right here in
23 the '04-'05 Health Plan on page II-7,
24 subsection D.

25 MR. LONG: Can we blow that one up.

1 Q: And I'll read it for you. I know you've been
2 reading a lot today. "Should there be a need
3 shown for additional beds for a hospital, then
4 an increase may be approved in order to --"
5 Okay. So in that first sentence there, it
6 talks about should there be a need shown for
7 additional beds for a hospital, right?

8 A: Yes.

9 Q: That's one hospital, right?

10 A: Yes.

11 Q: Then an increase may be approved. In order to
12 provide for a cost effective addition, wouldn't
13 you think that the addition would be talking
14 about the hospital?

15 A: Yes.

16 Q: "Up to the greater of 50 beds or the actual
17 projected number of additional beds may be
18 approved provided the hospital," again, one
19 hospital, right?

20 A: Right.

21 Q: "Can document and demonstrate the need for the
22 additional beds." That's the provision that
23 Trident applied under, isn't it?

24 A: Yes.

25 Q: Okay. Under the plain language, is there

1 anything in that provision that says you can
2 build a satellite hospital?

3 A: It doesn't use those words.

4 Q: It doesn't talk anything about that, a
5 satellite hospital, right?

6 A: No.

7 Q: And it would actually seem to imply that it was
8 only applying to one facility where the bed
9 transfer provision talks about two facilities,
10 right?

11 A: Well, in the plain language it's definitely
12 singular.

13 Q: All right. Now, it doesn't prohibit it, does
14 it?

15 A: No.

16 Q: It doesn't say you have to put the beds at the
17 hospital where the need is; it doesn't say
18 that, does it?

19 A: No, it doesn't.

20 Q: So and the Department has consistently
21 interpreted this provision to allow for the
22 creation of a satellite hospital, right?

23 A: Yes.

24 Q: Which is exactly what Trident Health System
25 proposed in its application, right?

1 A: Yes.

2 Q: There are a lot of hospitals that have been
3 built that way, right, in South Carolina?

4 A: Yes, I'm sure there are. No doubt.

5 Q: Now, both of the CON applications in this case,
6 after you made your decision, there was a
7 request for a final review with the DHEC Board,
8 right?

9 A: Yes.

10 Q: That's kind of the next step in the appeal
11 process. After your decision, you go to the
12 DHEC Board and they're given the opportunity to
13 conduct a final review conference, right?

14 A: Right. Right, in accordance with the
15 Administrative Procedures Act.

16 Q: And so if the -- if the DHEC Board wanted to
17 review these provisions in the State Health
18 Plan, whether they applied to these CON
19 applications, they could have done that, right?

20 A: Yes, they could have.

21 Q: But they chose not to, right?

22 A: No, they did not here for these cases, thus
23 they upheld our decision.

24 Q: Right. And there was no final review
25 conference?

- 1 A: Huh-uh (negative response)
- 2 Q: Nobody went over these. They just denied the
- 3 request for the final review conference and
- 4 chose not to have one, right?
- 5 A: Yes.
- 6 Q: Now, let me just ask one follow up on one
- 7 thing. That DHEC Board order that we just
- 8 talked about a minute ago regarding the bed
- 9 transfer provisions, Joint 16, now that was an
- 10 interpretation by the Board of the '04-'05
- 11 Plan, because Parkridge was filed under the
- 12 '04-'05 Plan, wasn't it?
- 13 A: I believe so.
- 14 Q: Yes. But the language from '04-'05 to '08-'09
- 15 for bed transfers is the same, isn't it?
- 16 A: Yes, it is.
- 17 Q: Now, let's talk about the bed need formula in
- 18 the State Health Plan is for new beds, isn't
- 19 it?
- 20 A: I believe it says additional beds.
- 21 Q: Right. And it has nothing to do with the
- 22 transfer provision?
- 23 A: No.
- 24 Q: Does it?
- 25 A: No.

1 Q: And so isn't it irrelevant to your analysis as
2 to what the bed need formula says when you're
3 analyzing a transfer, a proposed hospital under
4 the bed transfer provision?

5 A: Right.

6 Q: Okay. And one of the reasons is because,
7 number one, the criteria says you can't add to
8 the beds on a bed transfer, right?

9 A: Correct.

10 Q: Okay.

11 A: Or that's the interpretation, yes.

12 Q: Well, actually in the '08-'09 Plan, it says --
13 that's the first criteria says you can't add to
14 it?

15 A: Right. Right.

16 Q: All right. Now, do you believe that there are
17 standards in the State Health Plan to approve
18 new hospitals? In the State Health Plan are
19 there standards for you to follow to approve
20 hospitals?

21 A: Well, the Plan discusses beds.

22 Q: Well, let's look at the '08-'09 Plan, the one
23 that Roper St. Francis applied under. And
24 let's turn first to page, Section II-4. It's
25 in the book if you want to follow. That might

1 be easier for you.

2 A: I'm sorry. What exhibit is it?

3 Q: It's Joint 4 of the '08-'09 Plan. And we'll
4 look at a couple of pages on that starting off.
5 II-4.

6 A: Okay.

7 Q: Okay. About halfway down the page it says,
8 General Hospitals, doesn't it?

9 A: Yes.

10 Q: And that's the beginning of the General
11 Hospitals Section of the State Health Plan,
12 right?

13 A: Yes.

14 Q: And it goes on with definitions and discussion
15 all the way through, at least, II-11, right?

16 A: Yes.

17 Q: And then after that on II-12 through II-19, or
18 I guess II-21 is the inventory, right?

19 A: Right.

20 Q: And the bed need formula, the inventory?

21 A: Right.

22 Q: So let's go back and look at a couple of the
23 pages in the front, okay. II-4 starts the
24 General Hospital Section. Gives the definition
25 of a hospital, right?

1 A: Right.

2 Q: Then you turn over to page II-8.

3 A: Okay.

4 Q: The language says, "No additional hospitals
5 will be approved unless they are a general
6 hospital and will provide," and then it lists
7 three different sections of things that are
8 required before a hospital can be approved,
9 right?

10 A: Right.

11 Q: So clearly, the Health Plan in this section
12 deals with the approval of new hospitals,
13 right?

14 A: Right.

15 Q: Now, let's turn over about two more pages and
16 I want to point out something to you, page II-
17 11. In the State Health Plan for all of the
18 major services, the Health Plan will suggest to
19 what the important project review criteria
20 should be, right?

21 A: Yes.

22 Q: And that's true for hospitals, right?

23 A: Right.

24 Q: So when you're making the determination as to
25 what is the most important project review

1 criteria, this list right here is important,
2 isn't it?

3 A: Yes, it is.

4 Q: Now, you have the discretion to maybe add to it
5 or whatever, right?

6 A: Yes.

7 Q: But at least it's been my experience in doing
8 this for a little while that pretty much the
9 most important project review criteria matches
10 up with the most important project review
11 criteria in the State Health Plan in pretty
12 much all of the applications, right?

13 A: Yeah, for the most part.

14 Q: So let's take a look at Roper St. Francis'
15 application, Joint Exhibit 2, page 1108. We're
16 just going to look at it quickly so either way
17 you want to do it, whatever's easier for you,
18 okay. All right. Can we go back one page?
19 This is what we call THE deemed complete
20 letter, right?

21 A: Yes.

22 Q: All right. What is a deemed complete letter
23 mean?

24 A: Well, it signifies the beginning of what we
25 would call the review period in the State

1 Register under Notification of Affected
2 Persons.

3 Q: Okay. And in the deemed complete letter, the
4 Department provides the applicant and any
5 affected persons, who are getting copied with
6 it, with the most important project review
7 criteria, right?

8 A: Yes.

9 Q: And that's on the next page 1108?

10 A: Yes.

11 Q: And if we could blow those up. Those basically
12 match what is suggested in the State Health
13 Plan, right?

14 A: Yes, they do.

15 Q: Same categories pretty much, right?

16 A: Yes.

17 Q: Okay. And so that's one of the reasons that
18 the project review criteria are similar of the
19 two -- or I think almost the same between the
20 Trident application and the Roper St. Francis
21 application, right?

22 A: Yes.

23 Q: Choosing the project review criteria has
24 nothing to do with your analysis of whether
25 the applications are competing, does it?

1 A: No.

2 Q: All right. Now, let me take a minute here and
3 let's go look at Joint Exhibit 1, which is
4 Trident's application, okay. I know you've
5 been through a good bit of this already, I'm
6 just going to pick up one or two things,
7 probably more than one or two, maybe four or
8 five things that I saw in there that I thought
9 I might want to ask you about. If you could,
10 turn to page 22. Go to that first paragraph
11 there under the question. This question, you
12 got the Exhibit 2, you got Joint Exhibit 2 in
13 front of you?

14 A: Yes.

15 Q: All right. It could be easier for you to read
16 it. This question has the applicant, the means
17 for which a person will have access to the
18 facilities services, right?

19 A: Yes. I'm sorry, what page is that?

20 Q: Page Bates 22. Got it? Question number 10?
21 I'm sorry, you're looking at Number 2 or you're
22 looking at Number 1?

23 A: Oh, I thought you said two.

24 Q: I'm sorry. I might have. I need to fix that.
25 We're in Joint Exhibit 1, page 22.

1 A: Okay.

2 Q: This is Trident's application, if we could look
3 at that first. This question is question 10
4 and it's where the applicant tells you how a
5 person would have access to the facility
6 services, right?

7 A: Right.

8 Q: And of course in this box here they give you
9 where they think the patients are going to come
10 from, the referrals for their facility, right?

11 A: Right.

12 Q: And they talk about the Berkeley County
13 residents admitted to Trident Health System
14 acute care hospitals, and the vast majority of
15 them are going to be physicians, self-admit or
16 through the emergency department, right?

17 A: Yes.

18 Q: And then look at the first paragraph, the
19 applicant anticipates that the patients will
20 access the proposed Berkeley Medical Center via
21 the same channels which they currently access
22 the existing acute facilities of the Trident
23 Health System. So the Berkeley Moncks Corner
24 -- the Moncks Corner facility, patients are
25 going to be the same access as Summerville in

1 Trident -- Trident Medical Center, right?

2 A: Yes, for this application.

3 Q: That's what they are telling you. And that
4 means it's going to be the same patients, the
5 same doctors and the same emergency department,
6 right? Because they're closing the ED in the
7 building in Moncks Corner and putting it in the
8 hospital, right?

9 A: Yes.

10 Q: No changes. If we could, turn over to page 24.
11 Ms. Biggers did ask you about this, but I just
12 wanted to ask you one question about it, okay?

13 A: Okay.

14 Q: In this top paragraph at the top, Trident says
15 first that acute services generally, acute
16 services should be located in a reasonable
17 geographic proximity to the citizens which they
18 serve, right?

19 A: Right.

20 Q: Wouldn't that also apply to the Roper St.
21 Francis Hospital?

22 A: Yeah, certainly.

23 Q: And as Berkeley and Dorchester counties
24 continue to grow, it will become progressively
25 less feasible and less fair to expect their

1 residents to make long automobile drives to
2 access routine acute care services at
3 facilities that are distant from their homes.
4 Would that also apply to the Roper St. Francis
5 application at Goose Creek?

6 A: Yes.

7 Q: Because there's a large percentage of people in
8 Berkeley County who choose to use Roper St.
9 Francis as their provider of choice, right?

10 A: Yes, they do.

11 Q: And right now, they have to drive all the way
12 downtown to Roper Downtown or to West Ashley to
13 go to the hospital, right?

14 A: Yes.

15 Q: And as the people continue to move westward,
16 and we can agree they're going to move west
17 because they're not moving east, right?

18 A: Right.

19 Q: Because east has got an ocean, right? So it's
20 going to be harder and harder for them to
21 access those facilities, right?

22 A: Yes.

23 Q: And it wouldn't be fair to make them drive
24 those long distances, would it?

25 A: No, I don't believe so.

1 Q: Just like Trident said in their application.
2 All right. Let's talk about this issue about
3 growth in population, okay. It's undisputed,
4 if a population's growing, there's going to be
5 more patients for the providers, right?

6 A: Yes.

7 Q: So nothing happens and more people move to
8 Berkeley County, then there will be more
9 patients to be seen by the different providers
10 there, right?

11 A: Yes.

12 Q: Now, let's look at page -- let's go to page 73
13 in the Trident application. Okay.

14 MR. LONG: Let me make sure I've got the right one
15 here. Yeah, can we blow that up.

16 Q: Now, as part of the B(11) analysis that Trident
17 gave you, they gave you a lot of charts and a
18 lot of information in their application to
19 support their application, right?

20 A: Yes, they did.

21 Q: And so did Roper?

22 A: Yes.

23 Q: Okay. Let's look at this. I think this Chart
24 15 is kind of important and I'm going to ask
25 you if you think it's also important. Chart 15

1 presents the projections of the market share
2 for the proposed Berkeley Medical Center
3 facility will obtain within the Trident System.
4 So they're projecting their market shares with
5 this chart right here?

6 A: Right.

7 Q: And then they explain what it means. They say
8 the one percent market share forecast in zip
9 code 29401, for example, does not mean that the
10 Berkeley Medical Center will obtain one percent
11 of the inpatient days generated by the zip
12 code. Rather it means it will obtain one
13 percent of the total non-specialty, non-
14 tertiary inpatient days generated who elect to
15 obtain care from Trident. It's not one percent
16 of the whole zip code, it's one percent of the
17 Trident part of the market share, right?

18 A: Right.

19 Q: That would be a much smaller number, wouldn't
20 it? One percent of just Trident's portion would
21 be a lot smaller than one percent of the whole,
22 right?

23 A: Yes.

24 Q: And it says, "The market share utilization
25 projections that follow represent a

1 reallocation of patient days within the Trident
2 Systems. No declines in market share are
3 forecast for any other providers." So they
4 projected in their application that there would
5 be no shift in market share, right?

6 A: Right.

7 Q: They would only treat patients who had been
8 traditionally aligned with Trident, right?

9 A: Right.

10 Q: The next page, 74.

11 **MR. LONG:** If you just blow that up a little bit and
12 then we're going to --

13 Q: Okay. They actually went through each one of
14 the zip codes in the service area and ranked
15 them as to what they thought the percentage
16 would be of the Trident patients, right?

17 A: Right.

18 Q: And we took that chart and put it on this
19 little board here --

20 **MR. LONG:** Can you go to the map, which I think is
21 76, if you can see it on the screen.

22 Q: -- and put it on this chart here and put some
23 colors on it to kind of show what they
24 projected. Everything in pink was projected to
25 be 50 percent of the Trident patients, right?

1 That's what it means in our little scale here,
2 pink is 50 percent.

3 A: Okay. Yes.

4 Q: Then the orange is 25 percent, yellow is 20,
5 green is two, purple is one, okay?

6 A: Okay.

7 Q: So they're not projecting in their application
8 that they're going to get all the Trident
9 patients around the lake, are they? They're
10 only projecting they're going to get half?

11 A: Correct.

12 Q: So even if in their application they're
13 projecting that half the people who live in
14 these zip codes around Lake Moultrie will drive
15 by the new Moncks Corner Hospital and drive all
16 the way to Summerville or Trident Medical
17 Center to get care, half the people will do
18 that. That's what they project. That's pretty
19 conservative, isn't it?

20 A: That's very conservative.

21 Q: And what's interesting is, you think a lot of
22 those people are going to go to the emergency
23 department in Moncks Corner, or you think
24 they'll drive to the emergency department all
25 the way down to Trident Medical Center or

1 Summerville Medical Center?

2 A: Well, this chart predicts 50 percent that it --
3 I mean, again being very conservative. But it
4 seems reasonable they would probably end up
5 going to the closest facility.

6 Q: Right. The Moncks Corner facility, right?

7 A: Uh-huh (affirmative response).

8 Q: This zip code here, 29483, is kind of an
9 interesting looking zip code. It does split
10 the county line. You can see on the screen.
11 I took the lines off on this one because you
12 couldn't read the numbers. It juts up way up
13 here in the north, right, doesn't it?

14 A: Yes.

15 Q: So there are portions of this zip code that are
16 actually closer to Moncks Corner than they
17 would be to Trident Medical Center or
18 Summerville, aren't there?

19 A: Yes.

20 Q: Okay. So it's pretty reasonable to think that
21 a large number of those people would go to
22 Moncks Corner for their primary care, right, as
23 opposed to going to Trident Medical Center in
24 Summerville, right?

25 A: Yes, that would be reasonable looking at this

1 map.

2 Q: Okay. And then the people over here on the far
3 east, 29453 and 29450, they're traveling west
4 to the facilities. Moncks Corner is clearly
5 closer to them than it is to Trident Medical
6 Center or Summerville Medical Center, right?

7 A: Right. Yes, it is.

8 Q: Would you also think that maybe some of the
9 people who live in these zip codes in the north
10 who have otherwise gone to Roper's emergency
11 department might change their mind and start
12 going to the Moncks Corner emergency department
13 since it's brand new and has a brand new
14 hospital?

15 A: Well, that's a reasonable assumption.

16 Q: Okay. And also wouldn't this show that very
17 few people -- that Trident expects very few
18 people in the south to drive north to the
19 hospital, do they?

20 A: Yes, you're correct.

21 Q: Yeah, because these are two and one percent of
22 the Trident population and these are 50 percent
23 in the north and there's two and one in the
24 south, so that's very few people driving north,
25 right?

1 A: Yes.

2 Q: Okay. And there's no expectation in their
3 application that any people, any patients who
4 are currently aligned with MUSC or Roper St.
5 Francis are going to come to their facility.
6 They say they don't need any of those patients,
7 do they?

8 A: No, they're basically taking care of their own.

9 Q: Taking care of their own and filling the
10 hospital up, right?

11 A: Right.

12 Q: And that's what they told you in the
13 application. Now, after Roper St. Francis'
14 application was filed, did you ever get a new
15 B(11) analysis where they redid it where they
16 said, oh, no, this is all going to be different
17 now because Roper St. Francis has filed for a
18 hospital in Goose Creek?

19 A: No, we didn't.

20 Q: No, you didn't. All right. Now, when we went
21 to project review -- I just want to show you
22 one more exhibit on that issue, if I can
23 remember. I think it's Petitioner's 82, if I'm
24 right on that. It might be 81. I'm sorry,
25 it's Respondent's 82, I apologize. Let me

1 clarify that for the record. Let me show you
 2 Respondent's 82. Now, this document was
 3 produced in discovery. It wasn't available to
 4 you on review. But I just want to ask you if
 5 you think it's consistent with this map here,
 6 okay? This is some data that Trident produced
 7 in the discovery that showed the Moncks Corner
 8 inpatient discharges to their Moncks Corner
 9 facility. Look at the Goose Creek zip code at
 10 the number of people that were inpatient
 11 discharges through that Moncks Corner, that ED
 12 in Moncks Corner, and it's only seven people in
 13 three years, isn't it?

14 A: Yes.

15 Q: So that would be pretty good evidence that
 16 people are not driving from Goose Creek to
 17 Moncks Corner for their healthcare services,
 18 wouldn't it?

19 A: Yes, it's certainly indicative of that.

20 Q: All right. Let's go back into the application
 21 for Trident, Joint Exhibit Number 1, and look
 22 at page number 832. Now, before I ask you
 23 about this exhibit for this page or whatever,
 24 let's talk a second about project review.
 25 Project review, that is to be the applicant's

1 opportunity to come in and give you
2 information, additional information about their
3 project, right?

4 A: Right.

5 Q: And typically, the applicants will often come
6 in and have a PowerPoint and you and the rest
7 of the DHEC staff will be sitting there and
8 y'all listen to the PowerPoint and people will
9 present to you, right?

10 A: Right.

11 Q: And sometimes you might have an opportunity to
12 ask questions, but it's mostly the applicants
13 talking to you, right?

14 A: Yes, and we follow up after the presentation
15 with staff questions.

16 Q: Okay. So if you were going to make a point to
17 the Department about an issue, project review
18 would be a good place to start making that
19 point, wouldn't it?

20 A: Yes. And as I earlier testified, that is their
21 opportunity to be real concise and clear about
22 what they want to convey to us.

23 Q: And at no time in the -- and so if the adverse
24 impact that Roper St. Francis Carnes Crossroads
25 hospital would have on Trident Medical Center

1 and Summerville Medical Center, if that was a
2 really important issue, wouldn't you have
3 expected Trident to come to the project review
4 and talk about it in depth?

5 A: I mean, that would have been their decision to
6 discuss it or not.

7 Q: Okay. Now, at the project review about a week
8 later, you got this letter from Mr. Baehr,
9 right?

10 A: Yes.

11 THE COURT: What page is that?

12 MR. LONG: I'm sorry, this is 832 is where the
13 letter starts.

14 Q: You're still under Joint 1, right?

15 A: Yes.

16 Q: 832..

17 THE COURT: And that's Joint Exhibit 1?

18 MR. LONG: Yes, Your Honor.

19 THE COURT: Give me just a moment, please. I have
20 it, May 28, 2009?

21 MR. LONG: Yes, sir.

22 Q: You have it, Ms. Brandt?

23 A: Yes.

24 Q: Now, do you recall in the PowerPoint when Mr.
25 Baehr presented a slide in his PowerPoint

1 presentation in project review where he
2 projected that there would be these huge losses
3 to both hospitals if both were approved; do you
4 recall that?

5 A: Yes.

6 Q: He had a big number in there, right, it's like
7 59, 60 million dollars, right?

8 A: Yeah, it was substantial.

9 Q: With the combined losses, right? That was kind
10 of shocking how big that number was, wasn't it?

11 A: Yes, I was surprised.

12 Q: Okay. Then he followed it up with -- now when
13 he presented that to you, you got no pro forma
14 or anything did you? They didn't redo their pro
15 forma or anything, did they?

16 A: No. I believe it was just kind of a summary
17 slide that they presented.

18 Q: And then he had a opportunity to explain it to
19 you in his follow-up letter here. Let's look
20 over on the next page on page 833 at the first
21 full paragraph. Okay. And he says on page 26
22 on the Trident presentation that would have
23 been the PowerPoint, right? The losses total 59
24 million for the two hospitals. He's
25 calculating losses for St. Francis' hospital

1 too, right?

2 A: Correct.

3 Q: All right. Then he says, "These projections
4 assume that the two hospitals would have to
5 divide the growth in Berkeley County inpatient
6 market to justify their projects." So he seems
7 to be suggesting there they would have to
8 divide their patients; isn't that right?

9 A: Yes.

10 Q: Okay. Based on everything that you'd read in
11 the two applications, would you expect the
12 applicants to have to divide the same patients?

13 A: No, because both applications were submitted on
14 the premise they would serve existing patients.

15 Q: Okay. Did he give you any other justification
16 in this letter for how he came up with that
17 projection?

18 A: I don't believe, other than the -- no. I mean,
19 he had some financial information, but I
20 believe that was pretty much it.

21 Q: Well, on this letter I don't really see.
22 There's no financial information attached or
23 anything like that, not in this letter.

24 A: Well, I think it just reproduces the slide.

25 Q: Right.

1 A: From the project review.

2 Q: Okay. And then if you look at, go a couple
3 pages over to section 4 on page 836, for the
4 first time in the review, the application's
5 been pending for about five months now. For
6 the first time Trident says to you that the
7 proposed Roper Hospital at Carnes Crossroads
8 would have a material adverse impact on the
9 other providers, right?

10 A: Right.

11 Q: He raises adverse impact, after the project
12 review for the first time, right? Look at the
13 paragraph though under that, what is the basis
14 of the adverse impact? It's just that the
15 market share would change some, isn't it?

16 A: He does reference the market share percentages.

17 Q: No lost cases, right?

18 A: Right.

19 Q: No financial numbers, right?

20 A: No, not in this section.

21 Q: And he doesn't even explain why that change in
22 market share would have an adverse impact on
23 the providers, does he?

24 A: It doesn't appear so.

25 Q: All right. So on May 28, all you had in

1 regards to adverse impact on the two providers
2 was this paragraph right here, right?
3 Paragraph 4 on page 836.

4 A: Right.

5 Q: All right. And then three days before the
6 application is due, before the decision, I'm
7 sorry, three days before the decision, and
8 you're statutorily required to make this
9 decision by June 26, right? You have a
10 deadline, right?

11 A: Right.

12 Q: Per the statute?

13 A: Right. I mean, we -- yes. That's a long
14 explanation, but yes.

15 Q: It's a long explanation and there used to be a
16 way to reorder the criteria --

17 A: Right.

18 Q: -- and all that, but pretty much, and when you
19 say I'm making the decision on June 26, you're
20 like that's my deadline?

21 A: Right.

22 Q: I've got to make a decision.

23 A: Absolutely.

24 Q: You can't drag it out just to keep dragging it
25 out so everybody can give you more information,

1 right?

2 A: No.

3 Q: Three days before your deadline you get this
4 letter on June 23, okay? All right.

5 **THE COURT:** Where is the June 23rd letter?

6 **MR. LONG:** I'm sorry. You're right. Thank you,
7 Your Honor, page 900.

8 Q: All right. And in that he has a section here
9 where he starts talking about the St. Francis
10 Hospital and how it would take patients from
11 Trident Medical Center in Summerville, right?

12 A: Right.

13 Q: Okay. Now, even though the Trident application
14 says that there would be 100 percent
15 redirection, right, they're only treating their
16 own patients, they're redirecting their own
17 patients to the new facility and their
18 application is 100 percent of that, right?

19 A: Right.

20 Q: Okay. He starts talking in here that all --
21 that none of the patients at the Roper St.
22 Francis facility at Carnes Crossroads would be
23 redirected, right?

24 A: I believe you're right.

25 Q: And he starts doing his -- because he's saying

1 that 53 percent of all the patients at the
2 Carnes Crossroad hospital would otherwise be
3 seen at Trident Health System hospitals. So in
4 other words, 53 percent of the Roper St.
5 Francis patients would be formerly Trident
6 patients? No redirections?

7 **MR. SUMMER:** Excuse me, counsel, can you show me
8 where you're reading from?

9 **MR. LONG:** I'm pointing her to page 901.

10 **MR. SUMMER:** Well, when you said that -- you made a
11 statement that the letter says 53 percent --

12 Q: I'm asking her --

13 A: It does --

14 Q: Okay. Does it say 53 percent?

15 A: Yes.

16 Q: It references the 53 percent market share,
17 right?

18 A: Yes.

19 **MR. SUMMER:** That was not your question, counselor.
20 Your counselor (sic) was that 53 percent of the
21 patients were going to come from Trident;
22 that's what you stated. But that's not what
23 the letter says.

24 Q: Well, if he's projecting that 53 percent of the
25 patients at the Carnes Crossroads facility,

1 okay, would otherwise be seen at Trident, and
2 he's projecting they'll be redistribution of
3 patients from Trident to Carnes Crossroads,
4 right?

5 A: Yeah, it specifically references over half
6 would be taken from Trident hospitals and it
7 references the Roper St. Francis Berkeley
8 hospital.

9 Q: Do you think that's consistent with the
10 applications of what was presented to you
11 during the whole time the applications were
12 under review?

13 A: That was not consistent.

14 Q: Let's look over at page 902. He makes a
15 calculation in the middle of the page as to the
16 lost cases. And then I want to ask you
17 specifically about this little paragraph.
18 "Roper has attempted to argue that half or more
19 of the patients at the new Roper St. Francis
20 Berkeley hospital would be patients otherwise
21 seen at Roper and St. Francis facilities in
22 Charleston and the rest would come from
23 population growth; however, there's no
24 historical basis for this arbitrary forecast."
25 Do you think it's arbitrary to forecast that

1 your own patients would go to your own
2 facility?

3 A: No, and they certainly had statistics.

4 Q: Wouldn't that mean that the Trident application
5 was arbitrary since it projected 100 percent
6 redirection?

7 A: I'm sorry, could you repeat that?

8 Q: Wouldn't that also mean that the Trident
9 application was arbitrary since Trident
10 projected 100 percent redirection of patients?

11 A: Well, I guess you could make that comparison.

12 Q: Okay. And then on the third page he gives you
13 a contribution margin for loss per adjusted
14 admission and gives you a dollar amount of what
15 he says the loss will be to Trident. He gave
16 -- right, on page 903?

17 A: Yes.

18 Q: Again, he throws out a big number, \$33 million,
19 right?

20 A: Yes. I'm sorry, yes, in the conclusion.

21 Q: Okay. Over three years, \$33 million over three
22 years, right?

23 A: Yes.

24 Q: Not in one year. All right. No pro forma is
25 provided, is it?

1 A: No.

2 Q: No calculations? No chart or anything? No
3 mathematical calculations other than just the
4 text of the letter, right?

5 A: Right.

6 Q: Now, let me ask you about one other -- let's go
7 back a little bit. On, I think it was June the
8 9th, Mr. Gallati and Ms. Brisbin came to see
9 you, right?

10 A: Yes.

11 Q: Was Mr. Baehr with them?

12 A: I don't believe so. You know, like I had
13 testified earlier, I had forgotten about the
14 meeting and I don't -- I don't recall.

15 Q: Now, at that meeting, they asked to meet with
16 you, right?

17 A: Yes.

18 Q: You didn't summon them up to Columbia to meet
19 with you, did you?

20 A: No.

21 Q: Okay. And they came in and met with you, and
22 I guess you assumed that they wanted to talk to
23 you about something, right, about the
24 application?

25 A: Right.

1 Q: Okay. Did they give you any financial
2 documents or anything to suggest how much the
3 loss would be to their facility?

4 A: I don't recall that they did.

5 Q: And if they did, you'd have put them in the
6 application, right?

7 A: Right.

8 Q: And did they give you any sort of financial
9 documents to explain about these big losses
10 that would happen if both applications were
11 approved?

12 A: No, the record reflects nothing received on
13 that date.

14 Q: Okay. And you don't remember any sort of
15 explanation as to how they reached any of these
16 conclusions, do you?

17 A: I really don't remember.

18 Q: The main thing Mr. Gallati remembered is that
19 he was asking you whether you were going to
20 find the applications to be competing; do you
21 remember that?

22 A: I mean, he -- his testimony kind of refreshed
23 my memory, but you know, I don't doubt that he
24 would have.

25 Q: That would have been inappropriate for you to

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1 tell him that, wouldn't it? To tell one
2 applicant whether the -- what was your decision

3 --

4 A: Oh, certainly.

5 Q: -- was going to be with competing?

6 A: We would have to treat them both similarly as
7 far as what we allowed our staff to divulge or
8 to discuss.

9 Q: And so you didn't tell him, did you?

10 A: No.

11 **MR. LONG:** Just give me one second, Your Honor.

12 Q: The last questions, Ms. Brandt. If you had --
13 Mr. Summer asked you some questions about the
14 15 days provision in the regulation. If you
15 had to make a decision within 15 days of
16 whether the applications were -- within 15 days
17 of the applications being submitted as to
18 whether they were competing or not, you
19 remember Mr. Summer asked you about it
20 yesterday?

21 A: Yes.

22 Q: Would you be able to analyze whether the
23 approval of both exceeded the need? Can you do
24 that in 15 days?

25 A: No. No, I can't. I think it's more of an

1 opportunity for whomever to preserve, you know,
2 their rights, you know, just to be on the safe
3 side. I mean, that was their decision.

4 Q: And finally, do you think under the plain
5 language of the State Health Plan that Roper is
6 allowed to do what it's doing, transferring
7 beds to St. -- to Carnes Crossroads to
8 construct a satellite hospital?

9 A: I believe that they are.

10 Q: That's all I have.

11 THE COURT: All right. Mr. Summer.

12 MR. SUMMER: I've probably got about an hour of
13 questions, Your Honor. I think this is a good
14 time for a lunch break.

15 THE COURT: Is that the pleasure of the lawyers,
16 break now? What time is it?

17 MR. SUMMER: It's a quarter of one.

18 MR. LONG: Your preference, Your Honor.

19 THE COURT: Come back at 2:15. We'll recess until
20 2:15.

21 (Lunch break from 12:40 p.m. until 2:15 p.m.)

22 THE COURT: Sit down please. Mr. Summer?

23 MR. SUMMER: Thank you, Your Honor.

24 MS. BRANDT - REDIRECT EXAMINATION BY MR. SUMMER:

25 Q: Hello, Ms. Brandt. Once again, we're wasting

1 a beautiful day, aren't we?

2 A: Yes, we are.

3 Q: It was a nice break for lunch and a beautiful
4 day outside. But let's talk a little bit about
5 your examination this morning. I want to start
6 closer to the end of the examination with some
7 things that Mr. Long was walking you through.
8 And one of the things that he asked you, he
9 said there's going to be a growth, population
10 growth, do you remember that, discussing the
11 population growth with Mr. Long?

12 A: Yes.

13 Q: And that that population growth was going to
14 bring more patients, right?

15 A: Well, theoretically yes.

16 Q: Theoretically, yes. Well, I believe your prior
17 testimony regarding both of these applications
18 was that patients were going to come from
19 growth; do you remember that?

20 A: Well, the applications -- the Roper application
21 specifically mentioned population growth, and I
22 know that the Trident application mentioned
23 serving their own.

24 Q: But growth does not automatically mean greater
25 hospital utilization, does it?

1 A: But it's an indicator.

2 Q: It's an indicator. Do you know whether or not
3 there's been an increase or a decrease in
4 hospital utilization by the residents of
5 Berkeley County between 2007 and 2010; do you
6 know?

7 A: We would have to look through the information
8 in the applications.

9 Q: Do you know sitting here right now whether or
10 not hospital utilization, inpatient hospital
11 utilization has increased or decreased in this
12 time of explosive growth between 2007 and 2010?

13 A: I believe the information that was presented to
14 us indicated yes.

15 Q: Do you know what the actual experience has
16 been?

17 A: I'd have to look it up in the applications. I
18 honestly could not retain all of that.

19 Q: You and I can agree that if it's in the
20 application, it's going to be 2008 information?

21 A: There's some historical information and there's
22 projected information.

23 Q: Well, you would agree with me that there would
24 be no utilization information later than
25 January 26, 2009, in that record, would there?

1 A: I don't believe so, no, not because of the
2 timing.

3 Q: You would agree with me that there could be
4 nothing but forecasts after the date of the --
5 before the date of your decision, correct?

6 A: Correct.

7 Q: Okay.

8 MR. SUMMER: Let's go ahead and put up on the screen
9 Petitioner's 231.

10 Q: This is actually a summary of the utilization
11 in Berkeley County. And I want you to just
12 take a few minutes to look at this and tell me
13 whether or not utilization for hospital
14 services is increasing or decreasing.

15 A: And is this based on discharge data or Joint
16 Annual Reports, or what is this?

17 Q: Discharge data source says South Carolina
18 Office of Research and Statistics of the Budget
19 and Control Board.

20 A: Right. Right. But I know they generate all
21 other forms.

22 Q: Berkeley County Inpatient Discharges. Take a
23 few minutes to look at it, and then I want to
24 ask you a few questions, okay?

25 A: I mean it looks like it's decreased slightly.

1 Q: Decreased slightly. Well, let's look at what
2 the population has done. In 2007, there were
3 how many people in Berkeley County?

4 A: The population was 163,555.

5 Q: Right. And in 2010, how many people were there
6 in Berkeley County?

7 A: 177,843.

8 Q: Okay. And so that's an increase in population
9 of how much?

10 A: 8.7 percent.

11 Q: Okay. So if there's that -- almost nine
12 percent increase in population, would you
13 expect the use rate to go up or down?

14 A: Well, you have to consider other factors too,
15 though. This was certainly in a period of time
16 where the economy was getting worse and people
17 may have chosen to not have elective surgeries.
18 I mean there may be a host of explanations to
19 this data. And I would say the discharge
20 growth, I mean, it decreased some, but it
21 wasn't significant.

22 Q: If the population went up nine percent and the
23 utilization went down two percent, you have
24 nine percent more people only utilizing 98
25 percent as much hospital services as the

1 population had been in 2007, that's a
2 significant decrease in utilization when you
3 look at the increase in population, isn't it?

4 A: I don't necessarily agree. Again, there's got
5 to -- it's part of the picture, but there's
6 other information that we don't know, such as,
7 like I said, the economy and people electing
8 not going through with elective surgeries. I
9 mean, it wouldn't worry me if that's what
10 you're asking.

11 Q: It doesn't worry you?

12 A: I mean as far as the applications go.

13 Q: You've approved \$215 million worth of
14 expenditures to build 100 beds in two separate
15 locations, and the fact that utilization is
16 going down when population is going up doesn't
17 worry you; that doesn't bother you?

18 A: I mean, I've certainly taken note of it. But
19 I don't think that -- I mean, if you look at
20 the average negative two percent overall.

21 Q: Well, you remember yesterday talking about
22 explosive growth, right?

23 A: Right.

24 Q: Explosive growth is not creating an increase in
25 hospitalization in Berkeley County, is it?

1 A: I believe that the growth that we were talking
2 about was between 2000 and 2010. So this is
3 only part of it.

4 Q: You would agree with me that growth since 2007
5 has not increased hospital utilization, has it?

6 A: I agree that this chart shows that the
7 discharges have decreased and the population
8 has increased. I can't without further
9 information as to why draw that correlation.
10 It's not complete information.

11 Q: And just for the Court's edification, whose
12 market share has decreased the most in that
13 time period in Berkeley County?

14 A: Well, according to this, Roper St. Francis
15 Hospital's discharge growth decreased by four
16 percent.

17 Q: Okay. Let's go back to -- start at the
18 beginning. Let's see what else we can talk
19 about in terms of -- let's try to get the
20 record straight and your testimony accurate.
21 You recall the line of testimony this morning
22 where you were talking with Ms. Biggers
23 regarding the components of each of the
24 applications? Do you remember that line of
25 questioning this morning?

1 A: Yes.

2 Q: And in particular, I want to turn your
3 attention to the Trident record, which is Joint
4 1. And let's -- you're there with me?

5 A: I've got Joint 1.

6 Q: Right. Okay. And I believe that most of your
7 comments were between pages 1 and about 48.
8 That's about the last one I think I saw you
9 commenting on. Would you agree with that?

10 A: Yes.

11 Q: Let's talk about assumptions. You would agree
12 with me, would you not, that in order to create
13 a certificate of need application, we have to
14 have assumptions about facts of the future.
15 Fair statement?

16 A: Yes. Projections, yes.

17 Q: So we have to assume how many patients are
18 going to be there; is that right?

19 A: Right. There's certainly got to be
20 projections.

21 Q: We have to assume certain things about our
22 cost, don't we?

23 A: Yes.

24 Q: Haven't spent that money yet, so we have to
25 assume what that is going to be?

1 A: Yes.

2 Q: We also have to assume what are the existing
3 resources in the service area, correct?

4 A: Correct.

5 Q: For instance, if I'm going to do an adverse
6 impact analysis, it would be on existing
7 hospitals, correct?

8 A: Yes. I mean, you would have to define the
9 area.

10 Q: Once again, the date that Trident filed its
11 application is when?

12 A: August 13th, 2008.

13 Q: August 13th, 2008. When did Roper file its
14 application?

15 A: December -- let's see, 10th, 2008.

16 Q: So consequently, Trident's application didn't
17 anticipate that there would be a Roper
18 application, did it?

19 A: You would really have to ask Trident because I
20 think earlier testimony reflected that property
21 had been purchased and there was certain
22 anticipation. I mean, certainly the
23 application came in and Trident had certainly
24 opportunities to update their information.

25 Q: I'll just ask you this question one more time.

1 The application itself as filed on August 13th,
2 2008, in all the language that you went through
3 this morning, where in there do you see any
4 assumption that a market competitor was going
5 to build a hospital in Berkeley County? Just
6 point me to it.

7 A: I don't see any -- any notation about the
8 Berkeley St. -- the St. Francis Berkeley
9 application or file.

10 Q: It was not mentioned, was it?

11 A: No, it wasn't.

12 Q: And, in fact, you scheduled a single project
13 review for these two applications on May 29th,
14 2009, correct?

15 A: I believe it was May 21st.

16 Q: May 21st, 2009. I stand correct.

17 A: Yes.

18 Q: That's the same thing you do when you have
19 competing applications; you review them at the
20 same time, correct?

21 A: And it's the same thing I do when there's other
22 affected persons. In fact, I recently had that
23 happen.

24 Q: My question to you is, you had a single project
25 review for both of these applications, just as

1 you do for competing applications, correct?

2 A: Yes. But as I explained earlier as well, these
3 applicants are affected persons for each other,
4 and I think it's only considerate to make it
5 easier for the parties involved, particularly
6 if they have to travel, to have a joint project
7 review.

8 Q: And also while we're on this, you recall that
9 on June the 9th of 2009, Mr. Gallati had a
10 meeting with you in which he asked you point
11 blank, are you going to approve two? Aren't
12 these competing? Do you remember that
13 discussion?

14 A: Well, like I said, it jogged my memory after
15 his testimony that there had been a meeting.
16 And I believe he said that I responded that I
17 would make the decision when I made the
18 decision as to if they were competing or not.

19 Q: So it's fair to say that he was on notice on
20 June the 9th that you might approve both
21 projects, wasn't he?

22 A: He would have been on notice prior to that.

23 Q: When?

24 A: Again, as far as the project review, the way
25 applicants construct their project review, they

1 can approach it in any way they want to. And
2 they would have had the option to approach
3 their project review if there was competing
4 applicants and if there weren't competing
5 applicants. I mean, there could have been that
6 contemplation prior to putting together a
7 project review presentation.

8 **THE COURT:** Excuse me. That was June the 9th of
9 what year?

10 **MR. SUMMER:** June the 9th of 2009, Your Honor, just
11 a few days before the decision in this case.

12 **Q:** After that decision -- I mean, after that date,
13 the June 9th meeting, you did receive on June
14 the 23rd, Mr. Baehr's analysis, correct?

15 **A:** Yes.

16 **Q:** And we have established in your prior testimony
17 on your direct, that you read this letter,
18 didn't you?

19 **A:** Yes.

20 **Q:** And you considered Mr Baehr's adverse impact
21 analysis, didn't you?

22 **A:** Yes.

23 **Q:** And you did that prior to making your decision
24 on June 26th, correct?

25 **A:** Yes.

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1 Q: Did you ever tell Mr. Baehr that this was a
2 late submission?

3 A: No. I typically don't respond back. I mean,
4 if I -- it's my philosophy to try to consider
5 as much as I can to make a thoughtful decision.
6 But clearly the date this was received was
7 really pushing the envelope on giving me a fair
8 opportunity to evaluate the information, but I
9 did.

10 Q: You were not under a statutory deadline for a
11 decision by the 26th, were you?

12 A: Well, like I said before, it's complicated in
13 that we are -- we're bound at that time before
14 the statute changed to make a decision within
15 60 days. And because it -- we wanted to have
16 the concurrent project review that in certain
17 periods we try to, you know, hadn't -- we don't
18 want to exceed within reason that 60 day
19 period. So, but when we had the project
20 review, we want to give the parties ample
21 opportunity to prepare and submit follow-up
22 comments. So it's always been reasonable when
23 you say okay, 30 days. You know it's not in
24 black and white in the statute, but it's
25 reasonable. And it's not reasonable. And that

1 was agreed upon by the parties that were there
2 that day for the project review.

3 Q: Did you put it in writing anywhere in the
4 record you have 30 days to respond. Do you see
5 anything in the record that says you've got 30
6 days to give me more information?

7 A: I know that I verbally said that.

8 Q: Okay. Would you agree with me that adverse
9 impact is mentioned in Mr. Baehr's letter
10 starting on 832 through 838?

11 A: Well, this is post project review.

12 Q: Is it within 30 days of May 21st, 2009?

13 A: Yes, it is.

14 Q: And what's the date of it?

15 A: It's dated May 28th.

16 Q: And on page 836 under number 4, second
17 paragraph, regardless of whether the combined
18 Roper St. Francis market share reaches over 30
19 percent or over 40 percent in Berkeley County,
20 the hospitals that will realize the most
21 adverse impact for approval of a Roper St.
22 Francis Berkeley proposal would be the two
23 Trident hospitals. Do you see that?

24 A: Yes.

25 Q: When we go back over to Mr. Baehr's letter on

1 page 900, despite the fact that you read it,
2 despite the fact that you considered it prior
3 to making your decision, your prior testimony
4 is, is that you did not understand the concept
5 of contribution margin at the time, did you?

6 A: I did say that. But he also has other
7 information in this letter that translates into
8 cost. And I certainly understood that and I
9 understood the principles.

10 Q: You also didn't have a firm understanding about
11 what adjusted admissions were at that time
12 either, did you?

13 A: But I have an understanding of what adverse
14 impact is.

15 Q: Well, we established yesterday that you didn't
16 realize that adverse impact included staffing?
17 Adverse impact on staffing.

18 A: I said that that issue had not been raised as
19 a point of adverse impact.

20 Q: Well, I think your testimony -- let's go back
21 to your deposition.

22 A: Oh, I was talking about yesterday. I would
23 have to check my deposition.

24 Q: Ms. Brandt, have you got a copy of your
25 deposition with you?

1 A: No, I don't.

2 Q: Would you turn to page 167, please, ma'am, and
3 see if this doesn't reflect your recollection
4 from yesterday. It actually begins on the
5 bottom of page 166. And again for purposes of
6 the record, your deposition was taken on
7 Wednesday, November the 2nd of 2011, correct?

8 A: Yes.

9 Q: Some two and a half years after you had made
10 the decision in this case, correct?

11 A: Correct.

12 Q: Turn your attention to line number 25 on 166.
13 And I was asking you to read your own
14 regulations. And my question to you was, "You
15 realize that adverse impact is more than
16 financial?" What was your answer?

17 A: I'm sorry. What line are you on?

18 Q: Start at the bottom of 166, line 25.

19 A: Oh, okay. "I would have to look at how it's
20 spelled out in the regulations. And again, we
21 looked at both projects as a whole and the
22 information that was presented to us."

23 Q: What was your next conclusion after looking at
24 the regulations?

25 A: "I guess you're correct. 23, adverse impact

1 does speak to staff."

2 Q: Okay. Thank you. I want to talk a little bit
3 about assumptions. Would you agree with me
4 that the more historical data you look at, the
5 greater the likelihood that you can increase
6 your accuracy on future projections?

7 A: Well, I would agree for the most part. I mean,
8 there may be some anomalies that have worthy
9 explanations.

10 Q: Doesn't your department require applicants for
11 variety of services to outline for you what
12 their historical utilization is for those
13 services in most certificate of need
14 applications?

15 A: Well, it is required under B(11).

16 Q: And can we assume that the reason that you do
17 that is because the past experience is a
18 logical predictor of future utilization?

19 A: Yes. In general, it is.

20 Q: So let's talk about that from the standpoint of
21 zip code analyses. And I want to drill down on
22 something that Mr. Long talked to you about.
23 Let's look at the zip code analyses first in
24 the Trident application. Now, I'd ask you to
25 turn your attention first to inpatient

1 utilization as expressed on page 33 of Joint 1.

2 Are you with me?

3 A: Yes.

4 Q: Now, what has Trident done for you here?

5 A: They created a chart. David, would you mind if
6 I please got my reading glasses?

7 Q: Yes, ma'am. Please do so.

8 A: Thank you. Sorry.

9 Q: I have the opposite problem. I couldn't drive
10 home without my glasses.

11 A: Thank you. Much better.

12 Q: Yes, ma'am.

13 A: Okay.

14 Q: So what does this Table 1 set out for you and
15 your department to review?

16 A: It's entitled, Calendar Year 2006 Market Share
17 of Trident Health System in Berkeley,
18 Charleston, and Dorchester Counties.

19 Q: Okay. And this is under the, or on a page
20 where we're looking at projected utilization of
21 the proposed facility of service, and they're
22 looking at inpatient utilization for a prior
23 year; is that correct?

24 A: Yes.

25 Q: So they have specifically identified for you

1 where their patients are coming from by zip
2 code throughout the service area, correct?

3 A: Correct.

4 Q: So you can see not just Berkeley County, but
5 you also have Dorchester and you also have
6 Charleston?

7 A: Correct.

8 Q: Would you consider this to be a complete and
9 detailed summary of those zip codes and where
10 their patients were coming from in 2006?

11 A: Yes.

12 Q: Now turn over to page 74. You with me?

13 A: Yes.

14 Q: Do you remember the line of questioning that
15 Mr. Long went through with you about look where
16 their patients are coming from; they're telling
17 us where they're coming from. Do you see that?

18 A: Yes.

19 Q: Okay. So not only did they identify the
20 historical utilization on page 33 for 2006,
21 they're now telling them where they think these
22 patients are going to come from in what years?
23 Do you see the top of line there? Years what?

24 A: Three through five.

25 Q: Three through five. So that if we were to look

1 -- if we look back on page 34, okay?

2 A: Uh-huh (affirmative response).

3 Q: And do you see the incremental average daily
4 census expressed in the middle of the page?

5 A: Yes.

6 Q: And years three through four would be -- three
7 through five would be 2014 through 2016,
8 correct?

9 A: Let me make sure I know when they said it was
10 supposed to be complete. It says within 36
11 months of issuance. So I would say certainly
12 at least from 2015 through 2016.

13 Q: Okay. My point simply is this. You've got an
14 ADC in you're three, four and five and goes 32,
15 37 and 42, and Trident on page 74 told you what
16 zip codes they were going to come from, didn't
17 they?

18 A: Yes, they did.

19 Q: Okay. I'd call that a pretty detailed
20 projection of where these patients are going to
21 come from, wouldn't you?

22 A: Yes. And this particular chart you pointed me
23 to is reflective of the entire system.

24 Q: This is where their patients are going to come
25 from for the new hospital, correct?

1 A: Yeah, basically. I mean, one thing that they
2 did is they have three different charts. And
3 I think the final chart is -- I mean, there's
4 different bases for different charts.

5 Q: Right.

6 A: But basically this one is based on the entire
7 Trident System.

8 Q: All right. So we can agree on this much,
9 Trident identified by specific zip codes where
10 their patients come from in the past, right?

11 A: Yes.

12 Q: And they identified by specific zip codes and
13 by number of patients where they expect them to
14 come in the future, correct?

15 A: Yes.

16 Q: All right. Let's go make the same qualitative
17 analysis or review of Joint 2. So if you'll
18 now go to Joint 2. The first thing I'm going
19 to ask you to find in Joint 2 for me, I've been
20 looking for several years and I haven't found
21 it yet. Show me the zip code analysis of
22 historical utilization.

23 A: Well, there's not a zip code analysis. They
24 chose to do it -- take a different approach.

25 Q: First of all, let's focus on the question. You

1 will agree that they didn't give a zip code
2 origin of patients for historical utilization
3 like Trident did on page 33, did they?

4 A: Not identical to how Trident did it. But they
5 used their own methodology.

6 Q: Do you have any chart or anything that says, we
7 got X number of patients from this zip code?

8 A: They didn't do it by zip code. They did it by
9 other methods.

10 Q: They did it by seven-mile radius, correct?

11 A: Well, they also, and I'd have to look at it in
12 detail, but I know that they provided a lot of
13 discharge data as an attachment.

14 Q: I'm asking you, because you reviewed these and
15 you said they were persuasive and reasonable.

16 A: Right.

17 Q: I don't see that chart anywhere in this
18 application. And we can take a break and you
19 can look for 15 minutes and you can go find it.
20 If you can find it, I will be happy for you to
21 do so.

22 A: Well, I've already testified that there wasn't
23 a zip code chart.

24 Q: All right. Now, next question. Did they
25 project by zip code, like Trident did, that we

1 had this utilization in 2006, and in years,
2 future years, we expect to pull patients from
3 these zip codes of our existing patients?
4 There's no corresponding chart like that in the
5 Roper document, is there?

6 A: No. But that doesn't mean that they didn't do
7 an evaluation.

8 Q: They just didn't show you?

9 A: They have supporting documents, such as the
10 discharge data. We don't dictate how an
11 applicant does their analysis. For example,
12 I've seen an application in the past that
13 actually used census track data. I mean, it's
14 up to the individual applicant to decide the
15 best methodology for their need analysis.

16 Q: This is going to be a similar question about,
17 you know, I asked you whether or not you'd
18 known what utilization was done in the last
19 five years in Berkeley County, you know, had
20 gone down. And we've established that it had
21 actually gone down, correct?

22 A: According to the information you presented,
23 yes.

24 Q: Look on page 24 of Joint 2. Roper expects that
25 90 percent of these patients are going to come

1 from the primary service area identified in
2 Berkeley County. Berkeley County primary
3 service area identified in the prior section is
4 expected to generate 90 percent of the proposed
5 facilities volume, right?

6 A: Right.

7 Q: But they never tell you how many cases from
8 what zip code, do they?

9 A: No, they don't.

10 Q: No, they don't. Let's look at another slide
11 real quickly. Let's look at market share. Do
12 you remember this from yesterday?

13 A: Yes.

14 Q: Okay. These are the primary zip codes, okay,
15 the primary zip codes for the Carnes Crossroads
16 hospital when you look at their seven-mile
17 radius. And we established yesterday that
18 Roper is a distant third there. Do you
19 remember that testimony?

20 A: Yes.

21 Q: The reason Roper didn't show you where the
22 patients were going to come from is because
23 they don't have enough existing patients in
24 Berkeley County to create that 90 percent.
25 Their market share is so low that if they took

1 every patient that they see in Berkeley County,
2 they couldn't get anywhere near the census they
3 would need to run that hospital, but you didn't
4 know that, did you?

5 A: I certainly haven't drawn that conclusion.

6 Q: Isn't it fair to say that by not giving you zip
7 code data, by not giving you projections by zip
8 code of their existing patients and where
9 they're going to come from, Roper basically hid
10 the ball from the Department, didn't they?

11 A: I don't agree.

12 Q: Look at this application and tell me
13 quantitatively, Roper makes statements that 90
14 percent of that population is going to come
15 from their existing patients. Where are the
16 numbers to support that?

17 A: They have supporting data in attachments. Like
18 I said, the discharge data, and I believe they
19 may have had some Joint Annual Report data in
20 there as well. I'd have to --

21 Q: Show me.

22 A: Show you? Okay. Well, let me look. I know
23 there's -- Attachment 8 states as summary of
24 discharge data. And I believe after that
25 there's some Joint Annual Report data.

1 Q: Do you have page numbers I can look at?

2 A: Oh, I'm sorry. Page 378. It's the beginning
3 of Attachment 8.

4 Q: I'm looking for zip codes. Don't see any zip
5 codes, do you?

6 A: I clearly indicated to you that there weren't
7 zip codes.

8 Q: I understood your testimony from Mr. Long that
9 there were.

10 A: I believe what Mr. Long -- he listed a whole
11 list of sources. And I believe you probably
12 are correct in that he mentioned zip codes, but
13 I think his intent was to show that they did do
14 an analysis. They just didn't throw numbers on
15 a page.

16 Q: But you'd agree that the most detailed analysis
17 would be by zip code; would it not?

18 A: I would have to look at each individual
19 application and the merits. And we did in this
20 case. And we had opportunities to ask
21 additional questions if we didn't feel like
22 what they had presented was thorough and
23 complete.

24 Q: And I don't see any projections based on
25 existing patients, do you?

- 1 A: I haven't looked at the entire application. I
2 know that Ms. Sanders asked additional
3 questions.
- 4 Q: But you don't see them now?
- 5 A: Not on the pages you directed me to. But she
6 certainly did ask for additional information.
- 7 Q: We're on pages that you directed us to. Do you
8 see them anywhere where you're looking?
- 9 A: I directed you to the supporting information
10 for the B(11) part of the application.
- 11 Q: But you --
- 12 A: I didn't state that it was inclusive of
13 everything in the file.
- 14 Q: But you agree with me there are no projections
15 of cases from where they're going to come from
16 by zip code in that application, are there?
- 17 A: Yes.
- 18 Q: You agree?
- 19 A: I agree there's no zip code data.
- 20 Q: Okay. You really don't know -- strike that.
21 Other than the assurances that Roper gives you
22 that there are going to be enough patients, you
23 really don't know where they're going to come
24 from, do you?
- 25 A: They stated in their application that it would

1 come from -- that they're transferring beds to
2 accommodate their existing population in
3 Berkeley County.

4 Q: But you can't testify here today that you can
5 look at their market share and their discharges
6 and that they have enough volume in those zip
7 codes to fill a hospital, can you?

8 A: At the time the application was reviewed, we
9 drew the conclusion that this was a financially
10 viable project and that they were able to
11 fulfill what they projected to be their
12 utilization.

13 Q: Because they told you they could do it?

14 A: Because we reviewed the files.

15 Q: Seemed reasonable?

16 A: Well, certainly. We looked at their
17 calculations and their assumptions.

18 Q: Okay. Tell me some of the things that you did
19 to test either applicant's assumptions for
20 resource?

21 A: Well, we reviewed the filing in total for each
22 application.

23 Q: It's been my experience, especially working
24 with Ms. Fechtel, that she'll literally call us
25 up and she'll test those assumptions for

1 reasonableness and will request information to
2 verify. What did you do to test the projection
3 assumptions of Roper?

4 A: Well, I know that we certainly looked at the
5 accuracy of the population data. And, you
6 know, we had the Joint Annual Report, and we
7 certainly have access to the ORS data as well.

8 Q: Well, we've established that population, even
9 an increase in population, even explosive
10 growth in population has not translated into
11 increased utilization in Berkeley County,
12 haven't we?

13 A: At those particular points in time. But again,
14 I qualified that by saying that's not looking
15 at the entire picture.

16 Q: So other than the population data from ORS, how
17 is you test these assumptions for
18 reasonableness?

19 A: We review the data and see if it's accurate, in
20 a nutshell.

21 Q: I'm, again, looking at Roper's conclusory
22 language in Joint 2, and all I see are
23 conclusions about hey, 90 percent of these
24 patients are going to come from us.

25 A: Well, there is quite of bit of narrative within

1 their B(11).

2 Q: It is well written.

3 A: I mean, I know a certain point, and I can't
4 even tell you what the date was, that Ms.
5 Sanders actually asked them to translate some
6 of their narratives to tables since, at this
7 point in time, she was doing the intensive
8 review.

9 Q: All right. I'm kind of interested also in your
10 decision letters. You indicated that -- I
11 think you testified that if we looked on page
12 -- when Ms. Biggers was examining you. If you
13 look on page 1273 of Joint 2, what is Joint 2?

14 A: Joint 2 is the Trident file.

15 Q: Joint 2 is the Trident file. Are you sure?

16 A: Well, that's what it appears to me. What page
17 did you refer to?

18 Q: Can you look at the Joint -- look at the
19 beginning of the book. Do you have Joint 2?

20 A: Yes.

21 Q: And whose application is that?

22 A: Well, the cover says Trident. Oh, I'm sorry.
23 I was looking at the cover. I'm sorry. Yes,
24 you're correct.

25 Q: It's Roper's; is it not?

1 A: It's Roper's. I'm sorry. I stand corrected.

2 Q: Go over to page -- and what's the name of
3 Roper's hospital? What are they going to call
4 it?

5 A: Let me flip back to that page. I'm sorry.
6 You're absolutely right. Roper St. Francis
7 Hospital Berkeley.

8 Q: Okay. Do you mind turning over to page 1273.
9 This is part of the Department's summary of
10 findings; is it not?

11 A: Yes, it is.

12 Q: And this is the document that you contend
13 supports your decision letter to grant Roper a
14 hospital in Goose Creek as expressed in your
15 letter on page 1262 of Joint 2 dated June 26,
16 2009, correct?

17 A: Correct.

18 Q: Can you just read for the Court how -- what
19 were your conclusions regarding Roper's project
20 for distribution and accessibility.

21 A: "There are currently no acute care hospitals in
22 Berkeley County. The populations to be served
23 by the proposed Berkeley Medical Center will
24 reside primarily in Berkeley and Dorchester
25 Counties. The patients will be best served in

1 an acute care facility reasonably proximate to
 2 their homes and to the homes of their families.
 3 As the population centers of Berkeley and
 4 Dorchester Counties continue to move to the
 5 north and west, acute facilities in downtown
 6 Charleston and Charleston County will become
 7 increasingly difficult to access, especially
 8 with increased traffic congestion that can be
 9 expected to accompany population growth."

10 Q: Those are your conclusions regarding a facility
 11 known as Berkeley Medical Center. What is
 12 Berkeley Medical Center?

13 A: Well, I guess I made a mistake. I misquoted
 14 the facility name.

15 Q: What is actually in your summary is Trident's
 16 hospital, Berkeley Medical Center, correct?

17 A: Well, Berkeley Medical -- well, the Roper
 18 Hospital is certainly going to serve existing
 19 patients, and it's certainly true that there's
 20 no acute care hospitals in Berkeley County.

21 Q: Look at page 885 of Joint 1. Don't lose your
 22 place because we're coming back to this. Look
 23 at page 885 on Joint 1.

24 A: Okay.

25 Q: Is this the summary that supports the

1 Department's findings in your letter of June
2 26, 2009, found in Joint 1 at 871?

3 A: So are you asking me if it's the same verbiage?

4 Q: I'm asking you first, this is your summary of
5 findings as to Trident on 885, correct?

6 A: Yes.

7 Q: And it supports your decision as to Trident, as
8 expressed in your letter of June 26, 2009,
9 found at page 871 of Joint Exhibit 1, correct?

10 A: I'm sorry. Could you repeat that, please?

11 Q: I'd be happy to. This summary of findings that
12 we're looking at on page 885 --

13 A: Correct.

14 Q: -- of Joint 1, supports your decision as
15 expressed on page 871 of Joint 1, in your
16 letter dated June 26, 2009, approving the
17 Berkeley Medical Center project?

18 A: Correct.

19 Q: Correct. The language regarding distribution
20 and accessibility for criteria 3(a), 3(b),
21 3(c), 3(d), 3(e) and 3(f) is identical to the
22 language that is on page 1273, correct?

23 A: Yes, it is.

24 Q: You have no independent findings regarding
25 distribution for the Roper project, do you?

1 A: I'm not saying that I did. I'm saying that
2 clearly I must have made a copy and paste error
3 or --

4 Q: You copied and pasted because they're virtually
5 identical. You just approved them both?

6 A: No. My philosophy is not to make work. If I
7 can use something, I copy and paste among
8 documents all the time.

9 Q: You will agree with me that you have no
10 independent findings regarding distribution and
11 accessibility in criterias 3(a), 3(b), 3(e),
12 3(d) -- 3(e) and 3(f) for the Roper project, do
13 you?

14 A: I'll agree that I did not do a good job in
15 proofing and wording, but I will not agree that
16 I didn't analyze the applications.

17 Q: Would you agree with me that it's not in
18 writing in your summary?

19 A: I'll agree that the summary does not mention
20 Roper St. Francis under that specific item.

21 Q: So in your summary of findings, there are no
22 findings regarding distribution and
23 accessibility for Roper St. Francis, are there?

24 A: Those words are not on that page in that
25 particular area. But if you consider

1 everything as a whole, there are certainly
2 other items that mention the Roper project.
3 And I certainly did consider everything in the
4 application.

5 Q: We just don't have it in writing, correct?

6 A: Not in that particular paragraph.

7 Q: It's not in your summary?

8 A: But it is reflected in other areas. In other
9 words, there are other places in the summary
10 that reflect that I certainly reviewed the
11 application and drew the conclusions that this
12 was included in the project.

13 Q: Show me where you've got a distribution and
14 acceptability paragraph that is similar to what
15 you have for Berkeley?

16 A: Well, I've already conceded that that doesn't
17 exist.

18 Q: Okay.

19 A: But I won't concede that I didn't properly
20 review the applications.

21 Q: Thank you. Let's talk a little bit about this
22 Parkridge decision. You had been on the job
23 for less than three months when the Parkridge
24 -- the Board issued this Parkridge decision,
25 correct?

- 1 A: And what's the date on that again? What
2 exhibit?
- 3 Q: This is Joint Exhibit 16.
- 4 A: Okay. Hold on just a second.
- 5 Q: Do you recall the testimony you gave regarding
6 this?
- 7 A: I had been on the job for almost a year and a
8 half.
- 9 Q: Year and a half?
- 10 A: A little less than a year and a half, yes.
- 11 Q: Okay. This is a pronouncement from your Board,
12 correct?
- 13 A: Correct.
- 14 Q: And it's a pronouncement from your Board on a
15 specific provision of the State Health Plan,
16 correct?
- 17 A: Correct.
- 18 Q: And as a State employee, when your Board gives
19 its position on a specific part of the Plan,
20 you're going to follow it, aren't you?
- 21 A: Well, it was upheld by the Administrative Law
22 Court.
- 23 Q: Okay.
- 24 A: So, I mean, they've been reversed. But in this
25 case, they weren't.

1 Q: Okay. And as a practical matter, we know that
2 at the end of 2007, three people with 100 years
3 of experience in certificate of need were
4 summarily terminated?

5 MS. BIGGERS: Objection, Your Honor. That is not
6 reflective of prior testimony.

7 THE COURT: Sustained.

8 MR. SUMMER: I'll rephrase it.

9 Q: You do know that Mr. Grice, former director of
10 the Certificate of Need program; Mr. Whiteside,
11 former director of the Plan; Mr. Paul, also a
12 member of the Department, were all terminated
13 at the same time at the end of 2007, correct?

14 MS. BIGGERS: Same objection Your Honor.

15 MR. LONG: Your Honor, it's beyond the scope of the
16 cross. I didn't ask any questions about that
17 and I don't think Ms. Biggers did.

18 THE COURT: I think that's correct. I sustain the
19 objection and it's redundant. It's already
20 come into evidence of the case.

21 MR. SUMMER: As long as we can agree that it's in
22 evidence, Your Honor.

23 Q: So now let's go back --

24 MR. LONG: Your Honor, I just, I don't agree. I
25 think the transcript reflects what happened in

1 regards to the testimony. I just want to make
2 sure.

3 **MS. BIGGERS:** I would concur with Mr. Long. I think
4 the record will ultimately reflect what was
5 actually testimony.

6 **THE COURT:** Are you raising an objection for me to
7 rule on, or you're just making a comment?

8 **MR. LONG:** I just didn't --

9 **MS. BIGGERS:** Well, my objection is that I believe
10 that Mr. Summer has made statements that are
11 inaccurate as to prior testimony. And I guess
12 my comment on that was just that I would -- I
13 believe the remedy would be that Your Honor
14 will be able to review the prior testimony in
15 the record.

16 **THE COURT:** Well, I remember something coming up
17 about these departures from the Department. So
18 it's in the record there somewhere.

19 **MS. BIGGERS:** Thank you, Your Honor.

20 **MR. SUMMER:** Thank you, Your Honor.

21 **Q:** Now, let's put your decision making in June of
22 2007 in context of those departures of those
23 former employees and this directive of your
24 Board.

25 **A:** I don't understand what you're trying to say.

1 Q: As a practical matter, you weren't going to
2 risk losing your job; you were going to approve
3 this project?

4 A: That's absolutely untrue, absolutely.

5 Q: Would you agree with me that you had no choice
6 but to approve the project based upon the
7 Board's decision in Parkridge?

8 A: Actually not. The applications stood on their
9 own.

10 Q: Well, you would agree that Trident argued
11 vehemently that the transfer, the bed transfer
12 section could not and should not be used to
13 allow the creation of a hospital? You know
14 that's in the record, right?

15 A: Correct. But it's -- we had always allowed it,
16 we felt it was appropriate. We still feel it's
17 appropriate.

18 Q: Let's go back to this notion of the plain
19 English language and the DHEC language. Okay?
20 Now, we can go through all that again, or you
21 can simply say, that if I asked you all those
22 questions again today, you would agree with
23 them.

24 A: I will not change my answer from what I had
25 said yesterday.

1 Q: Regarding what was plain language and what was
2 DHEC language; remember that line of
3 questioning?

4 A: Yes.

5 Q: Okay. And so your testimony is that it would
6 be the same today, right?

7 A: Yes. But in -- as I would say again, the bed
8 transfer policy is a valid policy, and it was
9 upheld by the Board and it's the way that we do
10 business.

11 Q: During your deposition we talked a little bit
12 about Marlboro Park case, and you indicated you
13 were not aware of it and had not read it yet.
14 Do you remember that?

15 A: Yes.

16 Q: Okay. Since then have you read it?

17 A: No, I have not. I just have not had time.

18 Q: Have you ever looked at any court decisions?

19 A: Yes, I have.

20 Q: But not the Marlboro Park decision?

21 A: No. I didn't feel that it was relevant because
22 I had made my decision in this case, and I'm
23 not going to change my mind about the decision
24 I made.

25 Q: So you neither read the Court of Appeals case

1 or Judge Geathers' findings?

2 MS. BIGGERS: Objection. Asked and answered.

3 MR. SUMMER: Excuse me, Your Honor. There are two
4 decisions. I just want to make sure she hadn't
5 looked at either one of them.

6 THE COURT: I think answered the question. I sustain
7 the objection.

8 Q: The other thing that you indicated was that
9 there's a Doctors Care somewhere. Is that in
10 Goose Creek or was that in Moncks Corner?

11 A: No. I said when Lisa and I went to Moncks
12 Corner, there was one under construction.

13 Q: Well, what relevance does that have to whether
14 or not there should be a hospital somewhere?

15 A: Well, it indicated to me that the community was
16 growing and for somebody to -- that there was
17 evidence of businesses under construction. And
18 that I felt it was a growing community.

19 Q: How many people are employed in an average
20 Doctors Care?

21 A: That wasn't my point.

22 Q: I thought you just said there was evidence of
23 growth?

24 A: Well, clearly somebody felt that it was worthy
25 of an investment to build it.

1 Q: And how is that relevant to whether or not
2 you're going to put a hospital there?

3 A: I just said it indicated to me that the
4 community appeared to be growing. That was
5 just a statement I made. Certainly my decision
6 didn't hinge upon that one observation.

7 Q: Do you remember His Honor's question to you
8 about what if Roper is going to put a hospital
9 across the street from the Berkeley Medical
10 Center in Moncks Corner? Do you remember that
11 discussion?

12 A: Yes.

13 Q: And your answer included in part that distance
14 would make a difference; is that correct?

15 A: That was in part. There are other
16 considerations.

17 Q: You testified they were about 14 miles apart;
18 is that your recollection?

19 A: I believe I did.

20 Q: Okay. So 14 miles apart is not too close to be
21 duplicative; is that what you're saying?

22 A: It depends upon the situation. In this case
23 given the merits of the applications, it
24 wasn't.

25 Q: Would you agree with me that both the proposed

1 projects at Carnes Crossroads and the proposed
2 project in Moncks Corner are in the same
3 service area as defined in the two State Health
4 Plans?

5 A: Yes.

6 Q: Would you also agree with me that the two
7 hospitals are in the same -- the two proposed
8 hospitals are in the same county, in Berkeley
9 County?

10 A: Yes.

11 Q: Would you also agree with me that both of those
12 hospitals are in the same zip code?

13 A: There may be some overlap, but I would think it
14 would be very little. I would have to look. If
15 you have a chart here --

16 Q: Sure.

17 A: I'm sure there are several zip codes. I
18 believe you said zip code.

19 Q: The physical location. You understand that
20 each address has a zip cod, right?

21 A: Right.

22 Q: Do you realize that the Berkeley Medical Center
23 and the Carnes Crossroads are in the same zip
24 code, located in the same zip code?

25 A: Well, I'd have to look at the area that the zip

1 code encompasses.

2 Q: This is a Roper exhibit.

3 MR. SUMMER: What's the number on that one?

4 MS. TYER: It's Petitioner's 17.

5 Q: They're both in the same Moncks Corner zip
6 cod,; right?

7 A: Yes.

8 Q: Okay. And they're both on the same road,
9 aren't they?

10 A: I believe you're right.

11 Q: But they're not duplicative?

12 A: Being on the same road doesn't indicate the
13 merits of the individual applications.

14 Q: Were you here yesterday for the discussion
15 with, or for the testimony of the time travel
16 expert?

17 A: No, I was not.

18 Q: Okay. I'm going to put up a chart from -- which
19 is Petitioner's 169. It's a report signed by
20 Mr. Michael Ridgeway, who testified yesterday.
21 And can you look at his time travel report and
22 tell me how many miles, driving miles there are
23 between the Carnes Crossroads property and the
24 Berkeley Medical Center site in Moncks Corner?

25 A: Okay. I believe it says 11.8.

1 Q: Okay. I just wanted to make sure we had that
2 correct for the record. Let's take a look at
3 the 2008-2009 Plan, please. In particular, I
4 want to turn your attention first to Roman
5 Numeral II-18. Are you with me?

6 A: Yes.

7 Q: Okay. Mr. Long asked you a series of questions
8 about approval of this project not exceeding
9 need; do you remember that?

10 A: Yes.

11 Q: Okay.

12 A: I'm sorry, David. This page, what page should
13 we be on?

14 Q: We're going to start on 218 and we're going to
15 carry over to 219.

16 **THE COURT:** Excuse me, Ms. Brandt.

17 **MS. BRANDT:** Yes, sir.

18 **THE COURT:** As I indicated at the outset of this
19 hearing, I'd like to proceed informally as
20 possible, but you will address as Mr. Summer
21 rather than by his given name.

22 **MS. BRANDT:** Oh, yes, sir. That's fine. I'm sorry.
23 Thank you.

24 A: Mr. Summer, I'm looking at page II-18.

25 Q: Which Plan again?

- 1 A: Oh, I'm sorry. '04. Could you tell me what
2 page it is in this document, the Joint Exhibit?
- 3 Q: Page 26.
- 4 A: Okay. Thank you.
- 5 Q: Top right.
- 6 A: Okay.
- 7 Q: All right. You with me now?
- 8 A: Yes, sir.
- 9 Q: The 2008-2009 Plan is the Plan that Roper
10 applied under with this project to establish a
11 hospital at Carnes Crossroads, correct?
- 12 A: Yes, this is correct.
- 13 Q: All right. And when we look at the bed need,
14 the bed need is for a three-county service
15 area: Berkeley, Charleston, and Dorchester. Do
16 you see that?
- 17 A: Yes, that's correct.
- 18 Q: Okay. That's on 219?
- 19 A: Right.
- 20 Q: Let's start at the top with Trident Medical
21 Center.
- 22 A: Okay.
- 23 Q: What is the bed need at Trident Medical Center?
- 24 A: The -- to be added?
- 25 Q: Right.

1 A: Is 56.

2 Q: That projection is based upon Trident's use
3 rate, correct?

4 A: That's part of it. It's also based upon --

5 **MR. LONG:** Your Honor, I want to object to this line
6 of questioning. I didn't walk her through
7 anything in regards to the utilization chart in
8 the Health Plan. I didn't talk to her about
9 that at all, about the chart at all. And he
10 walked her through all this yesterday. He went
11 through every single one of these hospitals,
12 and called out the numbers and had her testify
13 to it.

14 **MR. SUMMER:** She testified in response to his
15 question that approval cannot exceed need under
16 the bed transfer section, and she said it
17 didn't. And I'm attempting to impeach her on
18 that point by walking her through this section
19 to show that, in fact, approval of this
20 application does exceed need.

21 **MR. LONG:** Well, what she testified to earlier was
22 that this utilization didn't matter in regards
23 to the bed transfer. They were separate and
24 distinct. And yesterday he walked her through
25 all of those to try to show that the approval

1 of both didn't exceed the need because of the
2 utilization chart. So it's redundant and it's
3 beyond the scope.

4 **THE COURT:** Well, I don't believe it's beyond the
5 scope. At a minium I'm going to overrule the
6 objection.

7 **MR. SUMMER:** Thank you, Your Honor.

8 Q: Trident's bed need is based upon its historical
9 utilization and a projection of the future
10 population, correct?

11 A: Yes, that's correct.

12 Q: So we can look at it and say because Trident is
13 busy and people are using it, it's entitled to
14 more beds. Fair statement?

15 A: Well, I can tell you that these figures show
16 that again, like you said, it's based upon the
17 population projection and the utilization or
18 the patient days.

19 Q: Okay. So their historical utilization
20 indicates they need beds?

21 A: It indicates that there is an excess of beds
22 and there can be beds added.

23 Q: An excess of beds or a need for beds?

24 A: A need for beds.

25 Q: A need for beds. They have a need for beds,

1 correct?

2 A: Correct.

3 Q: Summerville has a need for beds, correct?

4 A: Yes, to be added potentially is 24 beds.

5 Q: Correct. Does MUSC have a need for beds?

6 A: They're showing an excess of 65.

7 Q: Do they have a need for beds?

8 A: No.

9 Q: Okay. Does Roper or Roper Mount Pleasant have
10 a need for beds?

11 A: There is a negative need of six.

12 Q: Okay. And the question was does Roper or Roper
13 Mount Pleasant have a need for beds?

14 A: No.

15 Q: Okay. Does Bon Secours have a need for beds?

16 A: No.

17 Q: And if I look at the total excess of beds in
18 the service area, how many is it?

19 A: It's 48.

20 Q: Okay. So Roper could not apply for beds at any
21 of its locations, could it?

22 A: They could not apply to increase beds, but they
23 could certainly apply to transfer beds.

24 Q: And they have an excess of beds, right?

25 A: According to this Plan, which is not the Plan

1 upon which they applied.

2 Q: It's not?

3 A: I'm sorry. It is.

4 **MR. SUMMER:** Excuse me. Who was that?

5 Q: Okay. Go ahead.

6 A: I'm sorry. We're just going back and forth
7 between Plans. Yes, they did apply. But
8 again, it is a transfer.

9 Q: Let's go back to my question. First of all, it
10 is the Plan that Roper applied under, correct?

11 A: Yes.

12 Q: And the day after you gave the decision on June
13 the 26th, 2009, Roper had an excess of beds,
14 did they not?

15 A: Yes.

16 Q: They still had an excess of beds?

17 A: Yes.

18 Q: Thank you. Let's go over to II-9 while we're
19 still in this, please, ma'am, Roman Numeral II-
20 9 of the 2008-2009 Health Plan.

21 A: Okay. I'm there.

22 Q: Couple of questions that Mr. Long asked you
23 that I just want to clarify for the record. He
24 indicated that there's no language that
25 prohibits the construction of hospitals or the

1 creation of hospitals in this Section J. Do
2 you remember that question?

3 A: Yes.

4 Q: There's no prohibition, would you agree with
5 that?

6 A: Yes, I would.

7 Q: Okay. Expressed in that language, is there a
8 prohibition for the creation of a power plant?

9 A: Well, this is the South Carolina Health Plan.
10 And it lays out clearly that it's not
11 applicable to power plants.

12 Q: All right. Is there a prohibition for the
13 creation of an ambulatory surgery center
14 expressed in that?

15 A: They have their own separate section.

16 Q: Is there a prohibition for the creation of an
17 urgent care center in there?

18 A: They have their own separate sections for like
19 freestanding EDs.

20 Q: I asked for an urgent care center.

21 A: Urgent care? No. This doesn't cover urgent
22 care centers. No, sir.

23 Q: There are a lot of things that could be
24 prohibited that are not expressed there,
25 agreed?

- 1 A: Yes, if you want to look at it like that, but
2 however, this is applicable to health planning
3 and not other things.
- 4 Q: And I thought it was interesting that he
5 mentioned specifically the definition section
6 of hospitals and hospital beds on Roman Numeral
7 II-4. Do you see those?
- 8 A: Yes, I do.
- 9 Q: Read me the -- well, let's just do it quickly.
10 A hospital means a facility; do you see that?
- 11 A: Yes, sir.
- 12 Q: A facility. The whole facility, correct?
- 13 A: Yes.
- 14 Q: All right. Facility is the word used in Roman
15 Numeral II-9, correct? Do you see the word
16 "facilities"?
- 17 A: Yes. Facilities, yes.
- 18 Q: Okay. And that's consistent with a definition
19 of a hospital?
- 20 A: I believe in this case it is.
- 21 Q: Okay. So when J is referring to facilities
22 plural, it's referring to hospitals. But now
23 look at Roman Numeral II-9. And at the very
24 bottom of the page, the last sentence, "A
25 proposal to transfer or exchange hospital beds

1 requires a certificate of need and must comply
2 with the following criteria." Would you agree
3 with me that the following criteria refer to
4 the transfer of beds?

5 A: Yes, sir.

6 Q: Doesn't say the transfer of a facility, does
7 it?

8 A: No, sir. But you wouldn't have a hospital
9 without beds.

10 Q: Doesn't refer to relocate -- let's talk about
11 that. You wouldn't have a hospital without
12 beds, would you?

13 A: Correct.

14 Q: Proposal to transfer or exchange hospital beds
15 requires certificate of need and must comply
16 with the following criteria. It doesn't say a
17 proposal to create a new hospital, does it?

18 A: No, sir. But you have to have beds to have a
19 hospital. And that's the only logical way to
20 create a hospital.

21 Q: And a hospital is a facility?

22 A: Yes, it is.

23 Q: And Number 2 refers to a receiving facility,
24 doesn't it?

25 A: Yes, it does.

1 Q: Let's talk about Roman -- There was some
2 language, and we don't have to spend a lot of
3 time. There was some discussion that you and
4 Mr. Long had about the 15 days. And I just
5 want to make sure that I understand this. If
6 you look at the definition of competing
7 applications. Do you happen to have a copy of
8 the regulations still there from yesterday? If
9 not, I will be glad to get you one.

10 A: No, sir. Not unless it's part of --

11 Q: I will be happy to get you one. Here you go.

12 A: Should I keep this out?

13 Q: I don't think I'm going to need it anymore.

14 A: Okay. Thank you.

15 Q: If you go to that definition of competing
16 application. 61-15, Section 103, Subsection 6.
17 Are you with me?

18 A: Yes, yes.

19 Q: And you remember the questions Mr. Long was
20 asking you about do you have to make a
21 determination if they're competing within 15
22 days?

23 A: Yes, I do.

24 Q: That's not what that language says, is it?

25 A: And could you please repeat your question?

1 Q: I just want to make certain that we clear this
2 up. My recollection of Mr. Long's question was
3 that you had 15 days to determine if something
4 was competing. The 15 days is the time period
5 that someone has from the date of Notice of
6 Affected Persons, Notice to Affected Persons
7 going into State Register. If I want to
8 compete against that application, I must file
9 it before the 15th day after that, correct?

10 MR. LONG: Objection, Your Honor. That was not --
11 he's mischaracterized what the question was
12 earlier today. The question is compound. I
13 didn't --

14 THE COURT: Well, there was a question about the 15
15 day period. I'm going to overrule the
16 objection.

17 Q: The 15 day time period is when a competitor
18 must file an application prior to the
19 expiration of that 15 days, correct?

20 A: Well, according to this, if they want to be
21 considered competing. That doesn't guarantee
22 that we will determine they're competing. But
23 that's if they want to be considered competing.

24 Q: And we can agree that for ambulatory surgery
25 centers in the same county, you would know on

1 the 16th day that they were competing, correct?

2 A: The standards are written different for
3 ambulatory surgical facilities. They're worded
4 differently, so it's like comparing apples to
5 oranges in the verbiage.

6 Q: Well, we'll put some more fruits in here. But
7 you would agree with me that on the 16th day,
8 if you had two applications for ambulatory
9 surgery centers in Berkeley County, you would
10 know that they were competing and you could
11 only approve one, correct?

12 A: I'm not saying that necessarily with the
13 current Plan. But with the Plan that you read
14 me, that's yes, I would agree.

15 Q: That was the rule in 2008-2009, correct?

16 A: Yes.

17 Q: And similar fashion for home health, as Mr.
18 Long was inquiring, know what your number is.
19 On the 16th day, you know whether or not you
20 have competing applications, correct?

21 A: Well, no. Certainly, you know, that's if they
22 file after that deadline we don't have to
23 accept their applications. They could
24 certainly be -- they could certainly propose to
25 put a facility in that same area, but we

1 couldn't accept it..

2 Q: The question was, if you had a need for five.

3 A: Correct.

4 Q: Okay. And there are already existing four home
5 health agencies, and you received three
6 applications, two of which came within or
7 before that 15th day, on the 16th day you would
8 know that you had three competing applications
9 for home health, correct?

10 A: Yes, sir. In the specific case because the
11 information is a numerical format that you just
12 do the math and it's quite clear.

13 Q: Same for the next two

14 A: Well, it's not worded that simple. I mean, but
15 it depends upon the utilization.

16 Q: You just finished one for three different
17 applications in Horry County, correct?

18 A: Correct.

19 Q: You considered them competing from the
20 beginning, correct?

21 A: I had to make that determination. There was
22 three applications, but one was actually adding
23 to an additional facility and the other two
24 were brand new facilities.

25 Q: They were competing applications; were they

1 not?

2 **MS. BIGGERS:** Your Honor, I'd just like to make an
3 objection here on the basis that I believe he
4 is actually inquiring into a specific matter
5 that is under appeal, I believe.

6 **MR. SUMMER:** It's a simple question of they were
7 deemed competing. They were deemed competing
8 and they knew that they were competing after
9 that 15 day period. I think it's a fair
10 question.

11 **THE COURT:** Well, are you asserting that he is
12 trying to get an answer that is otherwise
13 privileged? Is that the basis of your
14 objection?

15 **MS. BIGGERS:** My objection is that I think he is
16 inquiring into a basis for a decision that Ms.
17 Brandt has made that has been challenged but
18 not yet made it to court. I don't think it's
19 appropriate for this venue. I don't think it's
20 relevant.

21 **THE COURT:** Well, relevance is one thing, but
22 privilege is another, and that is still my
23 question to you. Is it you think that he is
24 trying to get at privileged information?

25 **MR. SUMMER:** Your Honor, I will withdraw it. I want

1 to move on. It's not essential. I'll talk
2 about the beds next.

3 **THE COURT:** Thank you.

4 Q: Let's take that same concept of what we were
5 just talking about with ambulatory surgery
6 centers and home health agencies. Let's go
7 back to Roman Numeral II-19 in this Plan.

8 A: I'm there.

9 Q: We've established that Roper has a negative bed
10 need under this Plan, correct?

11 A: Yes, sir.

12 Q: We've also established that there is a negative
13 bed need of 48 for the entire planning area,
14 correct?

15 A: Yes, sir.

16 Q: Neither Roper nor a new entity, Community
17 Health Systems, could come into this area and
18 apply to build a new hospital and seek new
19 beds, could they?

20 A: No, sir, they could not.

21 Q: Okay. If you don't mind, please turn to page
22 833 in Joint 1.

23 **THE COURT:** Is that page 2 of the Baehr letter?

24 **MR. SUMMER:** Yes, sir, Your Honor, it is.

25 A: I'm there.

1 Q: This is my last question for you. Look at
2 paragraph -- the first full paragraph. And
3 read this paragraph into the record for me,
4 please.

5 A: Starting with "as shown"?

6 Q: Yes, ma'am.

7 A: Okay. "As shown on page 26 of the Trident
8 presentation, the losses would total
9 approximately 59 million for the two hospitals
10 combined over three years and over 15 million
11 in the third year alone. These projections
12 assume that the two hospitals would have to
13 divide the growth in the Berkeley County
14 inpatient market on which both applicants
15 justify their projects. For example, the Roper
16 St. Francis application projects growth in
17 average daily census in all of Berkeley County
18 of just over 20 patients per day by 2016. This
19 increase in inpatient utilization is enough to
20 justify construction of one 50-bed hospital,
21 along with additional census obtained from
22 gaining market share from existing providers.
23 It is certainly not enough to support two new
24 hospitals."

25 Q: Twenty patients. Even if you call the growth

1 explosive, there's only 20 new patients in the
2 marketplace in 2016 for 100 beds in two
3 different locations. Wouldn't you agree that
4 there just isn't enough growth to justify two
5 new hospitals?

6 A: No, sir, I don't agree.

7 Q: And that's based upon your extensive analysis
8 of the data, correct?

9 A: Yes. And, you know, certainly it's a review of
10 both applications as both as a whole.

11 Q: Thank you.

12 **THE COURT:** Thank concludes your examination?

13 **MR. SUMMER:** With this witness, yes.

14 **THE COURT:** You may step down, Ms. Brandt.

15 **MR. SUMMER:** Your Honor, we're ready to call our next
16 witness, Mr. John West.

17 **MS. BIGGERS:** Your Honor, could I ask for a brief
18 restroom break before we start our next
19 witness?

20 **THE COURT:** All right. Five minutes.

21 **MS. BIGGERS:** That's fine.

22 **THE COURT:** We'll be in recess five minutes.

23 **MR. SUMMER:** Thank you, Your Honor.

24 (Break from 3:37 p.m. until 3:44 p.m.)

25 **THE COURT:** Back on the record, please, ma'am. Mr.

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1 Summer?

2 MR. SUMMER: Yes, Your Honor.

3 THE COURT: Of course, Mr. West's appearance is
4 subject to objection, which I overruled;
5 however, I'd say to you that I'm allowing his
6 testimony based on my interpretation of the
7 acceptability provision. And it certainly
8 should be limited to what he knows, not to give
9 broad, sweeping opinions. You understand?

10 MR. SUMMER: Agreed, Your Honor.

11 THE COURT: Thank you.

12 MS. HOLLINGSWORTH: And Your Honor, just for the
13 record we, of course, renew our objection, but
14 we understand the Court's ruling that Mr. West
15 will be allowed to testify.

16 THE COURT: Thank you, ma'am. Noted and overruled.

17 JOHN S. WEST, being duly sworn, testifies as
18 follows:

19 MR. WEST - DIRECT EXAMINATION BY MR. SUMMER:

20 Q: Mr. West, could you please state your full name
21 for the record.

22 A: John Samuel West.

23 Q: And where were you born?

24 A: Moncks Corner, South Carolina.

25 Q: And in what building were you born?

1 A: Berkeley County Hospital.

2 Q: The one that was closed in 1975?

3 A: That is correct.

4 Q: Would you mind sharing with the Court your
5 family's history in Berkeley County?

6 A: My grandfather was a trained Baptist minister
7 who was called to the First Baptist Church of
8 Moncks Corner in 1929 and became the pastor of
9 the First Baptist Church of Moncks Corner. And
10 he came from Saluda, South Carolina, by way of
11 Kernersville, North Carolina, which was his
12 home. And he and his wife, my grandmother, and
13 their four children, one of whom was my father,
14 came to Moncks Corner in late 1929.

15 Q: All right. Tell us a little bit about your
16 grandfather and your father's history in the
17 county and how that's affected you.

18 A: Well, my grandfather was pastor of the First
19 Baptist Church of Moncks Corner from 1930 until
20 1938 when he left the church as a result of an
21 automobile accident. He lost his leg and had
22 a long rehabilitation period as a result of his
23 injury. But over the years after he retired
24 from the First Baptist Church of Moncks Corner,
25 he continued to hold services in various rural

1 areas of the county, the rural churches of the
2 county because back during those times, they
3 couldn't afford a pastor. And he served in
4 that capacity for well over 20 years. He
5 served in the Cross community, served in the
6 Cordesville community, in the St. Stephen
7 community, in the Jamestown Community, and
8 various other small churches across the county.

9 Q: Okay. Now, after his accident, who would
10 literally take him around to these communities
11 every Sunday to preach?

12 A: My father.

13 Q: And what was your father's occupation?

14 A: My father was an attorney in Moncks Corner for
15 over 50 years until he retired.

16 Q: And did your grandfather's preaching help him
17 in establishing a law practice?

18 A: Well, of course back when my father started his
19 law practice, it was -- it was pretty tough for
20 any lawyer to make a living in rural Berkeley
21 County. But certainly my grandfather's
22 contacts and my father's relationships that he
23 developed during the course of my grandfather's
24 travels throughout the county certainly helped
25 him getting to know the families throughout the

1 county, yes.

2 Q: Let's talk a little about you and then we'll
3 come back to your father and his law practice.

4 A: Sure.

5 Q: Where did you go to school?

6 A: Went to school in Berkeley County public
7 schools. Graduated from Berkeley High School
8 in 1975. After high school, I went to
9 University of South Carolina. I majored in
10 political science and history. I graduated in
11 1978.

12 Q: You graduated in three years?

13 A: I did. Went on into the master's program in
14 public administration at the University of
15 South Carolina for a year, and then entered law
16 school in 1979. Graduated from USC School of
17 Law in 1982.

18 Q: While you were in Columbia, who did you work
19 for?

20 A: I worked for Senator Marshall Williams from
21 Orangeburg the entire time I was in college and
22 in graduate school and in law school. And, in
23 fact, when I finished law school, I served as
24 staff counsel to the Senate Banking and
25 Insurance Committee for a year following my

1 graduation from law school and before I went
2 home to practice with my father.

3 Q: Okay. Tell us about going back to practice
4 with your father in his practice in Berkeley
5 county and what you did.

6 A: Well, my dad for many years had a general
7 practice in Moncks Corner. Just as you would
8 expect in a small town, he did a little bit of
9 everything. And when I arrived, I shared in
10 doing a little bit of everything with my dad,
11 and we had a general practice together for
12 several years, land work, probate work,
13 business work, some civil litigation, very
14 little criminal work and very little Family
15 Court work back then. But basically, that was
16 the nature of our practice, a general, local
17 practice. And that continued after we merged
18 with another law firm in Moncks Corner, a three
19 person law firm that consisted of some
20 contemporaries of mine. We merged those law
21 firms in 1986, and continued in the general
22 practice of law until later.

23 Q: Okay. Did your father's travels through the
24 county benefit his law practice?

25 A: Certainly did. Of course, he also served in

1 the South Carolina Legislature back before the
2 changes were made in the districts. That was
3 back in the '60s when there were two House
4 members from Berkeley County at large, and my
5 father was one of the members of the House of
6 Representatives for about ten years. And of
7 course, his travels politically, as well as
8 throughout his work in the rural parts of the
9 county and his law practice got him very, of
10 course very acquainted with the people of
11 Berkeley County.

12 Q: This was prior to home rule when the
13 legislative delegation ran the county, right?

14 A: It was prior to home rule. I would -- I would
15 have to say that Senator Dennis ran the county.
16 My father was one of two members of the House
17 of Representatives. But in Berkeley County,
18 Senator Rembert Dennis ran the county.

19 Q: And I think we would probably take judicial
20 notice of that. Tell me a little bit about
21 your career after that private practice. Where
22 did you go next?

23 A: In 1990, I left the private practice. My
24 father was winding down his practice at that
25 point in time and beginning a semi-retirement.

1 I don't think any lawyer who's been practicing
2 law for 50 years could ever totally retire.
3 But he was winding down his practice. I was
4 offered a position as corporate counsel to the
5 South Carolina Public Service Authority, Santee
6 Cooper, which I took and began working for
7 Santee Cooper in 1990.

8 Q: And how long did you stay with Santee Cooper?

9 A: I stayed at Santee Cooper until December 31st,
10 2004, when I retired as executive vice
11 president and chief legal officer of Santee
12 Cooper.

13 Q: And upon your retirement, what did you do next?

14 A: Well, of course it was my objective all along
15 to return to private practice. I have six
16 children, five boys and a girl, and a couple of
17 my boys were leaning toward the practice of
18 law. And we had a family understanding that at
19 some point I would resume the private practice
20 so that the boys would have a place to come
21 practice, and in fact, one of my sons is now
22 practicing with me.

23 Q: And based upon all your prior public service
24 when you were in Columbia, did you have enough
25 years to retire?

1 A: I did.

2 Q: How's your law practice doing?

3 A: Doing great.

4 Q: Do a lot of real estate work?

5 A: Doing a lot of land work, a lot of heirs
6 property work, a lot of probate work.
7 Basically what we were doing before I left to
8 go to Santee Cooper.

9 Q: Talk to me a little bit about some of the
10 public offices that you've held.

11 A: Well, I've served in only one elected office.
12 I was mayor of Moncks Corner from February of
13 1993 until the end of that term in early 1996.
14 I was elected in a special election so I did
15 not serve an entire four year term. And that
16 was my only elected position. I've served in
17 a number of appointed positions over the years,
18 and also served on a number of boards and
19 commissions. I'll be glad to go through some
20 of those if you wise.

21 Q: Why don't I just quickly ask you about a few.
22 You served at one point in time as a municipal
23 judge; is that correct?

24 A: Prior to my time as mayor of Moncks Corner, I
25 served both as a municipal judge and as the

1 city attorney and prosecutor for the Town of
2 Moncks Corner.

3 Q: Okay. And you also served on the State Election
4 Commission?

5 A: Served as a member of the State Election
6 Commission and for two years as chairman of the
7 State Election Commission between 2004 and
8 2006.

9 Q: What I would like for you to explain to the
10 Court is a little bit about the character of
11 the county, the history of the county, and then
12 also about the populations that exist there,
13 both north and south. So if you don't mind,
14 when you and I met in your office, you started
15 in 1884 and had a very concise and brief
16 history, but I found it very informative, and
17 if you wouldn't mind sharing that with the
18 Court.

19 A: Well, I can go back to the Lord Proprietors if
20 you want me to. But let's start with 1880 --
21 actually 1882.

22 Q: Okay.

23 A: 1882 is when Berkeley County was severed off,
24 carved off of what was then Charleston County.
25 This was all as the result of the Constitution

1 of 1868 and the creation of a number of
2 counties, including Berkeley County. And
3 Berkeley County became a standalone county in
4 1882. And with a long political fight, which
5 I will not bore the Court with, the Town of
6 Moncks Corner ultimately became the county
7 seat. But it was not until 1895 when Moncks
8 Corner became the county seat of the new, newly
9 created Berkeley County.

10 Q: Okay. What was commerce like in the early
11 county?

12 A: Well, historically, Berkeley County was not a
13 county unlike many counties in South Carolina
14 that had a large agricultural presence. There
15 was not very much farming in Berkeley County,
16 it was mostly subsistence and family farms, no
17 large farming activity in Berkeley County.
18 Going back many, many years even before the
19 creation of Berkeley County there was a small
20 farming community, except along the Cooper
21 River where you, of course, had the plantations
22 back in Colonial times. Mostly the commerce in
23 Berkeley County up until the 1940s, when the
24 Santee Cooper project came to that part of the
25 world mainly consisted of timber production,

1 turpentine and a little bit of small
2 manufacturing. So it was a very poor, rural,
3 undeveloped county for many, many years.

4 Q: And was it a large African American population
5 as well?

6 A: There was a very significant African American
7 population historically. And of course, one of
8 the reasons why Berkeley County became a county
9 in the first place is that Charleston did not
10 want a significant -- this is all well
11 documented; this is not my opinion. This is
12 all part of the historical record that folks in
13 downtown Charleston didn't want a significant
14 and growing African American population in
15 their county. So Berkeley County became a
16 county in large part because of the large
17 African American population. And that
18 continued for many years.

19 Q: Just as a side note because I found it very
20 interesting. What was an industry that cropped
21 up during Prohibition?

22 A: Well, of course Berkeley County was known
23 probably nationally as one of the hot beds of
24 moonshine production. In fact, the most
25 lucrative industry in Berkeley County for

1 several decades was bootleg whiskey.

2 Q: Did Al Capone every come to Moncks Corner?

3 A: I saw a picture of Al Capone and a gentleman by
4 the name of Glennie McKnight, who was a
5 grandfather of a childhood classmate of mine in
6 Moncks Corner, yes.

7 Q: Talk to us a little bit about how Santee Cooper
8 changed Berkeley County.

9 A: Well, it changed it for one obvious reason in
10 that it brought electrification to parts of
11 Berkeley County that were previously not
12 electrified. So the immediate impact of the
13 Santee Cooper project was electrification of
14 some of the rural area. And, of course, that
15 was in collaboration in some of the electric
16 cooperatives. But the most dramatic impact
17 was, of course, that there was money brought
18 into the county as the result of the
19 construction of the Santee Cooper project,
20 which added at the time of its construction was
21 the largest earth-moving project in the history
22 of the United States. A massive project,
23 brought several thousands workers into the
24 area, jobs. And then after the project was
25 constructed, of course, we saw an influx of

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1 professionals coming into the area, engineers,
2 accountants, people that prior to that time had
3 no reason to be in Berkeley County unless they
4 were pursuing the moonshine. But it did have
5 a significant impact on the region, not just in
6 Berkeley County, but of course the headquarters
7 of Santee Cooper by statute is in Moncks
8 Corner.

9 Q: I had not realized that.

10 A: By law.

11 Q: We'll put a map up so it will help us a little
12 bit as we talk a little bit more about -- I'm
13 assuming the construction also included the
14 construction of a lake?

15 A: Well, the project is the construction of two
16 large reservoirs. And the original project was
17 the construction of a power house and a dam at
18 the headwaters of the Cooper River.

19 MR. SUMMER: Technology is great when it works. If
20 you'll bear with us.

21 Q: All right. What effect did the creation of
22 those lakes have on the county in terms of
23 separating populations?

24 A: Well, there are a number of effects. One of
25 the very significant effects of the creation of

1 the two reservoirs, but in Berkeley County they
2 -- what was referred to as Lake Moultrie. The
3 Pinopolis Reservoir is what it's referred to on
4 the original land maps. You've got well over
5 100,000 surface area acres of water. And you
6 had a lot of families that were displaced as a
7 result of the creation of the reservoirs. So
8 you had people who were relocating. You had
9 cemeteries, hundred and hundreds of cemeteries
10 that were under what became the reservoir that
11 had to be relocated. And so you had that as an
12 immediate impact. And then you had a situation
13 where you started ultimately to see the
14 commerce that was concentrated in Moncks Corner
15 and south begin over a period of time.

16 Q: When we met you used phrases referring to the
17 New Berkeley County and the Old Berkeley
18 County. Talk to me about what those terms
19 mean.

20 A: Well, that's a term that many of us use. It's
21 not just my terminology. Anybody that's been
22 around as long as our family has been around,
23 and many of the families have been around, know
24 what we're talking about when we talk about Old
25 Berkeley County and New Berkeley County. But

1 to answer your question, New Berkeley County is
2 the southern part of the county. Goose Creek,
3 Hanahan, the areas that have been growing as a
4 result of the expansion of North Charleston and
5 Charleston and the progression of growth coming
6 north from North Charleston in that area. That
7 community, and we view it as a community, Goose
8 Creek and Hanahan as a single community in the
9 southern part of the county, that is New
10 Berkeley County.

11 Q: Is that an extension of North Charleston?

12 A: Well, that's how we view it. It is an
13 extension. And if you -- if you just simply
14 look at it and observe what's going on on the
15 Highway 52 corridor coming out of North
16 Charleston, what you have in its path is the
17 extension of growth north. And so yes, it is
18 a -- an extension of growth from North
19 Charleston. That is New Berkeley County. Old
20 Berkeley County, basically if you look at this
21 map, consists of the Moncks Corner area proper,
22 and then those rural areas surrounding Lake
23 Moultrie. On the western side, you've got Sand
24 Ridge and Cross. On around the top of the
25 lake, what we refer to as the top of the lake,

1 you've got Eadytown, Pineville, Russellville,
2 St. Stephen, Bonneau and Alvin. And then
3 northeast you have Jamestown, Shulerville,
4 Honey Hill and then Huger. All of those rural
5 areas that I've just described and Moncks
6 Corner constitute what we refer to as Old
7 Berkeley County.

8 Q: Since the 1950s or '60s, has there been much
9 development in those areas?

10 A: In Old Berkeley County there has not been much
11 development in the sense of any new industries
12 or any large commercial establishments coming
13 into those areas, with the exception of Moncks
14 Corner. And we are seeing and have seen some
15 growth in the Moncks Corner area. But if you
16 go into as far as the communities themselves,
17 the physical communities of Cross, Eadytown,
18 Pineville, St. Stephen, and so forth they look
19 very much like they looked when I was a little
20 boy riding out in those parts of the county to
21 go hunting.

22 Q: Just for the record, that's the biggest buck
23 I've ever seen in my life is the one you've got
24 in your office.

25 A: Well, that's not the biggest one there is.

1 That's just the one that's in the office.

2 Q: Yeah. Well, it's pretty impressive. We know
3 that we've seen population growth in that
4 northern Old Berkeley County over the years.
5 Where do those people go to work? How do they
6 survive?

7 A: Well, a lot of them travel great distances,
8 those that are working. You know, let me
9 clarify a little bit about my earlier testimony
10 about growth in the rural parts of the county.
11 I was addressing your question that speaks to
12 the question of commercial growth or industrial
13 growth, that kind of growth. The populations
14 in those areas have increased, and what we know
15 to be the case is, and because I represent a
16 lot of those folks, that the families are
17 settling back on family property. A lot of
18 subdivision of family property is taking place
19 in the rural parts of the county. Children are
20 having children, and you've got families that
21 are settling on grandfather's land or great
22 grandfather's land. And so you're seeing
23 population grow, but not so much the commercial
24 activity growth. A lot of these folks that I'm
25 describing in these various communities,

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1 they're not living in gated communities.
2 They're not living in residential subdivisions
3 as we understand that to be in the New Berkeley
4 County. We're talking about folks who are
5 scattered out on the end of the dirt road in an
6 old soybean field in a plot of land that great
7 granddaddy may have owned. So you've got an
8 entirely different profile of a citizen in the
9 rural. And I'm of course making broad
10 generalizations here. But you see a different
11 profile of the individuals living in these
12 rural areas than you do in the southern part of
13 the county.

14 Q: Is it predominantly a poor population?

15 A: From my observation it is, yes. Those are my
16 clients.

17 Q: And do you view the southern part of the county
18 to be more urban?

19 A: Well, it is. And, you know, basically you've
20 got along the 176 corridor, which is that large
21 development that Westvaco put in along there
22 back in the late '80s and early '90s. And then
23 the other residential subdivisions in Goose
24 Creek and Hanahan. It is an urban area.
25 There's very little rural property left in the

1 southern part of the county.

2 Q: Let me -- let's go next to, I'm turning to a
3 page in the record and ask you if you recognize
4 something.

5 MR. SUMMER: Can you please bring up page -- Joint
6 1, page 757.

7 Q: I noticed this the other day and I just asked
8 you in my office. The Berkeley County
9 Hospital, there's a -- it looks to be a section
10 from a resolution. But it references a Mr.
11 West. Is that by any chance Norman West, your
12 father?

13 A: I believe that is my father. Now, in all
14 fairness, I would qualify that by saying my
15 uncle, Joseph West, was a practicing attorney
16 in Moncks Corner, my dad's brother, for many,
17 many years until his death in 1989. And it is
18 possible that this is my uncle Joseph West.
19 But it is either my uncle, Joseph West or my
20 father. Most probably my father.

21 Q: Okay. As a member of your community, what's
22 your recollection and understanding of when
23 your hospital closed and Trident opened? How
24 did it -- how did the community help that
25 develop?

1 A: Well, of course it was, you know, partly --

2 MS. HOLLINGSWORTH: Your Honor, I apologize for
3 interrupting. Your Honor, at this point, these
4 events happened in the late '60s and early
5 '70s. And with all due respect to Mr. West, he
6 was at most in graceful. His knowledge is
7 going to have to be based on statements either
8 from his father, his uncle, the community.
9 We're just getting kind of beyond the point of
10 what he should directly know from having
11 experienced himself.

12 MR. SUMMER: Your Honor, this just goes to the
13 history. This community is entitled to have
14 its side of the story heard. And he is a
15 lifelong resident. And his -- either his
16 father or uncle participated in this. And I
17 would tell you he was not in grade school
18 because he's older than I am, so he was in high
19 school at the time. I think as a member of the
20 community, as a former mayor, as a lifelong
21 public servant, he has the opportunity to tell
22 the community's side of the story as it relates
23 to the development of the Trident Hospital
24 Systems.

25 THE COURT: As harmless as it may be, it's still

1 hearsay, Mr. Summer. And he can tell what he
2 knows, but not beyond.

3 MR. SUMMER: Okay.

4 Q: Let's talk about your understanding. Based
5 upon your lifelong residence there, what's your
6 understanding of how this transpired?

7 MS. HOLLINGSWORTH: Your Honor, again, I object. His
8 understanding is going to have to be based on
9 hearsay.

10 THE COURT: Sustained.

11 Q: What have you read about the creation of the
12 Trident System?

13 A: Well, what I have read and what I know of my
14 own knowledge and observation, with all due
15 respect, I was very involved in the activities
16 in the community, even in high school, because,
17 and I was in high school at the time, it was a
18 big deal for the Berkeley County Hospital to
19 close, and a topic of a great deal of community
20 discussion because it was at the heart of the
21 community. The Berkeley County Hospital was
22 constructed in 1929. Everybody that was born
23 in Moncks Corner during my generation and the
24 generation before was born in that hospital.
25 When grandmama got sick, that's where grandmama

1 went to. When kid got, you know, scraped in a
2 bicycle wreck, that's where they went to get
3 stitched up. So it was a community heartbeat
4 right there in the middle of Moncks Corner, on
5 Main Street in Moncks Corner. So when the
6 Berkeley County Hospital was rumored to close,
7 it was a topic of a great deal of discussion,
8 even to the point of being studied in high
9 school as part of our community studies that
10 there would be the closure of the Berkeley
11 County Hospital. So it was a topic of great
12 discussion in the community, and I was very
13 aware of the fact that it was going to be
14 closed. Now to the point of where Trident came
15 in. It was very widely understood that Trident
16 was going to build a hospital, and the hospital
17 in North Charleston was going to replace the
18 Berkeley County Hospital, which was going to
19 close, and the Dorchester County Hospital,
20 which was going to close, and that Trident was
21 going to serve -- the North Charleston facility
22 was going to serve the needs of both Dorchester
23 and Berkeley County citizens.

24 Q: As far as the relationship between the county
25 and Trident over the years, has it been

1 positive?

2 A: Well, as far as I understand it, it has been
3 positive. Certainly when I was working at
4 Santee Cooper, part of my duties involved
5 supervising the community relations group at
6 Santee Cooper, as well as the economic
7 development group, and we found ourselves very
8 often in community meetings with
9 representatives of Trident, and for that matter
10 Roper and other institutions in the community.
11 And the relationship between Trident and the
12 community are always very, very positive.
13 During the time I was the mayor of Moncks
14 Corner, we had regular dealings with Trident
15 officials, as well as others. And it was
16 always a very positive and good relationship.
17 So I guess, in general terms, the answer to
18 your question is the relationship between
19 Trident and the community was solid and good.

20 Q: Has it always been the understanding of the
21 community that at some point in time the
22 Berkeley County Hospital would be rebuilt in
23 Moncks Corner?

24 MS. HOLLINGSWORTH: Your Honor, I would just ask
25 that the question be rephrased. It can only be

1 Mr. West's understanding. He cannot speak for
2 the community.

3 MR. SUMMER: I'll rephrase it.

4 Q: What's your understanding of Trident's
5 commitment to build a hospital there?

6 A: It's always been my understanding that as time
7 went by and as the population grew that there
8 would be a Trident Hospital in Moncks Corner,
9 sited in Moncks Corner.

10 Q: Talk to me about what those -- what the
11 community needs are for a hospital. Not from
12 a health planning perspective. I know you're
13 not a health planner. But in terms of being a
14 former mayor and a former judge and a former
15 city attorney and a practicing attorney there
16 now, what's the value to that community to
17 having that hospital rebuilt?

18 A: Well, it's an answer that is on a number of
19 levels and a number of layers. Let's start
20 with this business of the travel time and
21 access to healthcare. When you go back, if you
22 can put that map back on.

23 MR. SUMMER: Okay. Go back.

24 A: I think it's very important. This is very
25 important to understand the travel times. And

1 before I get into travel times, I just want to
2 put this in some context, Your Honor. Berkeley
3 County is almost 1,100 square miles of
4 geography. 1,100 square miles. And that's
5 rounding the figure of land mass. You've got
6 about 130 acres of -- excuse me, 130 square
7 miles of surface water in Berkeley County. So
8 you've got one of the largest counties in South
9 Carolina geographically. And then when you
10 look at these communities that are spread all
11 over, particularly the upper portions of the
12 county, the travel time to the closest hospital
13 from Cross, from Eadytown, Pineville, St.
14 Stephen, Alvin, is significant. And I'll tell
15 you from personal experience, if I may. When
16 my wife Priscilla and I first moved back to
17 Berkeley County when we left Columbia, we lived
18 in Priscilla's grandmother's home in Cross,
19 South Carolina, an old farmhouse that was built
20 in 1848. And we lived there for the first year
21 that we came back to Berkeley County. When our
22 first child was born, we left Cross, South
23 Carolina, heading to Trident Hospital for our
24 first born to arrive. And it was right at an
25 hour. Right at an hour. Now, we happened to

1 hit a school bus, which probably added ten
2 minutes or so. But it was between 50 and -- 50
3 minutes and an hour to get to the hospital for
4 our first born to arrive. That's Cross. You
5 start going up to Pineville, you can add time
6 to that. You start going to St. Stephen, even
7 though they've improved Highway 52 and made it
8 dual lane, when I was growing up it was a
9 single lane from St. Stephen to downtown
10 Charleston. That was before I-26 was there.
11 But you start looking at travel time from St.
12 Stephen. My family has a farm in Jamestown,
13 South Carolina. We spend a lot of time up
14 there. My children and their friends and our
15 family have a farm in Jamestown, South
16 Carolina. If you jumped in your truck in a
17 hunting accident, or you fell off the tractor
18 and did that in Jamestown, South Carolina, it
19 would take you close to an hour to get to
20 Trident North Charleston, the closest facility
21 to go to. All right. So on to your question.
22 What is significant to the community and to the
23 many, many people I encounter and the people I
24 represent and to my family is not to have such
25 a travel time that is going to effectively deny

1 access to healthcare to those people out there
2 in the rural parts of the county. If they
3 could come to Moncks Corner, which is centrally
4 located, you can see it, it's right there dead
5 in the center of Berkeley County, you would cut
6 those travel times in half and you would make
7 healthcare accessible to those people. Many of
8 those people are not going to go to the
9 hospital. Many of those people are simply
10 going to find themselves in trouble if it means
11 they have an hour ride to the hospital,
12 assuming they had transportation.

13 Q: Do the people in southern Berkeley County have
14 ready access to hospitals today?

15 A: Absolutely.

16 Q: Okay. And where are those hospitals?

17 A: Well, you've got the Trident facility that
18 we've been talking about, the North Charleston
19 complex. You've got Summerville Medical
20 Center. And those are the two primary
21 hospitals in that area. And of course you can
22 see geographically they're right there within
23 just a short distance from New Berkeley County.

24 MR. SUMMER: If we could, let's go to Joint 2, page
25 795, please, ma'am.

1 Q: This is from Roper's project review
2 presentation. I simply want to read a
3 statement that's in the DHEC record, and then
4 I want to ask you a few questions about it.

5 A: Sure.

6 Q: Thank you. She's going to pull it up on the
7 screen for you. This is from Roper's
8 presentation. "The decision to place inpatient
9 services in Goose Creek rather than Moncks
10 Corner was based on both internal and external
11 market analysis. In both cases, Moncks
12 Corner's population growth would not support
13 the inpatient volume required to justify the
14 expense." That's Roper's position about Moncks
15 Corner. Now I think you've had an opportunity
16 to meet with Mr. Gallati; have you not?

17 A: I have.

18 Q: And Trident's made no secret about the fact
19 that if Roper builds a Goose Creek hospital,
20 it's not going to go forward with its plans to
21 build a hospital in Moncks Corner. You
22 understand that, don't you?

23 A: I asked him that question sitting across the
24 table because I needed to know and my family
25 needed to know what would happen if Roper is

1 granted authority to build a hospital at Carnes
2 Crossroads. And the answer was, we will not
3 build a facility in Moncks Corner.

4 Q: Now, this was about a year ago in your office?

5 A: At least, yes.

6 Q: Okay.

7 A: I have since asked that question again of him
8 in a public meeting which I attended in Moncks
9 Corner, and I got the same answer.

10 Q: Do you understand Trident's business decision?

11 A: I understand that if any business is going to
12 commit \$115 million and invest that money into
13 a growing concern, that that business must be
14 in a position to realize a return on that
15 investment, yes.

16 Q: And did Mr. Gallati explain to you how the
17 Goose Creek facility would impair Trident's
18 ability to remain healthy and to have revenue
19 to support Moncks Corner?

20 A: He did explain that, but he didn't have to
21 explain that because I understand, even as a
22 small business man, that if you have a
23 situation where your customers or clients or
24 those who are going to be accessing your
25 service are taken away from you, for whatever

1 reason, and that your share of that market is
2 going to be diminished, for whatever reason,
3 then you've got to take a long hard look as to
4 whether or not you're going to invest in that
5 business.

6 Q: If the shoe were on the other foot and Roper
7 were trying to build a hospital in Moncks
8 Corner, would you be here testifying for Roper?

9 A: Absolutely. I would have one caveat, and that
10 one caveat is is that Roper was never part of
11 the historical equation going all the way back
12 to the closure of the Berkeley County Hospital
13 in 1975. But even with that, I would
14 absolutely support any responsible hospital who
15 was coming to invest in my hometown and provide
16 healthcare for my community and for the rural
17 parts of the county, yes.

18 Q: You worked for Santee Cooper for a number of
19 years, didn't you?

20 A: I did, 15 years.

21 Q: Would you consider Santee Cooper a capital
22 intensive business?

23 A: Yes.

24 Q: And in that -- and that's a regulated industry
25 as well, isn't it?

1 A: Well, yes and no. It is regulated by state
2 statute and by its board of directors. It is
3 not regulated or under the jurisdiction of the
4 Public Service Commission. It is under the
5 jurisdiction of the Federal Energy Regulatory
6 Commission as it relates to the project.

7 Q: And does Santee Cooper need to make an awful
8 lot of money to reinvest in their power
9 delivery system?

10 A: Yes.

11 Q: Okay. So it takes a lot of money to run a
12 capital intensive business, doesn't it?

13 MS. HOLLINGSWORTH: Your Honor, at this point I just
14 ask that the leading questioning stop.

15 THE COURT: I'll sustain you.

16 Q: Based upon your experience as a senior officer
17 for Santee Cooper, what types of revenues are
18 necessary and margins are necessary to sustain
19 a capital intensive industry or business?

20 MS. HOLLINGSWORTH: Your Honor, if I may, I think
21 we're clearly exceeding the scope of what we
22 need Mr. West here for. We're now talking
23 business financial investment. I mean, Mr.
24 West was here to discuss the needs of Moncks
25 Corner, the history. We've gotten there. I

1 think at this point we're just exceeding the
2 relevance for what Mr. West is here for today.

3 **THE COURT:** Well, I agree in a limited way, but I
4 don't know where he's going with it. So you
5 can renew your objection. I'm going to
6 overrule it at this time and if it becomes too
7 much to bear, then you may stand up again.

8 **MS. HOLLINGSWORTH:** Thank you, Your Honor.

9 Q: Do I need to restate that question?

10 A: Please.

11 Q: Okay. Based upon your experience as a senior
12 officer for Santee Cooper, do you -- what, if
13 any, understanding do you have about the
14 necessity of significant revenues and return on
15 investment to sustain a capital intensive
16 industry?

17 A: Well, of course you've got to, before you make
18 any large capital investment, whether you're
19 building a power plant or whether you're
20 building a water treatment facility, whether
21 you're putting in a significant transmission
22 line, you have to make a business evaluation
23 based on all of the financials and projections
24 and assumptions that go into any major decision
25 to make sure that there is going to be an

1 income stream sufficient to sustain that
2 investment because, otherwise, you run the risk
3 of impairing -- in Santee Cooper's case,
4 impairing their bonds and getting in trouble
5 with your other customers. There's all kinds
6 of consequences to making a bad business
7 judgment. So yeah, significant analysis and
8 study has to go into every major investment.

9 Q: And did that enhance your understanding of Mr.
10 Gallati's decision?

11 A: I understood precisely he was talking about,
12 yes.

13 Q: I think we've covered everything that you and
14 I discussed, but do you have anything else that
15 you would like to share with the Court
16 regarding this matter?

17 A: Your Honor, I would like to just make one final
18 observation, and that is, is that it really is
19 going to create a significant void in Old
20 Berkeley County if this hospital is not allowed
21 to be constructed in Moncks Corner, or if the
22 consequence of this Court's decision is is that
23 Trident Hospital makes the business judgment
24 that it will not build a hospital in Moncks
25 Corner. That's going to create a huge, huge

1 void in our community, one that's going to
2 create a substantial hardship on, continuing
3 hardship on the community, particularly the Old
4 Berkeley County. And I don't think we've
5 touched on this at all, but the economic
6 development impact of having Trident build in
7 Moncks Corner is enormous. And the loss of
8 that opportunity of having physicians and staff
9 and the support personnel and all of the
10 economic development activities that would be
11 associated with \$115 million investment in
12 Moncks Corner would be heartbreaking to our
13 community and a great disappointment.

14 **THE COURT:** Thank you, Mr. West.

15 **MS. HOLLINGSWORTH:** Your Honor, I would move to
16 strike that response in its entirety. It's
17 highly prejudicial, wasn't in response to a
18 question, and it deals with matters related to
19 Trident's business decision, which has nothing
20 to do with anything that Roper St. Francis is
21 involved with this proceeding. Whatever
22 Trident chooses to do and its impact on the
23 community cannot come into the record as
24 somehow the relationship to the decision in
25 this matter.

1 THE COURT: I'm going to overrule your objection
2 simply because it's what I would have assumed
3 from all of the other testimony in the
4 aggregate. So he didn't tell me anything that
5 I hadn't already assumed from what I heard.

6 MS. HOLLINGSWORTH: Thank you, Your Honor.

7 THE COURT: Thank you.

8 Q: Mr. West, I sincerely appreciate you taking
9 time out of your practice at your personal
10 expense to be here. Trident certainly
11 appreciates it. And I would ask that you
12 please kindly ask any questions that opposing
13 counsel may have.

14 A: Happy to.

15 MS. HOLLINGSWORTH: May it please the Court?

16 THE COURT: Yes, ma'am.

17 MR. WEST - CROSS EXAMINATION BY MS. HOLLINGSWORTH:

18 Q: Mr. West, thank you for being over here this
19 afternoon. My name is Jennifer Hollingsworth
20 and I'm an attorney representing Roper St.
21 Francis in these proceedings. And I realize we
22 haven't met before so --

23 A: Good afternoon.

24 Q: -- it's nice to meet you. Now, Mr. West, I
25 understand from your testimony and from trying

1 to do my own little bit of research on you, you
2 did graduate from Berkeley High School in 1975;
3 is that right?

4 A: That's right.

5 Q: And at the time that you graduated from high
6 school, how many high schools were in Berkeley
7 County?

8 A: Well, they had Berkeley High School. There was
9 St. Stephen High School. There was Cross High
10 School. There was -- I think Goose Creek High
11 School was in existence when I was in high
12 school. And I think that was it.

13 Q: And you went to law school from 1979 to 1982,
14 correct?

15 A: Yes, ma'am.

16 Q: So other than a short period of time that you
17 would have been in the Columbia area, have you
18 resided in Moncks Corner your entire childhood
19 and adult life?

20 A: Yes, been in Moncks Corner all my life.

21 Q: And you did testify to a year in Cross, but
22 other than that, Moncks Corner it's, you know,
23 very near vicinity; is that right?

24 A: Moncks Corner is my home.

25 Q: You've never resided in Goose creek; isn't that

1 right?

2 A: No, ma'am.

3 Q: And you testified regarding your understanding
4 of the knowledge for the closure of Berkeley
5 Hospital in the '70s and also the Dorchester
6 Hospital. But again, you didn't have any
7 direct involvement with the planning, study or
8 any involvement with the decisions of the
9 hospitals or the communications between the
10 hospitals and Trident Medical Center?

11 A: No, ma'am. As I testified earlier, I was in
12 high school at the time. I would not have been
13 involved in any of the official activities
14 surrounding the closure of the Berkeley County
15 Hospital.

16 Q: Okay. And you testified that you considered
17 Goose Creek, and I think you kind of talked
18 about Hanahan, as being its own community; is
19 that right?

20 A: I did and I do consider it to be its own
21 community, yes.

22 Q: Just like Moncks Corner is its own community?

23 A: Well, I think Moncks Corner is different.
24 Moncks Corner is different than Hanahan and
25 Goose Creek. Moncks Corner is viewed, unlike

1 those areas in the southern part of the county,
2 the New Berkeley County, as part of the larger
3 Berkeley County, which would include those
4 rural areas that I spoke of. I would not
5 describe Moncks Corner as having a separate,
6 entirely separate and unique identity. I would
7 say that its identity is more connected with
8 the rural areas than certainly than the
9 southern part of the county.

10 Q: Okay. Now, there's no town or city called New
11 Berkeley or Old Berkeley, correct?

12 A: No, those are terms that are widely used in the
13 community, but there's no such place as New or
14 Old Berkeley County.

15 Q: When you keep referring to the community,
16 you're speaking to the community in which you
17 live, correct?

18 A: Well, the community I live and the community I
19 work in, which is Moncks Corner and rural
20 Berkeley County.

21 Q: Right. So when you're saying my community,
22 you're not speaking to Goose Creek community in
23 any way?

24 A: I do not view Goose Creek as my community, if
25 that's your question.

1 Q: Now, since you graduated from high school,
2 would you agree with me that Berkeley County
3 has gotten significantly bigger in terms of
4 population and growth?

5 A: I think Berkeley County has seen growth over
6 the years that you're describing, yes.

7 Q: And one way to look at growth is to look at
8 high schools, would you agree with that? As
9 more high schools come in, you have more
10 families in the area with students populating
11 those high schools?

12 A: Yes.

13 Q: And since you went to high school, you have
14 Stratford High School, correct?

15 A: Yes.

16 Q: And where is that located?

17 A: Stratford is in Goose Creek.

18 Q: And that was built in 1983; does that sound
19 correct to you?

20 A: I wouldn't disagree with you if that's what you
21 told me.

22 Q: And would you agree with me it's one of the
23 largest high schools in the state?

24 A: I think it's a 4A school. I wouldn't begin to
25 rank it in terms of how big it is relative to

1 other schools. I look at it from the
2 standpoint of where you are in playing
3 football.

4 Q: Right.

5 A: Okay. Stratford is a 4A football program.

6 Q: Which is the largest program in the state,
7 correct?

8 A: Yeah.

9 Q: Okay.

10 A: I mean 4A is, yes.

11 Q: And, in fact, 2011 it was the number 16 high
12 school football team in South Carolina; how
13 about that?

14 A: They've had an excellent program over the years
15 at Stratford and we have enjoyed, Berkeley --
16 Berkeley Stags have enjoyed beating them more
17 than they've lost to them.

18 Q: I can appreciate that. I guess Goose Creek was
19 number one last year, weren't they?

20 A: Goose Creek had a very impressive run under
21 Coach Reedy, who I know well, and is a
22 gentleman and a great coach.

23 Q: In addition to Stratford coming to the Goose
24 Creek area, you've also had Cane Bay High
25 School come to the area, haven't you?

1 A: Yeah, recently. Yes.

2 Q: Right. And it's actually been -- I think
3 they've probably graduated a class by now. I
4 think they opened in 2008. So they might be
5 close or maybe that's --

6 A: I think that's right.

7 Q: Okay. So we've had two large high schools
8 develop in the Goose Creek area in the last 20
9 years or so; would you agree with that?

10 A: It's part of the New Berkeley County
11 development and growth that I was describing
12 earlier. As it encroaches, that may be a
13 strong word, but as it -- the growth comes
14 north from North Charleston, there's only one
15 place for it to go, and that's Hanahan, Goose
16 Creek into New Berkeley County. And Stratford
17 and Cane Bay are part of New Berkeley County.

18 Q: And you would agree with me, you keep saying
19 the growth is from North Charleston, but in
20 fact, the growth is from Charleston, correct?
21 Because Charleston can only grow in so many
22 directions.

23 A: Well, I don't want to quibble with you. I mean
24 you've got to get to North Charleston before
25 you get to New Berkeley County.

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1 Q: Right.

2 A: So you pick where it's coming from, but it's
3 coming from the south.

4 Q: That's right. And it's coming up through
5 Berkeley County; is that right?

6 A: Like a freight train.

7 Q: Now, in terms of some of the industry, I think
8 we touched on some of them, but in addition to
9 Santee Cooper, Moncks Corner also has, I think,
10 Home Telephone is a big employer in your area;
11 would you agree with that?

12 A: It is, yes.

13 Q: And also the Berkeley Electrical Co-op?

14 A: Yes.

15 Q: And what about DuPont; is that in your area?

16 A: Well, DuPont is on the Cooper River, and it is
17 southeast of Moncks Corner along the west
18 branch of the Cooper River. But it is a major
19 employer in Berkeley County.

20 Q: And Goose Creek as well has big employers
21 certainly over the last few years coming to the
22 area; would you agree with that?

23 A: Yeah.

24 Q: And, in fact, that Google plant, the Naval
25 Weapons Station, those are all sources and

1 resources of employment for the residents in
2 the Goose Creek area?

3 A: I was actually involved in the recruiting of
4 Google when I was at Santee Cooper, and was
5 very much involved in those negotiations and
6 very aware of the economic impact of Google to
7 Berkeley County and to the region.

8 Q: And when you say the region, what are you
9 talking about?

10 A: The tri-county.

11 Q: Do you know where in Dorchester County the
12 Dorchester County Hospital was located before
13 it was closed?

14 A: I had surgery in the Dorchester County
15 Hospital, which is located on Main Street in
16 Dorchester County, in December of 1969. So I'm
17 very familiar with where it was --

18 Q: Approximately --

19 A: -- because I was operated on there.

20 Q: Where within the county was it, southern,
21 central, northern portion of the county?

22 A: Well, it was in Summerville. And if you would
23 pull up a map, you would see where Summerville
24 is located in Dorchester County. I think it --
25 it is in the sort of the eastern quadrant of

1 Dorchester County.

2 Q: You mentioned that you had one elected office,
3 your position as mayor of Moncks Corner.

4 A: Yes.

5 Q: Did you run for any other elected offices?

6 A: I did. I ran for the South Carolina Senate in
7 a special election in August of 2007,
8 Democratic nominee for State Senate upon the
9 death of Senator Bill Mescher, and was not
10 successful.

11 Q: Any other elected offices that you've run for?

12 A: No, ma'am.

13 Q: You would agree with me that in the event that
14 both hospitals did build as they've been
15 approved to do, that would bring a tremendous
16 amount of economic opportunity to Berkeley
17 County?

18 A: Assuming that they were economically viable,
19 which I do not agree that they would be. If
20 the question is if \$230 million was invested in
21 Berkeley County, would that be a good thing,
22 the answer would be yes.

23 Q: But you would agree with me that the
24 construction of the hospitals would bring
25 tremendous opportunities for employment to

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1 Berkeley County?

2 A: If the question is would the construction of
3 two \$115 million facilities in Berkeley County
4 was a good thing, standing alone I would say
5 yes, of course it would be.

6 Q: Thank you. My question is would the
7 construction of two hospitals in Berkeley
8 County bring tremendous opportunity in
9 employment for Berkeley County?

10 A: And my answer is assuming that they are each
11 economically viable at the end of the day and
12 could sustain themselves over the life of those
13 enterprises, then the answer of course would be
14 yes. I reject the premise of the question that
15 is that both could be economically viable,
16 because I do not believe that they could.

17 Q: I did not premise the question with anything.
18 I'm just asking you construction jobs from the
19 construction of two hospitals, are those
20 opportunities for employment in Berkeley
21 County?

22 A: Well, that wasn't your question. But if that
23 is your question --

24 Q: That remains my question.

25 A: -- then the answer is yes.

1 Q: Thank you. Now, you testified that while the
2 economic and the employment opportunities
3 within the smaller communities that you would
4 consider within the Moncks Corner northern
5 portion of Berkeley County may not have grown,
6 there is growth in the people in those areas;
7 is that right?

8 A: Yes, that is correct.

9 Q: And same with Moncks Corner, not only growth in
10 people, also the growth in industry that you
11 had discussed during your testimony; is that
12 fair to say?

13 A: Moncks Corner has grown in actual population,
14 and Moncks Corner has grown commercially over
15 the last couple of decades, not to the same
16 degree that southern Berkeley County or New
17 Berkeley County has grown. But Moncks Corner
18 has done better than St. Stephen and Bonneau
19 and some of these other communities.

20 Q: And you were asked about whether Trident's
21 relationship with Moncks Corner was a positive
22 once, and I believe you testified that it was.

23 A: Yes.

24 Q: And you did make a couple references to Roper
25 St. Francis, but just to be clear, do you feel

1 like Roper St. Francis has a good relationship
2 with Moncks Corner?

3 A: I think they did until one thing happened. And
4 I was present at the meeting when this
5 conversation took place at Wampee at Santee
6 Cooper; it's a recreational facility out at
7 Wampee. When it was represented to the
8 community, and it was a gathering of community
9 leaders. I happened to be one who was invited.
10 And the Roper officials promised the
11 construction of a hospital in Moncks Corner at
12 that meeting. And that promise was broken.
13 And as a result of that, the standing of Roper
14 in the community has been diminished because
15 they didn't tell the truth.

16 Q: You would agree with me that there are two
17 freestanding emergency departments in Moncks
18 Corner? Are you aware of that?

19 A: Yeah, I've had family members in both.

20 Q: Did you know that Roper's was established
21 before Trident's freestanding facility was
22 established?

23 A: I couldn't tell you, ma'am, whether or not one
24 was before the other. I think they were more
25 or less at the same time, but I'm sure you

1 know.

2 Q: Okay. And you would agree with me that Roper
3 St. Francis having that facility there in
4 Moncks Corner provides opportunities, both
5 meeting healthcare needs and employment and
6 other opportunities for Moncks Corner and the
7 areas surrounding?

8 A: Absolutely. We out in the community are glad
9 to have Roper's emergency room in Moncks
10 Corner. But that wasn't -- with all due
11 respect, that wasn't your question.

12 Q: Mr. West, do you consider Moncks Corner to be
13 self-sufficient in terms of shopping
14 opportunities and banking? Do you take care of
15 most of your needs within your community?

16 A: Well, that, and I don't mean to be flip with
17 you, I promise, and I mean no disrespect with
18 my answer, but I don't go shopping anywhere.
19 I do all my banking in Moncks Corner. I do all
20 of my accounting in Moncks Corner. I do
21 everything that I can do, other than go
22 shopping, in Moncks Corner.

23 Q: To your knowledge, does Goose Creek have all
24 those same opportunities? They have the
25 shopping, the grocery stores, the banking,

1 things of those nature?

2 A: Yes.

3 Q: So to your knowledge, residents of Goose Creek
4 don't have to travel up to Moncks Corner to go
5 to Walmart or Publix or any of those places?

6 A: They do not, and I would be surprised if they
7 chose to do that.

8 Q: Okay. And in fact, in Goose Creek we had
9 talked about some of the development. That
10 Cane Bay area is growing; would you agree with
11 that?

12 A: Cane Bay is a marvel. It's a wonderful
13 development, a modern development, and a first
14 class development. People come from all over
15 the place to look at Cane Bay, and I think it's
16 going to be a grand thing for the region.

17 Q: Okay. And now you -- you're a lawyer; is that
18 right? Lawyer by trade, lawyer by training?

19 A: Most of the time.

20 Q: You're not a contractor or an economist,
21 correct?

22 A: I am not a contractor, nor am I an economist.
23 I would say that my experience in over 30 years
24 of the practice of law has been directed
25 largely to business decisions and economic

1 analysis that I've been exposed to. But I am
2 not an economist.

3 Q: In terms of business decisions, you testified
4 that you understood Trident Health System's
5 business decision and that you've had at least
6 one conversation with Mr. Gallati regarding
7 that decision. Did Mr. Gallati provide you any
8 financial statements as he discussed to you,
9 the business decision?

10 A: No, he did not provide me any of the financial
11 statements.

12 Q: Did he discuss with you what the return on
13 investment was or should be for the Moncks
14 Corner facility that may or may not be built?

15 A: No, he did not.

16 Q: Did you ask to see any of those documents in
17 order to determine whether you agreed with his
18 business decision?

19 A: No, I did not consider it my business to try to
20 drill down into the analysis that Mr. Gallati
21 and his folks had done. That was not my place.
22 He's a sophisticated business person. He laid
23 out a case as to why he would not build a
24 hospital in Moncks Corner if Roper built a
25 facility at Carnes Crossroads, and I accepted

1 him at his word.

2 Q: To follow up on the Wampee meeting that you
3 discussed with Roper St. Francis. Do you
4 recollect when that occurred?

5 A: Well, it would have had to have been before
6 2004 because I left Santee Cooper in 2004. I
7 do not have a date for you. I just remember
8 the event.

9 Q: Okay. And so you don't want to take Roper St.
10 Francis at its word for its business decision
11 in the impact that it had, but Mr. Gallati,
12 you're willing to take his business decision at
13 his word?

14 A: Well, I haven't talked to anybody from Roper.

15 Q: Other than this prior to 2004 meeting that you
16 had testified to?

17 A: Well, let's be clear what the question is. If
18 we're talking about the meeting at Wampee, that
19 was in response to my questioning about whether
20 or not the community would support Roper in the
21 same way that it would support Trident, and I
22 told you, I think, that I would support and I
23 think most of the people in our community would
24 support Roper if Roper were building a hospital
25 in downtown Moncks Corner. The only caveat

1 that I recall testifying to was the concern
2 that the community had and the bad taste in the
3 mouths of many people that Roper represented
4 that it was going to build that very same
5 hospital but chose not to for business reasons.

6 Q: Do you consider North Charleston to be a
7 distinct community?

8 A: I never really have thought about that before.
9 I do not consider North Charleston to be part
10 of Berkeley County. That's not the question
11 you asked, but I want to say that to lead to
12 the answer to the question. I think North
13 Charleston is a distinct community.

14 Q: And it's a large community, isn't it? About
15 97,000 people, I think, is the most recent
16 census?

17 A: I haven't looked at any of those numbers. I do
18 think that the line between North Charleston
19 and New Berkeley has been blurred for some time
20 and it's continuing to blur to the point that
21 they are effectively one community.

22 Q: You would agree with me that a lot of your
23 testimony here today is anecdotal and that it's
24 based on your impressions and your
25 understandings and your experience, but it is

1 not based on any analysis of the applications,
2 financial statements or any documents that are
3 at issue in this case?

4 A: Well, that's a pretty loaded question. I would
5 not agree that the majority of my testimony is
6 anecdotal. I would -- I would say to you that
7 the majority of my testimony is based on my own
8 knowledge and observation and experience. I
9 would say to you in response to your earlier
10 question, I have not done an economic analysis,
11 but I accept on common sense that if you are
12 going to be putting \$115 million investment
13 into a community, you better be sure you're
14 going to get a good return on investment, or
15 you better not build it.

16 Q: Okay. But you didn't have any conversations
17 with Mr. Gallati about his \$27 million
18 investment in the Summerville community
19 decision he's made while this case has been
20 pending?

21 A: I didn't -- we didn't talk about Summerville.
22 We were talking about Moncks Corner.

23 Q: And just to clarify, you did say during your
24 testimony that a lot of your comments about
25 some of the outlying communities were broad

1 generalizations; is that right?

2 A: Well, I don't remember that, but if you tell me
3 that's what I said, I wouldn't disagree with
4 it. But I would simply point out that I have
5 family in these communities. I represent
6 dozens and dozens of families scattered
7 throughout rural Berkeley County. I have a
8 long history with many of those families over
9 the years going back to the relationships that
10 were established by my grandfather and my
11 father, and so to the extent that my comment
12 was general, it was in the context of my own
13 experiences in these communities.

14 Q: And it's your testimony here today that you
15 feel as a long time resident of Moncks Corners
16 that Moncks Corner needs a hospital, an
17 inpatient community hospital?

18 A: Vitally.

19 Q: And you are not a resident of Goose Creek,
20 correct?

21 A: No, I've already told you I live in Moncks
22 Corner.

23 Q: Right. So you're not here today to speak on
24 behalf of the Goose Creek community, are you?

25 A: I'm here as a community witness, as I

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1 understand it, in support of Trident building
2 a hospital in downtown Moncks Corner. That's
3 what I'm here for.

4 Q: And so you cannot dispute that Goose Creek's
5 residents may feel that they have a desire or
6 a need for an inpatient hospital facility?

7 A: I don't know what they think or what they
8 believe that they need. What I know is that if
9 you go back to that Berkeley County map that
10 the Goose Creek community is about five to
11 seven minutes from Trident North Charleston,
12 and that's an entirely -- somebody talked about
13 apples and oranges a while ago. That is apples
14 and oranges when you take Cross, St. Stephen,
15 Eadytown, Jamestown, and try to make a
16 comparison between them and Goose Creek, that
17 just doesn't wash.

18 Q: I was not making a comparison. I was simply
19 asking that you couldn't dispute residents of
20 Goose Creek who feel that they deserve or would
21 like an inpatient community hospital?

22 A: But they've already got one.

23 Q: But you can't speak for them, so if they feel
24 they don't have one, you have no basis to
25 dispute that, correct?

1 A: I'm not going to challenge you on the premise
2 of your question, and I do not mean to be
3 argumentative. If the question is can I speak
4 for the community of Goose Creek, the answer is
5 no.

6 Q: And Moncks Corner has two emergency
7 departments; is that right?

8 A: Yes.

9 Q: Goose Creek has no emergency departments, does
10 it?

11 A: Well, they've got Trident North.

12 Q: And where is Trident North located?

13 A: It's located on Highway 78 about five to seven
14 minutes from Goose Creek.

15 Q: We've established that's in the community of
16 North Charleston, correct?

17 A: Well, I don't -- I hadn't said that.

18 Q: Is that not where Trident Medical Center is
19 located?

20 A: Trident Medical Center is within that seven-
21 mile radius that was on that map.

22 Q: And what city is it in?

23 A: I think it is in the City of North Charleston.
24 But it is in the community, clearly dead center
25 in the community of New Berkeley County and

southern and northern Charleston County.

Q: And again, there is no state or city or recognition of New Berkeley County? That's simply your description of the area?

A: Other than everybody I know in my community knows where New Berkeley County is and where Old Berkeley County is. But if you ask somebody to show you a geographical center of New Berkeley County, I think that would be difficult other than to say that's Goose Creek and Hanahan.

MS. HOLLINGSWORTH: One second, Your Honor. I have no further questions. Thank you for your time, Mr. West.

MR. WEST: Thank you.

THE COURT: Redirect?

MR. SUMMER: We have no further questions of Mr. West.

THE COURT: Thank you for being here, Mr. West. You may step down.

MR. WEST: It was a pleasure, Your Honor, to be in your Court.

THE COURT: Thank you, sir.

MR. WEST: May I be excused to Moncks Corner?

MR. SUMMER: May we release the witness?

1 MR. LONG: No objection.

2 THE COURT: Without objection, you're released.

3 MR. WEST: Thank you, Your Honor.

4 MR. SUMMER: Your Honor, Mr. West has certified
5 copies of resolutions from the various
6 communities.

7 MR. LONG: Your Honor, he's off the stand and I
8 haven't seen the documents, so before we start
9 having Mr. Summer testify --

10 MR. SUMMER: Why don't we do this, why don't we give
11 y'all the documents tonight and y'all can take
12 a look at them and we can decide. These are
13 resolutions supporting the facility. So we'll
14 let y'all take a look at them tonight and we'll
15 decide. They're public records and they're
16 certified. So we'll see if we can go that way.

17 THE COURT: All right. Lawyers, is that it for
18 today?

19 MR. LONG: Yeah, I guess. It's their call on the
20 witness but I --

21 MR. SUMMER: Our next witness is probably a two hour
22 direct, so I think it probably is a good idea
23 just to stop for the evening.

24 THE COURT: Before we break up, let me ask how
25 you're getting along with documenting the list

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1 of documents entered into evidence just by
2 reference. You know you were going to have
3 staff do that daily.

4 MR. SUMMER: They're doing it daily and I don't have
5 -- we're reconciled. I don't think we have
6 problems.

7 THE COURT: I don't want to see it. I just want to
8 hear from you that it's being properly done.

9 MR. LONG: No, Your Honor, I think it is. Our legal
10 assistants are talking every day and I haven't
11 really been seeing the list either. I think
12 that actually what's happened as a practical
13 matter is the number of documents is slowing
14 because we're using the same ones over. But I
15 think -- I don't -- I think the court reporter
16 is involved in that process, too, so I think --

17 MR. SUMMER: Maybe what we can do on the last day of
18 trial is simply do a recitation of those
19 numbers to make sure that they're in the
20 record.

21 MR. LONG: Well, or we'll have a document.

22 MR. SUMMER: One of the two.

23 MR. LONG: A document is probably the best thing to
24 do.

25 THE COURT: Ms. Biggers, did you have something to

1 add?

2 **MS. BIGGERS:** No, Your Honor, I'm in agreement with
3 them.

4 **THE COURT:** Very well then. We will recess until
5 9:30 and keeping in mind that we will break off
6 tomorrow at 3:45, wasn't that what was said,
7 3:45? Be in recess.

8 **MR. SUMMER:** Thank you.

9 **MS. BIGGERS:** Thank you, Your Honor.

10 (There being nothing further, the hearing recessed at
11 5:00 p.m.)

12 **DAY 5 - FRIDAY, FEBRUARY 3, 2012**

13 **THE COURT:** Be seated, ladies and gentlemen. Our
14 court reporter this morning is Ms. Alexandra
15 Patrick. It's good to have you with us. We
16 are on the record. Mr. Summer?

17 **MR. SUMMER:** Trident would like to call Mr. Les
18 Shelton, Your Honor.

19 **LESLEY WOODSON SHELTON, III,** being duly sworn,
20 testifies as follows:

21 **MR. SHELTON - DIRECT EXAMINATION BY MR. SUMMER:**

22 Q: Good morning, Mr. Shelton.

23 A: Good morning, Mr. Summer.

24 Q: Will you please state your full name for the
25 record?

1 A: Lesley Woodson Shelton, III.

2 Q: Okay. Tell the Court a little bit about
3 yourself, where were you born and where did you
4 grow up?

5 A: I was born in Jackson, Mississippi. My father
6 was a flight surgeon in the Air Force so, I
7 lived in Mississippi; Texas; California;
8 Plattsburg, New York; and five years in
9 England, RAF Laken Heath. And my father was a
10 pediatrician and a flight surgeon and then he
11 decided he wanted to get into pediatric
12 cardiology. And the Air Force didn't need
13 pediatric cardiologists so he left the Air
14 Force after 12 years and did one-year
15 fellowship at Great Ormond Street Children's
16 Hospital in London. And then he came back to
17 the United States and he did a two-year
18 fellowship at the Medical College of Virginia
19 in Richland, finished in 1975, and then at that
20 point the USC Medical School down here had been
21 approved and Dick Weymoth, who was an associate
22 dean at MCD, was chosen to be the first dean of
23 the new med school here and several other MCD
24 people came down here with the med school, and
25 so did my father looked at the Columbia area

1 and decided to move down here and practice
2 general pediatrics and pediatric cardiology and
3 was a professor at the medical school for both
4 pediatrics and pediatric cardiology. So I've
5 been here since July of 1975.

6 Q: And where did you go to high school?

7 A: Spring Valley High School.

8 Q: And where did you go to college?

9 A: The University of South Carolina. Bachelor's
10 in biology in 1982, then master's in public
11 health in the health administration track.
12 Graduated in May of 1984.

13 Q: Let's talk a little bit about your course work.
14 I'm assuming that you did not focus your
15 studies in environmental health and physics,
16 did you?

17 A: No, I had an environmental class as part of the
18 MPH curriculum.

19 Q: Did you have accounting courses?

20 A: I took financial accounting, or, more
21 correctly, it took me, because the school of
22 public health was very small back then. They
23 only had seven students and so we took combined
24 classes with the business schools. So we were
25 like primarily like biology majors that were in

1 a graduate-level accounting class with MBA
2 students, so it was challenging to say the
3 least.

4 Q: Okay. Did you have course work in economics?

5 A: I did have healthcare economics class, yes.

6 Q: How about healthcare finance?

7 A: Yes, there was a healthcare finance class.

8 Q: Okay. And would you agree with me that
9 healthcare finance is an integral part of
10 healthcare planning?

11 A: Yes, I could agree to that.

12 Q: Okay. And did you have healthcare planning
13 courses?

14 A: Yes, we did have a class in healthcare
15 planning.

16 Q: And what did you do after you completed that
17 course work?

18 A: I finished in May of 1984 and went to work for
19 the Three Rivers Health Systems agency, which
20 was the regional HSA under the old federal
21 health planning days. There used to be a two-
22 part process, we still have the DHEC component
23 of the Plan and CON, but there used to be
24 regional agencies that were community agencies
25 that wrote their own Plans and reviewed CON

1 applications concurrently with DHEC so the HSA
2 would make a recommendation to DHEC as to what
3 the community thought the decision should be on
4 the CON project. And I started out doing grant
5 work for them, primarily -- county alcohol
6 agencies had to do yearly grant updates with
7 what's now DOA-DAS on drug and other alcohol,
8 other drug services. I did federal manpower
9 shortage area designations. Back in those days
10 the government would pay you to go to med
11 school in return for serving several years in
12 a shortage area. So I worked on getting
13 locations within our region designated as
14 manpower shortage areas, which would then
15 qualify them to seek a National Health Service
16 Corps physician to practice in their community.
17 And then from there I started working on their
18 version of their Health Plan and then later
19 became the CON director at work as well. So,
20 concurrently I was doing planning and CON
21 review.

22 Q: HSA was a federal agency,, correct?

23 A: It was federal-funded, primarily. There was
24 some local funding, but no state funding that
25 I'm aware of.

1 Q: Okay. But that was part of the federal
2 certificate of need program, right?

3 A: It was under public law 93-641. That created
4 the HSA health program, yes.

5 Q: And when did you make the transition for
6 working for the federal program to the state
7 program?

8 A: The federal funding ended in 1986, Three Rivers
9 stayed in business until May of 1987. I was
10 actually the last employee there; I sold all
11 furniture, etcetera. And then I went to work
12 for Dr. Robert Jackson who was the former DHEC
13 commissioner. He had a consulting firm, EQV
14 Services, that primarily focused on substance
15 abuse-related issues. So I worked for him from
16 May of 1987 until November of '87. Actually
17 wrote a CON application for an alcohol and drug
18 facility, amongst other things. And then I was
19 hired in November of 1987 by DHEC.

20 Q: What is the regulation that you currently work
21 with?

22 A: 61-15 is the certificate of need law in this
23 state.

24 Q: Talk to me, before we start going through the
25 law, talk to me a little bit about what

1 positions you have held within DHEC since
2 1987.

3 A: I'm not certain of the exact state government
4 titles because -- but I started out, basically
5 I worked in planning the whole time. I've been
6 promoted a couple of times over the years. I'm
7 now the senior planner with responsibility for
8 development of the Plan amongst other duties,
9 and I do supervise one other employee. But I
10 have always focused on writing the Heath Plan,
11 doing the collection of data and need
12 calculations, as well as the Medicaid nursing
13 home permit program and some other functions
14 with the agency's strategic planning and
15 basically other duties as assigned as they came
16 up.

17 Q: So when you say you've always working in
18 planning, does that mean you've always worked
19 on the promulgation of the State Health Plan?

20 A: That is correct.

21 Q: And you've done that since 1986?

22 A: '87, November of '87.

23 Q: November of '87. And you are now in charge of
24 administering that Plan, promulgating that Plan
25 and getting it passed every two years?

1 A: That is correct.

2 Q: Let's start, if you don't mind -- do you have
3 a copy of 61-15?

4 A: I'm sorry, I don't know. I've got joint
5 Exhibits up here and I don't know what -- thank
6 you.

7 Q: You're very welcome. Where it's talking a
8 little bit about, as we did in your deposition,
9 about the purposes of the Act, let's start with
10 Section 101, which is the purpose. And if you
11 don't mind let's read that into the record,
12 please.

13 A: Okay. The purpose of these regulations is to
14 promote cost containment, prevent unnecessary
15 duplication of healthcare facilities and
16 services, guide the establishment of health
17 facilities and services which will best serve
18 public needs and ensure that high quality
19 services are provided in both facilities and
20 the state.

21 Q: Okay. Talk to me about what it means to you,
22 promote cost containment; what does that mean?

23 A: Well, obviously healthcare is a major component
24 of all spending of the gross domestic product,
25 etcetera. And so the concern is that you would

1 want to avoid any unnecessary spending, that
2 the charges and costs for a service for a new
3 facility are reasonable and are not excessive,
4 can be justified by the applicant. That if
5 they have a new delivery methods that could
6 potentially reduce costs or change the way care
7 is delivered that might save money to the
8 patient or to the facility then that would be
9 the kind of things that the Department would
10 look for under cost containment.

11 Q: Would you agree with me that healthcare
12 industries, especially building hospitals, is
13 capital-intensive?

14 A: Yes, construction of hospitals is capital-
15 intensive.

16 Q: And would you agree with me that whether you're
17 not-for-profit, governmental, or a for-profit
18 entity, that in order to be successful, in
19 order to survive, you're going to have to get
20 some kind of a return on the initial investment
21 to construct a hospital?

22 A: Yes, I would agree.

23 Q: In fact, the Act contemplates, the regulations
24 contemplate that don't they?

25 A: I can't say that that language is there

1 specifically, but I would agree that that would
2 be something that the Department would
3 consider, yes, as part of the --

4 Q: Would you agree with me that it is anticipated
5 in the regulations, and in your practice, that
6 you want to see a given project have a positive
7 cash flow by the end of year three, that's
8 pretty standard, isn't it?

9 A: That's pretty standard in a number of sections
10 in the Plan, yes.

11 Q: So the Act, the regulations, the planning
12 process, contemplates a positive return on
13 investment as being part of the planning
14 process.

15 A: Okay. Yes, I can agree with that, yes.

16 Q: Would you also agree with me that promoting
17 cost containment is designed to maximize the
18 utilization of healthcare resources?

19 A: That could be a component of it, yes.

20 Q: For instance, if there were a need in a given
21 community, or let's just say a planning region.
22 If there were a need for 50 acute care hospital
23 beds, what effect would approving two hospitals
24 with 50 beds have from a health planning
25 perspective, what would be the negative

1 consequences of that?

2 A: I'm sorry, Dave -- excuse me, sorry, Mr.
3 Summer. Would you please say that again?

4 Q: Let's assume for a moment you have a planning
5 region that has a need for 100, excuse me, 50
6 acute care beds, okay? And were get to this in
7 a few minutes, we're going to talk about how
8 you project bed need. But from a cost-
9 containment perspective, what would be the
10 effect of building two 50-bed hospitals in that
11 planning region?

12 MR. LONG: Objection, Your honor, he's asking for -
13 it's a hypothetical. I have no problem with
14 asking a fact witness a hypothetical. I'm just
15 -- all these different issues, other factors
16 that go along with it, that's why it's
17 improper.

18 MR. SUMMER: Well a couple of things, Your Honor.
19 Number one is, for some reason, and it's very
20 apparent, the Department has decided that
21 they're not going to have any experts in this
22 case. And in all the years I've been doing
23 this, since the 1980's, this is the first time
24 I've ever had a case that I can recall where
25 they're folks were not listed as experts. But

1 putting that aside for a moment, this is the
 2 man's job. He promulgates the Plan, and so,
 3 while the question may be a/hypothetical, he
 4 deals in projections and hypotheticals every
 5 day. That's how he creates that Plan, he has
 6 to look for things in the future. If I can't
 7 question him on what his practice is and what
 8 this law means to him in his day-to-day work,
 9 then I have a real proof problem in this case.
 10 He's the person in charge of promulgating the
 11 Health Plan. The Health Plan is crucial to
 12 your determination of whether or not there was
 13 need, whether or not there's unnecessary
 14 duplication, whether or not there's adverse
 15 impact, whether or not what Roper did was
 16 consistent with the State Health Plan. So it
 17 seems me I ought to be granted some latitude in
 18 asking these questions.

19 **MR. LONG:** Your Honor, can I respond to that? This
 20 is the second time or third time he's made this
 21 comment about the Department not designating an
 22 expert. The Department doesn't need to
 23 designate an expert in this case. These
 24 individuals, Ms. Brandt and Mr. Shelton have a
 25 job. They're charged by the State to work in

1 this program and make decisions, well, at least
2 in Ms. Grant's case, to make a decision. What
3 she did is factual. What she relied on is
4 factual. We have experts. He's got an expert
5 he's maybe going to get up today or certainly
6 next week. We've got an expert. They're going
7 to give you their expert opinion. The
8 Department doesn't need to put an expert before
9 the Court. Whether the prior lawyers or prior
10 people decided they wanted to do that in other
11 cases, that's irrelevant for us today. So I'm
12 not surprised at all that there's not an expert
13 named in the case on the Department's side
14 because they don't need to do that. Now, he
15 admitted it's a hypothetical. Now, I didn't
16 object to his other questions where he talked
17 about it and I agree that he has a right to ask
18 him about his job and things like that, but
19 when you move over into saying assume, well
20 that's a hypothetical, that can't be permitted.
21 That's our position.

22 **MR. SUMMER:** Your Honor, I think -- I'm sorry.

23 **THE COURT:** Go ahead.

24 **MR. SUMMER:** I think not designating an expert was
25 by design. I think it's becoming painfully

1 clear -

2 **MS. BIGGERS:** Objection, Your Honor.

3 **THE COURT:** Wait. Let him finish.

4 **MR. SUMMER:** Thank you, Your Honor. This witness is
5 really the only institutional witness that the
6 Department has that has institutional knowledge
7 about the planning process that goes back to
8 1987 and I think I'm entitled to ask him
9 questions about how the Act is designed to work
10 and why.

11 **MS. BIGGERS:** Your Honor, I object to Mr. Summer's
12 statement that not designating an expert
13 witness by the Department was by design. Mr.
14 Summer has no knowledge, that is speculation.
15 As Mr. Long just explained there's no
16 requirement for the Department to designate an
17 expert. Ms. Brandt was a fact witness. Mr.
18 Shelton, as you can see here today, has been
19 called the Petitioners, he is not even the
20 Department's witness. And I object to that
21 statement, pure speculation. I would request
22 that it be stricken from the record because I
23 think it's prejudicial.

24 **THE COURT:** Well, I deny your request to strike it,
25 but I fail to see how even if the Department

1 did fail to designate by design, how it's
2 material to the quality of the evidence that he
3 seeks to get in. And I don't think that
4 whatever their reason is, there is rules of
5 evidence. So I'm going to have to sustain the
6 objection.

7 **MR. SUMMER:** Your Honor, I would also refer to Rule
8 701 of the Rules of Evidence and just state it
9 for the record. If the witness is not
10 testifying as an expert, which is what we have
11 here, the witness' testimony in the form of
12 opinions or inferences is limited to those
13 opinions or inferences which; A, are rationally
14 based on the perception of the witness; B, are
15 helpful to a clear understanding of the
16 witness' testimony or the determination of a
17 fact in issue; and C, do not require special
18 knowledge, skill, experience, or training.
19 Clearly this is part of his job and I do
20 believe that we ought to be allowed to do it,
21 but I will move on and try to do it a different
22 way.

23 **Q:** In promoting cost containment it's better to
24 have a hospital that, if we have 50-bed
25 hospital, it's better to have a hospital with

1 40 patients in it than ten, would you agree
2 with that concept?

3 A: The hospital would likely be more viable with
4 a higher average daily census, yes.

5 Q: Financial feasibility is important for the
6 certificate of need planning process, correct?

7 A: We do have some project review criteria that
8 relate to financial feasibility, yes.

9 Q: So having a viable census is important in order
10 to contain costs and to ensure the survival of
11 healthcare institutions?

12 A: Yes. As you said earlier we look for a
13 positive bottom line by the third year. So,
14 yes, that would assist that.

15 Q: Prevent unnecessary duplication of healthcare
16 facilities and services, that's another part of
17 the Act, correct?

18 A: That's correct.

19 Q: And when we had our deposition, you and I had
20 a long discourse on that. But you made several
21 points and one of those was that you stated
22 that the Department typically encourages the
23 development of services where they don't exist.
24 In other words, that you encourage their
25 development not concentrated in urban areas,

1 but distributed across communities and to
2 provide services to the medically underserved;
3 do you remember that testimony?

4 A: I remember it but I believe that was under the
5 next part about guide the establishment of
6 healthcare facilities who best -- I think that,
7 or at least that's what I remember having that
8 discussion is when we were talking about that
9 third criteria, is how we did that.

10 Q: Why do you want to avoid unnecessary
11 duplication of services?

12 A: Well, for some services -- I'll just use open
13 heart as an example, there are quality
14 standards. We know from the data that the more
15 cases you do per year the more proficient you
16 are and the better results you get. And so it
17 would be better to have fewer programs doing
18 more cases per year and so, therefore, there
19 would be a great proficiency per program and
20 hopefully better outcomes than having more
21 facilities practicing open heart but each
22 facility doing fewer procedures so that the
23 overall quality statewide might be less. And
24 there is some interaction between all these CON
25 standards that kind of ties in with the fourth

1 standard as well about promoting quality,
2 excuse me, ensuring that high quality services
3 are provided. So there is a lot of interaction
4 between these purposes.

5 Q: Okay. Would you agree with me that repetition
6 and redundancy begets quality in more than just
7 open heart?

8 A: Yes. It's just open heart is kind of the
9 classic example that we have the most data for
10 so you can cite it as an example and most
11 parties will agree to it.

12 Q: Okay. But you would agree that if you're
13 having your gallbladder out, you'd rather be in
14 a hospital where they do that on a routine
15 basis than have a surgeon who does it
16 routinely, wouldn't you?

17 A: That would be my preference.

18 Q: All right. And that's also one of the reasons
19 that you try to guide the establishment and
20 avoid that duplication of services, right, so
21 that there's critical mass in a given facility
22 to do a good job?

23 A: Yes. Yes, I'll agree with that.

24 Q: Let's talk a little bit about how you put the
25 Plan together. Is there a statute that speaks

1 to the Plan itself and how it's to be
2 promulgated?

3 A: It's in 61-15. I'm trying to think of the
4 exact section but I'm sure if you've got it --

5 Q: Well, I'm going to actually look at the
6 statute.

7 A: Okay. All right. That's 44-7-180, it covers
8 the Health Planning Committee and development
9 of the State Health Plan.

10 Q: Tell me a little bit, in your own words, about
11 the Health Planning Committee.

12 A: Yes, it is a 14-member committee that is
13 advisory to the DHEC Board, that guides the
14 development of the State Health Plan. Twelve
15 of the 14 members are appointed by the governor
16 and are equally distributed between providers
17 of healthcare, insurers, payers, and consumers.
18 One member is the DHEC Board representative,
19 which right now is Dr. Brad Hutto, and then
20 Elliot Elam, who is the state consumer
21 advocate, is an ex-officio member. So there
22 are 13 voting members of the Committee. The
23 Committee reviews -- I'm sorry, David, Mr.
24 Summer, do you want me to go through the whole
25 Plan development process or do you want me to