

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

AUG 03 2015

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2015-000056  
Lower Court Docket No. 11-ALJ-07-0575-CC

RECEIVED

APR 21 2017

Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center  
d/b/a Fort Mill Medical Center .....Respondent,

S.C. SUPREME COURT

v.

South Carolina Department of Health and Environmental Control  
and The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas  
Medical Center-Fort Mill ..... Respondents,

Of whom The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas  
Medical Center-Fort Mill, is ..... Appellant.

RECORD ON APPEAL - VOLUME III OF XVII

Douglas M. Muller, SC Bar #10277  
Trudy H. Robertson, SC Bar #64856  
E. Brandon Gaskins, SC Bar #73274  
Moore & Van Allen, PLLC  
78 Wentworth Street  
P.O. Box 22828  
Charleston, SC 29413-2828  
(843) 579-7000 Telephone  
(843) 579-7099 Facsimile  
Email: [dougmueller@mvalaw.com](mailto:dougmueller@mvalaw.com)  
Email: [trudyrobertson@mvalaw.com](mailto:trudyrobertson@mvalaw.com)  
Email: [brandongaskins@mvalaw.com](mailto:brandongaskins@mvalaw.com)  
Attorneys for Appellant The Charlotte-  
Mecklenburg Hospital Authority  
d/b/a Carolinas Healthcare System

Daniel J. Westbrook, SC Bar #012939  
Stuart M. Andrews, Jr., SC Bar #000400  
Susanna Knox, SC Bar #100954  
Nelson, Mullins, Riley &  
Scarborough, L.L.P.  
1320 Main Street, 17th Floor  
Columbia, SC 29201  
(803) 799-2000  
Email: [stuart.andrews@nelsonmullins.com](mailto:stuart.andrews@nelsonmullins.com)  
Email: [dan.westbrook@nelsonmullins.com](mailto:dan.westbrook@nelsonmullins.com)  
Email: [susannah.knox@nelsonmullins.com](mailto:susannah.knox@nelsonmullins.com)  
Attorneys for Respondent, Amisub of South  
Carolina, Inc., d/b/a Piedmont Medical  
Center, d/b/a Fort Mill Medical Center

*(caption continued from cover page):*

Ashley C. Biggers, SC Bar #17225  
Vito M. Wicevic  
DHEC, Office of the General Counsel  
2600 Bull Street  
Columbia, SC 29201  
(803) 898-3350  
Email: [biggerac@dhec.sc.gov](mailto:biggerac@dhec.sc.gov)  
Email: [wicevism@dhec.sc.gov](mailto:wicevism@dhec.sc.gov)  
Attorneys for Respondent South Carolina  
Department of Health and Environmental  
Control

## INDEX

### Record Volume I of XVII

#### ORDERS

|                                                                     |    |
|---------------------------------------------------------------------|----|
| Order of Judge Matthews, filed December 9, 2009 .....               | 1  |
| Order of Supreme Court Order dated April 8, 2010 .....              | 29 |
| Final Order and Decision of Judge Lenski, filed March 31, 2014..... | 34 |
| Order of Judge Lenski Vacating Final Order, May 2, 2014 .....       | 73 |
| Amended Final Order of Judge Lenski, filed December 15, 2014 .....  | 74 |

#### PLEADINGS

|                                                                                                  |     |
|--------------------------------------------------------------------------------------------------|-----|
| Respondent CHS's Motion in Limine, filed April 2, 2013.....                                      | 127 |
| Respondent CHS's Motion for Reconsideration, filed April 9, 2014.....                            | 227 |
| Petitioner's Response in Opposition to Motion for Reconsideration, dated<br>April 21, 2014 ..... | 250 |

#### TRANSCRIPTS

|                                                                                                                   |     |
|-------------------------------------------------------------------------------------------------------------------|-----|
| Transcript of Administrative Hearing before the Honorable S. Phillip Lenski,<br>April 8, 2013 – May 7, 2013 ..... | 271 |
|-------------------------------------------------------------------------------------------------------------------|-----|

(pp. 6-66 omitted)

#### Arun Adlakha, M.D.

|                                            |     |
|--------------------------------------------|-----|
| Direct Examination by Mr. Andrews .....    | 297 |
| Re-Direct Examination by Mr. Andrews ..... | 338 |
| Re-Cross Examination by Mr. Muller .....   | 341 |

#### Bill Masterson

|                                              |     |
|----------------------------------------------|-----|
| Direct Examination Mr. Westbrook .....       | 342 |
| Cross Examination by Mr. Muller.....         | 394 |
| Re-Direct Examination by Mr. Westbrook ..... | 395 |

#### Roy Norman Taylor, M.D.

|                                            |     |
|--------------------------------------------|-----|
| Direct Examination by Mr. Andrews .....    | 400 |
| Cross Examination by Mr. Gaskins.....      | 447 |
| Re-Direct Examination by Mr. Andrews ..... | 449 |

#### Robert Walsh

|                                           |     |
|-------------------------------------------|-----|
| Direct Examination by Mr. Westbrook ..... | 459 |
|-------------------------------------------|-----|

## **Record Volume II of XVII**

### **Robert Walsh**

Cross Examination by Mr. Gaskins.....534

Re-Direct Examination by Mr. Westbrook .....535

### **David Samuel Levitt**

Direct Examination by Mr. Andrews .....542

### **Sushil Singhi, M.D.**

Direct Examination by Mr. Andrews .....848

Cross Examination by Mr. Gaskins.....896

Re-Direct Examination by Mr. Andrews .....898

Re-Direct Examination by Mr. Andrews .....905

### **David Samuel Levitt (Resumed)**

Re-Direct Examination by Mr. Andrews .....917

## **Record Volume III of XVII**

### **Charles Miller**

Re- Direct Examination by Mr. Andrews .....1021

### **Joel Grice**

Direct Examination by Mr. Andrews .....1031

### **Daniel Sullivan**

Direct Examination by Mr. Westbrook.....1143

Cross Examination by Mr. Gaskins.....1164

Re-Direct Examination by Mr. Westbrook .....1166

### **Joel Grice (Resumed)**

Re-Direct Examination by Mr. Andrews .....1188

Re-Cross Examination by Mr. Muller.....1199

### **Beverly Brandt**

Cross Examination by Mr. Andrews .....1204

Re-Cross by Mr. Andrews.....1317

Re-Cross by Ms. Robertson.....1319

### **Frank Murphy, Jr.**

Cross Examination by Mr. Westbrook .....1325

### **Donald Stewart**

Cross Examination by Mr. Westbrook .....1448

## **Record Volume IV of XVII**

### **Donald Stewart**

Re-Cross Examination by Mr. Westbrook .....1504

### **Robert Alexander, M.D.**

Cross Examination by Mr. Andrews .....1511



|                                            |      |
|--------------------------------------------|------|
| Re-Direct Examination by Mr. Gaskins ..... | 1531 |
|--------------------------------------------|------|

**William Revell, M.D.**

|                                        |      |
|----------------------------------------|------|
| Cross Examination by Mr. Andrews ..... | 1534 |
|----------------------------------------|------|

**Kathryn M.T. Platt**

|                                        |      |
|----------------------------------------|------|
| Cross Examination by Mr. Andrews ..... | 1585 |
|----------------------------------------|------|

**Dawn Carter**

|                                          |      |
|------------------------------------------|------|
| Cross Examination by Mr. Westbrook ..... | 1850 |
|------------------------------------------|------|

**Record Volume V of XVII**

**Dawn Carter**

|                                             |      |
|---------------------------------------------|------|
| Redirect Examination by Ms. Robertson ..... | 2005 |
|---------------------------------------------|------|

**David Samuel Levitt**

|                                                     |      |
|-----------------------------------------------------|------|
| Rebuttal Direct Examination by Mr. Andrews .....    | 2006 |
| Rebuttal Re-Direct Examination by Mr. Andrews ..... | 2069 |
| Rebuttal Re-Cross Examination by Mr. Muller .....   | 2076 |

**Bill Masterson**

|                                                    |      |
|----------------------------------------------------|------|
| Rebuttal Direct Examination by Mr. Westbrook ..... | 2077 |
| Rebuttal Cross Examination by Mr. Gaskins .....    | 2095 |
| Rebuttal Re-Cross Examination by Mr. Gaskins ..... | 2096 |

**Daniel Sullivan**

|                                                    |      |
|----------------------------------------------------|------|
| Rebuttal Direct Examination by Mr. Westbrook ..... | 2098 |
|----------------------------------------------------|------|

**Exhibits**

**Joint-A-CHS-001**

|                             |      |
|-----------------------------|------|
| .0009-10, Figures 3-4 ..... | 2132 |
| .0015-17 .....              | 2134 |
| .0047-52 .....              | 2137 |
| .0056-57 .....              | 2143 |
| .0059-61 .....              | 2145 |
| .0064 .....                 | 2148 |
| .0067 .....                 | 2149 |
| .0079-80 .....              | 2150 |
| .1164-1167 .....            | 2152 |

|                  |      |
|------------------|------|
| .1174-1182 ..... | 2156 |
| .1184.....       | 2165 |
| .1187-1188 ..... | 2166 |
| .1191.....       | 2168 |
| .1198.....       | 2169 |
| .1210-1211 ..... | 2170 |
| .1215.....       | 2172 |
| .1303-1315 ..... | 2173 |

**Joint-B-PMC-001**

|                  |      |
|------------------|------|
| .0002-0266 ..... | 2186 |
|------------------|------|

**Record Volume VI of XVII**

**Joint-B-PMC-001**

|                  |      |
|------------------|------|
| 0267-0415 .....  | 2451 |
| .0449-0643 ..... | 2600 |
| .0690-0835 ..... | 2795 |

**Record Volume VII of XVII**

**Joint-B-PMC-001**

|                  |      |
|------------------|------|
| .0836-0902 ..... | 2941 |
| .0990-0996 ..... | 3008 |
| .1000-1014 ..... | 3015 |
| .1017-1031 ..... | 3030 |

**CHS**

|              |      |
|--------------|------|
| 12.....      | 3045 |
| 32, p 1..... | 3217 |

**Petitioner**

|             |      |
|-------------|------|
| 1B.....     | 3218 |
| 2.0032..... | 3229 |
| 3.0029..... | 3230 |
| 4.0001..... | 3231 |

### **Record Volume VIII of XVII**

#### **Petitioner Exhibits (Cont'd)**

|             |      |
|-------------|------|
| 4.0201..... | 3431 |
| 5.....      | 3514 |
| 6.0001..... | 3778 |

### **Record Volume IX of XVII**

|              |      |
|--------------|------|
| 6.0140.....  | 3917 |
| 7.....       | 3997 |
| 8.....       | 3998 |
| 11.....      | 4170 |
| 12.0001..... | 4173 |

### **Record Volume X of XVII**

|          |      |
|----------|------|
| 14.....  | 4361 |
| 15.....  | 4445 |
| 16.....  | 4449 |
| 17A..... | 4619 |
| 17B..... | 4679 |
| 17C..... | 4740 |
| 17D..... | 4804 |

### **Record Volume XI of XVII**

|               |      |
|---------------|------|
| 17D.0048..... | 4851 |
| 18.....       | 4868 |
| 19.....       | 4885 |
| 20.....       | 4886 |
| 21.....       | 4887 |
| 22.....       | 4889 |
| 23.....       | 4994 |
| 24.....       | 4997 |
| 25.....       | 5010 |
| 26.....       | 5057 |
| 27.....       | 5058 |
| 28.....       | 5060 |
| 29.....       | 5066 |
| 30.....       | 5105 |
| 32.....       | 5106 |
| 33.....       | 5107 |

|          |      |
|----------|------|
| 34.....  | 5108 |
| 35.....  | 5109 |
| 36A..... | 5111 |
| 36B..... | 5176 |
| 37A..... | 5244 |
| 37B..... | 5272 |
| 38A..... | 5300 |

**Record Volume XII of XVII**

|          |      |
|----------|------|
| 38B..... | 5335 |
| 39A..... | 5373 |
| 39B..... | 5407 |
| 40A..... | 5440 |
| 40B..... | 5470 |
| 41A..... | 5501 |
| 41B..... | 5530 |
| 44A..... | 5562 |
| 44B..... | 5591 |
| 45A..... | 5594 |
| 45B..... | 5623 |
| 46A..... | 5627 |
| 46B..... | 5656 |
| 47A..... | 5660 |
| 47B..... | 5689 |
| 48A..... | 5693 |
| 48B..... | 5722 |
| 49.....  | 5726 |
| 50.....  | 5730 |
| 51.....  | 5734 |
| 52.....  | 5738 |
| 53.....  | 5741 |
| 54.....  | 5744 |
| 55.....  | 5748 |

**Record Volume XIII of XVII**

|              |      |
|--------------|------|
| 55.0070..... | 5817 |
| 56.....      | 6181 |
| 57.....      | 6183 |
| 58.....      | 6185 |
| 59.....      | 6187 |
| 60.....      | 6189 |
| 61.....      | 6191 |
| 62.....      | 6193 |
| 63.....      | 6195 |
| 64.....      | 6197 |

|         |      |
|---------|------|
| 66..... | 6205 |
| 67..... | 6289 |
| 69..... | 6296 |
| 70..... | 6300 |

**Record Volume XIV of XVII**

|          |      |
|----------|------|
| 71.....  | 6303 |
| 72.....  | 6308 |
| 73.....  | 6328 |
| 74.....  | 6330 |
| 75A..... | 6342 |
| 75B..... | 6452 |
| 76A..... | 6612 |

**Record Volume XV of XVII**

|          |      |
|----------|------|
| 76B..... | 6705 |
| 77A..... | 6800 |
| 77B..... | 6875 |
| 78A..... | 6972 |
| 78B..... | 7047 |

**Record Volume XVI of XVII**

|          |      |
|----------|------|
| 79A..... | 7147 |
| 79B..... | 7245 |
| 80A..... | 7345 |
| 80B..... | 7421 |
| 81A..... | 7506 |
| 81B..... | 7606 |

**Record Volume XVII of XVII**

|               |      |
|---------------|------|
| 81B.0030..... | 7635 |
| 82.....       | 7710 |
| 83.....       | 7730 |
| 84.....       | 7750 |
| 88.....       | 7753 |
| 89.....       | 7754 |
| 90.....       | 7762 |
| 91.....       | 7768 |
| 92.....       | 7774 |
| 93.....       | 7781 |
| 94.....       | 7788 |
| 95.....       | 7794 |
| 96.....       | 7800 |
| 97.....       | 7807 |

|           |      |
|-----------|------|
| 98.....   | 7808 |
| 99.....   | 7809 |
| 100.....  | 7810 |
| 101.....  | 7811 |
| 102A..... | 7812 |
| 102B..... | 7818 |
| 102C..... | 7819 |
| 103.....  | 7820 |
| 104.....  | 7823 |
| 105.....  | 7824 |
| 106.....  | 7825 |
| 107.....  | 7826 |
| 108.....  | 7827 |
| 109.....  | 7829 |
| 110.....  | 7831 |
| 111.....  | 7832 |
| 114.....  | 7835 |
| 115.....  | 7854 |
| 116.....  | 7856 |
| 117.....  | 7858 |

#### **DHEC**

|                                   |      |
|-----------------------------------|------|
| DHEC Record 000057 .....          | 7860 |
| DHEC Record 000211 – 000213 ..... | 7861 |

1       seeing in that part of the county continued to  
2       grow as well as the Health Plan itself made a  
3       provision that there were 64 beds available to  
4       Piedmont to expand.

5       Q: All right. And are you familiar with the Plan?

6       A: Yes.

7       Q: What was your understanding at the time  
8       concerning the determination of bed need in the  
9       Plan?

10      A: Well, the basic formula they used and language  
11      in the Plan, that Piedmont had 64 beds  
12      available to it for growth and expansion.

13      Q: All right. Did you meet with the Department  
14      officials, DHEC officials concerning the  
15      development of your plans?

16      A: I did.

17      Q: And what was the import of that meeting?

18      A: Well, the import of that meeting was to confirm  
19      our understanding of the Plan and the formula  
20      and the availability of the beds so that there  
21      would be no confusion or misunderstanding as  
22      basically decisions were being made and I  
23      proceeded.

24      Q: And what did you -- did you meet with -- was  
25      Mr. Levitt with you?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 000981

- 1 A: Yes.
- 2 Q: And who did you meet with?
- 3 A: Mr. Grice.
- 4 Q: And what did you and Mr. Levitt inform Mr.
- 5 Grice of at that meeting?
- 6 A: That we were interested in utilizing the 64
- 7 beds of expansion for healthcare in York County
- 8 and that it was our intent to build a hospital
- 9 in the Fort Mill area with those beds.
- 10 Q: Okay. Now, did you have any understanding at
- 11 the time that the beds could be awarded to
- 12 other parties beyond Piedmont?
- 13 A: I did not.
- 14 Q: If you had understood that, would it have
- 15 affected the plans concerning the establishment
- 16 of Fort Mill Medical Center?
- 17 A: Absolutely.
- 18 Q: How would that have?
- 19 A: We would have added those beds to Piedmont
- 20 Medical Center in Rock Hill.
- 21 Q: And why would you have done that?
- 22 A: Because it would have avoided placing them at
- 23 risk for a competing application. It's common
- 24 practice in South Carolina -- it had been up
- 25 until there that under the Health Plan that if



- 1 the existing provider that basically those beds  
2 were assigned to wanted to expand their  
3 facilities, that's what they did.
- 4 Q: Okay. All right. Now, let me direct your  
5 attention to the issue concerning the 100 beds  
6 that were proposed as a result of the October  
7 2005 application that was submitted. Were you  
8 involved in the decision to complement the 64  
9 beds identified in the Plan with 36 transferred  
10 beds?
- 11 A: I was.
- 12 Q: And why did you decide to do that?
- 13 A: Basically, what we were looking at was a need  
14 of 64 beds as identified in the Plan and also,  
15 you know, recognizing what our objectives were  
16 in treating the folks in their home community  
17 and close to home and we looked at the patient  
18 population that we were currently serving from  
19 the Fort Mill area at Piedmont Medical Center  
20 and we made projections of the beds associated  
21 with that and under the goal and assumptions  
22 we were using, these people would want to be  
23 treated closer to home that we were very  
24 quickly finding 64 beds very inadequate.  
25 Therefore, if you looked at what basically

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1           would be freed up and available at Piedmont,  
2           that we could combine with the 64, the  
3           efficiencies would be greater and it just made  
4           a lot of sense. Do it now versus later.

5       Q:   Now, where there -- sorry?

6       A:   Do it now versus later.

7       Q:   I'm sorry?

8       A:   Do it now versus later.

9       Q:   Were there any acute-care beds in the hospital  
10           that were shuttered at the time and not being  
11           used at all?

12      A:   We did. I think it was about approximately 19  
13           beds or so that were not being utilized in the  
14           hospital at the time.

15      Q:   Okay. And how did you believe you would  
16           protect yourself against the future need for  
17           the balance of that 36, the 17 beds?

18      A:   Well, I think as Mr. Levitt testified  
19           yesterday, we did an analysis on what we  
20           believed was the county-wide demand. And you  
21           know, particularly as it related to the growth  
22           occurring in Rock Hill, the growth patterns in  
23           the western side of York County as well, and  
24           determined that we were well-equipped to not  
25           only transfer beds, but then take care of for

1 a considerable period of time the needs of the  
2 county based on those projections.

3 Q: Okay. All right. Mr. Miller, let me talk with  
4 you about the hospital and its medical staff.  
5 Start at a high level for me and explain what  
6 you believe the relationship is between the  
7 medical staff of a facility and it's success.

8 A: Well, I've been in healthcare for 37 years and  
9 never admitted a patient, so physicians are  
10 critical to the viability and success of a  
11 healthcare organization. Particularly  
12 specialists, who are the ones who are  
13 performing the procedures, surgery and, you  
14 know, have a tendency to take care of more  
15 patients in the hospital than not. Primary  
16 care physicians that are necessary in order to  
17 refer patients to the surgeons who ultimately  
18 are doing the procedures, but the medical staff  
19 is the life blood of the hospital.

20 THE COURT: Could you hold on for a second. Could  
21 you please turn that off? Thank you.

22 MR. ANDREWS: I'm sorry. May we proceed?

23 THE COURT: Please.

24 Q: I'm sorry. All right. With that background,  
25 what was the medical staff like between the

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 000985

1 period of time you arrived at Piedmont in late  
2 2004 or 2005 when these applications were  
3 filed?

4 A: It was a very collegial medical community. You  
5 know, a lot of the physicians -- kind of to  
6 take you back at the hospital, Piedmont Medical  
7 Center moved from York General to the new  
8 facility in 1982 with 57 members of the medical  
9 staff, they knew each other, their families  
10 knew each other, they go to church together,  
11 their kids dated each other and still through  
12 the early 2000s it was that kind of community.  
13 They were very close-knit, socialized together  
14 -- and the referral patterns. These were  
15 physicians that had known each other for years.  
16 They respected their skills, their ability to  
17 take care of each other's patients in their  
18 respective specialties and, you know, referral  
19 patterns as you would find in any other  
20 community. Primary care physicians, it didn't  
21 matter who owned the practice, it didn't matter  
22 who you worked for. Referred to physicians in  
23 the community fully, you know, based on your  
24 experience and relationships you had developed  
25 through the years.

1 Q: Did that kind of collegiality and community  
2 continue to exist after the filing of the  
3 applications in this case?

4 A: We started to see some change in that. I don't  
5 think there's any question that when we filed  
6 the application in 2005 there were subsequent  
7 competing applications filed. You know, within  
8 the medical community the doctors were kind of  
9 trying to figure out who was going to win this  
10 thing and who wasn't and there was an  
11 appreciation, particularly within the various  
12 owned practices to kind of circle the wagons  
13 around your hospital. We saw Novant-  
14 Presbyterian come into the community and begin  
15 to aggressively acquire practices which is not,  
16 you know, historically their pattern.  
17 Carolinas Health System had had practices in  
18 the community for a number of years.

19 Q: All right. Let's look at a document that's CHS  
20 1383. And just draw that up, if you would, on  
21 the screen. Have you looked at this document  
22 before Mr. Miller?

23 A: I have.

24 Q: Dan, if you could call out, just highlight it  
25 a little bit, pull out the names of the

1 practices or just the whole line concerning the  
2 practices. You may not be able to do anything  
3 more than highlight it. Just put it in yellow.

4 **MR. MULLER:** Your Honor, I don't mean to interrupt,  
5 but if Mr. Andrews could just repeat this  
6 Exhibit, I didn't catch it. I heard CHS  
7 Exhibit -

8 **MR. ANDREWS:** It's not an Exhibit, Your Honor. It's  
9 just a document in discovery and so it's not  
10 one we've named an Exhibit and I don't know  
11 whether we have a Demonstrative -- Ms. Sackett  
12 has informed me that we do. It's a 2008  
13 production. I have copies of it here.

14 **THE COURT:** Thank you.

15 **MR. MULLER:** Your Honor, I have no objection to this  
16 if we're allowed to do the same thing in terms  
17 of making a Demonstrative Exhibits of something  
18 that has been produced in discovery. In  
19 fairness, believe I probably did that yesterday  
20 so I don't have an objection to this as long as  
21 we have that opportunity.

22 **THE COURT:** As long as it's a two-way street. Okay.  
23 Absolutely, Mr. Muller. And Mr. Andrews.

24 **MR. ANDREWS:** I didn't assume there was anything  
25 contrary to the rules of evidence asking

1 questions about it. That's all we intended to  
2 do, Your Honor.

3 **THE COURT:** Thank you.

4 Q: All right. Mr. Miller, take a look at this  
5 document, if you would please. And walk  
6 through here, based on your knowledge, as well  
7 as what this document reflects, and identify  
8 what this is as of April -- actually, as of  
9 2006.

10 A: These are medical practices that are owned and  
11 operated by Carolinas Medical System or Health  
12 System in York County.

13 Q: All right. And let's take it down to the end,  
14 Dan, of the last column. There's some dates  
15 provided there related to each. Now, do you  
16 see any dates subsequent to 2006?

17 A: I do not.

18 Q: All right. So, at least then current through  
19 that period of time, is that right? Okay.  
20 Now, Dan, I want to connect the last column  
21 with the first, so we can either pull them out  
22 or let's just look at the whole document. Mr.  
23 Miller, let me give you a copy of this rather  
24 than strain your eyes. All right. So, Dan,  
25 what you're doing is connecting the first and

1 the last columns to show the name of the  
2 practices and the dates they had joined the  
3 CPN, CPN is what Mr. Miller?

4 A: Actually, I'm going to assume it's the  
5 Carolinas Physician Network.

6 Q: And what is Carolinas Physician Network?

7 A: It's the network owned and operated by  
8 Carolinas Health System.

9 Q: A network of physicians?

10 A: Network of physicians, yes.

11 Q: Okay. Now, of these practices you had said  
12 just a moment ago that Carolinas had owned and  
13 operated practices in the Rock Hill area for  
14 some time prior to the filing of any these  
15 applications?

16 A: That's correct.

17 Q: Does this document reflect that?

18 A: Yes, I mean Shiland Family Practice goes back  
19 to June of 1995. Palmetto Pediatrics, June of  
20 1994. Internal Medicine Practice of Medical  
21 Associates of Rock Hill, April of 1993.  
22 Piedmont GYN/OB, August of 1995, et cetera.

23 Q: All right. And when did Piedmont file its CON  
24 application?

25 A: 2005.



1 Q: You filed one in 2004, didn't you?

2 A: 2004. I'm sorry.

3 Q: Do you remember when?

4 A: I do not. I'm sorry. I believe October.

5 Q: Late year?

6 A: Late year.

7 Q: And you revised it, do you remember when?

8 A: Early 2005.

9 Q: January 2005? The record can stand for itself,  
10 but, okay. And what activity here concerning  
11 the development of acquisition of practices is  
12 reflected on this document?

13 A: Well, you see then in March and April of 2005,  
14 the acquisition of Rock Hill Pediatrics and the  
15 acquisition of the two local Sanger Clinic  
16 operations, the one that was operating in Fort  
17 Mill at the time and then Rock Hill.

18 Q: And did Medical Associates of Rock Hill have --  
19 previously have an office in Fort Mill?

20 A: No. They opened a satellite facility in 2006  
21 and while not reflected on this document,  
22 Shiland Medicine also subsequently opened an  
23 operation in Fort Mill as well.

24 Q: All right. And let's take a look at what Mr.  
25 Levitt testified yesterday, Demonstrative 141,

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 please, Dan, if you could pull that up. All  
2 right. Now, let's identify here the -- have  
3 you looked at this document previously?

4 A: I have.

5 Q: And what do you understand it to be?

6 A: This is a document showing the total number of  
7 referrals, the current list of CPN practices  
8 for residents of York County being referred out  
9 of York County to others within the CPN  
10 network.

11 Q: Let's go down through this list and identify  
12 several of the practices. Dan, first let's  
13 call out Medical Associates of Fort Mill and  
14 Rock Hill and if you'll highlight those two  
15 lines. You identified this practice  
16 previously, Mr. Miler, on the prior page as  
17 being one that had been owned by Carolinas for  
18 some time, is that correct?

19 A: Correct.

20 Q: Prior to the filing of the application in 2005,  
21 what had been the practice of the physicians of  
22 Medical Associates of Rock Hill? Had they been  
23 on your medical staff?

24 A: They had been on our medical staff. They  
25 utilized specialists within the York County

1 community who practiced at Piedmont Medical  
2 Center.

3 Q: Okay. Let's look at the next two groups.  
4 Actually, let's apply Palmetto Pediatrics, the  
5 next group. Do you recall seeing that on the  
6 prior list?

7 A: Yes.

8 Q: And what had been Palmetto Pediatrics'  
9 experience with regard to Piedmont?

10 A: They had utilized Piedmont Medical Center and  
11 its physicians, as well, through the support of  
12 their patients.

13 Q: And the next group? Piedmont GYN/OB of Rock  
14 Hill, what had been the extent to which  
15 Piedmont had used -- Piedmont GYN/OB group had  
16 used Piedmont hospital?

17 A: Active members of the medical staff, again,  
18 seeing their patients at Piedmont and were  
19 actively involved in the planning of the  
20 women's center that we talked about earlier.

21 Q: Okay. And the next group, Rock Hill Pediatrics  
22 Associates and Rock Hill Pediatric, Fort Mill,  
23 what's your familiarity with this group?

24 A: Again, active with the medical community and  
25 utilization of the hospital for taking care of

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 000993

1           their patients.

2       Q:     And the two Sanger practices?   What was their  
3           participation in the activities of your medical  
4           staff and the use of Piedmont hospital?

5       A:     Very active in the use of Piedmont Medical  
6           Center     particularly     of     the     cardiac  
7           catheterization program and support of the open  
8           heart surgery program.

9       Q:     And finally, Shiland, the two offices that ---

10      A:     Significant     referral     patterns     to the  
11           specialists in Rock Hill and utilization of  
12           Piedmont Medical Center.

13      Q:     Okay.     Now, after 2005 did the hospital's  
14           relationships with the physicians in these  
15           practices change?

16      A:     We began to see a degradation of the referral  
17           patterns from these practices to specialists in  
18           the community and a number of them began, over  
19           time, to eliminate their medical staff  
20           privileges at the hospital completely.

21      Q:     Okay.   Let's move to Demonstrative 26, please,  
22           Dan.   Were there members of these practices who  
23           were active in the leadership of Piedmont  
24           hospital? I'm sorry, Demonstrative, excuse me.  
25           Demonstrative 26.       Excuse me, my fault.

1 Exhibit 26 rather than Demonstrative. Thank  
2 you, Dan. Yes. That's what we're looking for.  
3 What is this list, Mr. Miller?

4 A: This is a list going back to 2000 physicians  
5 who are employed by Carolinas Health System,  
6 through CPN who were active members of the  
7 medical staff and held various positions of  
8 leadership within the medical staff, either  
9 chairmen of departments, chairmen of  
10 committees, chief of staff, members of the  
11 hospital board. On the quality improvement  
12 committee. Utilization review committees,  
13 ethics committees a number of different  
14 activities.

15 Q: Dan, let's turn to the next page and look at  
16 the highlighted section of these. Mr. Miller,  
17 have you reviewed Exhibit 26 and made any  
18 adjustments to it?

19 A: I have identified -- there were previously on  
20 the list some physicians who are not actually  
21 employees of Carolinas Health System or CPN  
22 that were on the previous list, so what I have  
23 done here is highlighted those that are, in  
24 fact, CHS-employed, CPN-employed physicians so  
25 that we can be clear about who is and who is

1 not. Those that are not highlighted in yellow,  
2 were mistakenly identified as CHS-related  
3 individuals.

4 Q: And those highlighted have been and are now  
5 affiliated with Carolinas?

6 A: That's correct.

7 Q: Okay. Now, from your perspective from working  
8 with these physicians who were at various  
9 points in time hospital leaders, what's the  
10 significance of their now departure from  
11 Piedmont Medical Center?

12 A: Well, we've obviously lost a significant number  
13 of individuals who were willing to give freely  
14 of their time in leadership roles of the  
15 organization, particularly relative to the  
16 medical staff. These are individuals who in  
17 their respective roles were helping drive  
18 quality, ethics decisions, utilization reviews,  
19 strategic planning, you know, those things that  
20 are important to the administrative and medical  
21 relationships in the organization.

22 Q: Now, during the time of their leadership  
23 position, were these physicians either employed  
24 at the time by Carolinas or were they  
25 independent prior to their employment or both?

1 A: It would be a combination. For instance, you  
2 know, if you start at the top, you've got  
3 Martin, Garcia, Cook, Copple, Bale, I believe  
4 as identified in a previous Demonstrative,  
5 those practices has been owned by Carolinas for  
6 a significant period of time, far beyond the  
7 2000 date.

8 Q: Okay. And, in fact, did Dr. Bale, who is  
9 reflected on that sixth line, did he take any  
10 action relative to the application of Piedmont  
11 Medical Center?

12 A: Actually, he -- Dr. Bale was serving as  
13 chairman of the board of governors at the  
14 hospital when we filed and wrote a letter of  
15 support for our application.

16 Q: Dan, let's pull out Exhibit 3, Bates 181 and  
17 what is this letter, Mr. Miller?

18 A: This is a letter to Joel Grice, if you can go  
19 back down to the date, dated November 12, 2004.  
20 And it was submitted with the application.

21 Q: Okay. And what does it convey?

22 A: Basically it says it is written with  
23 enthusiasm, I would like to endorse Tenet  
24 Healthcare Corporation application for a  
25 Certificate of Need for the construction of a

1 new hospital facility in Fort Mill, South  
2 Carolina.

3 Q: Let's, Dan, pull out the third paragraph, if  
4 you would, and read, please, Mr. Miller the  
5 second -- beginning with the second sentence  
6 from the end of the paragraph.

7 A: Currently many residents within this area are  
8 traveling north to secure hospital services  
9 often resulting in a fragmentation of their  
10 healthcare needs. This new facility will offer  
11 an opportunity for the improved continuity of  
12 care and additional options for patients and  
13 their family. Hopefully, the additional  
14 competition will help in managing the rising  
15 healthcare costs.

16 Q: All right. Now, at the time he drafted this,  
17 what was Dr. Bale's position?

18 A: Chairman of the board of governors of Piedmont  
19 Medical Center.

20 Q: And who was he employed by?

21 A: Carolinas Health System, CPN.

22 Q: All right. Dan, if you'll draw up Exhibit 27,  
23 please. And what is this document, Mr. Miller?

24 A: This is physicians who had been members of the  
25 medical staff who did not renew their



1 privileges after the purchase by CHS at some  
2 point.

3 Q: Okay. If we could go through the list, how do  
4 the categories, which would be group practices  
5 compare to those you previously reviewed?

6 A: They're consistently the same.

7 Q: All right. Now, what were the effects of the  
8 resignations when they took place and over what  
9 period of time generally did that happen?

10 A: They appear to be happening generally the 2008  
11 to '11 period. Their predominantly in late  
12 2009 into mid-2011. Excuse me, late 2010 and  
13 mid-2011.

14 Q: Now, by the time the resignations occurred, and  
15 by the way, is the resignation list complete?  
16 Do you have Rock Hill Pediatrics?

17 A: No. Rock Hill Pediatrics is not on this list.

18 Q: And how many physicians do they have?

19 A: They have seven in that practice.

20 Q: And how many of them resigned their privileges?

21 A: All of them.

22 Q: All right. So when you left Piedmont were  
23 there any Carolinas physicians who continued to  
24 remain on the Piedmont Medical staff who were  
25 employed by that system?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 A: I'm aware of only two.

2 Q: Okay. Now, let me take you back to  
3 Demonstrative 141 that you testified about a  
4 moment ago. And let's flip to the second page  
5 of that Demonstrative, Dan. Now, during the  
6 period of time after the changes in practices  
7 that you just discussed, did you observe any  
8 change in referrals and the referral patterns  
9 among physicians affiliated with Carolinas?

10 A: Yes. I mean we had been observing some  
11 degradation of referral patterns prior to that  
12 but it became really significant as we moved  
13 into 2010, particularly 2011 and '12, as noted  
14 here.

15 Q: All right. And have you evaluated the effect  
16 of those changes on different product lines at  
17 Piedmont?

18 A: We have.

19 Q: Dan, let's begin by looking at Demonstrative  
20 173. And what does this Demonstrative show,  
21 Mr. Miller?

22 A: Basically it shows the market share of Piedmont  
23 Medical Center compared to Carolinas Medical  
24 Center in years 2005 to 2009 and 2011.

25 Q: And generally, how is it consistent with the

1 observations you were making at the time?

2 A: Well, basically, it is showing the impact that  
3 the loss of those referrals within the local  
4 medical community and the hospital is having on  
5 the market share of the hospital.

6 Q: Okay. And have you analyzed the effect of this  
7 impact on complex services as well?

8 A: We did.

9 Q: And let's take a look at that, at Demonstrative  
10 81, Dan. And what's being presented here, Mr.  
11 Miller?

12 A: These are complex medical cases. Again, it's  
13 the total market share for those cases  
14 beginning in 2005 to '09 and '11.

15 Q: What's the significance of the changes in the  
16 market share of complex cases for Carolinas and  
17 Piedmont? What's happened over this period of  
18 time?

19 A: Well, obviously over this period of time, these  
20 are complex cases that are being referred that  
21 had been previously served at Piedmont Medical  
22 Center that are now leaving the market place  
23 and going to Carolinas Medical Center. Complex  
24 cases, you know, represent a high level of  
25 reimbursement under Medicare and Medicaid

1 system of DRG reimbursement, so this is a  
2 significant financial impact on the hospital.

3 Q: What effect does it have on your medical staff  
4 when over 25 percent of the complex procedures  
5 are lost to your staff over a six year period?

6 A: It places individual physicians at risk of  
7 being able to maintain the high skill levels  
8 that they were trained for because these are  
9 complex cases. These are the kind of cases  
10 that you don't want somebody who has just done  
11 one of them over the last year. And so as  
12 their frequency goes down over time, it will  
13 erode their skill set.

14 Q: Okay. Let's turn to the next -- we're not  
15 going to review all of these, Mr. Miller. Mr.  
16 Levitt has testified about them at length. But  
17 let's look at just a few. Demonstrative 179.2.  
18 All right. Now, what's this showing in general  
19 terms?

20 A: This is our cardiology program, the one that we  
21 invested a significant amount in developing,  
22 the open heart center that I spoke of earlier.  
23 And you can see that there's been a significant  
24 erosion of the market share in that service,  
25 particularly over this time period subsequent

1 to 2005.

2 Q: Now, the document that Mr. Levitt testified  
3 about yesterday and you will in a moment at  
4 Demonstrative 177 shows a 56 percent loss in  
5 cath and EP procedures over this same period of  
6 time. Do you see that?

7 A: Yes.

8 Q: All right. Now, let's go back to the  
9 Demonstrative 179.2. As this loss was  
10 occurring, how did you make adjustments to the  
11 staff that was available?

12 A: Well, I think Dr. Singhi was absolutely correct  
13 in recognizing that we reduced staff. We  
14 reduced hours of operation. And there were  
15 days we actually closed some of the procedural  
16 rooms that were available. We unfortunately,  
17 during that period of time, we not able to hold  
18 on to some of the experienced and well-trained  
19 staff because they were in the position of  
20 needing full-time work for their own personal  
21 reasons and all. So basically, we rolled back  
22 services.

23 Q: And when you rolled back services by reducing  
24 staff, how does that affect the compensation of  
25 the staff?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001003

1 A: Well, basically, they're not getting their 40  
2 hours a week in so their personal paychecks are  
3 cut.

4 Q: Why didn't you just keep them on full salary?

5 A: Because I can't afford to.

6 Q: Why?

7 A: Loss of volume.

8 Q: How does that relate to what you pay them?

9 A: Basically, if there's no work, we don't need  
10 them to be there putting in hours, and if they  
11 don't get hours, they don't get paid.

12 Q: Now, has there been any massive layoff in the  
13 hospital or the cardiac unit or other units to  
14 make adjustments for the downturn in the loss  
15 of services such as in this unit?

16 A: We work hard at trying to avoid your choice of  
17 term, massive layoff. A lot of this is done  
18 through what's commonly referred to as flexing  
19 staff, come in the morning, we assess the  
20 schedule, we assess how many admissions we've  
21 got, how many procedures we have lined up.  
22 Typically, by eight or nine o'clock in the  
23 morning we're sending, you know, excess staff  
24 home.

25 Q: Why eight or nine in the morning?

1 A: Because they come in at seven in the morning  
2 when the shift starts and it gives you a couple  
3 of hours to assess the day. And, you know, but  
4 they go home and they don't get paid for the  
5 hours which they don't work. And also, we did  
6 a lot of that, but there are some positions  
7 that are eliminated, I describe those, you  
8 know, primarily onesies, twosies, but as weeks  
9 or months go by they accumulate over the course  
10 of the year. And, of course, you know,  
11 attrition. Unfortunately attrition doesn't  
12 typically happen, unfortunately the highly-  
13 skilled people are the most mobile in leaving.

14 Q: Why is that?

15 A: Because they are highly skilled in what they do  
16 and they typically have a lot of years of  
17 experience and they are the most mobile.

18 Q: Okay. Let's look at the next slide in this  
19 series, 179.3. Now, in addition to cardiac  
20 services, has there been a downturn in surgery  
21 services?

22 A: Yes. In orthopaedics, you know, not only some  
23 of the same phenomena that I just spoke about  
24 with the cardiology, but in addition to that  
25 OrthoCarolina, a Charlotte-based orthopaedic

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001005

1 group is now seeing patients, I believe at  
2 least one day a week, maybe more, inside the  
3 Shiland Family Practice through a contractual  
4 relationship they have with Carolinas Health  
5 System.

6 Q: And how has that affected your orthopaedic  
7 services?

8 A: Well, again, it just continues to support CHS's  
9 strategy of driving referrals within an in-  
10 network program and to get subsequently the  
11 surgical cases into their own facilities.

12 Q: All right. And as we're looking at this flip  
13 in market share, where Piedmont had over three  
14 times the market share and now has only two-  
15 thirds of the market share of Carolinas, how  
16 has that affected your ability to maintain the  
17 same compliment of staff that you had in 2005  
18 in your OR suites?

19 A: Same thing. We're not operating the same  
20 number of operating rooms that we did back  
21 early in those days and we're dealing with less  
22 staff over time.

23 Q: Now, let's finally take a look at the next  
24 slide related to neurosurgery. Now, what was  
25 the market share in 2005? I'm sorry, let's

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001006



1 move to 180-09. Okay. What does this show,  
2 what changes does this show, Mr. Miller?

3 A: Actually, the neurosurgery market share shows,  
4 again, decline from 2005 to 2011. This was  
5 never -- unlike some of the previous ones we've  
6 looked at, if you recall this was a service  
7 that we started as part of the sixth addendum.  
8 So a relatively new service in the life span of  
9 the service area, but we had gotten to a 29  
10 percent market share in 2005 and it has  
11 likewise gone down to about 16 percent market  
12 share in 2011.

13 Q: What effect does it have on their ability to  
14 offer a complex service such as neurosurgery  
15 when your volume is cut in half and is not  
16 substantial to start with?

17 A: I believe that if we continue on this glide  
18 path despite the obligation to provide this  
19 service, we're not going to have the ability to  
20 retain and keep the neurosurgeons themselves  
21 into the market place. These are highly-  
22 skilled individuals that are used to doing  
23 complex cases and a steady stream of them and  
24 working with a team of individuals, who, like  
25 themselves, have become experienced in working

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 with these complex cases and they'll migrate  
2 away from Piedmont.

3 Q: How will it affect the quality of your nursing  
4 staff who have experience in your neurosurgery?

5 A: They'll migrate out as well.

6 Q: And then where would be the neurosurgical  
7 services that would be available for York  
8 County residents?

9 A: They'd have to go into Charlotte.

10 Q: All right. Okay. Now, let's turn you  
11 attention to your communications with the  
12 Department through Mr. Levitt related to the  
13 effects of the approval of Carolina Medical  
14 facility in Fort Mill on the operations and  
15 service of Piedmont. Do you recall what you  
16 conveyed to the Department concerning what  
17 adjustments in services and staff that Piedmont  
18 would make if Carolinas were approved?

19 A: Well, we provided them with some examples of  
20 some things we would evaluate. I think, we're  
21 not going to be in a position to be finite  
22 about it, but clearly we would start with that  
23 list of additional services that we added  
24 subsequent -- that were not part of the system  
25 them, but that we added subsequently and we

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001008

1 would probably be looking at the infusion  
2 center, wound care center, pain management, you  
3 know, we would probably, you know, based on  
4 this data look at downsizing the neuro, the  
5 cardiology program, there is a significant gap  
6 between where we were today with that service  
7 and where we are contractually obligated to be  
8 with that service. So there's potentially a  
9 rolling in that. I think the special care  
10 nursery could easily be taken back to a newborn  
11 nursery and we would not have neonatology  
12 coverage available at the hospital which would  
13 put those patients in a position of having to  
14 go to Charlotte or here to Columbia.

15 Q: Okay. Before we get into any depth on that,  
16 any further embellishment of it, let me ask you  
17 instead just to -- help the judge understand  
18 what process you have used or you expect based  
19 on your experience that the CEO of Piedmont  
20 would use in deciding if the volume continued  
21 to decline and you lost two to 3,000 additional  
22 patients and the revenue associated with the  
23 use of their hospital, how you would make  
24 judgements of what to cut and where to cut it.

25 A: We would be, as you know, the data continued to

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 unfold as it has historically, we would be  
2 evaluating at the service line level, the  
3 impact of those declines of volume were having  
4 on us and the revenue stream associated with  
5 this and the ability to flex and manage costs  
6 associated with those services in order to try  
7 to maintain them. At some point, though, we're  
8 going to hit a core level of services. Those  
9 level of resources that you either can provide  
10 the service or you no longer can, so it is off  
11 and it would be an ongoing evaluation with a  
12 pretty high level of detail.

13 Q: Now, before we look at those services, help the  
14 Court understand how you've experienced the  
15 loss in services you have. A previous figure  
16 that was in your July 11, 2011, report showed  
17 a loss of 2200 patients of 2005 to 2010. How  
18 did you maintain profitability while at the  
19 same time you were losing over 2000 patients?

20 A: Basically by very aggressively managing costs  
21 in some cases on almost a daily basis. Flexing  
22 staff. Keep in mind human resources represent  
23 50 percent of every dollar spent in delivering  
24 healthcare. So they become first and foremost  
25 an ability to do that. Looking at supply

1 costs, looking at discretionary expenditures  
2 and, you know, just focusing on adverse impacts  
3 while at the same time you're making effort --  
4 in our efforts to reaching other markets which  
5 we are trying to do to mitigate the loss but  
6 probably predominately through cost management.

7 Q: Okay. All right. Now, Dan, let's go to an  
8 Exhibit we developed previously, Mr. Miller, at  
9 210. And these are the services you've  
10 identified earlier as those being not  
11 contractually required to the county. And how  
12 would -- you've identified and testified about  
13 a number of services on this list. Why have  
14 you identified them?

15 A: Because these are, for instance, let's talk  
16 about the women's tower, I can close the  
17 pediatric unit and migrate what pediatric  
18 patients we may still have into a general  
19 patient population. I can close the OB/GYN ORs  
20 and consolidate those into the main ORs in the  
21 core hospital. I can lose the special care  
22 nursery, eliminate neonatology and have just a  
23 have a well-born nursery and transfer any  
24 potential complex cases.

25 Q: Now, if your OB, if your delivery volume

- 1 dropped below 1200 would you have an option  
2 about giving up your special nursery unit?
- 3 A: No. Probably not. Well, actually under the  
4 licensing requirements, I would not be able to  
5 maintain my Level II-E nursery status.
- 6 Q: And now the neonatologist, do you have one or  
7 two currently on staff?
- 8 A: We have two in order to facilitate coverage.
- 9 Q: Okay. And those are physicians?
- 10 A: Physicians.
- 11 Q: Who employs them?
- 12 A: Actually, it's a contract service through  
13 pediatrics, it's a national company.
- 14 Q: And are they full time contract positions?
- 15 A: Local. Bariatric surgery is not a program we  
16 would need continue. Infusion therapy program  
17 is not one.
- 18 Q: When you say need to continue, do you mean  
19 contractually obligated?
- 20 A: Not contractually obligated. Infusion therapy  
21 is a service that helps support our oncologist  
22 in the community, some of which are doing  
23 infusion therapy in their offices which call on  
24 the hospital to assist with that. Wound care  
25 center, these are patients who have had surgery

1 or some other incident that's created a wound  
2 and allows them to be cared for outside of the  
3 hospital setting, the physician office setting.  
4 Pain management is a program that we operate.  
5 There are alternatives in the community for  
6 that. And also, this is probably a  
7 representative list of the kinds of areas that  
8 we would evaluate very carefully.

9 Q: All right. Let's look at the prior page at  
10 209. You had mentioned previously that some of  
11 the heart center services that provided more  
12 services than may be required under the  
13 contract. What were you referring to?

14 A: We operate four cardiac cath units right now.  
15 We don't need to have but two.

16 Q: Under the contract?

17 A: Under the contract. The heart dedicated-bed  
18 unit is not an obligation. EMS is an area we  
19 have significantly -- our response times in EMS  
20 are significantly below that we are obligated  
21 to have in the contract and we've done that  
22 through an expanded investment. What we've  
23 done there far exceeds what we're obligated to  
24 do there. And so there's flexibility within  
25 those even though they are contractual

1 obligations.

2 Q: What's the effect, and based on your operations  
3 of hospitals for all the time you've been  
4 involved with them, this dwindling down, paring  
5 down of the services by product line that the  
6 hospital would deliver?

7 A: It's a slow death to be blunt. It's going to  
8 have a significant impact on the ability to  
9 recruit and maintain quality physicians and  
10 it's going to affect the kind of individuals,  
11 nursing and technical staff that you're able to  
12 attract to your facility as well.

13 Q: All right. Mr. Miller, based on your knowledge  
14 of your medical staff and your experience at  
15 Piedmont, have you had any concerns related to  
16 the ability of the independent members of the  
17 medical staff to remain independent?

18 A: Oh, absolutely. I don't think there's any  
19 question, if we reflect back on the shift of  
20 referrals that are taking place by the  
21 Carolinas Health System CPN practices, it's  
22 impacting those physicians who have made an  
23 effort to remain independent and want to remain  
24 independent and by nature like to be  
25 independent if they want to, but they are going



1 to be forced into an alignment for their own  
2 personal survival.

3 Q: If Dr. Singhi's group, Carolina Cardiology,  
4 became affiliated with Carolinas, what effect  
5 would it have on the heart center at Piedmont?

6 A: I'm not sure that the hospital wouldn't find  
7 itself having a conversation with the county  
8 about its ability to even maintain this  
9 program. At a minimum we would be faced with  
10 the struggle of being able to retain an open  
11 heart surgeon who isn't going to be able to  
12 continue to maintain his proficiency.

13 Q: If Dr. Taylor's group, Rock Hill GYN, became  
14 affiliated with Carolinas and moved their  
15 business there as other physicians have, what  
16 would be the effect on the operation at  
17 Piedmont?

18 A: I've got two OB/GYNs who would be trying to  
19 take care of the patient population of York  
20 County.

21 Q: Well, you could recruit another OB/GYN?

22 A: I can try.

23 Q: What effect would it have on the patients that  
24 have historically sought services there who now  
25 see those practitioners?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 A: They'll leave, they'll have to go to Pineville  
2 for their deliveries. They won't deliver with  
3 us.

4 Q: Will they also go to CMC-Fort Mill?

5 A: Yes, to the extent they offer those services.

6 Q: Okay. All right. Now, if Carolinas' proposed  
7 Fort Mill hospital was approved what effect  
8 would it have, based on your experience, on the  
9 competition of healthcare in York County?

10 A: I'm not sure that you would still have a  
11 competitive model. I think the significant  
12 impact that the practices are having and  
13 continue to have as well as having that  
14 facility available to continue to basically  
15 force the independent physicians into non-  
16 independent integrated status with Carolinas  
17 Health System basically and I think what we  
18 would predict to be a significant negative  
19 shift in payor mix at Piedmont Medical Center  
20 would move it back from where it is today to a  
21 hospital comparable to what it was in 1980.

22 Q: Thank you. No further questions, Your Honor.

23 THE COURT: All right. Thank you, Mr. Andrews. It  
24 is a little after noon. It might be a good  
25 time to take a lunch break. What do you think,

1 hospital?

2 A: It is on the side where Presbyterian was going  
3 to build.

4 Q: You were shown a slide showing trend, inpatient  
5 volume trends. Was that trend you entire  
6 patient volume or was it just York County?

7 A: It's my understanding it is the entire patient  
8 population.

9 Q: Dan, could you pull up DHEC's 137? And this is  
10 the slide I was referring to. Do you  
11 understand that to be your entire patient  
12 population or just York County?

13 A: I'm sorry, it's labeled York County inpatient  
14 population, so I'm assuming it's York County  
15 patient population.

16 Q: If you could go to Demonstrative 211. All  
17 right. And these were the things we talked  
18 about earlier. These are your obligations  
19 under the York County contract. Reasonable  
20 pricing, ambulance service, capital  
21 reinvestment, annual reports, right?

22 A: Correct. Those are the key elements. There  
23 are others.

24 Q: Now, you mentioned that there were various  
25 services that you would have to consider

1 cutting depending on volume, correct?

2 A: I would be in a position to evaluate everything  
3 that's available to me to potentially alter,  
4 yes.

5 Q: All right. And I asked you in your deposition  
6 would you or could you. In other words is it  
7 you will cut or that you may cut. How did you  
8 respond?

9 A: I believe I told you, I believe the line of  
10 questioning we were engaged in was an effort  
11 for me to be very specific and I believe my  
12 response to you at the time it would be  
13 irresponsible of me to be that specific at this  
14 point. Basically, we would have to evaluate  
15 the impact the various reductions in volumes  
16 and all that occurred when they occurred and  
17 make decisions accordingly.

18 Q: Have you ever described it as a possibility  
19 that you'd cut as opposed to that you would  
20 cut?

21 A: I don't think there's any question whatsoever  
22 that the -- that if we're impacted as we  
23 believe we would be that there would be some  
24 alterations in services, potential reductions  
25 in the workforce as a result of that.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 A: Part of it, yes.

2 Q: Your 64-bed application indicated that you had  
3 2200 admissions from patients in the Fort Mill,  
4 Tega Cay area, those now three zip codes, back  
5 then they were two and from the Clover zip  
6 code, 29710. And you're proposing to build a  
7 64-bed hospital. If you had that level of  
8 admissions, meaning you had less than 2200 from  
9 the Fort Mill, Tega Cay area, why would you  
10 propose to build a 100-bed hospital up there  
11 that proposes to serve 5500 patients in year  
12 three?

13 A: Because we believe that would be the demand on  
14 the facility by year three.

15 Q: All right. Was another concept that it was a  
16 defensive strategy?

17 A: No, we believe that we will be serving 5500  
18 patients by year three. Those was our basic  
19 projection.

20 Q: Did you testify in the previous case that it  
21 was a defensive strategy to protect your market  
22 share?

23 A: The whole concept of being in Fort Mill  
24 starting with Baxter Urgent Care, the imaging  
25 center, putting primary care physicians in that

1 market. The hospital and other activities, its  
2 stated purpose has been to slow the out-  
3 migration of York County residents into the  
4 Charlotte area.

5 Q: And was that designed to protect other  
6 providers, whether it is Carolinas, whether  
7 it's Presbyterian, whether it's any other  
8 hospital system from encroaching on your market  
9 share?

10 A: The stated goal of our Fort Mill strategy was  
11 to curtail the out-migration of York County  
12 residents from leaving York County. People  
13 are, you know, you own medical practices in  
14 York County. Your rival owns medical practices  
15 in York County. We're not going to keep that  
16 from happening, but we can increase our  
17 presence and we believe better serve the folks  
18 in that geographic by having a stronger  
19 presence there than we have had.

20 Q: Have you previously testified that it was a  
21 defensive strategy to protect other systems  
22 from encroaching on the market share?

23 A: That is in fact what I just said. In essence,  
24 yes.

25 Q: And is protecting market share one of the

1 purposes and needs in the State Health Plan to  
2 your knowledge?

3 A: I have no knowledge of that.

4 Q: Those are all the questions I have of Mr.  
5 Miller.

6 THE COURT: Okay. All right. Ms. Biggers?

7 MS. BIGGERS: No questions from the Department.

8 THE COURT: All right.

9 (Off the Record)

10 MR. MILLER - RE-DIRECT EXAMINATION BY MR. ANDREWS:

11 Q: Dan, please pull up CHS Exhibit 15, go to page  
12 two on that. Look at the right-hand square  
13 footage of the facility. Mr. Miller, Mr.  
14 Muller asked you if you knew the square footage  
15 of Piedmont and he drew to your attention the  
16 215,000 square feet that existed back in 1980  
17 at Piedmont Medical Center. Do you recall it  
18 was 215,000?

19 A: Correct.

20 Q: And you weren't certain of the square footage  
21 of Piedmont Medical Center. This is an excerpt  
22 from the emergency department expansion CON  
23 application. Identify the existing square  
24 footage without the renovations of Piedmont  
25 Medical Center in that graph?

1 A: 525,000 square feet.

2 Q: About twice the size of the hospital currently?

3 A: Correct.

4 Q: And how has the hospital expanded in the past  
5 30 years from 215,000 to over 500,000 square  
6 feet?

7 A: The Women's Tower represents about 95,000  
8 square feet and I'm not sure what the heart  
9 center addition that was done in 1996  
10 represents but it's considerably smaller than  
11 the Women's Tower.

12 Q: And the balance is?

13 A: Would have been the original core building.

14 Q: Okay. Now, with regard to the examination of  
15 Mr. Muller concerning the option that York  
16 County exercised, do you know why county  
17 officials chose to elect to contract with Tenet  
18 in the sixth addendum rather than accept the  
19 offer of Carolinas to buy York County Hospital?

20 A: Yes. My understanding from the material I had  
21 available to me and all of that, they  
22 appreciated the long-standing relationship that  
23 our organization had with the county, our  
24 responsiveness to the needs of the people that  
25 we were serving and our willingness to continue

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001022



1 to grow the facility along with the growth in  
2 the county as well as the fact that we were a  
3 South Carolina, York County-based business.

4 Q: Okay. And as far as you know, did they have  
5 free choice to either accept or reject either  
6 proposal?

7 A: Absolutely. In fact, it's my understanding  
8 that they were offered a rather lucrative  
9 opportunity to make the switch.

10 Q: And why didn't they accept it?

11 A: I believe that they firmly believed that what  
12 we were doing and what we were proposing doing  
13 and our commitment to the community was in the  
14 best interest of the people who they were  
15 elected to serve.

16 Q: All right. Now, Mr. Muller showed you some  
17 excerpts from the York County reports from 2000  
18 -- I think it was '10 and '12. Let me take you  
19 back, let's look at Demonstrative, Dan, 213.  
20 To compare the full-time, part-time and PRN  
21 contract staff. What were the changes in those  
22 employees as reported in your reports to York  
23 County from 2007 to 2012?

24 A: Well, in 2007 it was 2,113 full time employees,  
25 1,079 in 2012. Part time dropped from 132 to

1           77. Almost in half and PRN went up, but again,  
2           these are individuals who are called on as-  
3           needed basis.

4   **MR. MULLER:** Your Honor, if I could just interject  
5           something. And I may have to retract that.  
6           This comes from our Exhibit?

7   **MR. ANDREWS:** That's right.

8   **MR. MULLER:** Thank you.

9   Q: And looking at the change between 2007 and  
10       2012, Mr. Miller, what information does this  
11       provide to you?

12   A: That basically, we were managing the  
13       organization and relationship to the declines  
14       in volumes and changes in the levels of service  
15       that were going on in the organization at the  
16       time. I would also offer as I commented on in  
17       my testimony, that this is kind of an aggregate  
18       number. And I would suspect and offer that if  
19       we broke it out, we would find that the  
20       hospital numbers are in even sharper decline.  
21       We did have one service that we expanding at  
22       the time and that was the EMS service as we  
23       were expanding and improving response times to  
24       the county and added employees to that service.

25   Q: Okay. Now, as you were essentially reducing

- 1 the time available to full-time employees, as  
2 you testified earlier you did when there wasn't  
3 sufficient work for them to do ---
- 4 A: Correct.
- 5 Q: Were those nurses and technicians be  
6 categorized as full-time or part-time  
7 employees?
- 8 A: They would have been full-time individuals and  
9 some part-time. Obviously if you are faced  
10 with a day in which business is soft, you would  
11 probably hope to go to part-time employees  
12 first to be able to float them off. The full-  
13 time people are not immune to being floated off  
14 on any given day.
- 15 Q: And so would the information being reported to  
16 the county on that full-time line item account  
17 for the reduced hours available to full-time  
18 employees as a result of the reduction in  
19 services?
- 20 A: Yes, this is not a body count. This are based  
21 on actual paid hours for staffing. So, this is  
22 a realtime, hourly paycheck impacting  
23 reduction.
- 24 Q: All right. Now, finally, let me ask you to  
25 turn to Demonstrative 72, Dan. Mr. Miller, Mr.

1 Muller had asked you whether or not the peer  
2 group reporting to the county and Piedmont's  
3 performance in it reflected any adjustment  
4 based on the case mix index weighing to your  
5 peer hospitals. Do you recall that question?

6 A: I do.

7 Q: And you said it wasn't, what you were reporting  
8 to the county wasn't CMI-adjusted, correct?

9 A: Correct.

10 Q: Now, did you ever propose or did you ever  
11 address that issue with the county?

12 A: I did. I actually proposed that we use CMI-  
13 adjusted data during our discussions on the  
14 eighth addendum when we -- again, the primary  
15 purpose of the eighth addendum was to basically  
16 create clarity and the intent of the parties  
17 and we had an extensive discussion about CMI  
18 adjusting to the MEDPAR data at that time.

19 Q: And what was the result of your proposal?

20 A: They rejected it. It, by their own admission  
21 it in their minds created confusion. It was  
22 something they didn't understand how it worked.

23 Q: Okay. Now, have you applied the case mix  
24 weighing to the peer group hospitals in your  
25 work on this case?

1 A: Yes.

2 Q: And what's reflected there in that  
3 Demonstrative?

4 MR. MULLER: Your Honor, I am going to object to  
5 this one because I don't believe this  
6 Demonstrative matches up to what I was just  
7 looking at in the source. Could I possibly  
8 show the Court that?

9 THE COURT: Yes.

10 MR. ANDREWS: Would you show it to me too?

11 MR. MULLER: Yes.

12 MR. ANDREWS: All right. I'm being informed by Mr.  
13 Levitt this updates what's in the report.  
14 We'll be happy to turn to the report. This is  
15 more current information. I wasn't aware of  
16 that, Your Honor. Is that all right, Mr.  
17 Muller?

18 MR. MULLER: I'm sorry?

19 MR. ANDREWS: Is that all right with you?

20 MR. MULLER: Yes.

21 Q: All right. Thanks. We can just do that. Dan,  
22 if you could pull up the end of July 2011  
23 report, page 24, figure 10. Thank you. Okay.  
24 Now, what is this information before you, Mr.  
25 Miller?

1 A: This is the 2010 average MEDPAR inpatient  
2 charges of the peer group hospitals. It shows  
3 the average charge, the case mix index and  
4 basically the charge adjusted for the case mix  
5 index.

6 Q: Okay. And what is -- discuss a little more  
7 generally, if you would, I don't know if it's  
8 been thoroughly explained, the purpose of the  
9 CMI adjustment?

10 A: Basically, it is a measure of resources that  
11 are consumed in delivering care. The DRG  
12 system basically assigns an index to each and  
13 every procedure for which it has an assigned  
14 code. It's an attempt to indicate -- I guess  
15 the best way to describe it, more complex cases  
16 have a higher index indicating they consume  
17 more resources. A lower index basically  
18 reflecting on something that's more simple and  
19 less complex and not consume and more resources  
20 and all. As an example on here, CMC with a  
21 case mix of 2.0372, not surprising, it's a  
22 quaternary institution. It's doing organ  
23 transplants, level one trauma and it all,  
24 compared to Presbyterian, Piedmont, CMC all  
25 seen at about 1.6 and some change indicating

1       that they're delivering services to relatively  
2       the same mix of services, cardiology, surgical  
3       cases and that kind of thing comparable.

4       Q:   And let's just for clarity then, contrast that  
5       with Springs, the second one.

6       A:   Springs, 1.2.   It's a much smaller facility.  
7       It does not have a particular capability to  
8       provide complex services.   It has a pretty, I  
9       guess what we would call more traditional  
10      community-based kind of hospital

11      Q:   All right.   And so look at the average column,  
12      which is what's reported to the county at their  
13      request, how is that information calculated?

14      A:   The average charges, it's basically the total  
15      of all cases for Medicare inpatients at these  
16      facilities divided by the number of total  
17      cases.   It's a simple average.

18      Q:   Without regard to the complexity or the length  
19      of stay services?

20      A:   Correct.   Without regards to any of those  
21      influences.

22      Q:   All right.   And then the CMI then adjusts for  
23      the complexity?

24      A:   Yes.

25      Q:   Understanding that more complex cases are using

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 more resources, more money and more time.

2 A: Correct.

3 Q: And then based on this, once the adjustment is

4 applied and these facilities are the ones in

5 the peer group that are affiliated in the peer

6 group in the contract, is that correct?

7 A: Correct.

8 Q: Okay. And after the case mix adjustment, which

9 hospitals have the highest CMI adjusted charge?

10 A: Palmetto-Baptist, Springs, Richland, Mary Black

11 Spartanburg.

12 Q: All right. That's enough. And which ones have

13 the lowest?

14 A: Gaston, CMC-Pineville, Piedmont, Presbyterian

15 and CMC. In reverse order.

16 Q: Okay. Thank you. No further questions, Your

17 Honor.

18 **THE COURT:** Thank you.

19 **MR. MULLER:** Nothing further from me.

20 **THE COURT:** All right. Anything from the

21 Department?

22 **MS. BIGGERS:** No, Your Honor.

23 **THE COURT:** All right. I think we're finished with

24 Mr. Miller.

25 **MR. ANDREWS:** We are, Your Honor.



1 THE COURT: Sir, thank you very much. You may be  
2 excused.

3 MR. ANDREWS: Your Honor, before we call Mr. Grice,  
4 can we take a short break before we start?

5 THE COURT: Ten minutes.

6 (Off the Record)

7 THE COURT: Mr. Andrews.

8 MR. ANDREWS: Thank you, Your Honor, we would like  
9 to call Joel Grice.

10 THE COURT: Mr. Grice.

11 JOEL GRICE, having been duly sworn, testified as  
12 follows:

13 MR. GRICE - DIRECT EXAMINATION BY MR. ANDREWS:

14 Q: Good afternoon, Mr. Grice. Please state your  
15 name and business address for the record?

16 A: Joel C. Grice. 430 White Falls Drive,  
17 Columbia, South Carolina 29212.

18 Q: Mr. Grice, what's your current employment?

19 A: I'm managing partner of Grice & Whiteside, LLC.

20 Q: Have you retired from the state?

21 A: Yes, sir. I retired, technically, in I think  
22 March of 2003 as a TERI employee but worked on  
23 until December 2007.

24 Q: And what was your last position with the  
25 Department?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001031

1 A: I was director of the Bureau of Health  
2 Facilities and Services Development.

3 Q: And how long were you with DHEC before you  
4 retired?

5 A: I joined DHEC in 1975 and became involved with  
6 the Certificate of Need Program in 1978. I was  
7 total 32 years, but 29 in the Certificate of  
8 Need Program.

9 Q: All right. And what was your title in your  
10 last position there, Mr. Grice?

11 A: It was bureau director of the Bureau of Health  
12 Facilities and Service Development. And we had  
13 four things under us that I supervised,  
14 Certificate of Need, the State Health Plan  
15 Development, the Medicaid Permit Program and  
16 the Certificate of Public Advantage Program.

17 Q: Okay. Let's turn to your resume, which is has  
18 been pre-admitted as Exhibit 70. And before  
19 one of your four areas of responsibility was  
20 supervision of the CON program, is that  
21 correct?

22 A: Yes, sir.

23 Q: And how long were you in that position?

24 A: Since December 2000, as the bureau director.  
25 But I did supervise the CON program as director

- 1           since 1984.
- 2       Q:     Okay.     So before becoming director of the
- 3           bureau, you were director of the Office of
- 4           Certificate of Need, is that correct?
- 5       A:     Yes, sir.
- 6       Q:     All right.     And how long were you in that
- 7           position?
- 8       A:     A total of 16 years.
- 9       Q:     Okay.     And before becoming director of the CON
- 10          Office, what responsibilities did you have at
- 11          DHEC?
- 12       A:     Well, just briefly I joined CON in 1978 as a
- 13          reviewer and was promoted in 1981 to a planner
- 14          IV, and had some additional responsibilities,
- 15          the supervision and another new program called
- 16          The State's Appropriates Review Program.
- 17       Q:     And what's your educational background?
- 18       A:     I have a bachelor's and master's degree in
- 19          biology from the University of South Carolina.
- 20       Q:     Okay.     During the course of your work with the
- 21          CON program, either as director of the bureau
- 22          or director of the office or as a reviewer, can
- 23          you estimate the number of CONs that you've
- 24          reviewed or supervised during that 29 year
- 25          period?

1 A: Yes, sir. I would say approximately 2,000.

2 Q: Okay. And would you describe, just in very  
3 general terms, the kinds of facilities and  
4 services that were subject to your review?

5 A: Well, of course, development of new health care  
6 facilities, and replacement facilities like  
7 hospitals, nursing homes, ambulatory surgery  
8 centers, home health agencies as well as the  
9 purchase of sophisticated medical equipment,  
10 like MRIs, CT scanners and radiation therapy  
11 equipment, et cetera.

12 Q: Okay. For those that you mentioned, the CON  
13 applications for new hospitals. Can you  
14 estimate how many new hospital CON applications  
15 you had the occasion to review?

16 A: I think it's for around, roughly ten or 11. I  
17 can't remember. It might be less than that,  
18 seven or eight, but these were replacements  
19 we're talking about, I believe.

20 Q: All right. What different kind of new hospital  
21 applications have you reviewed?

22 A: Well, I've reviewed just everything from a  
23 brand new hospital that is being established,  
24 replacement hospitals in South Carolina, as  
25 well as satellite facilities that were

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 developed from existing hospitals in South  
2 Carolina.

3 Q: Okay. And if you've reviewed anywhere from  
4 eight to ten replacement hospitals, how many  
5 satellite hospital applications have you  
6 reviewed?

7 A: I think it was around 14.

8 Q: Okay. And have you testified in CON cases on  
9 behalf of DHEC and the decisions it's made?

10 A: Yes, sir.

11 Q: Have you been qualified as an expert witness in  
12 those cases?

13 A: I have. Yes, sir.

14 Q: Okay. Were you involved in this case involving  
15 Fort Mill during the initial review prior to  
16 Judge Matthews' remand?

17 A: Yes, sir. I was.

18 Q: All right. Did you have any involvement in the  
19 review of this case subsequent to the remand?

20 A: No, sir.

21 Q: When were you retained by my firm on behalf of  
22 Piedmont as an expert witness in this case?

23 A: During the summer of 2012.

24 Q: Did you have any contact with any  
25 representatives of Piedmont concerning your

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 retention prior to the summer of 2012?

2 A: No, sir. Not at all.

3 Q: All right. And since being retained to work on  
4 this case by Piedmont, what have you done?

5 A: Basically, I have reviewed the applications  
6 that I was responsible for in the decision-  
7 making process back in 2004, 2005, as well as  
8 the revised applications that were submitted, I  
9 believe in 2008, '07, '08, '09. I know there  
10 was the hearing in 2009.

11 Q: The hearing was in '09?

12 A: Yes, sir.

13 Q: And that subsequent remand was in 2011?

14 A: That's right. I'm sorry. Yes, sir. I  
15 reviewed the revised applications that were  
16 submitted after Judge Matthews' order.

17 Q: Okay. I would like to move this time to  
18 qualify Mr. Grice as an expert in the CON  
19 program and healthcare planning.

20 **THE COURT:** Objections?

21 **MR. MULLER:** Without objection, Your Honor.

22 **MS. BIGGERS:** No objection.

23 **THE COURT:** No objection. All right. Then  
24 there being no  
25 objection Mr. Grice is hereby recognized by the

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001036

1 Court as an expert in the CON program and  
2 healthcare Planning.

3 Q: Mr. Grice, you testified that you reviewed  
4 about -- something on the order, based on the  
5 math I've done, 22 to 25 CON applications  
6 involving the construction of new hospitals, is  
7 that right?

8 A: Yes, sir.

9 Q: Okay. And you've mentioned two different kind  
10 of new hospitals, replacement facilities and  
11 satellite hospitals, is that correct?

12 A: That is correct.

13 Q: All right. Let's start with satellite  
14 hospitals, what are the reasons, I'm sorry,  
15 let's start with replacement facilities first.  
16 What are the reasons that hospitals submit CON  
17 applications for you for replacement  
18 facilities?

19 A: Generally, our experience in South Carolina has  
20 been that a lot of our hospitals, particularly  
21 county hospitals were very old, built back in  
22 the late forties or early fifties and they were  
23 antiquated. And they definitely needed to be  
24 replaced.

25 Q: All right. Have you developed a Demonstrative

1           that provides a list of some of those you  
2           reviewed?

3       A:    Yes, sir.

4       Q:    Let's pull up, Dan, Demonstrative 125. And  
5           what's on your list here, Mr. Grice?

6       A:    Yes, sir.    The Medical University of South  
7           Carolina, of course, Piedmont Medical Center-  
8           Rock Hill.

9       Q:    Now, repeat which Piedmont replacement hospital  
10          was?

11      A:    This is the original, the replacement of the  
12          old York General Hospital.

13      Q:    Okay.

14      A:    And then we've got the Carolinas Hospital in  
15          Florence, which was a replacement of actually  
16          two facilities in Florence, one being I think  
17          called, Florence General and there's one other.  
18          I forgot the name of it. It was a very small  
19          facility but Carolinas was the replacement.  
20          And then we have St. Francis Xavier Hospital in  
21          Charleston that was replaced with a new  
22          facility over in the, gosh, I forget the name  
23          of the area in Charleston. I'm not that  
24          familiar with Charleston, but it's in another  
25          area.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001038



1 Q: Could it be West Ashley?

2 A: West Ashley, I'm sorry. Yes, sir. And then  
3 Coastal Carolina Hospital was a replacement of  
4 the old Jasper County Hospital in Jasper  
5 County. The Allen Bennett Hospital was owned  
6 by the Greenville Hospital System and it's been  
7 replaced in Greer, South Carolina. It's now  
8 known as Greer Memorial. East Cooper Hospital  
9 in Mt. Pleasant was replaced within the last  
10 five years to a new site in Mt. Pleasant. And  
11 Carolina Pines in Hartsville was a replacement  
12 of an old facility located in that town.

13 Q: Now, Mr. Grice you were involved in the review  
14 of all of these applications?

15 A: Yes, sir. I was.

16 Q: Now, when you reviewed these applications, what  
17 was the Department looking for?

18 A: Well, basically, need. To be sure there's a  
19 need for a continued services and certainly  
20 there was. And all the important criteria on  
21 the Certificate of Need that there would be,  
22 you know, a cost effective application and  
23 financially feasible and growth and population  
24 in those areas.

25 Q: Okay. Now, did you ever deny one of these

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 applications?

2 A: No, sir, never.

3 Q: All right. Now, let's move to satellite  
4 hospitals. How many satellite hospitals,  
5 again, did you say you believe you've reviewed?

6 A: My memory, I think it was around 14. I did a  
7 list.

8 Q: Have you developed a list of it?

9 A: Yes, sir.

10 Q: All right. Let's take a look at Demonstrative  
11 109. And what is this a list of, Mr. Grice?

12 A: This is a list of the first satellites that we  
13 did approve, that I was involved in with  
14 reviews of the CON applications in South  
15 Carolina.

16 Q: Okay. Define for the Court what you would mean  
17 by a satellite hospital? What is that?

18 A: Okay. A satellite hospital is one where we  
19 have the, I guess we would say, the parent  
20 hospital that is there with a bed need, or beds  
21 that are probably not properly utilized. In a  
22 county where there's some rapidly growing  
23 populations in suburban areas. And they  
24 realize that they are going to apply for the  
25 beds that are shown as needed in the Health

1 Plan, or beds that aren't properly utilized in  
2 the old facility, to build a satellite in that  
3 county in a rapidly growing area to benefit the  
4 system, their own system there.

5 Q: And up through 2005, did the State Health Plan  
6 address a method by which existing hospitals  
7 would develop satellite hospitals?

8 A: No, sir. This was something that occurred and  
9 we followed our own standard at DHEC. And  
10 that's the way it was done.

11 Q: All right. And what was that standard in  
12 general terms?

13 A: Well, the standard was if a hospital, you know,  
14 could show the need for that satellite and new  
15 additions in the county with rapidly growing  
16 population. If they could submit that  
17 application with their own bed need or transfer  
18 of their beds, and if they met all the  
19 important criteria in the Certificate of Need  
20 regulations, they could be approved.

21 Q: Okay. And in reviewing these hospitals, what  
22 you define in your Demonstrative 109 as the  
23 first satellite hospital, you mean the first in  
24 the state?

25 A: Yes, sir. These are some of the first we had

1 in South Carolina.

2 Q: What period of time would they generally have  
3 been developed?

4 A: It would have been, these are before the year  
5 2000.

6 Q: And describe what you have on the list?

7 A: Well, we've got St. Francis Eastside in  
8 Greenville. And that was developed by the St.  
9 Francis Hospital in Greenville, South Carolina.  
10 Now, Trident-Summerville, that hospital was a  
11 satellite in Dorchester County.

12 Q: Of what hospital?

13 A: I'm sorry. Trident-Summerville. It's actually  
14 called Summerville Medical Center.

15 Q: Okay.

16 A: And just to prevent some confusion here,  
17 Trident Medical Center was developed in the  
18 North Charleston area in 1975. And they  
19 basically served Berkeley and Dorchester  
20 County, northern Charleston. But as the growth  
21 took place, there was a need for a hospital in  
22 Dorchester County. And Trident built the  
23 satellite, called Summerville Medical Center.

24 Q: And Providence Northeast?

25 A: That was a satellite of Providence Hospital in

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

- 1 Columbia, South Carolina that was developed in  
2 the northeastern section.
- 3 Q: All right. And we've already heard a good bit  
4 of testimony about Georgetown-Waccamaw. You  
5 don't need to further describe that. Carolina  
6 Women's Center is that a speciality facility?
- 7 A: Yes, sir. It was developed by the Carolinas  
8 Hospital System in Florence.
- 9 Q: That system have any relationship to Carolinas  
10 Healthcare System involved in this case?
- 11 A: No, sir. Not at all.
- 12 Q: Okay. All right. Now, you've developed a  
13 further list of the more recent satellites?
- 14 A: Yes, sir.
- 15 Q: Let's look at that, it's Demonstrative 110,  
16 please, Dan. And what do we have here Mr.  
17 Grice?
- 18 A: Okay. These are satellite hospitals developed  
19 since the year 2000 in South Carolina.
- 20 Q: As far as you know, is this a complete list of  
21 all the satellites developed since 2000?
- 22 A: Yes, sir. As far as I know, this is the one.  
23 The last three on the list are not yet  
24 developed. Palmetto-Parkridge is under  
25 construction. And the last two are not yet

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 under construction, just approved.

2 Q: Okay. Describe what you're presenting here in  
3 this demonstrative?

4 A: Okay. We've got the AnMed Women's and  
5 Children's Hospital in Anderson, South  
6 Carolina. That was a satellite of Anderson  
7 Medical Center.

8 Q: How many beds?

9 A: It's 72 beds. And that same year 2002, the  
10 Greenville -Patewood facility in the Greenville  
11 area that's also 72 beds. That was a satellite  
12 from beds from the Greenville Hospital System,  
13 Greenville Memorial. And then in 2005, out of  
14 Loris, the Loris Community Hospital developed a  
15 satellite called Seacoast Medical Center and  
16 it's 50 beds. And also that same year, we had  
17 the Greer Memorial Hospital that was also  
18 developed by Greenville Hospital System. There  
19 was also a replacement of beds, including the  
20 Allen Bennett Hospital. And we have also the  
21 Pelham facility in Spartanburg, that was a  
22 satellite of Spartanburg Regional Medical  
23 Center. And the Roper-Mt. Pleasant is located  
24 on Mr. Pleasant that is a satellite of Roper  
25 Hospital in downtown Charleston.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001044

1 Q: Is that the Roper Hospital System that's  
2 partially owned and managed by Carolinas, the  
3 party in this case?

4 A: Yes, sir. It is. I think it's ten percent  
5 owned by the Carolinas Hospital System. Okay.  
6 And then we have Palmetto-Parkridge, I'm sorry,  
7 the Palmetto Baptist-Parkridge. It's currently  
8 under construction in the Irmo, South Carolina  
9 area. And those beds came from directly from  
10 Baptist Medical Center, beds that were not even  
11 utilized.

12 Q: Part of the Palmetto System here in Columbia?

13 A: Yes, sir. Palmetto Health. And then the  
14 Roper-Berkeley, that is a satellite of the,  
15 here again, the Roper Hospital in downtown  
16 Charleston. A new hospital of 50 beds in  
17 Berkeley County. And also Trident Regional  
18 Medical Center in North Charleston also was  
19 approved for a satellite in Berkeley County,  
20 also for 50 beds.

21 Q: Okay. Now, what I want to do is, let's look at  
22 some Demonstrative Maps that you asked me to  
23 prepare. Let's begin with Demonstrative 126,  
24 Dan, to show the satellites, if you would, the  
25 total satellites related to the Greenville

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Memorial System.

2 A: Yes, sir. There we see the two satellites, the  
3 Greenville Memorial and Patewood Memorial that  
4 are the two satellites of Greenville Memorial  
5 Hospital.

6 Q: Okay. Let's take a look then at Demonstrative  
7 128 for the Roper-St. Francis System in  
8 Charleston. Now, what are the satellites  
9 affiliated with that system in the Charleston  
10 area, Mr. Grice?

11 A: Okay. We see the Roper Hospital and here we've  
12 got the Roper-Mt. Pleasant and the Roper-  
13 Berkeley, they're the satellites there. And  
14 Roper-St. Francis, of course, is also  
15 affiliated with Roper Hospital and that's also  
16 a new facility, relatively new facility.

17 Q: All right. It goes back a few years. Twenty  
18 years can seem new.

19 A: It seems like yesterday to me, yes, sir.

20 Q: All right. How many hospitals including, then,  
21 the main hospital are in the Tri-County area  
22 affiliated with Roper?

23 A: The ones that have been approved, I believe ---

24 Q: The total?

25 A: I believe that are affiliated with Roper,

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



1 three.

2 Q: All right. And including the center, the main  
3 hospital?

4 A: Yes.

5 Q: It would be four?

6 A: Four, that's correct.

7 Q: All right. Let's look at Demonstrative 130,  
8 staying in the Tri-County area, are there any  
9 other systems with multiple satellites?

10 A: Yes, sir. Trident Medical, Trident Regional  
11 Medical Center in North Charleston. Now, it's  
12 two satellites, one operational, the  
13 Summerville Medical Center in Berkeley County  
14 and the, I'm sorry, Summerville Medical Center  
15 in Dorchester County and the Berkeley Medical  
16 Center that's approved to be in Berkeley  
17 County.

18 Q: Okay. And let's look in the Columbia area.  
19 What have you identified here, Mr. Grice?

20 A: Here we have Palmetto Health System now  
21 consists of the Palmetto-Richland Hospital and  
22 Palmetto-Baptist that are in downtown Columbia.  
23 And their new satellite that is under  
24 construction is the Palmetto-Parkridge.

25 Q: Now, we don't have it on this map, but you

1 identified previously Providence Northeast and,  
2 of course, there is Providence downtown, so how  
3 many total facilities are there in the  
4 Providence System in Columbia?

5 A: All right. In the Providence System it would  
6 a total of two hospitals.

7 Q: Okay. Now, Mr. Grice, have you prepared a  
8 Demonstrative that identifies what you've  
9 previously began testifying about, about the  
10 common characteristics that you've identified  
11 over the years that are affiliated with  
12 satellite hospitals?

13 A: Yes, sir.

14 Q: Okay. Let's pull that up, Dan, Demonstrative  
15 129. And what have you prepared here, Mr.  
16 Grice?

17 A: Well, what I see is some of the four main  
18 patterns that we see with applicants who  
19 request approval for satellites. I think a  
20 hospital system, if they see in the area, you  
21 know, an excess capacity of their own facility  
22 where there's an underutilization of beds and  
23 perhaps also, new growth areas in the county,  
24 suburban areas particularly. They are going to  
25 need to be able to protect and gain market

1 share and this is going to strengthen the  
2 parent hospital, in my opinion, and, of course,  
3 I think the hospitals know this very well. If  
4 they do not move in this order, they're going  
5 to be damaged. Particularly, they're going to  
6 perhaps lose patients to other facilities out  
7 of county, et cetera. So it's very important  
8 for them, particularly when we have population  
9 growth, for them to determine what's the best  
10 pattern, advance where I am or build a  
11 satellite particularly if an area's growing and  
12 it's going to be more convenient for patients  
13 to go to a new satellite rather than travel  
14 some distance to their parent hospital.

15 Q: Over the last decade, what has been the trend  
16 of large hospital systems throughout the state?  
17 Has it been to add beds at their main campus or  
18 to establish satellites?

19 A: It's mainly satellites.

20 Q: Okay. Dan, let's go back to Demonstrative 110.  
21 Mr. Grice, go over the list of hospital  
22 satellites developed since 2000 and how many on  
23 this list are affiliated with hospitals that  
24 are not tertiary facilities, that is not  
25 facilities that have open heart programs, and

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 provide a range of complex services.

2 A: I only see one there, that's the Loris, Loris  
3 Community Hospital, which developed Sea Coast.  
4 Loris is a smaller primary care hospital in the  
5 town of Loris, South Carolina in Horry County.  
6 And it's not a tertiary facility.

7 Q: And all the others, how would you characterize  
8 them?

9 A: The other satellites, their parent hospitals  
10 all have tertiary services, open heart and  
11 other sophisticated services.

12 Q: And what relationship exists between the needs  
13 and demands of those facilities and their  
14 development of satellite hospitals within their  
15 system?

16 A: Well, these satellites are going to be able to  
17 track patients in the rapid growing areas and  
18 when those patients need referral for more  
19 complicated services, such as open heart  
20 surgery or a therapeutic cardiac  
21 catheterization, they can be referred to the  
22 parent hospital which has those services. And  
23 that helps maintain and substantiate the  
24 services of the parent hospital.

25 Q: Okay. Let me take you back to the period, Mr.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Grice, when you were director of the bureau and  
2 you had responsibility for the position in  
3 which you were involved in this case. Do you  
4 remember being first contacted by  
5 representatives of Piedmont related to their  
6 interest in developing a hospital in Fort Mill?

7 A: Yes, sir. I do. I certainly do. The  
8 administrator of the Piedmont Medical Center  
9 that testified today, Mr. Levitt, I had an  
10 appointment with him. This is the usual  
11 situation, we had the open-door policy when I  
12 was at DHEC. And I welcomed people to come in  
13 and talk about the projects so that they would  
14 have some comfort prior to submitting an  
15 application.

16 Q: All right. Subsequent to meeting with them,  
17 did you also meet with representatives of the  
18 other applicants in this matter, Presbyterian,  
19 Hospital Partners of America and Carolinas?

20 A: Yes, sir, absolutely.

21 Q: Okay. All right. Now, what do you recall that  
22 Mr. Miller and Mr. Levitt informed you about  
23 their interest in the Fort Mill Medical Center?

24 A: Well, they were, of course, were aware that the  
25 2004-2005 Health Plan showed the need for 64

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 beds. And they wanted just to let me know that  
2 they were working on an application for a  
3 satellite in the Fort Mill area that was going  
4 to be, you know, a 64-bed facility. And they  
5 just wanted us to be aware that the application  
6 was under development and would be submitted  
7 shortly.

8 Q: All right. Did they discuss with you the  
9 options that were available to Piedmont  
10 concerning the establishment of a satellite  
11 facility or the use of the beds to expand their  
12 existing campus in downtown Rock Hill?

13 A: Yes, sir. Certainly, they had an option,  
14 anybody would, the bed need was one that was  
15 really developed by them in a health plan with  
16 their utilization and population growth in the  
17 county. And they could have added beds to the  
18 existing Piedmont Medical Center or built a  
19 satellite. And as we discussed with other  
20 satellites in South Carolina, in this  
21 particular case with that rapidly growing area,  
22 Fort Mill, it would certainly be beneficial to  
23 the parent hospital like Piedmont to add that  
24 satellite facility.

25 Q: Okay. Now, at this time had you been contacted

1 by anyone else concerning anyone's interest in  
2 the use of those beds?

3 A: No, sir.

4 Q: Okay. Now, the records show that in October of  
5 2005, Piedmont withdrew and re-filed their  
6 application to build a satellite facility in  
7 Fort Mill and to establish a 100-bed facility  
8 there. Do you recall that?

9 A: Yes, sir.

10 Q: And how did you review that change?

11 A: It was positive, in my opinion. They had a  
12 unique position there because with the rapidly  
13 growing population there at Fort Mill, that  
14 100-bed facility, I think, was an excellent  
15 idea. Particularly to save cost in the future  
16 because it's much more cost-effective to build  
17 all those beds now, if you can project they  
18 will be needed in the future. And basing it on  
19 the growth in that area, if they were to build  
20 only 64 beds, probably even the second or third  
21 year, they would be looking at making an  
22 addition. And when you add an addition to an  
23 existing hospital, it's very disruptive to the  
24 services.

25 Q: How is disruptive?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 A: Because you've got to start construction and  
2 block off areas and the patients are somewhat,  
3 you know, distracted and uncomfortable and it's  
4 just not a pleasant situation to have a  
5 construction project going on.

6 Q: Have you seen that over the years as hospitals  
7 have expanded services and added beds?

8 A: I have, yes, sir. I have.

9 Q: Okay. All right. Mr. Grice, let's pull back  
10 a little bit and talk more generally about what  
11 you do when you're presented with application  
12 for a satellite facility like Piedmont's. How  
13 do you review that?

14 A: We review it like any application. The  
15 regulation required, you know, the standard  
16 review process. The number of days for review,  
17 ask for additional information. It's reviewed  
18 as any application would be. And, of course,  
19 we have 30 days to review and request  
20 additional information. And if we desire, we  
21 can have a project review committee meeting,  
22 meet with the applicant, let them go into more  
23 detail with the staff.

24 Q: All right. Of all the applications you've  
25 received for satellite hospitals during your 29



1           year career, in particularly those that you've  
2           more recently identified. Did you approve  
3           them?

4   A:   Yes, sir. Everyone of them.

5   Q:   Were any of them competing?

6   A:   No, sir.

7   Q:   Why not?

8   A:   I did not review the last two.

9   Q:   Other than the last two?

10   A:   No, sir. They were not competing.

11   Q:   Were those last two competing?

12   A:   No, sir. Because there was a need for each of  
13           them. One of them transferred beds, the other  
14           had a bed need, so basically, you define  
15           competing as when there's a limited need and  
16           you can only approve one.

17   Q:   Okay. Now, did you approve Piedmont's when you  
18           had reviewed it and you made a decision for the  
19           Department in 2006?

20   A:   Yes, sir. I did.

21   Q:   Why did you do that?

22   A:   I studied that very carefully. That was a  
23           long, complicated review process. And my main  
24           reason was I felt that there were numerous  
25           factors there that were positive for Piedmont.

1 I saw that project as really protecting that  
2 facility that was built in the early 1980s that  
3 had developed with tertiary services like open  
4 heart, that there was beginning to be out-  
5 migration out of the county. And that new  
6 satellite I knew was going to benefit the  
7 parent hospital, because it would attract  
8 patients, a lot of them who currently out-  
9 migrate. And then those patients when they  
10 needed more sophisticated care like tertiary  
11 services would be referred to the parent  
12 hospital, Piedmont. It would benefit the  
13 county. Piedmont had a great reputation, in my  
14 opinion having that contract with the county  
15 that had been discussed by Mr. Miller today.  
16 And also, I knew with that rapidly growing area  
17 with 100 beds, that also was positive. But  
18 that wasn't the most important thing, but I  
19 knew that if it's really rapidly growing like  
20 it is, you're going to need more beds in the  
21 future and that was a cost-effective way to do  
22 it. Build it now, rather than later when cost  
23 go up with inflation.

24 Q: Okay. Let's take a look at Demonstrative 113.  
25 I think you prepared this as a list of the

1 items that you identified in your approval  
2 letter, is that right?

3 A: Yes, sir.

4 Q: Okay. And why don't you review just quickly  
5 these four bullet points, do these track your  
6 letter?

7 A: Yes, sir. The 100 beds, as I mentioned is  
8 certainly a benefit and the contract that  
9 Piedmont Medical Center System had with York  
10 County.

11 Q: Why was that an important issue for them?

12 A: Because it had been there since Piedmont was  
13 developed and as it has been discussed today,  
14 that left the county to be able to look at the  
15 charges and make sure they're reasonable and  
16 the other benefits involved. They've already  
17 been discussed. That was just very important.  
18 And during the review I went over that and that  
19 was unique, very unique in this state.

20 Q: All right. And the third bullet point?

21 A: The third bullet point, technically at that  
22 time, it was only the applicant that would be  
23 approved under the 2004-2005 ---

24 Q: No, I'm sorry. The third, not the fourth.

25 A: I'm sorry. Demonstrate commitment to the

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 county, yes. You know, I was around and even  
2 met the original administrator of the old York  
3 General Hospital in 1980. And that hospital  
4 needed replacement and it was great that, you  
5 know, that AMI came in and built that new  
6 facility. And so you think about they  
7 developed it as a small facility over the years  
8 and added all the services like open heart  
9 surgery and so it's a large facility now. And  
10 I think it needs to be maintained. I think,  
11 you know, that's very important.

12 Q: Okay. And what's the fourth point?

13 A: The fourth point is that it's the only  
14 applicant that would be approved under 2004-  
15 2005 State Health Plan.

16 Q: That was your finding in the letter?

17 A: It was. I had reviewed them competitively, but  
18 I also -- as I'm required, you know, at that  
19 time to make findings that relate to the  
20 regulations. And I also added that in there,  
21 which was true.

22 Q: All right. We're not going to go into your  
23 basis for that. That's a statement of fact?  
24 Okay. So we'll move beyond that. Now, let me  
25 focus on the third bullet point, which is that

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 with regard to that demonstrated commitment to  
2 the county, you were involved in the approval  
3 of the first replacement hospital in 1980?

4 A: Yes, sir. That's correct.

5 Q: All right. So you knew about that? Were you  
6 involved in the open heart surgery CON  
7 application as well?

8 A: Yes, sir. I certainly was.

9 Q: Did you approve that application, Mr. Grice?

10 A: No, sir. The first one I denied.

11 Q: What did you deny?

12 A: Because in reviewing the criteria, I made a  
13 mistake, actually. We had opposition from  
14 hospitals in Charlotte, North Carolina that had  
15 an open heart surgery and I ---

16 Q: Who were they, do you remember?

17 A: I'm sure it was Carolinas Medical Center. It  
18 may have been Presbyterian too. It's been so  
19 long, that's been probably pushing 20 years ago  
20 when we reviewed that. But there was  
21 opposition and the concern was that, you know,  
22 right now the open heart surgery patients at  
23 that time, 20 years ago, were going to  
24 Charlotte.

25 Q: From where?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001059

1 A: From York County, Rock Hill. And I felt it was  
2 going to had an adverse effect.  
3 Q: On who?  
4 A: On North Carolina hospitals.  
5 Q: Uh-huh (affirmative response).  
6 A: And that was one of my principle reasons for  
7 denying it.  
8 Q: Okay. Now, were there any border cities in  
9 South Carolina during that same period that  
10 also filed open heart surgery applications?  
11 A: Yes, sir.  
12 Q: Who was that?  
13 A: Aiken, South Carolina. And we had the same  
14 situation occur, Aiken Regional Medical Center  
15 applied for open heart and we had opposition  
16 from some hospitals in Augusta, Georgia that  
17 also had open heart. And I also denied Aiken  
18 for the same reason.  
19 Q: All right. As a result of those two denials,  
20 were those cases appealed?  
21 A: Yes, sir, they were.  
22 Q: At the time before the establishment of the  
23 Administrative Law Court, there were hearing  
24 officers, is that correct?  
25 A: That's correct.

- 1 Q: All right. Now, during the pendency of those  
2 reviews, was there any legislative action taken  
3 concerning DHEC's decision in these two cases?
- 4 A: Yes, sir. I think the Three M Committee met.
- 5 Q: The Three M Committee being what?
- 6 A: The, I think Military, Medical, and ---
- 7 Q: Municipal.
- 8 A: Municipal, right. And I was there at the  
9 meeting and they were ---
- 10 Q: You were invited to be present?
- 11 A: Yes, sir.
- 12 Q: Did you testify?
- 13 A: I did.
- 14 Q: And what was the nature of your testimony?
- 15 A: Basically, the reason that I denied those was  
16 the fact that I saw approval of the facility in  
17 South Carolina of open heart as having an  
18 adverse impact on the out-of-state facilities.  
19 And I was pretty well raked over the coals.
- 20 Q: In what regard?
- 21 A: Well, I was told, Mr. Grice, you must, when you  
22 make decisions on CON you look at South  
23 Carolina citizens. You approve South Carolina,  
24 that is your job to focus on South Carolina not  
25 out-of-state.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: What did you understand the message to be with  
2 regard to the development of health care  
3 facilities in South Carolina?

4 A: The message was that basically, you know, we  
5 have to, in making our decisions make sure that  
6 we're really benefitting South Carolina. I  
7 mean, our program here is part of South  
8 Carolina state government. We try to protect  
9 and assist South Carolina-licensed hospitals.  
10 And that is our main focus, not to make some  
11 decision that's going to negatively impact  
12 them.

13 Q: Now, as a result of your being summoned before  
14 the Senate Three M Committee, what action, if  
15 any, was taken concerning the two cases in Rock  
16 Hill and Aiken?

17 A: They submitted new applications, each of them,  
18 and they were approved.

19 Q: Okay. All right. Now, let's go back to your  
20 work on this case. In addition to the four  
21 items you've identified in your decision  
22 letter, did you also address issues related to  
23 this case in the CON summary that was developed  
24 around the same time that the decision was  
25 made?



- 1 A: Yes, sir.
- 2 Q: Okay. And did you have a hand in the  
3 preparation of that?
- 4 A: I did. In my review of this first application,  
5 of these first applications for a satellite in  
6 York County, I had a lady in our office that  
7 did a lot of the work, but basically, we worked  
8 together and she.
- 9 Q: She would appreciate you referring to that.
- 10 A: But we worked even late at night. We were  
11 there until twelve o'clock, midnight. And I  
12 was right it out longhand, giving it to her to  
13 type and it worked well that way.
- 14 Q: Who are you referring to?
- 15 A: Ms. Mary Fechtel.
- 16 Q: Okay. All right. Now, Dan, let's turn to that  
17 CON summary, beginning at page 856 and that  
18 being, Joint Exhibit 1(B). All right. And  
19 what is this document, Mr. Grice?
- 20 A: Okay. That is the Certificate of Need summary  
21 sheet for the Fort Mill Medical Center. And I  
22 believe this is the application that was  
23 submitted in 2005.
- 24 Q: And is this the CON summary sheet that records  
25 the Department's analysis of the application?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001063

1 A: Yes, sir. It is.

2 Q: Okay. Now, did you prepare in this analysis a  
3 section concerning potential adverse impacts?

4 A: Yes, sir.

5 Q: All right. Let's turn to, Dan, page 898 in the  
6 report. And let's go down and pick up, if you  
7 would, Mr. Grice. And Dan, if you would draw  
8 out and highlight the last paragraph on that  
9 page? And Mr. Grice read that into the record,  
10 please, those highlighted sections and those  
11 paragraphs?

12 A: All right. In contrast should either of the  
13 competing three applicants be chosen to  
14 construct a new facility, their patient base  
15 would be siphoned from the existing utilization  
16 of Piedmont Medical Center which must continue  
17 to operate under the contract of York County to  
18 provide the following services in addition to  
19 hospital services whether approved or denied  
20 for a satellite facility. If patient  
21 utilization should drop drastically at the  
22 current facility due to competition from  
23 another provider income may be affected and the  
24 foregoing services may be compromised.

25 Q: All right. Now, what were you referring to

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 here, Mr. Grice?

2 A: Well, what we were referring to there is, if we  
3 did not have the satellite for Piedmont Medical  
4 Center, that, as that last sentence says:  
5 Patient utilization would drop and due to  
6 competition from another provider -- and it  
7 would, it would be a negative situation for the  
8 existing provider.

9 Q: Now, that paragraph begins with in contrast,  
10 and I probably should have asked initially is  
11 that what was your finding in the first  
12 paragraph? We don't need to turn back to it,  
13 but what was your finding with regard to  
14 whether or not the transfer of the 36 beds and  
15 the establishment of the Fort Mill Medical  
16 Center, the 100-bed facility, would have an  
17 adverse impact on operation of Piedmont Medical  
18 Center?

19 A: I did not make that finding of that you would  
20 have an adverse impact. It would have a  
21 positive impact.

22 Q: Why was that?

23 A: Because of the fact that it would actually, it  
24 would reduce some of the out-migration in the  
25 county. And it would attract patients that

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001065

1 would be new residents that would be moving  
2 into the rapidly growing area of Fort Mill.  
3 And those patients, if they needed  
4 sophisticated services would be transferred to  
5 the parent hospital, Piedmont Medical Center  
6 for those tertiary services.

7 Q: Okay. Dan, let's flip to the next paragraph on  
8 the same page 899 and the report. And, Mr.  
9 Grice, read into the record this section that's  
10 highlighted, please?

11 A: Additionally, there's an issue of critical mass  
12 and critical care. For a given population of  
13 patients and the physicians who possess the  
14 knowledge and skills to offer the required  
15 care, utilization of the three diagnostic  
16 therapeutic cardiac catheterization  
17 laboratories which operate at over a 100  
18 percent at Piedmont Medical Center and the  
19 willingness of York County residents to stay in  
20 York County for this type of critical service  
21 attest to the fact that the development of the  
22 Fort Mill Medical Center rather than a  
23 competing applicant will allow the current  
24 provider to expand current services and develop  
25 more complex tertiary services as the critical

1 mass of patients reached/served.

2 Q: And what's the purpose of your point concerning  
3 the critical mass of patients?

4 A: Well, when I used that term, a lot of times I'm  
5 thinking about really a good number of beds  
6 available at, you know, the new satellite too.  
7 I mean, if that's what you're referring to. I  
8 know, let me look at that one more time as you  
9 were saying it.

10 Q: Complex tertiary services.

11 A: It's when a critical mass of patients is  
12 reached. In other words, that critical mass of  
13 patients that you don't want to lose, that you  
14 don't want to out-migrate. They may need those  
15 type complex services.

16 Q: Okay. Now, let's pick up the last section of  
17 the paragraph. Read that if you will, please?

18 A: If a North Carolina-based provider is approved  
19 an inevitable dilution of that critical mass  
20 would occur as patients choose to stay with  
21 and/or are referred to that specific provider's  
22 tertiary facility in Charlotte. In the  
23 Charlotte scenario, the ability and need would  
24 attract highly trained sub-speciality  
25 physicians who live, work selectively in York

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 County and South Carolina, would be  
2 compromised. Allowing the development of the  
3 Fort Mill Medical Center would enable growth of  
4 services, expansion of physician staff with  
5 critical skills and allow a more equitable  
6 comparison to the large providers in North  
7 Carolina. It is more important to have more  
8 cardiac surgeons, neurosurgeons, infectious  
9 disease specialists, oncologists, et cetera,  
10 living and working in York Count in South  
11 Carolina than to have those positions filled in  
12 Charlotte.

13 Q: Why did you believe that to be true?

14 A: Well, I think with the growth of York County  
15 and to maintain the high level services of the  
16 Piedmont Medical Center that is true. You do  
17 not want to lose those type of tertiary-type  
18 positions who would move out of state if the  
19 existing provider there would continue to lose  
20 services.

21 Q: All right. Now, let's move onto the current  
22 updated applications that were filed, Mr.  
23 Grice, after you left DHEC. You said earlier  
24 that you reviewed the updated applications, is  
25 that right?

- 1 A: Yes, sir.
- 2 Q: And have you reviewed the utilization data for  
3 the period between 2005 and 2010?
- 4 A: I have.
- 5 Q: And what have you observed about that?
- 6 A: Well, during that period of time there has been  
7 more out-migration of patients that are going  
8 from York County across state lines.
- 9 Q: Okay. Now, how does your opinion now, that  
10 you've developed purposes of this hearing  
11 process, compare to the opinion you developed  
12 when you were reviewing these applications in  
13 2006?
- 14 A: It's much more confirmed and I feel very  
15 comfortable with our decision back in 2005,  
16 because I think this is the prime example why  
17 I saw the need to approve this originally in  
18 2005. I think this confirms that decision.
- 19 Q: All right. Now, let me shift your attention to  
20 the decision that was made by Ms. Brandt in  
21 2011. Have you reviewed her decision?
- 22 A: Yes, sir.
- 23 Q: Have you developed your opinion of it?
- 24 A: Yes, sir.
- 25 Q: All right. You developed a Demonstrative which

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 outlines that?

2 A: Yes, sir. I have.

3 Q: All right. Dan, let's pull up DHEC's 131. And  
4 does this reflect your opinion, Mr. Grice?

5 A: Yes, sir.

6 Q: And review it, if you would for the Court?

7 A: Well, I think the most DHEC decision failed to  
8 recognize the connection between the existing  
9 Piedmont Medical Center and the Fort Mill  
10 Medical Center and the quality of healthcare  
11 services in York County. Because I think it's  
12 very important that, you know, that Fort Mill  
13 Medical Center is going to help the entire  
14 system there. It's actual going to maintain  
15 the utilization of high quality services and  
16 the tertiary services at Piedmont and the  
17 quality of healthcare in that county. The  
18 second, they failed to recognize the adverse  
19 impact of a Charlotte area-based hospital  
20 system in Fort Mill. And third, it failed to  
21 apply the project review criteria consistently  
22 with the Department's historical practice.

23 Q: Okay. Now, are you prepared to offer opinions  
24 related to each of those issues?

25 A: Yes, sir.



1 Q: Okay. Let's begin generally, as you know,  
2 section 307.2 of the DHEC regs require the  
3 Department to consider competing applications  
4 among other things and how they comport with  
5 the purposes of the Act. Let's turn to the  
6 purposes and look at Demonstrative 92.

7 **THE COURT:** Mr. Muller?

8 **MR. MULLER:** Your Honor, when I took -- this would  
9 be another example. When I took Mr. Grice's  
10 deposition and I asked him for a list of his  
11 opinions, he could not give them to me. As a  
12 result, I was forced to go through the review  
13 criteria to elicit what opinion he had on the  
14 review criteria in the decision letter. And  
15 now that we're at trial, he's prepared a list  
16 that's far more expansive than that. So my  
17 objection to it is, at his deposition he was  
18 not prepared to give me any of this  
19 information, now he's giving it to the Court.  
20 If the Court would like, I can show you that  
21 the testimony where he said that.

22 **MR. ANDREWS:** Your Honor, our view is that's the  
23 completely the matter of cross examination.  
24 This is going to be a general review of the  
25 purposes. I can ensure you there was a

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 complete and thorough review of all the project  
2 review criteria. We're not there yet. I don't  
3 know that Mr. Muller ever asked about the  
4 purposes of the Act. If he did, then Mr. Grice  
5 could respond, he's going to be bound by, you  
6 know, whatever or subject to cross and whatever  
7 his responses are. If he didn't then he  
8 didn't. He didn't have a, you know, developed  
9 report or written report like the other experts  
10 did. And he responded to the questions asked  
11 him.

12 **MR. MULLER:** Of these three topics, the only one  
13 that he addressed was the last one, I believe.  
14 And obviously, adverse impact, but only to the  
15 extent of this project review criteria. And he  
16 was very vague. In fact, the response, I seem  
17 to recall the response he gave me was, you  
18 know, whatever they asked me, was the response.  
19 As opposed to providing me with this list, so  
20 I would have an opportunity to explore these  
21 various areas of what is now expanded  
22 testimony.

23 **MR. ANDREWS:** Your Honor, we appreciate the ability  
24 to go through the examination, it's not  
25 expanded at all. That's a summary of the

1 project review criteria. He was examined by  
2 Mr. Muller and by Ms. Biggers about the all the  
3 project review criteria in which he disagreed  
4 with Ms. Brandt. And Ms. Biggers asked him  
5 about the others. I think, Mr. Muller's  
6 examination actually was limited to those in  
7 which there was a finding against Piedmont.  
8 Ms. Biggers supplemented that with what about  
9 the others. He responded to all of them. And  
10 again, he was there as a deponent prepared to  
11 respond and give his testimony concerning his  
12 opinions and he did that. And, you know, I  
13 don't know that it will be fruitful to review  
14 several hundred pages of his testimony at  
15 deposition for purposes of proving the  
16 different elements of this. That's what would  
17 be necessary to address the issues now. And I  
18 suggest cross examination is the time to do  
19 that.

20 **MR. MULLER:** I can show you the exact -- and it's a  
21 very short back and forth with Mr. Andrews,  
22 where I asked him for a list of the opinions  
23 and he said, well, you will get that orally.  
24 He doesn't have it in writing, you won't  
25 receive it writing and I'm not required to

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 provide it to you in writing. I mean,  
2 essentially, here's that he confined it to the  
3 review criteria. And, Your Honor -

4 **THE COURT:** At his deposition. Did Mr. Grice  
5 confine his opinions at his deposition to the  
6 third bullet on that Demonstrative Exhibit?

7 **MR. MULLER:** This is only a matter of three pages,  
8 if the Court wants to review it? I can provide  
9 the Court with a copy of his deposition. You  
10 can see how this issue was addressed at his  
11 deposition because he wasn't giving me a list  
12 as he's doing here today. He was -- and this  
13 is a matter of probably three pages of his  
14 deposition, Your Honor. It's not very  
15 extensive, but I don't mean to say things that  
16 are out of order, but in probably three pages,  
17 or maybe even two pages, you can read what the  
18 back and forth was between me and Mr. Andrews,  
19 with respect to this issue.

20 **MR. ANDREWS:** And I would disagree with that.  
21 Because what we need to do is then add Ms.  
22 Biggers' examination of it and then some  
23 additional work beyond that. So it's not, I  
24 don't know even the pages but I can assure you  
25 it's beyond that. Let me do, if I could offer

1           this to you, three lines related to this. On  
2           page 18, line 21.

3   **THE COURT:** Of his deposition?

4   **MR. ANDREWS:** Yes. It is his deposition.

5   **MR. COURT:** You're referring to ---

6   **MR. ANDREWS:** Line 18, the question from Mr. Muller  
7           to Mr. Grice: Can you just recite the line, it  
8           should be at the top of the document, the areas  
9           about which you're expected to testify? Mr.  
10          Grice's responds: Okay. Mr. Grice will offer  
11          opinions in the area of healthcare planning and  
12          finance. Mr. Grice will testify that  
13          Piedmont's application, as originally filed  
14          then is updated, most fully complied with  
15          requirements, goals, purposes of the CON Act,  
16          the Health Plan, and DHEC regulatory criteria.  
17          We identified him -- that was a reference to  
18          our pleading response to the interrogatory and  
19          the preliminary statement. And which we  
20          identified that as the range of matters that  
21          Mr. Grice would testify about. And had Mr.  
22          Muller asked him about his opinions about the  
23          purposes, he would have received a response.  
24          He didn't ask him about that. We had already  
25          identified that. So for to complaint surprise

1 about the purposes of that doesn't comport in  
2 our view with the representation he made at the  
3 outset.

4 **MR. MULLER:** If I can briefly read you -- my  
5 question to him was: Mr. Grice I'm trying to  
6 understand Mr. Andrews' statement. His  
7 statement was basically about the lack of a  
8 list. I take it that your intent at trial is  
9 to go over DHEC's September 9, 2011, decision  
10 letter and explain in what areas you agree with  
11 DHEC and what areas you do not agree with them,  
12 is that a correct statement? His answer: You  
13 know, I will answer whatever questions are  
14 given to me during the trial. You know, I  
15 don't know exactly how all this is going to be  
16 done but I know that you will probably -- Mr.  
17 Andrews will have direct questions and you will  
18 cross examine. But today, I'll try to answer  
19 what you've asked me, you know. And then Mr.  
20 Andrews, again, says he's going to offer  
21 opinions about the purposes of the program  
22 identified in the regs from the CON and then he  
23 goes on to say that he doesn't have to give me  
24 a list. Which at that point in time that we  
25 started going through the project review

**CREEL COURT REPORTING, INC.**  
1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 criteria because his previous answers were so  
2 vague. And then Ms. Biggers asked him the same  
3 questions. So we were focused on the decision  
4 letter and the review criteria, not on what  
5 appears to be expanded testimony.

6 **MR. ANDREWS:** Your Honor, frankly this seems like a  
7 lot of to do about nothing for this reason.  
8 The purposes of the Act are simply a summary of  
9 the project review criteria or the criteria are  
10 the embellishment of the purposes of the Act.  
11 There's a complete overlap between the two.  
12 And the very general statements I intend to  
13 elicit at this point concerning the purposes  
14 are consistent with and, in fact, I hope you  
15 don't find it duplicative but you probably will  
16 recognize it entirely overlaps the project  
17 review criteria about which he's already  
18 testified. This is just essentially a summary  
19 as the purposes are a summary of the testimony  
20 he'll provide in more detail about the project  
21 review criteria.

22 **THE COURT:** All right. Mr. Muller, I'm going to  
23 overrule your objection. Mr. Andrews, you may  
24 continue.

25 **Q:** All right, sir. Now, let's turn to the

1 purposes of the Act. Mr. Bupp, the  
2 Demonstrative is 92. Mr. Grice, you're  
3 familiar with these purposes?

4 A: Yes, sir.

5 Q: And review your opinions for the Court related  
6 to them in this case based on your review of  
7 the updated application?

8 A: Okay. My opinion, the purposes of the CON  
9 program, number one, promote cost containment.  
10 In my opinion, I would say each application has  
11 demonstrated based on their project, you know,  
12 they can promote cost containment in building  
13 a cost-effective facility. But the other  
14 three, when we say prevent unnecessary  
15 duplication of healthcare facilities and  
16 services, the one that best meets that is the  
17 Fort Mill Medical Center. And the reason is,  
18 that if we can establish that facility, the  
19 Fort Mill Medical Center developed by Piedmont  
20 Medical Center, it is going to prevent patients  
21 that would go to another facility built there  
22 by another provider like Carolinas Hospital  
23 System who might refer their patients, their  
24 patients any tertiary care services to  
25 Charlotte. The Fort Mill Medical Center will

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



1 be able to refer their patients, their patients  
2 there to the Piedmont Medical Center for the  
3 tertiary services. So I would look at the fact  
4 that there's a duplication, in my opinion that  
5 we would have with not properly utilizing the  
6 availability of services at Piedmont, when the  
7 patients are going to Fort Mill because of  
8 another facility sending the patients over  
9 there. Guide the establishing of healthcare  
10 facilities and service that best meet public  
11 needs. In this case, here again, I see that as  
12 the Fort Mill Medical Center best meeting that  
13 because of the fact it really, as we've  
14 mentioned, it would benefit the York County,  
15 the Piedmont Medical Center, that facility  
16 that's been built there and the population  
17 growth in that county. And also, the last one,  
18 ensure that high quality services are provided  
19 in health facilities in this state. And here  
20 again, it kind of reminds me of what I went  
21 through in that senate meeting, we've got to  
22 look at that we are planning and ensuring high  
23 quality services provided in South Carolina  
24 whenever possible. If we can make decisions  
25 that would benefit our state facilities.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001079

1 Q: All right. And what's your opinion, Mr. Grice  
2 concerning which of the two applicants best  
3 then meets the overall purposes of the Act.

4 A: The application by the Fort Mill Medical Center  
5 best meets the purposes.

6 Q: All right. Now, let's turn to Ms. Brandt's  
7 letter approving Carolinas in the updated  
8 applications, which is the Joint Exhibit 1(B),  
9 page 1017. All right. Have you reviewed Ms.  
10 Brandt's letter?

11 A: Yes, sir. I have.

12 Q: All right. Let's turn to the second page where  
13 she identifies the specific issues that she  
14 reports in her letter. Let me draw your  
15 attention first to the second paragraph. Would  
16 you read that into the record?

17 A: Yes, sir. The Department is concerned with the  
18 decline in utilization of Piedmont Medical  
19 Center. The heavy dependance of recapturing  
20 significant lost market share, which would  
21 require a significant reversal of market trend.  
22 The impact of redirecting existing patients  
23 away from Piedmont Health Center and  
24 substantial cost of the project and the ability  
25 to finance the project.

1 Q: All right. And what's your opinion of the  
2 finding that Ms. Brandt made here?

3 A: I don't agree with that finding at all.

4 Q: Why?

5 A: Well, they say the Department's concerned with  
6 the declining utilization of Piedmont Medical  
7 Center. Well, there's a reason for that  
8 declining utilization, of course, because of  
9 the fact that so many patients are being  
10 redirected out of state. They say, the heavy  
11 dependance of recapturing significant market  
12 share, significant lost market share, which  
13 would require significant level of reversal of  
14 market trend. Well, that, of course, could be  
15 repaired, you know, with the development of the  
16 Fort Mill Medical Center. And also we're  
17 looking at the impact of redirecting existing  
18 patients away from Piedmont Medical Center. I  
19 don't see that as happening. The Fort Mill  
20 Medical Center is not going to redirect  
21 patients away Piedmont Medical Center.  
22 Ultimately, it's going to really benefit  
23 Piedmont Medical Center in redirecting patients  
24 to that facilities as well as capturing a lot  
25 of the out-migration. The substantial cost of

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 the project, the total project cost is greater  
2 for Fort Mill. Well, there's a reason for that  
3 and it's actually a very effective plan for  
4 building 100 beds, rather than 64. Ability to  
5 finance the project, I do not agree with that.  
6 Each applicant, in my opinion, meets criteria  
7 for the ability to finance.

8 Q: Okay. All right. Let's move to the third  
9 paragraph, the next paragraph that is, included  
10 in Ms. Brandt's letter. And would you read  
11 this into the record?

12 A: If Carolinas Medical Center-Fort Mill, the  
13 proposed project demonstrated that it's current  
14 significant level of market share and  
15 utilization will be sufficient to justify the  
16 implementation of the project. Appears to be  
17 financially feasible and proposes to shift  
18 current market share to a facility in South  
19 Carolina, resulting in less adverse impact to  
20 existing facilities.

21 Q: Do you agree with that statement?

22 A: No, sir, I do not. Here again, that -- the  
23 project by Carolinas Medical Center is not  
24 going -- I mean, it could be considered  
25 financially feasible but it's not going to

1 shift the current market share to a facility --  
2 well it will shift its own market share to a  
3 facility in South Carolina. In other words,  
4 it's not going to result in less adverse impact  
5 for existing facilities like the existing  
6 facility in South Carolina, Piedmont Medical  
7 Center.

8 Q: In all of your years of working in the CON  
9 program, have you ever seen a hospital built  
10 that did not attract new market share?

11 A: No, sir. Every new hospital is going to  
12 attract new market share.

13 Q: Why is that?

14 A: A new hospital is going to attract existing  
15 residents as well as new residents who move to  
16 the area. It's just more attractive, it's one  
17 that, you know, people want to go to and try  
18 even if they're going to have to drive a few  
19 extra miles.

20 Q: Okay. Now, let's look quickly at the first of  
21 the three paragraphs in Ms. Brandt's decision  
22 letter. Do you notice that these refer to  
23 project review criteria that Ms. Brandt found  
24 that CMC best meets?

25 A: Yes, sir.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: Okay.

2 A: And she listed the specific ones and I don't  
3 agree with that either.

4 Q: All right. We'll go into more detail on that  
5 in a moment. So let's move to your review of  
6 the CON criteria and did you review these for  
7 purposes of developing opinions related to  
8 those that Ms. Brandt reached in her review of  
9 the application?

10 A: Yes. Yes, I went through all of the criteria,  
11 yes.

12 Q: Okay. Have you developed a side-by-side  
13 comparison as a Demonstrative?

14 A: Yes, sir.

15 Q: All right. Dan, let's pull up Demonstrative  
16 170, please. And, Mr. Grice, describe what's  
17 presented in this Demonstrative.

18 A: In this particular one, these are all of the  
19 applicable project review criteria.

20 Q: In the left-hand column?

21 A: Yes, sir. They were listed as being most  
22 important in the review of these applications.

23 Q: Okay.

24 A: And then, on the right-hand side, we've got the  
25 name of the criteria and a brief summary of

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1           what it looks to and on the right-hand side, we  
2           see as to whether it was considered to be  
3           consistent. All -- we were consistent with  
4           both Ms. Brandt and ---

5       Q:    Sorry, let's just take it one at a time. How  
6           about Ms. Brandt's, what do you have there?

7       A:    Okay. Ms. Brandt's, we've got whether she  
8           considered both projects to be consistent or  
9           only one to be consistent with the various  
10          criteria.

11       Q:    Or what, if she's found, for example on CHS on  
12           one could that mean that's the only one or  
13           that's the one that best meets the criterion?

14       A:    That would be the one that best meets the  
15           criteria.

16       Q:    Okay. And what have you done in the right-hand  
17           column under your name?

18       A:    The same thing. For each criteria that's  
19           listed, I have put whether I saw it consistent,  
20           were both applications consistent or only one  
21           and, of course, putting the initials of the one  
22           facility I saw to be consistent.

23       Q:    And the entries that are not highlighted, are  
24           those where you've agreed with Ms. Brandt?

25       A:    Yes, sir.

- 1 Q: And the entries where they're green, what do  
2 they reflect?
- 3 A: That reflects a disagreement.
- 4 Q: And what's the nature of the disagreement?
- 5 A: It would be that I saw either both met or ---
- 6 Q: No, just the green.
- 7 A: I'm sorry.
- 8 Q: Just the green.
- 9 A: I'm sorry. That's where both met.
- 10 Q: Where you found both met?
- 11 A: Yes, sir.
- 12 Q: And Ms. Brandt found what?
- 13 A: That Carolinas Hospital System met it best.
- 14 Q: Okay. And where you have a red PMC, what does  
15 that reflect?
- 16 A: That reflects where I saw that Piedmont Medical  
17 Center met it better than Ms. Brandt's  
18 determination of Carolinas Hospital System.
- 19 Q: Okay. All right. Now, with that, let's go  
20 through these and we'll focus just on the  
21 criteria in which there has been, based on your  
22 review you disagree with Ms. Brandt's finding,  
23 okay?
- 24 A: Yes, sir.
- 25 Q: All right. Let's pick up the first one then,

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



1           which appears to be 2(d), would that be  
2           correct?

3       A:    Yes, sir. That is.

4       Q:    All right. Then let's look -- let me take you  
5           to the regulation so we can have that fresh in  
6           all our minds. We can review what that  
7           provision consists of. Dan, if you'll call  
8           that up, please. Mr. Grice, if you'll read  
9           into the record, which would be regulation  
10          section 802.2(d).

11       A:    Okay. It says in the case of a reduction,  
12           relocation or elimination of a facility of  
13           service, the applicant should address the need  
14           that the population presently has for the  
15           service, the extent for which that need will be  
16           met by the proposed relocation or by  
17           alternative arrangements and the effect of the  
18           reduction or elimination or relocation of the  
19           service on the ability of low income persons,  
20           racial and ethnic minorities, women, the  
21           elderly, handicapped persons and other  
22           underserved groups to obtain needed healthcare.

23       Q:    Okay.. Now, what's the purpose of this section  
24           of the criteria, Mr. Grice?

25       A:    Well, the purpose of this is if you're going to

1 have, you know, as it says reduction,  
2 relocation, elimination of service, you want to  
3 make sure that the applicants address that that  
4 change is, is not going -- it's not going to be  
5 problematic on the effect of the services to  
6 the ability of low income persons, women, the  
7 elderly, handicapped and other underserved  
8 groups to obtain healthcare services.

9 Q: All right. Based on your review of Piedmont's  
10 updated material, do you see any evidence of  
11 any medically underserved group would be harmed  
12 by the proposed relocation of 36 beds?

13 A: No, sir. I have not.

14 Q: What is your opinion concerning the transfer of  
15 the 36 beds?

16 A: I think it's a good move. It's certainly legal  
17 and appropriate and I think it is the  
18 appropriate move to make in this case with  
19 Piedmont developing that satellite hospital.

20 Q: Okay. Now, what would be an example where  
21 there would be harm to medically underserved  
22 group by the relocation of beds?

23 A: Well, if beds were taken from an area where  
24 there was, let's say, a very elderly population  
25 or population that met some of the consistent

1 with what's mentioned in that criteria and  
2 moved to an area of the county where you're  
3 going to serve a different type population,  
4 that could be problematic. Where the  
5 underserved groups would actually lose access,  
6 you know, to needed services and you have moved  
7 somewhere them else. And that could be the  
8 case, not only of relocation but even  
9 elimination.

10 Q: Okay. Now, have you analyzed the transfer of  
11 beds in other satellite hospitals?

12 A: Yes, sir.

13 Q: Okay. Now, how often does that happen?

14 A: As far as the?

15 Q: Transfer of beds to establish satellite  
16 hospitals?

17 A: In most, most satellite applications there is  
18 some transfer of beds.

19 Q: Let's actually take a look back to your  
20 Demonstrative 110, of your list of more recent  
21 satellite facilities and the last one, and you  
22 identified the hospitals that provided the  
23 beds. This one has adds the middle column,  
24 what does this consist of?

25 A: That is whether the beds were from a transfer

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 or a need in the Health Plan or both.

2 Q: Okay. And what's been your experience and the  
3 experience of the Department over the last  
4 decade concerning the use of transfers, beds  
5 that are transferred from the parent facility  
6 to establish satellites?

7 A: It's been -- that's been one of the main ways  
8 that satellite hospitals have been developed,  
9 from using that method of a transfer.

10 Q: Okay.

11 A: Or need.

12 Q: Now, with regard to the proposed transfer of 36  
13 beds by Piedmont to add to the 64 beds  
14 identified as needed in the Plan, are you aware  
15 of how many beds were available to be  
16 transferred to Piedmont?

17 A: Yes, well, I know that I think 19 of the beds  
18 may have not been utilized, 17 were  
19 understaffed, but if I understand your question  
20 correctly, 36 were available up there.

21 Q: Was there a high demand being placed on these  
22 beds?

23 A: No, sir. Not at all.

24 Q: And subsequent to the 2005 application, have  
25 you reviewed the average use of the beds?

1 A: Yes. And it was a low utilization.

2 Q: Okay. All right. Now, let me then ask you,  
3 you already stated your opinion concerning  
4 whether the transfer of the 36 beds would be  
5 justified. Which -- what's the number -- which  
6 applicant do you believe best meets the need  
7 related to the number of beds that would be  
8 most helpful to address the out-migration of  
9 the area, 64 or 100?

10 A: One hundred.

11 Q: All right. Now, do you agree then with regard  
12 to section 2(d), did Piedmont, in your opinion  
13 justify the relocation of the beds?

14 A: Yes.

15 Q: Okay. All right. Now, let's then, let me ask  
16 you to move to the next section. Section 2(e)  
17 of the regs, Dan, if you could pull that out.  
18 What's the provision relate to, Mr. Grice?

19 A: Okay. This has to do with the utilization,  
20 this is going to relate to a new facility. It  
21 says: Current and or projected utilization  
22 should be sufficient to justify the expansion  
23 or implementation of the proposed service. So,  
24 that's, that's looking at utilization, you  
25 know, projecting the need, et cetera. It's

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 going to justify the expansion.

2 Q: And do you believe that either or both parties  
3 proposed applications would be justified based  
4 on the demand for services in the Fort Mill  
5 area?

6 A: Yes.

7 Q: Which is it? Either or both?

8 A: Both..

9 Q: Okay. All right. Why is that?

10 A: Well, I mean there is, regardless of which  
11 applicant were to build a hospital there, you  
12 know, there is certainly a growing population.  
13 And so either facility would be financially  
14 feasible and, you know, with -- but certainly  
15 the Piedmont Medical Center in Fort Mill is  
16 better, you know, for the county. But the  
17 current projected utilization would be  
18 sufficient.

19 Q: Okay. So, Dan, let's go out to Demonstrative  
20 117. And look at those last two provisions,  
21 2(d) and 2(e) and what's your opinion  
22 concerning -- now with regard to those two  
23 provisions, how would you assess the  
24 application to the two parties?

25 A: I would find both applicants consistent with

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1           those criteria.

2       Q:    Okay.   All right.   Let's move on then to the  
3           next section of the regulations, Mr. Grice, and  
4           look at section 3.   Now, that's got eight sub-  
5           parts.   Let's focus on, Dan, if you would  
6           scroll down and look at the ones that were the  
7           subject of any determination by Ms. Brandt  
8           where she found that Carolinas best met them.  
9           Let's start with section 3(a).

10       A:   All right.

11       Q:   Now, this one Ms. Brandt found Carolinas best  
12           met.   You've determined, based on this  
13           Demonstrative that Piedmont best met it, is  
14           that correct?

15       A:   Yes, sir.

16       Q:   All right.   Let's read the reg and you tell us  
17           why.

18       A:   Okay.   3(a) Duplication and modernization of  
19           services must be justified.   Unnecessary  
20           duplication of services and unnecessary  
21           modernization of services will not be approved.  
22           And my reason for saying that Piedmont Medical  
23           Center is the only one that will meet this is  
24           because I see the development of a satellite by  
25           another entity, and out-of-state entity not

1           Piedmont Medical Center, as being unnecessary  
2           duplication of services because of the fact  
3           that here again, Piedmont Medical Center has  
4           been developed for over 30 years there. The  
5           tertiary services there are declining and to  
6           maintain and to support and to benefit those  
7           services in the future, we're going to need a  
8           new hospital and another provider like  
9           Carolinas Hospital System, will really be  
10          forwarding patients across state lines for  
11          those tertiary services which will be a  
12          duplication of services currently offered at  
13          Piedmont Medical Center.

14       Q:   Mr. Grice, if it were instead of Carolinas, if  
15           it were Palmetto Health System that were  
16           proposing to build a hospital in Fort Mill and  
17           to shift patients needing complex care to  
18           Columbia instead of to Charlotte, would your  
19           analysis about the effect on Piedmont be any  
20           different?

21       A:   No, sir.

22       Q:   Why not?

23       A:   Because here again, you have another provider  
24           from another area outside of that region, that  
25           would be taking the patients away. Removing

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



1 patients from the county and they would be  
2 getting -- let's say Palmetto here in Columbia  
3 had a satellite up there, they would be  
4 referring their tertiary patients down to  
5 Columbia to Palmetto Health.

6 Q: So, is your principal concern that Carolinas is  
7 located out of state or that it's located  
8 outside of York County and that is the basis  
9 for the opinion you saw from 3(a)?

10 A: It's outside of York County.

11 Q: Okay. And let's move on to 3(b). Read that  
12 into the record. Dan, pull that regulation up,  
13 please.

14 A: The proposed service should be located so it  
15 may serve medically underserved areas or an  
16 underserved population such as elderly and  
17 should not unnecessarily duplicate existing  
18 services or facilities in the proposed service  
19 area. And this relates very much to what I  
20 just testified to a few moments ago, that  
21 should we have this proposed service of a new  
22 satellite from a facility that's outside the  
23 county, it is going to unnecessarily duplicate  
24 some existing services in that service area  
25 particularly relating to the tertiary services

1           that will be really damaged by -- at Piedmont  
2           Medical Center.

3       Q:   Now, does the 64-bed satellite hospital or free  
4           standing hospital in Fort Mill, that would be  
5           owned by Carolinas if this application were to  
6           be approved in and of itself create an  
7           unnecessary duplication?

8       A:   No, sir.   That would not.   I'm looking at  
9           unnecessary duplication as a fact that we are  
10          going to have -- if that hospital were there,  
11          they are going to gain utilization for patients  
12          in the Fort Mill area.   They are going to refer  
13          patients to their main hospital in Charlotte  
14          and Piedmont Medical Center is going to lose  
15          capacity and there will be excess beds.   There  
16          will be closed rooms there.   That even though  
17          right now the utilization is up some, it will  
18          be worse, so that will even be unnecessary  
19          duplication.

20       Q:   Now, aren't referrals already going outside of  
21           York County to Charlotte area hospitals?

22       A:   Yes, sir.

23       Q:   So, why is it unnecessary duplication if it's  
24           already happening?

25       A:   Well, certainly, this is something we can't

- 1 continue. I think we need to have that new  
2 Piedmont Medical Center there and because of  
3 the fact that -- it's going to really increase  
4 the utilization, you know, of the Piedmont  
5 Medical Center and it will grow too. I mean it  
6 will be a large facility, 100 beds that I think  
7 in that rapid growing area will, within five or  
8 six years be full.
- 9 Q: All right. All right. Let's go back, Dan, to  
10 Demonstrative 117. And look at the next set of  
11 criteria in this section. All right. We just  
12 reviewed your opinions concerning 3(a) and  
13 3(b), Mr. Grice. On (c), (d), and (e), you and  
14 Ms. Brandt apparently agree. So let's then  
15 look at 3(f) and (g) and then we'll move to  
16 (h). Okay?
- 17 A: Okay.
- 18 Q: Now, just in summary, Ms. Brandt found in favor  
19 of Carolinas on these two matters and what's  
20 your opinion?
- 21 A: I think both of them meet these two criteria.
- 22 Q: All right. And let's pull the criteria up and  
23 Mr. Grice, read them into the record.
- 24 A: Okay. (f) states: The applicant should  
25 address the extent to which all residents of

1 the area and particularly the low income  
2 persons, racial and ethnic minorities, women,  
3 the elderly, handicapped persons and other  
4 medically underserved groups are likely to have  
5 access to those services being proposed. And  
6 (g): The facility providing those services  
7 should establish provisions to ensure that  
8 individuals in need a treatment as determined  
9 by a physician have access to the appropriate  
10 service regardless of ability to pay.

11 Q: All right. What are the purposes of these  
12 related provisions?

13 A: Well, the purposes are that we want to ensure  
14 that medically undeserved groups are -- have  
15 access to healthcare. For example, DHEC  
16 requires indigent care plans. And that's, you  
17 know, each applicant has got to provide that.  
18 I don't see these criteria as not being met by  
19 either one of the applicants.

20 Q: All right. And do you know the basis, based on  
21 her report, why Ms. Brandt awarded the check  
22 here to Carolinas?

23 A: I'm not sure.

24 Q: Let me help you with ---

25 A: Okay.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: Let's see if I can refresh your memory on this.  
2 Do you remember how -- if there was a change in  
3 Carolinas' proposed indigent care service in  
4 its first application?

5 MR. MULLER: Objection, Your Honor. He's leading  
6 the witness and basically suggesting an answer  
7 to him.

8 MR. ANDREWS: No, I'm not, Your Honor. It's not  
9 leading. Let me finish the question. Does he  
10 remember if there was a change was the  
11 question. I didn't -- I wasn't going to propose  
12 what the change was.

13 MR. MULLER: I believe he was saying exactly what  
14 the change was so that the witness would be --  
15 know where he was headed.

16 THE COURT: Let's do this. Okay. If you could just  
17 re-ask the question and then we'll go from  
18 there. And then Mr. Muller, if you still have  
19 an objection, please note your objection.

20 MR. ANDREWS: Didn't finish it and I will this time.

21 THE COURT: All right. Thank you, Mr. Andrews.

22 Q: So, do you recall if there was a change in  
23 Carolinas' indigent care from its original  
24 application to the updated application?

25 THE COURT: All right. You can answer.

1 MR. MULLER: No objection.

2 THE COURT: All right. Thank you.

3 A: Yeah, there was. It was, I think the indigent  
4 care proposed by Carolinas was approximately  
5 double what Piedmont was and I guess one of the  
6 reasons I didn't put a lot of emphasis on it  
7 was because this was not reasonable at all. I  
8 mean, every applicant has to give an indigent  
9 care plan and I even remember when that was  
10 established in 1984. That was a big issue with  
11 the Department of Health and Environmental  
12 Control started and I worked applicants to  
13 determine what reasonable rates were and every  
14 applicant's got to give it, but you want to  
15 have a rate that you can live with and not some  
16 excessive rate. And so, I think Ms. Brandt at  
17 DHEC, she saw the higher indigent care amount  
18 being provided by Carolinas as being superior,  
19 more for that reason that the criteria. Those  
20 two criteria better than Fort Mill Medical  
21 Center.

22 Q: Have you looked at Carolinas' and Fort Mill's  
23 proposed rates and compared them with the  
24 proposed rates of other new hospital  
25 applications you've reviewed in the last ten

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1           years?
- 2   A:    Yes, sir.  I have.
- 3   Q:    Have you developed a Demonstrative on this?
- 4   A:    Yes, sir.
- 5   Q:    Now, let's pull up Demonstrative 118.  And
- 6           what's presented here, Mr. Grice?
- 7   A:    These are satellite hospitals that have been
- 8           approved in recent years in South Carolina.
- 9           And in the budgets that they presented, of
- 10          course they have their percentage of gross
- 11          revenue allocated to indigent care and we see
- 12          how much that was, that was allocated and ---
- 13   Q:    Would you be specific and read, state in the
- 14          record what that is?
- 15   A:    Yes.  The indigent care percentage of gross
- 16          revenue for year three at Carolinas Medical
- 17          Center-Fort Mill was 6.4 percent.
- 18   Q:    How does that compare to the other applications
- 19          for new hospitals between 2005 and 2010?
- 20   A:    It is the highest rate.
- 21   Q:    By what margin?
- 22   A:    By, well, let's say the next highest rate is
- 23          like 4.3 percent, so it's even, let's see --
- 24          it's 50 percent higher, almost 50 percent
- 25          higher than the next rate, but it's 100

1           percent, over 100 percent higher than the Fort  
2           Mill Medical Center which is 3.1 percent.

3       Q:   And how does the Fort Mill Medical Center  
4           proposed indigent care load compare with those  
5           of other applicants on this Exhibit?

6       A:   It's very reasonable.   Other applicants have  
7           more, some have a little bit higher, but that  
8           is a -- the indigent care is a proposed rate.  
9           Hospitals really don't know how much indigent  
10          care will be provided. They have to have it in  
11          their budget and have that money available if  
12          it's needed.   In many cases they may not  
13          actually use that percentage.   But in my  
14          opinion, that's not a good reason to approve  
15          the applicant for the CON based on what their  
16          indigent care rate is going to be, if it's  
17          reasonable.   If it's zero, that would be a  
18          problem.   If it's too high, you know, that's --  
19          they can print that but I think, you know, I  
20          don't -- they both provided indigent care, they  
21          both meet the criteria and so I would say, you  
22          know, I think what Fort Mill gave is  
23          reasonable.

24       Q:   Do you think what Carolinas did is a reasonable  
25           rate based on your view of other new hospital

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



- 1 applications?
- 2 A: No, sir. I don't. I think it's too high.
- 3 Q: All right. But your opinion is that they meet
- 4 this criterion anyway, is that right? These
- 5 two criteria?
- 6 A: Yes, I mean they gave indigent care. They gave
- 7 an amount. I think it's high, but, you know,
- 8 DHEC certainly has the ability to go in that
- 9 hospital and monitor to see what it actually
- 10 was.
- 11 Q: Okay. All right. Well, let's move on then to
- 12 the next criterion. Dan, let's go back to
- 13 DHEC's 117. And that list, you found that both
- 14 applicants equally meet (f) and (g) and then
- 15 you have (h).
- 16 A: Yes, sir.
- 17 Q: And what is (h) and what have you found?
- 18 A: Okay. Impact on provider's service and the
- 19 medically underserved.
- 20 Q: And you found for Piedmont and we'll pull up
- 21 that reg and you explain your position.
- 22 A: Okay. Potential negative impact of the
- 23 proposed project upon the ability and or
- 24 resources of existing providers and medically
- 25 undeserved groups must be considered. Well,

1           you know, I think Ms. Brandt put that did not  
2           apply. That was not applicable, I think, was  
3           the determination.

4       Q:    Do you believe it should apply?

5       A:    Yes, sir. I think so.

6       Q:    Why?

7       A:    Well, we've got -- let's see, potential  
8           negative impact on this proposed project on the  
9           ability of services of existing providers and  
10          services for medically underserved groups must  
11          be considered. I think that's something you do  
12          have to consider. This -- let's say for  
13          example the Carolinas Medical Center project  
14          very well may have a potential negative impact  
15          upon existing providers that serve medically  
16          underserved groups, particularly if their  
17          financial situation is hard as it could be with  
18          Piedmont.

19      Q:    Who would be the existing provider?

20      A:    It would be Piedmont Medical Center.

21      Q:    All right. And in what way -- you've offered  
22           your opinion that Piedmont meets this better  
23           than Carolina. In what way do you believe that  
24           potential negative impact would occur?

25      A:    Well, what would happen here, the -- because

1 the Fort Mill Medical Center, which is going to  
2 really embellish the system of Piedmont in the  
3 county, I think that particular criterion we  
4 consider -- I think there would be less  
5 potential negative impact, you know, of this  
6 project upon the ability of the resources of  
7 existing providers like Piedmont Medical Center  
8 to be able to serve medically underserved  
9 groups.

10 Q: All right. Dan, let's go back and to  
11 demonstrative 117. You've offered your opinion  
12 concerning this last provision and, Your Honor,  
13 can we take a short break before we move onto  
14 the next set of criterion?

15 THE COURT: Any objection?

16 MR. MULLER: No objection.

17 THE COURT: Great. Let's take ten minutes in  
18 recess.

19 (Off the Record)

20 THE COURT: Mr. Andrews?

21 MR. ANDREWS: Thank you, Your Honor.

22 Q: All right. Mr. Grice, let's move on to the  
23 next criterion. Now, let's begin by going back  
24 then to Demonstrative 117. Looking at Ms.  
25 Brandt's decision concerning section 22 of 802

1 and I'm looking at what you believe, how you  
2 believe that should be decided. All right.  
3 She found for Carolinas and you believe this  
4 application, this provision should be applied  
5 in favor of Piedmont, is that right?

6 A: Yes, sir. That's correct.

7 Q: All right. Let's read the reg and go forward  
8 from there.

9 A: Yes, 22, relating to distribution. The  
10 existing distribution of the health service  
11 should be identified and the effect of the  
12 proposed project upon that distribution should  
13 be carefully considered to functionally balance  
14 the distribution of the target population.  
15 Now, my reasoning for assuming that Piedmont  
16 Medical Center best meets that criterion or  
17 meets it, you know, best meets it in this case  
18 for the Fort Mill Medical Center is because  
19 right now what we're seeing in this area is  
20 really an out-migration; they're losing. I  
21 think what this project is going to do, it will  
22 functionally balance the distribution of  
23 services to the target population or capture a  
24 lot of the out-migration when the new hospital,  
25 Fort Mill Medical Center, capture that with

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 referrals to the existing Piedmont Medical  
2 Center.

3 Q: And in contrast, how do you believe the  
4 application, or how do you believe the  
5 Carolinas Fort Mill Medical Center would affect  
6 the distribution of services in York County?

7 A: It would not functionally balance of  
8 distribution regarding the population, it's  
9 going to actually capture patients that live in  
10 the Fort Mill area and including existing  
11 patients that it currently refers to North  
12 Carolina, but also, will refer patients needing  
13 more complex services to Charlotte and the  
14 facilities up there that it owns.

15 Q: Now, when Ms. Brandt, as you read in your  
16 review of her decision letter, in the third  
17 paragraph, found that Carolinas would  
18 successfully shift market share to its proposed  
19 Carolinas Medical Center facility in Fort Mill.  
20 How do you believe that finding fits within  
21 this criterion?

22 A: I think it, you know, it doesn't fit this  
23 criterion. This criterion, I think is really,  
24 the Carolinas is inconsistent with this whereas  
25 the Fort Mill Medical Center is consistent and

1 better meets it.

2 Q: All right. Now, let's move on to -- actually,  
3 Dan, let's move back to 117. And take a look  
4 at the next section. Take it all the way  
5 through there. All right. Now, this next  
6 section of regulations, Ms. Brandt has found  
7 that for charges that both parties equally met  
8 them, is that correct?

9 A: That's correct.

10 Q: And with regard to all the others that  
11 Carolinas best met them and you have that both  
12 applicants equally meet them except for the  
13 last one, is that correct?

14 A: That is true.

15 Q: All right. Now, in general terms, let's look  
16 at Demonstrative 119. Now, this is what we've  
17 just discussed and what you've summarized, Mr.  
18 Grice. Generally speaking with regard to these  
19 criteria that are summarized here, what's the  
20 function of these provisions in your  
21 experience?

22 A: You know, the function here is to make sure  
23 that applicants meet these criteria to be  
24 financially feasible where they could develop  
25 this project to have, you know, appropriate

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 projection of expenses and utilization, and  
2 income that's appropriate. That they are  
3 financially feasible. They can identify  
4 appropriate methods of financing. And so, you  
5 know, most applicants meet this. I mean, if  
6 you have an application and require that you've  
7 got to demonstrate the method of financing and  
8 have an appropriate letter from a lending  
9 institution or bank that shows the money is  
10 available, it shows financial feasibility, et  
11 cetera.

12 Q: Excuse me. In your experience, have CON  
13 decisions turned on these issues?

14 A: No, sir. If you have an application, and you  
15 know, it's in, those are the ones that  
16 definitely you're going to have an application,  
17 everybody knows you've got to have information  
18 to make that consistent.

19 Q: Okay. Now, after a CON project is awarded,  
20 does the Department monitor the implementation  
21 of the project?

22 A: Yes, sir. We have the authority, but you know,  
23 we don't have the staff to do it. We can  
24 monitor the cost, you know, and like  
25 particularly the capital cost to make sure it's

1 within the range of what was approved, no, as  
2 far as going through and having someone audit,  
3 go through the finances, the budget, no, sir.

4 Q: All right. Now, there's a process for when a  
5 CON project is implemented that when it's  
6 complete that the applicant will report to the  
7 Department, is that right?

8 A: Yes, sir. That's the requirement.

9 Q: And what do they report back? What do they  
10 include in that report?

11 A: They include what all of their capital costs  
12 were for the development of the new project.

13 Q: Now, after the project is operational is there  
14 any report particularly after year two and  
15 three when these applications are reviewed that  
16 were an applicant reports its operational cost  
17 to the Department?

18 A: No, sir.

19 Q: Doesn't report its charges or expenses?

20 A: No, sir.

21 Q: Okay. Now, if even when they're reporting on  
22 capital costs of projects, when the applicant  
23 exceeds those cost, is the CON revoked?

24 A: No, sir. Generally, reducing costs overruns,  
25 a lot of times, we'll allow up to a ten percent

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



1 cost overrun with no penalty. If it's more  
2 than ten percent, you know, there will be a  
3 fine. A small fine.

4 Q: All right. Now, is that the process the  
5 Department applies if the project is  
6 competitive or even if it's not competitive?

7 A: Yes, sir. Anyone who receives a Certificate of  
8 Need, and develops the project, once it's  
9 complete they've got to give the final cost.

10 Q: Now, how does the Department protect itself  
11 against an applicant in the competitive process  
12 that wants to submit a lowball estimate to win  
13 the CON?

14 A: What we have to do in the review process is  
15 really compare similar projects that have been  
16 reviewed within a recent time frame, make sure  
17 that they appear to be reasonable. Just like  
18 talking about capital costs of hospitals, they  
19 have continued to go up. No doubt. We're  
20 looking at a million plus a bed now. But, you  
21 know, if a hospital comes in like an average of  
22 \$3 million a bed, it kind of raises a red flag.  
23 If it comes in a lot less, a million today, you  
24 get concerned. Even though I was involved in  
25 the program when the average cost was a hundred

1           thousand dollars a bed, so we've seen a lot of  
2           changes. But certainly, we want to make sure  
3           it's reasonable.

4       Q:   Now, in determining whether or not an applicant  
5           in a competing situation, and applicant's  
6           proposals are reasonable, do you compare them  
7           against each other or do you compare them  
8           against projects that the Department has  
9           already approved?

10      A:   Projects the Department has already approved.  
11           In competing applications, no two applicants  
12           are going to be exact. You know, in terms of  
13           cost per bed -- the costs are wide open, a lot  
14           variables that can occur. And it's a  
15           projection. You just want to make sure it's  
16           reasonable.

17      Q:   All right. So is lowest cost necessarily the  
18           best cost?

19      A:   No, sir. Not at all. Certainly, one of the  
20           purposes of the CON is to look at cost  
21           effectiveness, cost containment, but a lot of  
22           times that is not what you end up with. By  
23           approving the lowest cost, there are a number  
24           of factors you need to consider and we just  
25           want to make sure the cost is reasonable based

1 on the project for the long term.

2 Q: Now, when a competing application or when an  
3 application is submitted and others want to  
4 compete with it, is the first application  
5 confidential and sealed so that subsequent  
6 applicants won't have access to it so they can  
7 take that into consideration and slip in below  
8 them?

9 A: No, sir. It's not sealed. There's no legal  
10 requirement for that. And so, the first  
11 applicant -- anyone under the Freedom of  
12 Information Act can get a copy of their  
13 complete file. And many times in reviewing  
14 projects, like nursing homes, for example,  
15 years ago, I'd tell the applicant you're not  
16 necessarily the smartest to turn in an early  
17 application because it will be scrutinized.

18 Q: Why did you advise applicants that it wouldn't  
19 be wise to submit it first?

20 A: Well, because if they submitted it early other  
21 competitors would get a copy of it and they are  
22 gonna to go through it and try to find ways I  
23 can beat this applicant in a competitive  
24 situation. We'll lower our costs and we'll do  
25 a number things that impress the Department.

1 Q: And what do the regulations provide to protect  
2 the Department from the kind of manipulation of  
3 the process?

4 A: Well, the regulations allow us to be able to  
5 make the best decision based on the criteria  
6 and review other files that we have in our  
7 department to make sure the information is  
8 realistic.

9 Q: And the files being prior approved  
10 applications?

11 A: Yes, sir.

12 Q: Okay. All right. Then when was Piedmont's  
13 application first submitted to establish a  
14 hospital in Fort Mill?

15 A: I believe it was around November 2004.

16 Q: And when was Carolinas' application submitted?

17 A: I think it was around March 2005.

18 Q: So, how much time did Carolinas have to get a  
19 copy of it, review it and consider Piedmont's  
20 application before submitting its own?

21 A: Four to five months.

22 Q: Okay. All right. Now, all right. Let's go  
23 back to the regulations related to the  
24 financial criteria. We've already said that  
25 Ms. Brandt found with regard to charges that

1 both applicants equally met that one and let's  
2 move to 6(b). Dan, would you pull it up and  
3 Mr. Grice would you read that into the record?

4 **THE COURT:** May I offer a suggestion, and Mr.  
5 Andrews and Mr. Muller -- and you can handle  
6 this in any way -- if it's not necessary to  
7 read that entire section into the record, I've  
8 got it.

9 **MR. ANDREWS:** You've got it.

10 **THE COURT:** But if that will break up your  
11 examination, then please feel free, but I'm  
12 just trying to maybe to save a little on the  
13 record.

14 **MR. ANDREWS:** Thank you, Your Honor. As long as Mr.  
15 Grice - Mr. Grice do you have a copy of the  
16 regs with you if you need them?

17 **A:** I don't have it with me, but I can read it up  
18 there, is that okay?

19 **Q:** Well, the point of it, I think ---

20 **A:** Oh, I'm sorry.

21 **Q:** --- Judge Lenski was suggesting a way to speed  
22 up the process and not having to read.

23 **THE COURT:** I have it. Mr. Muller?

24 **MR. MULLER:** I was just going to say I also noticed  
25 on a slide that he has -- that we best met

1           seven and we did not -- it was equally met, so  
2           we can probably skip over seven.

3   **MR. ANDREWS:**   Well, Ms. Brandt may have found that,  
4           but the others, when you say we, if there's a  
5           stipulation that all parties have equally met  
6           it from -

7   **MR. MULLER:**    Well, just in reading her decision  
8           letter, all applicants provided projections -

9   **MR. ANDREWS:**   Well, thank you.   And Mr. Muller is  
10          correctly pointing out that in part of Ms.  
11          Brandt's decision letter she says all parties  
12          equally met seven, but in numerous places she's  
13          critical of Carolinas, you know,   Piedmont for  
14          having higher capital costs, so that's the  
15          reason we're actually having to go into seven.  
16          Unless there's a stipulation that we've equally  
17          met it, then we're happy to move on.

18   **MR. MULLER:**   Well, I don't -- we can address it,  
19          Your Honor.   I'm not so sure what our position  
20          is going to be.   I was just trying to shortcut  
21          -

22   **THE COURT:**   And I appreciate that.

23   **MR. ANDREWS:**   It's a good observation.   I thought  
24          that Ms. Brandt's report was ambiguous in that  
25          regard and that's why I felt it needed

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 addressing.

2 **THE COURT:** Thank you. So how ever you want to  
3 handle it, I just wanted to make the  
4 suggestion.

5 Q: All right. Now Mr. Grice, let's take it this  
6 way, I will ask your opinion and if you need to  
7 refer to the regs to remind yourself of the  
8 actual language, then let's do that, but  
9 otherwise, let's move on, okay?

10 A: Okay.

11 Q: All right. Now, with regard to 6(b), now, how  
12 does this regulation relate to financial  
13 projections?

14 A: Well, what we were saying there is that the  
15 levels of utilization in that service area  
16 should be reasonably consistent with those  
17 experienced by similar facilities and the  
18 projected level should be consistent with the  
19 need level. And with this case, both  
20 applicants met that as I see. In other words,  
21 there is population growth in each one of them.  
22 You know, provided need documentation.

23 Q: Okay. Now, 6(b), determine the reasonableness  
24 of utilization projections. Does it invite the  
25 Department to look at each application's

1           proposal or to look to the reasonableness of  
2           their projections and compare them to similar  
3           facilities?

4    A:    I think to look at the applications and compare  
5           them to similar facilities.

6    Q:    Okay. And have you done that?

7    A:    Yes.

8    Q:    And what's your opinion concerning that?

9    A:    I think they both, yes.

10   Q:    All right. And Mr. Levitt testified about it  
11           so I'm not going to pull up the Plan, but have  
12           you reviewed the State Health Plan to determine  
13           the occupancy rates?

14   A:    Yes, sir. I have.

15   Q:    And what did you find?

16   A:    They are similar. I mean, I didn't see a  
17           problem.

18   Q:    Okay. All right. Okay. So we'll move on  
19           through that. All right. Now next, let's  
20           address the issue concerning the expenses that  
21           are the subject of section 7, okay?

22   A:    Okay.

23   Q:    All right. Now, take a look at that. Now,  
24           this is consistent with your prior testimony,  
25           I believe, but what's the purpose of this

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896



1 section, Mr. Grice? Projected expenses.

2 A: Right.

3 Q: What is the Department directed to look to  
4 about determining the reasonableness of  
5 projections concerning expenses?

6 A: Here again, we're looking at the projections of  
7 all these costs. Construction costs, operating  
8 costs, debt service, et cetera, to be  
9 consistent with those experienced by similar  
10 facilities offering similar types, scope of  
11 services. So, there again, both of these  
12 applicants.

13 Q: What did Ms. Brandt do?

14 A: She, I believe she said that her -- that  
15 Carolinas Medical, Carolinas Hospital System  
16 best met this criteria.

17 Q: Do you remember why?

18 A: I think because she saw their construction cost  
19 as being less is one thing.

20 Q: Let's just focus on -- yeah, I'm sorry.

21 A: And perhaps even operating costs. I think she  
22 went into a lot of detail on this. And so, but  
23 that, in my opinion, that's too much going into  
24 too much detail, again, you have to look at the  
25 broad picture on projected expenses. This is

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 all projected and you just want to make sure  
2 it's reasonable.

3 Q: Do you see anything in Ms. Brandt's decision  
4 where she followed the regulations and provided  
5 evidence concerning what similar facilities  
6 incurred in terms of capital and operating  
7 expenses?

8 A: No, sir.

9 Q: All right. Did you do that?

10 A: Yes, sir. I did.

11 Q: All right. Now, let's look at Demonstrative  
12 151. What does this chart show?

13 A: This shows recent satellite hospitals in South  
14 Carolina that have been approved with their  
15 total project costs, number of beds and then  
16 the calculation of the total budget cost per  
17 bed.

18 Q: And how does the proposals of Carolinas and  
19 Piedmont compare on total project costs and  
20 total project costs per bed with the other  
21 satellite hospitals that even were presented  
22 prior to in terms of timing of the updated  
23 applications to the other facilities?

24 A: Right. They're reasonable in my opinion. We  
25 look at -- based on the number of beds the

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 total project cost is within the range of other  
2 applicants as well as the calculation of total  
3 budget cost per bed.
- 4 Q: Okay. And with regard to your comment about  
5 the operating cost -- let me actually, Dan, ask  
6 you to call up the CON analysis that Ms. Brandt  
7 undertook. Joint Exhibit 1(B), page 1029, that  
8 Exhibit. All right. All right. Mr. Grice,  
9 just read the beginning of the second sentence:  
10 However. Do you see that?
- 11 A: Yes, sir. However, it appears that Piedmont  
12 has the highest cost and revenue for adjusted  
13 discharge.
- 14 Q: In your 29 years of work with the Department,  
15 Mr. Grice, have you ever seen an application  
16 where the Department has made a determination  
17 that one of the reasons causing the denial of  
18 an application has to do with the determination  
19 as to the highest operating cost and revenue  
20 per adjusted discharge?
- 21 A: No, sir. Not at all.
- 22 Q: Do you see anywhere in the analysis of  
23 operating costs where Ms. Brandt compared the  
24 reasonableness of Carolinas' proposal with any  
25 existing facility that had been approved by the

1 Department?

2 A: I did not.

3 Q: And do you believe there's -- is there any  
4 reasonable basis in the regulations for this  
5 sort of analysis?

6 A: No, sir.

7 Q: All right. So, what is your determination  
8 concerning the application at section 7 for  
9 both applicants?

10 A: Not, we're talking about criteria 7?

11 Q: That's right. Yes.

12 A: And I don't memorize them.

13 Q: This is expenses.

14 A: Okay.

15 Q: Which party or which parties best meet that?  
16 Projected expenses?

17 A: Yeah, now what I think I put there is ---

18 Q: We can go back to it.

19 A: I'm sorry.

20 Q: No, no. It's getting late.

21 A: Let me go, yeah, let me see. That's sort of,  
22 yeah, see, both of them meet that. Both,  
23 because even though they can vary, any  
24 applicant -- they're -- these were reasonable,  
25 they're both of them are reasonable. Both are

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1           reasonable.   They're not going to be exact,  
2           certainly.   So they both met it.
- 3   Q:   Okay.   Let's move on to the next set of  
4           criterion which we'll take up together.   The  
5           next two in that list are net income and  
6           financial feasibility.   Now, without reading  
7           those, can you summarize what they're about?
- 8   A:   Yes, sir.   That's a matter of really analyzing  
9           the budget each applicant has provided to  
10          determine the net income project for each year.  
11          They're require at least a three year projected  
12          pro-forma.   And then determine whether the  
13          project is financially feasible.
- 14   Q:   Okay.   So ---
- 15   A:   You know, many projects may take more than  
16          three years to show a profit, but these show a  
17          profit earlier than that.
- 18   Q:   And have you looked at the net income, the  
19          long-term financial feasibility of these  
20          applicants' proposals?
- 21   A:   Yes, sir.
- 22   Q:   And what have you found them to be?
- 23   A:   I found them to be reasonable and found both to  
24          be consistent with those criteria.
- 25   Q:   Okay.   Now, in establishing this analysis, is

1           there -- has it been your experience to look at  
2           the performance of other facilities?

3       A:    Yes, I mean I based, when I review applications  
4           I base knowledge that I have looked at, but I  
5           wouldn't necessarily go back to bare budgets of  
6           similar applications. These applications, they  
7           just need to have reasonable budgets and we're,  
8           you know, the income and operational costs are  
9           reasonable and with regard to whether it's  
10          going to be financially feasible project.  
11          Hopefully within three years.

12       Q:    Okay. Now, have you in this case compared the  
13           proposed net income with the net incomes of  
14           other applicants in different CON applications  
15           for new hospitals?

16       A:    Yes, sir. I have.

17       Q:    All right. Let's take a look at Demonstrative  
18           150. And what does, describe what this is.  
19           First of all, identify, are these from CON  
20           applications?

21       A:    Yes, sir.

22       Q:    Have you reviewed those applications?

23       A:    Yes, sir. I have.

24       Q:    Okay.

25       A:    And these are other satellite hospitals that

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 we've discussed earlier and this is showing  
2 their net income for the first three years of  
3 operation and what's in red there shows loses.  
4 And you see that, you know, all of them are  
5 showing income on the third year, but in  
6 comparing Fort Mill Medical Center and  
7 Carolinas Medical Center-Fort Mill, we see, you  
8 know, that Carolinas is showing a profit each  
9 year, but, you know, Fort Mill is by the third  
10 year, but you look at the others, the other  
11 projected ones that, you know, show big losses  
12 the first few years. So, I mean, they're all  
13 approved. They're all, you know, reasonable.

14 Q: Why do you consider all these reasonable?

15 A: Well, any new hospital that's going to operate,  
16 that first year is going to be a very -- the  
17 first couple years are going to be very  
18 difficult and normally, hiring new staff, it  
19 takes time to build up the patient volume,  
20 you're going to show loses, that's just the way  
21 it is. Of course, they're part of a satellite  
22 system, I mean part of a bigger system, and of  
23 course, they will, their parent hospital is  
24 going to help sustain any losses for the start  
25 up. But, when we look at this, that's normally

1           what we see in developing of new hospitals, you  
2           know, satellites or any new hospital.

3       Q:   All right.   Now, let's look at the first two.  
4           Those, Roper-Berkeley and Roper-Mt. Pleasant  
5           are owned in part and operated by Carolinas, is  
6           that right?

7       A:   That is correct.   Because they are part of the  
8           Carolinas   system   ten   percent   owned   in  
9           Charlotte.

10      Q:   Now, how does their first year net income of  
11           those two projects compare with CMC-Fort Mill  
12           projections?

13      A:   Tremendous opposite difference.   I mean they  
14           show a tremendous losses, 11.7 million, 7.7  
15           million where Carolinas is showing \$663,000  
16           profit the first year.

17      Q:   All right.   And year two?

18      A:   Year two, here again the Roper projects are  
19           showing tremendous losses, 3.3 million lost for  
20           the Roper-Berkeley; 1.188 loss for Roper-Mt.  
21           Pleasant.   Of course, Carolinas Medical Center-  
22           Fort Mill is showing \$1.6 million profit.

23      Q:   All   right.           And   what   is   in   competing  
24           application, do you make, has it been your  
25           practice to make decisions that one proposal is

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



- 1 more financially feasible than another when  
2 they all show a positive trend of net income  
3 over a three year period?
- 4 A: No, sir. I would never do that. They're all  
5 financially feasible. The numbers are not going  
6 to be identical. There are going to be  
7 different situations, but if they're all  
8 showing a positive trend by the third year,  
9 that's very good and they're financially  
10 feasible in my opinion.
- 11 Q: Okay. Is there any doubt in your mind based on  
12 the record or your review about the ability of  
13 either applicant to be able to afford to build  
14 and sustain the development of a new hospital  
15 in Fort Mill?
- 16 A: No, sir. Either applicant would be able to do  
17 that.
- 18 Q: Does that question relate in any way, and how  
19 does that question relate, if it does at all,  
20 to the purpose of the financial feasibility and  
21 net income criteria?
- 22 A: It relates.
- 23 Q: Okay. In what way?
- 24 A: Well, that is, you know, part of the criteria.  
25 I mean that's what we talked about in financial

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001127

- 1 feasibility that it's going to be successful in  
2 the future.
- 3 Q: Okay.
- 4 A: Financially.
- 5 Q: All right. Let's move on to the next set of  
6 criterion related to the financing of the  
7 project. And if we can take a look and see  
8 what those provisions are. All right. Now,  
9 that would be 16(a), is that right?
- 10 A: Yes, sir.
- 11 Q: And then there's another provision in the next  
12 section related to 13(b), Mr. Grice, let's go  
13 ahead and deal with both of those at the same  
14 time. You can see 13(b) dealt with the  
15 applicant obtaining financing?
- 16 A: Right.
- 17 Q: Have you formed an opinion about those  
18 provisions?
- 19 A: Yes. Both applicants are consistent with those  
20 criteria, yes.
- 21 Q: What did Ms. Brandt find?
- 22 A: She found the cost containment was better met  
23 by ---
- 24 Q: No.
- 25 A: I'm sorry, I'm sorry.

- 1 Q: We're talking about it relates to 16(a) and the  
2 cost containment provision is actually related  
3 to the financing, right?
- 4 A: Yes, yes.
- 5 Q: Do you want to take a look at the reg? Would  
6 that help you?
- 7 A: Yes. Yes, sir.
- 8 Q: Okay. Dan, if you could just bring it up on  
9 the board, please. Let's look at 16(a).
- 10 A: Okay. Okay. I've got it.
- 11 Q: All right. Now, what does this provision  
12 relate to?
- 13 A: Okay. She's chosen, the one that's, you know,  
14 the most feasible one. The most feasible  
15 option.
- 16 Q: For financing?
- 17 A: For financing, yes.
- 18 Q: Okay. And what did Ms. Brandt find?
- 19 A: Okay. I believe she found that Carolinas best  
20 met this particular one.
- 21 Q: Do you remember how Carolinas proposed to  
22 finance its project?
- 23 A: Yes, sir. Cash. I mean no borrowing of funds,  
24 it would be paid in cash.
- 25 Q: All right. And let's take a look at the

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 letter, I don't have the reference here. Do  
2 you remember how Piedmont proposed to pay for  
3 it?

4 A: Yes, sir. They were going to be -- it was more  
5 flexible, it was going to be part financing and  
6 part cash.

7 Q: Okay. And how do you evaluate the compliance  
8 with the regulation of those two alternative  
9 proposals for financing the project?

10 A: Well, I would see either one would be  
11 consistent, however, now, you know, I think the  
12 option that the Fort Mill Medical Center is  
13 going to take is more reasonable. That gives  
14 more flexibility. It's impossible to know at  
15 this point in time. It may take a year or two  
16 to even start construction, how you really want  
17 to finance it. What the economy is going to be  
18 like. A lot of times applicants will put cash  
19 just to reduce the capital costs and have no  
20 interest cost for financing. So, it's more  
21 reasonable to put, you know, you don't know  
22 what its going to be. A combination is a good  
23 idea. Cash is rather unusual.

24 Q: Okay. And if cash were used and the project is  
25 in part financed in whole or in part,

1 subsequently is there any process for reporting  
2 that after the final report is submitted to the  
3 Department?

4 A: No, sir. It's not a requirement. Certainly,  
5 the Department could ask, but no. That could  
6 be changed so much. You know, the Department  
7 is really looking at the final capital cost but  
8 they may not know the end result on the  
9 financing of the project.

10 Q: Okay. All right. So, with regard to the  
11 method of financing, what is your determination  
12 concerning each applicant?

13 A: Well, you know, I would say each applicant is  
14 consistent. I, you know, would favor the one  
15 that is owned by Fort Mill, but either one  
16 would meet the criteria.

17 Q: Okay. All right. Let's move to efficiency,  
18 section 17 and what have you -- first of all,  
19 what's the purpose of that regulation?

20 A: You know, I don't memorize ---

21 Q: That's all right. We'll pull it up so you can  
22 familiarize yourself with it.

23 A: I wasn't able to do that working at DHEC.

24 Q: Let's see.

25 A: Okay. This one, yes, it's pretty standard.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1           The project should improve efficiency by  
2           avoiding duplication of services, promoting  
3           shared services, fostering economy and scales  
4           of size.

5       Q:    Okay.

6       A:    And in my opinion, the Fort Mill Medical Center  
7           best meets this criteria, meets it, yes.

8       Q:    And why?

9       A:    Well, because they're going to avoid the  
10           duplication of services like I mentioned before  
11           because that duplication is going to really,  
12           the duplication is going to be where they do  
13           not lose the use of several tertiary services  
14           that the home or the parent Piedmont Medical  
15           Center and they would promote shared services  
16           and fostering the kinds of scale to size, here  
17           again, you could make a statement that they're  
18           really planning better for the future for a  
19           rapidly growing area by being able to do 100  
20           beds, which I think in that area, those beds,  
21           you would need an addition by the end of three  
22           years. Because even if you were building only  
23           64, you're probably going to reach about 70  
24           percent utilization. That's when you need to  
25           start planning for additional beds.

1 Q: Okay. Mr. Grice, have you reviewed -- you said  
2 you reviewed the updated application and  
3 related materials of Piedmont that they  
4 submitted to the Department. Dan, let's pull  
5 up Exhibit 31. Look at slide 37 from the  
6 project review materials. Do you recognize  
7 this slide, Mr. Grice?

8 A: Yes, sir. I do.

9 Q: What does it show?

10 A: Okay. This is the projected utilization with  
11 the average daily census, beds and occupancy  
12 rates of the three hospitals, three of the  
13 hospitals that were competing originally.  
14 Well, it's got Fort Mill Medical Center and  
15 Carolinas Medical Center.

16 Q: And PH -- PHY refers to Presbyterian?

17 A: Yes, sir.

18 Q: Okay. Go ahead.

19 A: Okay. So what we've got there are the numbers  
20 showing for the first three years the average  
21 daily census, the number of beds proposed by  
22 each one and their occupancy rate. And we can  
23 see in looking at those occupancy rates, it's  
24 rather impressive with a new hospital because  
25 Carolinas Medical Center will really have, even

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

RECORD 001133

- 1 by the first year, 63.9 -- I'm sorry.
- 2 Q: No, you're right. Excuse me for interrupting.
- 3 A: 63.9 for the first year, 65.6 for the second,
- 4 67.5 for the third. When you reach that
- 5 utilization right there, that's when you know
- 6 we're going to need some additional beds.
- 7 We've got to plan now because to get approval
- 8 and begin construction will take at least a
- 9 couple of years.
- 10 Q: Does the State Health Plan establish occupancy
- 11 rates that are thresholds for recognizing need
- 12 in the plan?
- 13 A: Yes, sir. They do.
- 14 Q: And as far as a hospital this size, what would
- 15 those levels be?
- 16 A: I think we're doing those levels right there,
- 17 looking at that 60 percent range.
- 18 Q: And what's the trigger, do you know, for new
- 19 beds under the Plan?
- 20 A: I forget right now.
- 21 Q: Okay.
- 22 A: I didn't actually do that. Calculate the ---
- 23 Q: All right. Okay. And so, what does that tell
- 24 you about Carolinas' proposal with regard to an
- 25 occupancy rate of its proposed 64-bed facility?



1 A: That it's going to be relatively high in a  
2 short period of time.

3 Q: Okay. And in the right-hand column of those  
4 three is Presbyterian's proposed occupancy  
5 rate, what did they propose for being their 64-  
6 bed hospital by year three?

7 A: 74.5 percent.

8 Q: Okay. Now, based on your review of  
9 Presbyterian and Carolinas proposals for  
10 occupancy of their 64-bed hospitals, what  
11 inferences do you make about what number of  
12 beds can be effectively used in that area?

13 A: Looking at -- with them both proposing 64 beds  
14 and with that occupancy rate proposed by the  
15 third year, it very well justifies 100 beds.  
16 If you could possibly have 100 beds, you  
17 wouldn't have to make that additional  
18 construction, begin planning by year three.

19 Q: And in contrast, what proposal by year three is  
20 Fort Mill Medical Center making for its  
21 occupancy?

22 A: It's already at 58.2 percent, so it's utilizing  
23 an average of 58 beds and so probably they're  
24 doing well. By five years or six years they  
25 will be up there.

- 1 Q: All right. Should they been in excess under  
2 the regulations of 65 percent by three years?
- 3 A: There's no requirement of that, no, sir.
- 4 Q: Okay. Now, and therefore which applicant best  
5 meets section 17 related to efficiency?
- 6 A: In my opinion, that would be the Piedmont  
7 Medical Center Fort Mill application.
- 8 Q: Okay. Let's then go to the next series of  
9 criteria. Now, you can see here, Mr. Grice,  
10 that all of 13 is in indication that you and  
11 Ms. Brandt meet those criteria. Those relate  
12 to record of the applicant, is that correct?
- 13 A: Yes, sir.
- 14 Q: The -- ability to obtain financing, in fact, on  
15 13(b), I think probably is mistaken and Ms.  
16 Brandt found that Carolinas better met that,  
17 would that be correct?
- 18 A: Yes.
- 19 Q: Okay. So that'd be 13(b) showed if it  
20 accurately reflects Ms. Brandt's decision, that  
21 should not say both, it should say CHS?
- 22 A: Right. Yes, sir. That's correct.
- 23 Q: Okay. All right. Otherwise, she found the  
24 records were -- that all applicants met the  
25 record criteria, is that right?

1 A: Yes, sir.

2 Q: Now, acceptability, there was, Ms. Brandt and  
3 you both found that all applicants met that.  
4 I want to go, just I want to ask you a question  
5 about that quickly. Do you recall from your  
6 reading of Ms. Brandt's decision the number of  
7 letters that were filed by the various parties?

8 A: Yes, sir.

9 Q: In general terms?

10 A: It was in the thousands.

11 Q: Okay.

12 A: Each got letters of support which relates to  
13 acceptability.

14 Q: Would it be 10,000 for Presbyterian and many  
15 thousands for the others?

16 A: Exactly. I don't know. Five or 6,000 I think  
17 for the others.

18 Q: Why do you agree with Ms. Brandt concerning her  
19 opinion that all applicants met that criterion?

20 A: Well, when you -- you cannot, you should not  
21 base your decision on who has the most letter  
22 of support. That's a way -- applicants can  
23 always generate letters of support. Numerous  
24 ways. I even recall having seen people in  
25 front of Wal-Mart for small projects getting

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001137

1 letters of support on Saturdays. I mean if you  
2 want to get letters of support, there are ways  
3 to do it. And you can hire an organization, a  
4 company to go out and get them for you. If you  
5 have appropriate support and look at the  
6 quality of letters, too, if you have letters of  
7 physicians and other people, that's great, but  
8 both of them met that criteria. Because they  
9 both had appropriate levels of support. You  
10 don't count them. You don't weigh them in my  
11 opinion.

12 Q: Okay. And let's look at opposition. Ms.  
13 Brandt said the opposition expressed in  
14 letters, with letters submitted with the  
15 Department should be taken into consideration.  
16 I'm not quite sure if she meant in clarifying  
17 in favor of Carolinas, but what's your  
18 recollection?

19 A: Well, I think the Piedmont, the Fort Mill  
20 Medical Center had some letters of opposition.  
21 Well, there might have been 40 or 50 letters,  
22 in that range. And the Carolinas project may  
23 have had a few or none, but I think because of  
24 that she saw the opposition as being something  
25 compelling and she put down that Carolinas best

1 met that. Because they had little if any  
2 opposition where the Piedmont project had some.

3 Q: What's your view of that?

4 A: You can get opposition with any project. When  
5 you look at the letters of support, that much  
6 outweighed the opposition. In my experience in  
7 the CON program over the years have been  
8 particularly when you have only one facility in  
9 the county, people always -- some people have  
10 an unpleasant experience. There's only one  
11 nursing home, one hospital, it's not a perfect  
12 world and somebody is going to have some  
13 experience that they thing, you know, is not  
14 positive and they don't forget it.

15 Q: Okay. Let's move on to the last two sections,  
16 23(a) and (b) related to adverse impact section  
17 of the reg based on how those regs are  
18 identified. Have you developed your opinion  
19 here that Piedmont best meets both the, Ms.  
20 Brandt found that Carolinas best met adverse  
21 impact on utilization and that it equally, that  
22 the applicants equally met the concerns of  
23 staffing. What's the basis for your opinion  
24 here, Mr. Grice?

25 A: Well, on 23(a) the adverse impact on existing

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001139

1 facilities, here again, with the development of  
2 Piedmont Medical Center, that is going to have  
3 less adverse impact on the existing facility  
4 which is the existing Piedmont Medical Center  
5 in Rock Hill, so relative of Fort Mill will  
6 allow less adverse impact on the existing  
7 facility in that county. So, that's why I say  
8 that Piedmont Medical Center best meets that.  
9 As far as adverse impact on staffing, here  
10 again, when you have another provider, it gets  
11 to be competition for hiring staff and that is  
12 problematic. A new hospital close by, a lot of  
13 people that live near there go to work there,  
14 to not have to drive further. If it were the  
15 Fort Mill Medical Center project, those people  
16 would be employed by Piedmont, they could work  
17 for both or the new facility but when we have  
18 another provider such as Carolinas Hospital  
19 System they're going to be working for someone  
20 else and it will be an adverse impact on the  
21 staffing of the existing Piedmont Medical  
22 Center.

23 Q: All right. Have you developed a Demonstrative  
24 that summarizes the potential adverse impacts  
25 that you've identified?

1 A: Yes, sir.

2 Q: Okay. Dan, let's pull up 122. And what do you  
3 have here, Mr. Grice?

4 A: Well, the adverse impact, it would really  
5 reduce utilization at the existing facility.  
6 Particularly if you look at the specialized  
7 services you have at Piedmont Medical Center  
8 such as open heart and the neonatal intensive  
9 care nursery, it's going to have an impact on  
10 medical staff current and future because as our  
11 utilization drops and some the people with  
12 medical specialties, utilization drops, those  
13 physicians are going to be looking for  
14 positions somewhere else and leave and it's  
15 also going to have an impact on the nursing and  
16 technical staff. So, you know, all those  
17 things would make a recovery from adverse  
18 impacts difficult. So, that's major -- mainly  
19 a summary of the adverse impact that would  
20 occur if we did not have Fort Mill Medical  
21 Center in York County.

22 Q: And what's your opinion of Ms. Brandt's finding  
23 concerning adverse impact that Carolinas would  
24 only serve its patients and patients from the  
25 Carolinas Network?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 A: Well, I don't agree. I mean it's what is it's  
2 obviously going refer many patients to  
3 Charlotte. It's going to also be a gathering  
4 new patients into that new facility and it's  
5 going to cause a continued reduction in  
6 utilization and staffing at the existing  
7 facility in Rock Hill.

8 Q: Thank you, Mr. Grice.

9 MR. ANDREWS: I have nothing further, Your Honor.

10 THE COURT: All right. Thank you, Mr. Andrews.  
11 Unless everybody is just dying to carry on here  
12 on a Friday night, I think this is an  
13 appropriate time to recess for the weekend.  
14 All right. Thank you. Ten o'clock on Monday.

15 (There being nothing further, Day Five recessed at  
16 5:25 p.m.)

17 DAY SIX - TUESDAY, APRIL 16, 2013

18 THE COURT: Good morning, everyone. Back on the  
19 record. And today is Tuesday the 16th of  
20 April. I wanted to put something on the record  
21 about matters from yesterday.

22 Yesterday on April 15th the Court was  
23 informed by Mr. Muller, counsel for Carolinas,  
24 of the very sad news that his father had just  
25 passed away in Connecticut. Mr. Muller was



| Page 1169                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 1171                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 THE COURT: All right, Mr. Westbrook. Good morning.<br/> 2 DANIEL SULLIVAN, being duly sworn, testifies as<br/> 3 follows:<br/> 4 MR. SULLIVAN - DIRECT EXAMINATION BY MR. WESTBROOK:<br/> 5 Q: Mr. Sullivan, please state your full name and<br/> 6 present address, please.<br/> 7 A: Daniel Joseph Sullivan, 2090 Bethany Way,<br/> 8 Alpharetta, Georgia.<br/> 9 Q: Where were you born and raised, Mr. Sullivan?<br/> 10 A: Charleston, South Carolina.<br/> 11 Q: Where are you employed now?<br/> 12 A: Sullivan Consulting Group, Inc.<br/> 13 Q: And what are your duties and -- principal<br/> 14 duties and responsibilities with Sullivan<br/> 15 Consulting Group?<br/> 16 A: Obviously, I'm president of the firm and so<br/> 17 I've got administrative duties, but involved in<br/> 18 performing consulting work for our healthcare<br/> 19 client. Our firm is exclusively focused on the<br/> 20 healthcare field.<br/> 21 Q: All right. Let's look at Petition's Exhibit<br/> 22 11. I believe that's already been admitted.<br/> 23 MR. WESTBROOK: Put that up on the screen for us,<br/> 24 Dan.<br/> 25 Q: Is this your resume, Mr. Sullivan?</p>                                   | <p>1 And at Amhurst, I started as just an entry<br/> 2 level consultant and was involved in doing<br/> 3 financial feasibility studies in connection<br/> 4 with tax-exempt bond issues; doing other types<br/> 5 of projection analysis. And that was about the<br/> 6 time that certificate of need was just<br/> 7 beginning to grow in the country as a program<br/> 8 throughout the state. And so I began to do<br/> 9 that in addition to other types of health<br/> 10 planning work with healthcare organizations;<br/> 11 strategic planning, market analysis, product<br/> 12 line planning and that sort of thing.<br/> 13 I was at Amhurst for eight years. I<br/> 14 became a regional vice president with Amhurst.<br/> 15 And we merged in 1988 with the firm of actually<br/> 16 Ernst &amp; Whinney at the time, which became Ernst<br/> 17 &amp; Young. And I was a partner for a couple of<br/> 18 years with Ernst &amp; Young. Then I decided to<br/> 19 set up on my own and start my own company. And<br/> 20 I started Sullivan Consulting Group at that<br/> 21 time.<br/> 22 Q: Okay. And now that you are with Sullivan<br/> 23 Consulting Group, can you tell us what kind of<br/> 24 work specifically you do with your company?<br/> 25 A: Sure. Again, it broadly falls into two large</p> |
| Page 1170                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 1172                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>1 A: Yes, it is.<br/> 2 Q: Is it current?<br/> 3 A: It is.<br/> 4 Q: All right. If you would, using your resume if<br/> 5 you'd like to jog your memory, tell us a little<br/> 6 bit about your educational background; will<br/> 7 you?<br/> 8 A: Sure. I did my undergraduate degree in<br/> 9 economics and public policy studies from Duke<br/> 10 University and then a master in health<br/> 11 administration from Duke University.<br/> 12 Q: All right. And can you summarize your work<br/> 13 history for us since your undergraduate degree?<br/> 14 A: Sure. Immediately after undergraduate school,<br/> 15 I went to work in the Duke University Medical<br/> 16 Center, what's called a private diagnostic<br/> 17 clinic. It is a group practice with the<br/> 18 faculty members at Duke Medical School. I<br/> 19 worked there for about six years doing a<br/> 20 variety of different administrative roles. The<br/> 21 last two years I also attended grad school<br/> 22 simultaneous with working. Upon graduation<br/> 23 from grad school in 1980, I joined Amhurst<br/> 24 Associates, which at the time was a large<br/> 25 national healthcare management consulting firm.</p> | <p>1 categories; health planning and healthcare<br/> 2 finance. On the health planning side, we are<br/> 3 involved in strategic planning for healthcare<br/> 4 organizations, market research, projection<br/> 5 analysis, preparations; certificate of need<br/> 6 applications. On the financial side, we<br/> 7 prepare financial projections to various types<br/> 8 of healthcare projects; sometimes for use in a<br/> 9 certificate of need application, sometimes just<br/> 10 for internal use. And then I also analyze<br/> 11 financial statements, look at the capacity of<br/> 12 organizations and sometimes evaluate<br/> 13 opportunities from a financial standpoint for<br/> 14 some of our clients. And from time to time I<br/> 15 also get involved with providing expert witness<br/> 16 testimony in certificate of need matters, as<br/> 17 well as other types of litigation.<br/> 18 Q: How many states, approximately, have you done<br/> 19 CON work in over the years with Sullivan?<br/> 20 A: Probably 30 or so over the years. I'm old<br/> 21 enough that there were a lot more states that<br/> 22 had CON programs when I first started. But,<br/> 23 you know, virtually every state on the east of<br/> 24 the Mississippi and a few on the west of the<br/> 25 Mississippi.</p>     |

293 (Pages 1169 to 1172)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001143

| Page 1173                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 1175                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 Q: Right. Have you worked in South Carolina<br/>2 before?<br/>3 A: I have. I worked in South Carolina pretty<br/>4 early in my career, and I've been working<br/>5 pretty consistently over the last 30 or<br/>6 something years in South Carolina.<br/>7 Q: Now, just overall, can you estimate for us<br/>8 about how many CON applications that you have<br/>9 had significant involvement in in one way or<br/>10 another?<br/>11 A: You know, somewhere around a thousand. There<br/>12 was a time when, you know, the firm was<br/>13 probably doing 40 or 50 a year. That's slowed<br/>14 down a bit now, but somewhere around a<br/>15 thousand.<br/>16 Q: You've mentioned that you've done some expert<br/>17 witness work before or testimony given as<br/>18 expert witness testimony before. Do you know<br/>19 how many times you have been qualified as an<br/>20 expert?<br/>21 A: Not exactly, but more than a hundred times.<br/>22 Q: And what areas of expertise have you been<br/>23 qualified in particularly?<br/>24 A: Broadly in healthcare planning and healthcare<br/>25 finance. Sometimes it would be specific</p> | <p>1 Francis Hospital in Greenville, South Carolina,<br/>2 we assisted them in developing a new hospital<br/>3 project on the east side of Greenville called<br/>4 St. Francis Women's Hospital, I think, at the<br/>5 time. I think it's a full service hospital<br/>6 now. And I've been involved in assessing the<br/>7 Parkridge Project here in Columbia.<br/>8 Q: Right.<br/>9 A: I was involved in analyzing that project. And<br/>10 while I didn't testify in that case, I was<br/>11 involved in doing a lot of the analytical work<br/>12 on behalf of Lexington Medical Center in the<br/>13 Parkridge case.<br/>14 Q: And the Parkridge, that's a Palmetto Health<br/>15 project, is that right?<br/>16 A: It is, yes.<br/>17 Q: And you worked for Lexington opposing that<br/>18 project?<br/>19 A: I did. And there's probably some more, but<br/>20 those are the ones that come to mind.<br/>21 Q: All right. Have you served on any special<br/>22 committees studying the South Carolina CON<br/>23 programs?<br/>24 A: I have. Last year there was a CON task force,<br/>25 I think at the direction of the governor. I'm</p>                                    |
| Page 1174                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 1176                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>1 proffers for certificate of need analysis,<br/>2 certificate of need programs or certificate of<br/>3 need application preparation; that sort of<br/>4 thing. But generally health planning and<br/>5 healthcare finance.<br/>6 Q: Let's look at a subset of CON applications and<br/>7 that's CON applications from new hospital<br/>8 projects. Have you been involved in those kind<br/>9 of CON matters before?<br/>10 A: I have many, many times.<br/>11 Q: In what states?<br/>12 A: Florida, Georgia, South Carolina, West<br/>13 Virginia, Tennessee, Kentucky, Alabama.<br/>14 Q: Quite a few?<br/>15 A: Yeah.<br/>16 Q: What about -- let's look at some in South<br/>17 Carolina. Can you give us some examples of new<br/>18 hospital projects you've worked on in South<br/>19 Carolina?<br/>20 A: Sure. There was a battle many years ago<br/>21 between Roper and St. Francis Xavier Hospital<br/>22 in Charleston before they got together and both<br/>23 trying to build new hospitals on the West<br/>24 Ashley area of Charleston. And I was involved<br/>25 in working with Roper Hospital on that. St.</p>                | <p>1 not quite sure exactly how it came to be. But<br/>2 the task force was put together with<br/>3 representatives of the legislative branch.<br/>4 Various people in the healthcare community;<br/>5 hospital representatives, nursing home, home<br/>6 health agencies. Blue Cross was involved in<br/>7 it. There were a couple of independent<br/>8 consultants who served on that task force, and<br/>9 I was one of those.<br/>10 Q: All right. And how many people all total were<br/>11 on that committee?<br/>12 A: I think about 25 or 27, a fairly large group.<br/>13 Q: And how long did that committee's work go on?<br/>14 A: A long time, probably about seven months, seven<br/>15 or eight months.<br/>16 MR. WESTBROOK: Your Honor, at this time I would<br/>17 like to move to have Mr. Sullivan qualified as<br/>18 an expert in the field of healthcare planning<br/>19 and healthcare finance.<br/>20 MR. GASKINS: No objection.<br/>21 MS. BIGGERS: No objection.<br/>22 THE COURT: All right. There being no objection,<br/>23 the Court recognizes Mr. Sullivan as an expert<br/>24 in the field of healthcare planning and<br/>25 healthcare finance.</p> |

294 (Pages 1173 to 1176)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001144

Page 1177

1 Q: Okay, Mr. Sullivan, when were you first  
 2 retained to work on this case of this matter?  
 3 A: I believe I was contacted first in July or so  
 4 of 2012; so a little less than a year ago.  
 5 Q: All right. So that would have been after  
 6 DHEC's second decision to award the CON to CHS?  
 7 A: That's true.  
 8 Q: Did you have any involvement at all in  
 9 Piedmont's initial 2005 application?  
 10 A: I did not.  
 11 Q: And it sounds like you also did not have any  
 12 involvement at all in DHEC's -- excuse me,  
 13 Piedmont's 2010 updated application?  
 14 A: I did not.  
 15 Q: And you didn't have any involvement, I guess,  
 16 in the subsequent submissions after October  
 17 2010, the subsequent submissions by Piedmont to  
 18 DHEC?  
 19 A: That's correct.  
 20 Q: Okay. Well, what were you asked to do in  
 21 connection with your engagement in this case?  
 22 What did you do, I guess, is the better  
 23 question.  
 24 A: Sure. Initially I was asked to come in and  
 25 sort of take a fresh look at this since I

Page 1178

1 hadn't been involved in many years of this  
 2 review process and sort of take a look at the  
 3 entirety of the record and specifically to  
 4 focus on the second DHEC decision and to look  
 5 at that decision from the perspective of  
 6 whether it was reasonable, whether it was based  
 7 on sound health planning policies and whether  
 8 it was supported by data, other analytical  
 9 information and also asked to undertake any  
 10 other analyses, investigations that I thought  
 11 were necessary in order to be able to render  
 12 those opinions.  
 13 Q: All right. What -- I'm sure you reviewed a  
 14 number of documents. What were some of the  
 15 things -- kinds of things you reviewed besides  
 16 the DHEC decision?  
 17 A: When I looked through the records from the  
 18 first go round, the 2005-2006 applications,  
 19 though I didn't specifically focus on those as  
 20 much because I thought that the more recent  
 21 information would be more relevant. So I  
 22 reviewed all the submissions by the three  
 23 parties at that time when Presbyterian was  
 24 still involved, including the initial  
 25 applications and the various other bits of

Page 1179

1 additional information that were filed by the  
 2 various parties involved. And then subsequent  
 3 to the decision, I reviewed a number of  
 4 discovery materials that were provided to me  
 5 from the various parties, Piedmont and  
 6 Carolinas Health System. And I also had been  
 7 involved in reviewing exhibits prepared by Mr.  
 8 Levitt and by experts for the other parties.  
 9 Q: And how much of this hearing have you sat  
 10 through so far?  
 11 A: The entire hearing.  
 12 Q: Do you have an opinion as to which applicant  
 13 best meets the purposes of the CON Act, the  
 14 state health plan, applicable regulatory  
 15 criteria?  
 16 A: I do.  
 17 Q: And what is that?  
 18 A: I do believe after my analysis that the Fort  
 19 Mill Medical Center project, I believe, best  
 20 meets the purposes of the CON Act, the CON  
 21 review criteria and the state health plan.  
 22 Q: Do you have an opinion as to how CMC-Fort Mill,  
 23 if it were to be approved, would affect the  
 24 availability and quality of healthcare to York  
 25 County residents?

Page 1180

1 A: I do.  
 2 Q: And what is that?  
 3 A: I believe that the approval of the CMC-Fort  
 4 Mill project would be detrimental to the  
 5 quality and availability of healthcare  
 6 services to York County residents.  
 7 Q: Okay. Let's start with Ms. Brandt's decision.  
 8 You said you reviewed that. And I believe you  
 9 have a sort of analytical framework that you  
 10 would like to use in discussing her decision,  
 11 is that right?  
 12 A: That's true. I've prepared some demonstrative  
 13 exhibits.  
 14 Q: Okay. Let's go to the first one. All right.  
 15 Now, I see the title to this chart says, "Pivot  
 16 Points," in quotes, "Pivot Points in Ms.  
 17 Brandt's Decision." What do you mean by pivot  
 18 points?  
 19 A: Well, in reviewing the decision, there were a  
 20 few significant issues where Ms. Brandt had a  
 21 choice, either to accept the positions that  
 22 CMC-Fort Mill were presenting or the positions  
 23 that FMMC was presenting. And the decision, I  
 24 believe, really pivoted on these particular  
 25 choices. You know, had she looked at these in

295 (Pages 1177 to 1180)

1230 Richland Street / Columbia, SC 29201  
 (803) 252-3445 / (800) 822-0896

RECORD 001145

| Page 1181                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 1183                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 a different fashion, I think she would have<br/>2 likely reached a different conclusion as to the<br/>3 most appropriate party to pick.<br/>4 Q: All right. Why don't you -- we can go into<br/>5 some detail in these in turn. But to start<br/>6 off, why don't you just read them into the<br/>7 record, which is five that you've identified.<br/>8 A: Sure. The first is adverse impact, and I know<br/>9 there has already been a lot of discussion<br/>10 about that. And I think there is sort of three<br/>11 elements to adverse impact. The first would be<br/>12 with the impact of the CMC-Fort Mill Hospital<br/>13 would be Piedmont Medical Center. Another<br/>14 issue that was raised in the decision would be<br/>15 the impact if Fort Mill Medical Center was<br/>16 approved on Piedmont itself. And then I think<br/>17 probably the most important aspect of that<br/>18 would be the impact of the approval of either<br/>19 applicant on the quality and availability of<br/>20 services in York County.<br/>21 The second issue is mal-distribution. And<br/>22 this was raised by Carolinas Health System and<br/>23 their comments to DHEC. And it really focuses<br/>24 on the issue of 64 beds versus 100 beds and<br/>25 whether 100 beds is too many for the North York</p> | <p>1 but I would just like to get the final numeral<br/>2 of that in the exhibit. It doesn't seem to be<br/>3 on there.<br/>4 MR. WESTBROOK: That I believe that is exhibit -- or<br/>5 demonstrative rather, Exhibit 216.<br/>6 MR. GASKINS: Thank you.<br/>7 Q: Sure. All right. Let's take a first pivot<br/>8 point, adverse impact. And I believe your next<br/>9 demonstrative is 217; is that right?<br/>10 A: That's correct.<br/>11 Q: All right. And I see your question, "Which<br/>12 project will minimize adverse impact on the<br/>13 York County Health system?" And then it says,<br/>14 "CMC-FM will take a significant number of<br/>15 patients from PMC." Now, why did you say that?<br/>16 A: Well, there's a number of different reasons.<br/>17 And let me sort of plot through those. The<br/>18 first is the proximity of the proposed CMC-Fort<br/>19 Mill Hospital to both the Fort Mill population<br/>20 and the Rock Hill population, for that matter.<br/>21 Proximity alone I think is going to result in<br/>22 some redirection of patients. We've already<br/>23 heard some testimony about this. That means<br/>24 the simple fact that if you build a hospital<br/>25 very close to where people live, there's at</p>                  |
| Page 1182                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 1184                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>1 County market.<br/>2 Q: All right.<br/>3 A: Unnecessary duplication. That is related to<br/>4 the 100- versus 64-bed issue. Carolinas is the<br/>5 contender, and I think Ms. Brandt adopted their<br/>6 argument that building 36 additional beds over<br/>7 the 64 would result in unnecessary duplication<br/>8 of services.<br/>9 Financial Access, Carolinas had projected<br/>10 6.3. In the second go round, they projected<br/>11 6.3 percent charity care as opposed to 3<br/>12 percent that Fort Mill Medical Center had<br/>13 projected. Ms. Brandt seemed to have focused<br/>14 on that as a favorable consideration, if you<br/>15 will, in evaluating the CMC-Fort Mill<br/>16 application.<br/>17 And then finally there were a number of<br/>18 issues brought up about financing and financial<br/>19 projections, but I think a large derivative of<br/>20 those first four. But I thought I would at<br/>21 least address those because they did pick up a<br/>22 portion of the decision.<br/>23 Q: All right. Well, let's start with the first --<br/>24 your first pivot point --<br/>25 MR. GASKINS: Excuse me. I'm sorry to interrupt.</p>                                                                                                                                         | <p>1 least some people who are going to choose to<br/>2 use that hospital. You know, CMC-Fort Mill in<br/>3 its application had taken the position it would<br/>4 only redirect patients from existing CHS<br/>5 facilities in Mecklenburg County. As a<br/>6 practical matter, I don't think you can do<br/>7 that. I mean, if you build a hospital and put<br/>8 it down in an area where there wasn't one<br/>9 before, there is very little way to control<br/>10 which patients are going to come to that<br/>11 hospital. And people don't walk around with<br/>12 visors that say I'm a Piedmont patient or I'm<br/>13 a CMC patient. And so the mere fact of it<br/>14 being there, being proximate and close, in<br/>15 addition to being a shiny new building, I think<br/>16 it's going to attract some new patients there.<br/>17 So I think it would be wholly unrealistic<br/>18 to expect that you would have no impact on<br/>19 existing providers.<br/>20 The second factor, and this has also, I<br/>21 think, been touched on, the emergency<br/>22 department at CMC-Fort Mill is going to serve<br/>23 patients who would have otherwise gone to the<br/>24 PMC. And if we think about it, there are<br/>25 several different ways people get into</p> |

296 (Pages 1181 to 1184)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001146

Page 1185

1 emergency departments. One is ambulances bring  
2 them there. And oftentimes when a patient is  
3 injured or sick, the ambulance will bring them  
4 to the closest hospital. Now, in some cases,  
5 absent the approval of CMC-Fort Mill, that  
6 closest hospital would be Piedmont. With the  
7 new hospital there, or at least a portion of  
8 that population, that hospital is going to be  
9 CMC-Fort Mill. Other patients are going to  
10 walk into the hospital, and those patients are  
11 going to -- oftentimes want to go to a place  
12 that is close to home. And again, this relates  
13 to the proximity thing being closer to the  
14 population means more people are going to go to  
15 the ED.

16 And then finally for patients who go to  
17 the ED at CMC-Fort Mill and their diagnosis  
18 having a more significant problem. For  
19 example, if they come to the hospital and they  
20 are diagnosed as having a heart attack, and  
21 they need immediate intervention in terms of an  
22 angioplasty for example, my understanding is  
23 that if those patients need that service, that  
24 they are going -- and CMC-Fort Mill is treating  
25 that patient, that they would be transferred to

Page 1186

1 the CMC facility for that speciality care.

2 And so there would be sort of a direct  
3 impact in terms of the loss of the patients who  
4 would come to the ED at CMC-Fort Mill. Then  
5 there would also be a loss of these specialty  
6 patients who would be transferred to another  
7 facility.

8 Q: What impact would CMC-Fort Mill have on  
9 physicians in the area?

10 A: Well, I think that is probably the most grave  
11 potential impact that it could have. I mean,  
12 we -- there were three physicians who testified  
13 last week, three independent physicians. And  
14 I believe all three of them testified that if  
15 CMC-Fort Mill were constructed, they would feel  
16 compelled to seek staff privileges there. And  
17 that is only good business on their part. They  
18 have patients that live in the Fort Mill area.  
19 The patients would likely want to go to a  
20 proximate hospital. And those doctors right  
21 now practice, if not exclusively, a majority of  
22 their patients go to Piedmont now. If they  
23 were to get staff privileges at CMC-Fort Mill,  
24 I think undoubtedly some of those patients who  
25 otherwise would have been admitted to Piedmont

Page 1187

1 will go to the new hospital instead.

2 Q: Now, you said just a moment ago that there was  
3 -- from a practical point of view, if you  
4 didn't follow to shift, market share I believe  
5 is what you said.

6 A: Right.

7 Q: Even if there were a practical way to shift  
8 market share, what incentives in your opinion  
9 would CHS have to simply shift its current  
10 market share from North Carolina to the Fort  
11 Mill facility?

12 A: I don't believe from a business standpoint that  
13 there is any real incentive for CHS to want to  
14 shift patients from North Carolina to York  
15 County. Now, I'm not disputing that some  
16 patients are going to be shifted. I mean,  
17 certainly, some of the patients who go to  
18 Pineville, for example, now will choose to go  
19 to the new hospital because it is closer to  
20 home. But not all of the patients who go to  
21 Pineville who live in York County are going to  
22 choose to do that. And there is certainly no  
23 incentive to CHS to try to give special push to  
24 those patients to utilize a hospital in Fort  
25 Mill.

Page 1188

1 Q: Why not?

2 A: Well, based on my review of various CON  
3 applications and deposition testimony, it  
4 appears that CHS has spent about \$300 million  
5 over the last decade or so on expanding  
6 services at CMC Pineville. And I think we've  
7 already talked about this, but it is located  
8 right on the York County border. So there is  
9 every intention, I think, of trying to justify  
10 that significant capital investment by trying  
11 to maximize utilization of hospitals. I think  
12 that is only rational behavior on the part of  
13 CHS. And if we look at the growth, just in the  
14 bed complement at CMC Pineville in 2002, it was  
15 a 97-bed hospital. Twelve beds were approved  
16 to be added in 2002. By 2005, an additional 11  
17 beds were added. Then in 2007, it was sort of  
18 a big project where CMC Pineville got approval  
19 to add 86 additional beds, and in addition to  
20 add a number of other specialized services to  
21 the hospital and dramatically expand the  
22 footprint of hospital as a result of that  
23 project.

24 Q: Now, how did CMC Pineville justify its bed  
25 expansion with respect to York County?

297 (Pages 1185 to 1188)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001147

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1189</p> <p>1 A: Well, when I reviewed the application, the 2007<br/> 2 application, about a quarter of the patients<br/> 3 that CMC Pineville was serving at that time<br/> 4 came from York County. The application<br/> 5 described York County as being in the primary<br/> 6 service area of CMC Pineville, which is logical<br/> 7 because it is located right on the border of<br/> 8 York County. And it indicated that it would<br/> 9 expect that the growth in York County would be<br/> 10 one of the factors in driving future<br/> 11 utilization that would support the increase of<br/> 12 86 beds. That wasn't the sole factor. They<br/> 13 were also looking at growth, another portion of<br/> 14 what they call the southern perimeter of<br/> 15 Charlotte. But York County was certainly a<br/> 16 significant component and was expected to still<br/> 17 represent over 20 percent of the admissions to<br/> 18 the expanded CMC Pineville Hospital after<br/> 19 development. And so, you know, that's a pretty<br/> 20 significant factor.<br/> 21 Now, another important thing to think<br/> 22 about in just in terms of timing, in 2007 DHEC<br/> 23 had approved the Fort Mill Medical Center<br/> 24 project. This was before the remand.<br/> 25 Q: This was during the first appeal of this</p> | <p style="text-align: right;">Page 1191</p> <p>1 Pineville was dramatically greater, 1,500<br/> 2 discharges greater.<br/> 3 So there is a -- you know, I think what we<br/> 4 have here is a situation where CHS, thinking<br/> 5 that they had not won the hospital in York<br/> 6 County, decided instead from a strategic<br/> 7 standpoint to expand its services in Pineville<br/> 8 and to try to serve York County from Pineville.<br/> 9 And then by happenstance they had another bite<br/> 10 of the apple --<br/> 11 Q: Remand, you mean.<br/> 12 A: On the remand, yes. They then sort of back<br/> 13 tracked a little bit. So actually we are going<br/> 14 to shift a whole bunch of patients from<br/> 15 Pineville to the new facility. So, you know,<br/> 16 I think that CHS has already built to capacity<br/> 17 to serve York County patients and that's at<br/> 18 Pineville. And for them to now seek approval<br/> 19 of this and to say it's only going to come<br/> 20 through shifting patients, I think it means<br/> 21 that somewhere there is some double counting<br/> 22 going on.<br/> 23 Q: Now, you mentioned that CMC Pineville, as part<br/> 24 of its expansion, added a number of special<br/> 25 services, right?</p>                                                                      |
| <p style="text-align: right;">Page 1190</p> <p>1 decision?<br/> 2 A: Right. And so in the CMC Pineville<br/> 3 application, they took into account what the<br/> 4 effect of a Fort Mill Medical Center project<br/> 5 would have on their Pineville facility.<br/> 6 And if I can go to another slide, in 2007<br/> 7 they said if CMC Pineville were to be approved<br/> 8 with the Fort Mill Medical Center there, that<br/> 9 they expected there to be a loss of about 440<br/> 10 discharges in, I believe was the third year of<br/> 11 operation, as a result of that, Piedmont<br/> 12 Medical Center's own facility in York County.<br/> 13 Now, in 2010 after the remand when CMC-Fort<br/> 14 Mill resubmitted its application, whatever we<br/> 15 want to call it, amended or updated or what<br/> 16 have you, their projections now in terms of the<br/> 17 impact on the Fort Mill Hospital on CMC<br/> 18 Pineville would be a shift of 1,923 admissions.<br/> 19 So we can see that the assumption was that<br/> 20 a Fort Mill Medical Center wasn't going to have<br/> 21 much impact on Pineville. But if CMC-Fort Mill<br/> 22 were built, because CHS had taken the position<br/> 23 in that application that the patients would be<br/> 24 shifted from existing CHS facilities, all of<br/> 25 a sudden the impact of that hospital on</p> | <p style="text-align: right;">Page 1192</p> <p>1 A: It did.<br/> 2 Q: And what's the significance of that with<br/> 3 respect to the shift?<br/> 4 A: Well, I think there are sort of two aspects to<br/> 5 that. Among the services they offer; open<br/> 6 heart surgery, interventional cardiology, which<br/> 7 includes angioplasty, electro physiology<br/> 8 studies and so forth that we've discussed<br/> 9 before, a neonatal intensive care. In order to<br/> 10 support those services, they need to have<br/> 11 referrals. I mean, you know, when you have<br/> 12 what are often referred to as tertiary<br/> 13 services, not all of that business is going to<br/> 14 be generated from your in-house population of<br/> 15 patients. You have to also rely on transfers<br/> 16 from smaller facilities to utilize those<br/> 17 services. And so CMC-Pineville, again,<br/> 18 projected that those services would be well<br/> 19 utilized and relied on the York County<br/> 20 population. And I think it is reasonable to<br/> 21 assume that if CMC-Fort Mill were constructed<br/> 22 and patients are being served at CMC-Fort Mill<br/> 23 and they need these specialized services, it is<br/> 24 only logical to think that those services would<br/> 25 be -- those patients would transfer to CMC-</p> |

298 (Pages 1189 to 1192)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001148

Page 1193

1 Pineville.  
 2 So as I said before, I think in the past, many  
 3 of those patients would have gone to Piedmont.  
 4 Q: Now, there has been a good bit of testimony in  
 5 the hearing so far about out-migration from  
 6 York County to North Carolina facilities to CHS  
 7 facilities in North Carolina, specifically, and  
 8 the effects of CHS physician referrals on that  
 9 out-migration. With that -- given that  
 10 context, what effect do you believe CMC-Fort  
 11 Mill would have on CHS's historical efforts to  
 12 redirect patients from York County?  
 13 A: I think that having a hospital in York County  
 14 is somewhat of a game changer, if you will, for  
 15 CHS. They've been able to make significant end  
 16 roads into York County just by building up this  
 17 physician network. And having a new hospital  
 18 in York County is going to only increase CHS's  
 19 ability to expand that physician network. For  
 20 example, if you have a hospital -- right now  
 21 CHS doesn't have a hospital. And the testimony  
 22 I've heard is by and large the Carolinas  
 23 Physician Network physicians don't practice at  
 24 Piedmont. Those doctors, if they're located in  
 25 York County, are having to drive to Pineville

Page 1194

1 or somewhere else in order to perform either  
 2 inpatient services or even outpatient surgical  
 3 services, for example. But by having a  
 4 hospital there, it would be more attractive to  
 5 physicians to want to practice in the York  
 6 County area. It would be more attractive, for  
 7 example, if orthopedic surgeons, for general  
 8 surgeons, for gastroenterologists and so forth  
 9 who would have a hospital based program where  
 10 they could go and do their procedures. Also a  
 11 cardiologist, for example, could do certain  
 12 basic things there and then have the capability  
 13 of transferring those patients up to Pineville.  
 14 And so I think that having this capability  
 15 that a new hospital offers is going to only  
 16 expand the number of physicians that are in the  
 17 York County market. And again, when you look  
 18 at the secondary effect of that, patients who  
 19 otherwise were going to physicians who practice  
 20 at Piedmont now, a new doctor moves into your  
 21 neighborhood, his office is closer to where you  
 22 live; the likelihood that at least some of  
 23 those patients are going to choose to use the  
 24 new physician. And again, it's a ripple  
 25 effect, you know, through the county. And so

Page 1195

1 the physician component of this, I think, is  
 2 only going to be exacerbated in terms of the  
 3 potential for future loss of patients at  
 4 Piedmont if CHS is successful in getting this  
 5 hospital.  
 6 Q: Now, CHS has made an announcement about going  
 7 into the health insurance business. Can you  
 8 tell us about that?  
 9 A: Sure. There was an announcement, I guess a  
 10 couple of weeks ago, that CHS was entering into  
 11 a venture with Coventry Health, which is a  
 12 national health insurance provider. They  
 13 wanted to begin to offer health insurance  
 14 products in the Charlotte area. And a number  
 15 of health systems are taking those steps. But  
 16 if you think of how you capture patients, how  
 17 you penetrate a market, there are sort of three  
 18 legs to the stool, if you will. I mean, one is  
 19 having facilities in the market where patients  
 20 can go. Secondly is having physicians in the  
 21 market where patients can go. And the third is  
 22 if you don't have a health insurance product,  
 23 having contracts with health insurance  
 24 companies that will bring those patients to  
 25 your facility.

Page 1196

1 If you have your own health insurance  
 2 product, typically you would be able to require  
 3 the patients go to facilities that are in the  
 4 network. With the CHS product, I think it  
 5 would be logical to assume those in network  
 6 facilities and those in network physicians  
 7 would be CHS physicians at those facilities.  
 8 There would be substantial penalties to go  
 9 outside the network. And so patients would  
 10 have a strong incentive to go to CHS  
 11 facilities.

12 Having a hospital in Fort Mill would  
 13 facilitate CHS's efforts to sell insurance in  
 14 York County. It would be if -- let's say, for  
 15 example, that CHS didn't have a facility in  
 16 York County and they were trying to sell  
 17 insurance to a company that was based in Rock  
 18 Hill, they may not be that excited about  
 19 signing with CHS if all the patients had to go  
 20 to Pineville and all of their employees had to  
 21 go to Pineville for services. But if, instead,  
 22 CHS had a hospital there, and so they could go  
 23 to our Fort Mill facility. And if they needed  
 24 anything more exotic than that, then they can  
 25 go to Pineville or downtown, that's a more

299 (Pages 1193 to 1196)

1230 Richland Street / Columbia, SC 29201  
 (803) 252-3445 / (800) 822-0896

RECORD 001149

| Page 1197                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 1199                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 attractive package to offer to employers. So</p> <p>2 CHS already has a very large presence in the</p> <p>3 Charlotte market. And I think through this</p> <p>4 health insurance effort, I think they can</p> <p>5 further consolidate some of the market power</p> <p>6 that they already have.</p> <p>7 Q: And when you say the Charlotte market, are you</p> <p>8 including northern York County now?</p> <p>9 A: I'm including all of York County in that.</p> <p>10 Q: Now Ms. Brandt, with DHEC accepted CHS's</p> <p>11 position that if Fort Mill Medical Center were</p> <p>12 built, it would have an adverse impact on</p> <p>13 people, that Fort Mill Medical Center would</p> <p>14 adversely impact Piedmont. What's your</p> <p>15 reaction to that?</p> <p>16 A: Well, when I first read that, I was somewhat</p> <p>17 stunned, quite frankly, by that assertion that</p> <p>18 somehow allowing the biggest hospital system in</p> <p>19 the Charlotte market to come in and build a</p> <p>20 hospital in York County where they didn't have</p> <p>21 one, would have a lesser impact than an</p> <p>22 existing provider simply creating a satellite</p> <p>23 hospital to serve patients in its existing</p> <p>24 market. That, to me, I just don't see any</p> <p>25 logical basis for that to, you know, be a</p>                                                                        | <p>1 away from it because of the hospital in Fort</p> <p>2 Mill and because of the redirection, especially</p> <p>3 patients out of York County.</p> <p>4 And so I think it would be illogical to</p> <p>5 assume anything other than the fact that</p> <p>6 allowing Piedmont to shift some of its existing</p> <p>7 patients and to recapture some of the out-</p> <p>8 migration that's happening in York County could</p> <p>9 be a far better outcome for Piedmont than</p> <p>10 simply the deadweight loss associated with</p> <p>11 losing patients to CHS.</p> <p>12 Q: Let me ask you to go back to your second bullet</p> <p>13 point on your slide for a moment.</p> <p>14 A: Sure.</p> <p>15 Q: You were here -- you said you were here for the</p> <p>16 entire -- for all of the testimony so far in</p> <p>17 this hearing. I want to ask you to think back</p> <p>18 to Mr. Masterton's testimony. Do you recall</p> <p>19 Mr. Masterton talking about a strategy for</p> <p>20 halting out-migration and recapturing out-</p> <p>21 migration?</p> <p>22 A: I do.</p> <p>23 Q: And did you hear Mr. Masterton testify that</p> <p>24 while there were three elements of that, the</p> <p>25 key element was building Fort Mill Medical</p>                                                                                                                                     |
| Page 1198                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 1200                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>1 reasonable conclusion. You know, we've already</p> <p>2 heard testimony from Mr. Levitt about the fact</p> <p>3 that Piedmont has seen its market shares in</p> <p>4 York County and at Fort Mill specifically</p> <p>5 decline significantly in the last decade. And</p> <p>6 so there is a significant amount of impact that</p> <p>7 has already occurred without having a hospital.</p> <p>8 Piedmont is going to have no opportunity. I</p> <p>9 mean, let's assume that CMC-Fort Mill is built.</p> <p>10 I mean, that in effect is going to create a</p> <p>11 barrier for Piedmont. Basically it's going to</p> <p>12 wall off, if you will, the whole northern</p> <p>13 sector of the county. And it's going to mean</p> <p>14 that Piedmont is going to have very little</p> <p>15 opportunity to reverse the out-migration,</p> <p>16 particularly out-migration from northern York,</p> <p>17 which is the fastest growing and as we've</p> <p>18 heard, one of the more affluent portions of</p> <p>19 York County. And so I think that that's a very</p> <p>20 real concern. So Piedmont, instead of being</p> <p>21 able to sort of bounce back from a significant</p> <p>22 downturn in its market share over the last</p> <p>23 seven or eight years, it's basically going to</p> <p>24 be stuck where it is today, with a significant</p> <p>25 potential for further shift in market share</p> | <p>1 Center. My question is do you agree with that?</p> <p>2 A: I do. Without Piedmont having a physical</p> <p>3 presence in the Fort Mill market, I don't see</p> <p>4 them being able to effectively reverse the out-</p> <p>5 migration that's occurred over the last seven</p> <p>6 years or so from northern York County. CHS,</p> <p>7 as I said, has dramatically expanded Pineville.</p> <p>8 It offers a broad range of services equivalent</p> <p>9 to what Piedmont does. They've effectively</p> <p>10 penetrated the physician market in York County</p> <p>11 through acquisition and improvement. And so as</p> <p>12 a result without having a physical presence</p> <p>13 there that would attract patients to the</p> <p>14 facility and give Piedmont a base on which to</p> <p>15 recruit additional physicians, I just -- I</p> <p>16 don't think that any other strategy is going to</p> <p>17 have any significant impacts in terms of</p> <p>18 changing the out-migration pattern.</p> <p>19 Q: Okay. You've been discussing CMC-Fort Mill if</p> <p>20 it were to be built, CMC-Fort Mill's adverse</p> <p>21 impact on Piedmont. Let me ask you now to</p> <p>22 focus on what kind of impact do you believe</p> <p>23 CMC-Fort Mill would have on the York County</p> <p>24 health system and also what do you mean by the</p> <p>25 York County health system?</p> |

300 (Pages 1197 to 1200)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001150



| Page 1201                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 1203                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 A: Let me start with what I mean by the York<br/>2 County health system.<br/>3 Q: All right.<br/>4 A: Now, obviously Piedmont is a big part of York<br/>5 County health system, it's the only hospital in<br/>6 the community. But there is also physicians.<br/>7 There is other types of healthcare<br/>8 professionals that operate in York County. But<br/>9 the county itself, it's in the health business,<br/>10 if you will, the county health department.<br/>11 There is community education programs. There<br/>12 is outreach programs, screening programs and so<br/>13 forth. All of these things are part of the<br/>14 healthcare system. And, you know, in my view<br/>15 approving CMC-Fort Mill is going to adversely<br/>16 affect that for a few different reasons. Let<br/>17 me describe those.<br/>18 Q: Sure.<br/>19 A: I mean, the first is it's going to perpetuate<br/>20 the out-migration of York County residents to<br/>21 North Carolina and for all the reasons we've<br/>22 already talked about. And, you know, you might<br/>23 say, well, what difference does that make if<br/>24 the patient gets service in North Carolina<br/>25 versus South Carolina? Well, I mean, I think</p>                                                                        | <p>1 speciality programs damages the healthcare<br/>2 system in York County because patients won't<br/>3 have to travel farther to get those services.<br/>4 And in some cases, continued reductions in<br/>5 volume just means that those services can't be<br/>6 as broad and as high quality as they could be<br/>7 if there was a larger patient base.<br/>8 Q: All right. And we're talking about clinical<br/>9 services now. How about some points on that<br/>10 from this adverse impact on the system?<br/>11 A: Well, I think there is certainly the potential<br/>12 for tax revenues for York County and South<br/>13 Carolina to decrease as a result of the<br/>14 approval of CMC-Fort Mill. And we know that<br/>15 Piedmont is a taxpaying entity. And Mr.<br/>16 Miller, I think, described in some detail the<br/>17 types of taxes that are paid and a significant<br/>18 amount of money every year. I'm not saying<br/>19 that you should always approve a taxpaying<br/>20 hospital when we get into a CON fight. I think<br/>21 there is sometimes good reasons to approve for<br/>22 not-for-profits and sometimes good reasons to<br/>23 approve for-profit entities. But when you have<br/>24 an existing for-profit entity that is<br/>25 contributing to the existing infrastructure of</p> |
| Page 1202                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page 1204                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 that the focus of the CON Act in South<br/>2 Carolina, and I think just generally good<br/>3 health planning, you would like people to<br/>4 receive needed services as close to home as<br/>5 possible. And I see through the approval of<br/>6 the CMC-Fort Mill project as putting greater<br/>7 pressure on patients leaving the county for<br/>8 care because CHS is a very large network of the<br/>9 hospitals in Mecklenburg County.<br/>10 I think probably equally significant is<br/>11 the fact that the speciality programs that<br/>12 Piedmont offers, and we've heard testimony<br/>13 about some of the things that are done in terms<br/>14 of neonatal services, in terms of cardiac<br/>15 services, in terms of orthopedics and<br/>16 neurosurgery, and the fact that you need a<br/>17 certain volume of patients in order to maintain<br/>18 quality, efficiency in those programs as well<br/>19 as to maintain economic viability. And I think<br/>20 that some of those programs are certainly<br/>21 threatened if there is this continued exodus,<br/>22 especially patients from York County into<br/>23 Mecklenburg County. And I won't go through all<br/>24 the discussion that has already happened on<br/>25 that point, but I think that the loss of those</p> | <p>1 accounting like Piedmont is in York County, if<br/>2 the result of your project is to reduce the<br/>3 number of patients who are getting care in the<br/>4 county and at the same time reduce the county<br/>5 tax base and the county, as I said before, is<br/>6 also involved in activities that have<br/>7 implications for the health of residents, I<br/>8 think that's a negative to the healthcare<br/>9 system.<br/>10 South Carolina, itself, gets revenue from<br/>11 Piedmont. It goes in terms of the income taxes<br/>12 that it pays to the state. And obviously the<br/>13 state is involved in healthcare activities as<br/>14 well. I mean, DHEC is involved in a number of<br/>15 health-related activities. And so you are<br/>16 reducing the revenues that are paid in South<br/>17 Carolina. And I think it goes back again to<br/>18 the purposes of the CON Act, and that is to<br/>19 ensure that quality and accessibility for<br/>20 patients in South Carolina. I mean, if the<br/>21 goal was just to ensure that patients got good<br/>22 quality care, I mean then it would not matter<br/>23 if they were going to Mayo Clinic or Charlotte<br/>24 or wherever. But I think the idea is to try to<br/>25 maximize the services providing within the</p>                            |

301 (Pages 1201 to 1204)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001151

| Page 1205                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 1207                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 state.</p> <p>2 Q: You mentioned the purposes of the CON Act.</p> <p>3 You're familiar with those purposes; are you</p> <p>4 not?</p> <p>5 A: I am.</p> <p>6 Q: And you're familiar with the regulatory</p> <p>7 criteria?</p> <p>8 A: I am.</p> <p>9 Q: I know what's set forth in Motion 61-15. Based</p> <p>10 on your experience and based on health planning</p> <p>11 principles, do the criteria encompass all</p> <p>12 aspects of the CON purposes -- CON Act</p> <p>13 purposes?</p> <p>14 A: They don't. I think they attempt to flush out</p> <p>15 those purposes. But healthcare is so complex.</p> <p>16 It is very difficult to capture on any set of</p> <p>17 regulations, even though South Carolina has</p> <p>18 many regulations as it reflects a CON review,</p> <p>19 to capture all aspects of a determination of</p> <p>20 which project would best meet the needs of the</p> <p>21 community.</p> <p>22 Q: Mr. Sullivan, what effect would approval of</p> <p>23 CMC-Fort Mill have on the York County</p> <p>24 Healthcare System with respect to payer mix and</p> <p>25 the proportionality of who gets served?</p>                                                                                                                                                                                                      | <p>1 And so that would be a source of some of these</p> <p>2 better paying patients for Piedmont. There is</p> <p>3 certainly a strong potential if CMC-Fort Mill</p> <p>4 is constructed, that given the payer mix of the</p> <p>5 physicians who practice there, given the</p> <p>6 demographics of the area where the Fort Mill</p> <p>7 facility will be located, that Piedmont will</p> <p>8 see its payer mix erode even further over time.</p> <p>9 Q: What do you mean when you say payer mix erode?</p> <p>10 A: Well, one of the aspects about healthcare that</p> <p>11 I think it's difficult sometimes for people</p> <p>12 outside the industry to understand is that not</p> <p>13 every payer pays the full cost of providing</p> <p>14 services. Medicaid, for example, is not a</p> <p>15 particularly generous payer. Oftentimes it is</p> <p>16 paying below cost. Medicare, depending on the</p> <p>17 service, can be paying -- you have a small</p> <p>18 profit or you are actually losing money on</p> <p>19 Medicare patients, as well. Obviously, people</p> <p>20 without health insurance, you're not getting</p> <p>21 paid very much for those people. And so by and</p> <p>22 large, hospitals make their profits through</p> <p>23 their managed care commercial insurance</p> <p>24 patients. That's where there is the greatest</p> <p>25 margin. And if those patients begin to shrink,</p> |
| Page 1206                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 1208                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>1 A: Well, you know, we've heard testimony already,</p> <p>2 which I won't repeat, about the fact that</p> <p>3 Piedmont has seen erosion in its payer mix in</p> <p>4 the sense that its percentage of commercial</p> <p>5 managed care patients has gone down. It's</p> <p>6 percentage of Medicaid and uninsured patients</p> <p>7 has gone up. And we've also heard testimony</p> <p>8 from the physicians about the fact that they</p> <p>9 see it in their own practices, the free</p> <p>10 physicians who practice here, they don't see as</p> <p>11 many of those well-paying patients. We also</p> <p>12 saw the exhibit and looked at the payer mix of</p> <p>13 the CPN physicians practicing in York County.</p> <p>14 We saw that they had --</p> <p>15 Q: You're talking about Exhibit 27?</p> <p>16 A: I'll take your word for that.</p> <p>17 Q: Okay. I'm sorry. Go ahead.</p> <p>18 A: That they had relatively low percentages of</p> <p>19 Medicaid and charity care, self-pay care in</p> <p>20 their practices. So I think there is certainly</p> <p>21 a strong concern that if CMC-Fort Mill is</p> <p>22 approved -- well, let me add one more thing to</p> <p>23 that. You know, I think there is evidence</p> <p>24 which we will look at in a minute, that the</p> <p>25 Fort Mill area has a more affluent population.</p> | <p>1 then you are left increasingly relying upon</p> <p>2 Medicaid, Medicare and charity self-pay</p> <p>3 patients. You are going to see your resources</p> <p>4 shrink as well and your ability to expand</p> <p>5 services or even to maintain service.</p> <p>6 Q: Now, we are talking a general topic here I</p> <p>7 think of this slide is the impact of CMC-Fort</p> <p>8 Mill, the impact it would have on the York</p> <p>9 County healthcare system?</p> <p>10 A: Right.</p> <p>11 Q: And I think, you know, one more bullet point.</p> <p>12 What would be the impact on, do you believe, on</p> <p>13 employment?</p> <p>14 A: I believe that it would be a net reduction in</p> <p>15 employment in York County. And, I mean, and I</p> <p>16 guess granted, whoever builds a hospital in</p> <p>17 Fort Mill is going to hire employees, you know.</p> <p>18 And so to some extent, that is somewhat</p> <p>19 employment neutral, if you will.</p> <p>20 But if we think about the potential loss</p> <p>21 of specialty patients going to Mecklenburg</p> <p>22 County, this certainly, as we've heard</p> <p>23 testimony from Mr. Masterton and I think from</p> <p>24 Mr. Miller, there is certainly the potential to</p> <p>25 have to layoff or reduce the hours of existing</p>                                                                                                                          |

302 (Pages 1205 to 1208)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001152

Page 1209

1 employees who work at Piedmont in those  
2 speciality areas. And that's somewhat of a  
3 bigger impact because those are sometimes the  
4 most highly skilled and most difficult to  
5 recruit types of individuals in the healthcare  
6 system. And so reducing that employment, I  
7 think damages sort of the infrastructure again  
8 of the healthcare system in York County.  
9 Q: All right. We have been talking about the  
10 effect that approval of CMC-Fort Mill would  
11 have on the York County healthcare system.  
12 Let's move to the topic of the effect that  
13 approval of Fort Mill Medical Center would have  
14 on the York County healthcare system.  
15 A: Sure. In my view, the net effect of approving  
16 Fort Mill Medical Center would be to enhance  
17 the healthcare system in York County.  
18 Q: All right. And why do you say that?  
19 A: Well, probably number one is that I believe it  
20 would have the biggest impact in terms of  
21 reversing out-migration of patients. With the  
22 CMC-Fort Mill project it will probably reduce  
23 out-migration of some of what I'll call  
24 primary/secondary type patients, the patients  
25 who have needs but not at the highest level of

Page 1210

1 need for treatment. With these tertiary  
2 patients, the patients that will need highly  
3 specialized services, are not likely to be  
4 reversed for CMC-Fort Mill. In contrast,  
5 Piedmont would have every incentive to keep  
6 those speciality patients in the county. And  
7 so I think that would be a positive in terms of  
8 trying to build and strengthen the existing  
9 speciality services that exist in the county.  
10 That's really -- those two points are related,  
11 my first and second point.  
12 Q: All right. Let's talk about tax revenues. If  
13 CMC-Fort Mill is approved, what about Fort Mill  
14 Medical Center?  
15 A: Well, I think certainly the tax revenues are  
16 going to go up in two different ways. First of  
17 all, if you have a taxpaying entity in Fort  
18 Mill versus a not-for-profit entity in Fort  
19 Mill, there is going to be income taxes and  
20 business taxes and other types of taxes that  
21 will be paid. And specifically, I think there  
22 has been some testimony that property tax  
23 associated with the proposed Fort Mill Medical  
24 Center will be about \$4 million a year that  
25 would go directly to York County. So there

Page 1211

1 would be a positive impact in terms of tax  
2 revenues, which again filters through the  
3 system in terms of the general health of the  
4 county which also has an impact on the health  
5 of the population.

6 And then finally, for the reasons I think  
7 we've already discussed, it would expand  
8 employment opportunities in York County, but  
9 yet it may well keep more of those patients in  
10 the county. There would be greater job  
11 opportunities in York County as opposed to  
12 those jobs going to Mecklenburg County.

13 Q: All right. On the previous slide, the one  
14 talking about focusing on the CMC-Fort Mill's  
15 impact on the system, you had a bullet point  
16 about payer mix, the proportionality of payer  
17 mix.

18 A: Right.

19 Q: What about if Fort Mill Medical Center is  
20 approved, what would the effect be on the  
21 proportionality of the payer mix?

22 A: I think that again, the presence in Fort Mill  
23 will allow Piedmont to be able to maintain a  
24 presence in that better demographic market in  
25 North York County and also to allow them to

Page 1212

1 retain some of those better paying patients who  
2 require speciality services that would  
3 otherwise be out-migrating into Mecklenburg.  
4 So I think that would again be another positive  
5 aspect of the approval of Fort Mill Medical  
6 Center.

7 Q: Mr. Sullivan, when DHEC evaluates a CON  
8 application or is competing to an application,  
9 they rank the criteria in order of priority;  
10 are you familiar with that?

11 A: I am.

12 Q: In this case where did DHEC rank adverse impact  
13 in terms of priority about this?

14 A: Well, they had four tiers, if you will, of  
15 priorities. And adverse impact was ranked on  
16 the fourth tier -- the last, the lowest tier.

17 Q: All right. And the tiers would contain, in  
18 some cases, multiple criteria?

19 A: That's true.

20 Q: All right. And where did -- and so they ranked  
21 adverse impact in the fourth tier, you say?

22 A: Yes.

23 Q: Where did Ms. Brandt rank in terms of priority  
24 accessibility of that criteria?

25 A: Well, it was in the second tier. But the first

303 (Pages 1209 to 1212)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001153

| Page 1213                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 1215                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 tier, the only criterion was consistency with</p> <p>2 the state health plan, which I think Judge</p> <p>3 Matthews addressed in an earlier decision. So</p> <p>4 really accessibility now is in the second or</p> <p>5 highest tier of the criteria that we were last</p> <p>6 discussing.</p> <p>7 Q: So would you conclude from that that DHEC</p> <p>8 prioritized -- gave greater priority to</p> <p>9 accessibility and a number of other criteria</p> <p>10 than they did to adverse impact?</p> <p>11 A: Yes.</p> <p>12 Q: And do you believe from a health planning</p> <p>13 perspective that was appropriate ranking or</p> <p>14 not?</p> <p>15 A: I don't. I mean -- first of all from a general</p> <p>16 health planning perspective, I think the two</p> <p>17 key factors in any health planning decision are</p> <p>18 what's the benefit that's going to derive to</p> <p>19 the community and what's the negative impact on</p> <p>20 existing services in the community that would</p> <p>21 result from approving it.</p> <p>22 If we only looked at, for example,</p> <p>23 accessibility, you know, that's often talked</p> <p>24 about in CON hearings, you'd have a hospital in</p> <p>25 every corner because that would be the way to</p>                                        | <p>1 what this is before I interrupted you.</p> <p>2 A: Sure, it's actually page Roman Numeral II-IX,</p> <p>3 I believe, 2004-2005 State Health Plan. And</p> <p>4 that's a section on acute care hospital beds.</p> <p>5 Q: And you've excerpted some language there.</p> <p>6 A: I have. And just focus on the last sentence.</p> <p>7 "The benefits have improved accessibility but</p> <p>8 will be equally weighted with the adverse</p> <p>9 effects of duplication in evaluating</p> <p>10 certificate of need applications for these</p> <p>11 beds."</p> <p>12 Q: All right. What is the significance of that</p> <p>13 sentence with respect to this grant ranking or</p> <p>14 prioritizing criteria?</p> <p>15 A: Well, I think certainly this is pretty clear.</p> <p>16 I mean not -- state health plan isn't always</p> <p>17 this clear in terms of what the priorities are.</p> <p>18 But in this case, I think it is pretty clear</p> <p>19 that accessibility should be given the same</p> <p>20 weight as adverse impact.</p> <p>21 Q: Now, let's go back to your analytical framework</p> <p>22 for discussing the pivot points, as you call</p> <p>23 them, and Ms. Brandt's decision. We've been</p> <p>24 talking about the first one. Are you done with</p> <p>25 adverse impact and ready to move on?</p> |
| Page 1214                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 1216                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1 maximize accessibility. Now obviously that</p> <p>2 would have tremendous negative impacts on the</p> <p>3 existing providers if you started building</p> <p>4 hospitals on every corner. And so I think</p> <p>5 there is -- just from a general health planning</p> <p>6 perspective, I think that there is -- impact</p> <p>7 always has to be given a very high priority</p> <p>8 right up there with accessibility and</p> <p>9 improvements and other aspects of the</p> <p>10 healthcare system.</p> <p>11 Q: And health planning principles aside, what</p> <p>12 about -- how does the state health plan address</p> <p>13 this, South Carolina State Health Plan?</p> <p>14 A: Well, there is an exhibit that shows an excerpt</p> <p>15 from the South Carolina State Health Plan, the</p> <p>16 section of the health plan that deals with the</p> <p>17 addition of acute care beds.</p> <p>18 Q: Well, let me stop you just a second. This is</p> <p>19 labeled Piedmont Exhibit 8A, and I believe this</p> <p>20 has been admitted, but I'm not positive.</p> <p>21 MR. WESTBROOK: Is there objection to 8A?</p> <p>22 MR. GASKINS: No objection.</p> <p>23 THE COURT: It's been admitted.</p> <p>24 MR. WESTBROOK: Thank you.</p> <p>25 Q: All right. Piedmont Exhibit 8A, tell us again</p> | <p>1 A: I think probably everybody is done with that</p> <p>2 and ready to move on.</p> <p>3 Q: Okay. Let's move on to the second pivot point.</p> <p>4 And tell us what that is.</p> <p>5 A: It's now distribution, and this goes to the</p> <p>6 issue of 100 versus 35-64 beds.</p> <p>7 Q: And I believe you said that this was -- this</p> <p>8 issue of maldistribution was introduced by CHS,</p> <p>9 is that right?</p> <p>10 A: That's correct.</p> <p>11 Q: Okay. Why don't you elaborate on that.</p> <p>12 A: CHS in its -- I believe in its July 2011</p> <p>13 submission to DHEC had set forth an analysis of</p> <p>14 bed-to-population ratios and divided the county</p> <p>15 up into three regions; northern York, Rock</p> <p>16 Hill and western York and then calculated the</p> <p>17 number of beds per capita that would exist in</p> <p>18 those regions as a result of one, the approval</p> <p>19 of 100 beds at Fort Mill and two, with the</p> <p>20 approval of 64 beds in Fort Mill.</p> <p>21 MR. WESTBROOK: Let's go to demonstrative 149.</p> <p>22 Q: And as Dan is doing and calling it out for us,</p> <p>23 why don't you orient us here, Mr. Sullivan.</p> <p>24 Let's start with the chart on my left.</p> <p>25 A: Okay.</p>                                                             |

304 (Pages 1213 to 1216)

1230 Richland Street / Columbia, SC 29201  
 (803) 252-3445 / (800) 822-0896

RECORD 001154

Page 1217

1 Q: It says beginning Platt Exhibit 4; what is  
2 that?  
3 A: The chart on the left shows what was submitted  
4 to DHEC back in July of 2011.  
5 Q: All right, who's Platt?  
6 A: Kathy Platt is a health planning consultant who  
7 was working with CHS on their application.  
8 Q: All right. And what is your relationship with  
9 Kathy Platt?  
10 A: We worked together for 18 years. When I  
11 started my firm, she was the first employee I  
12 hired. So I know Kathy very well. And so she  
13 -- a few years ago we amicably parted ways.  
14 And she has her own firm now.  
15 Q: Good. All right. Tell us about Ms. Platt's  
16 Exhibit 4 here.  
17 A: What she did is she defined the population in  
18 these three regions that I talked about;  
19 northern York, western York and Rock Hill and  
20 greater Rock Hill, I guess is the way she said  
21 it, and then calculated how many beds would  
22 exist per capita. And this is a fairly simple  
23 calculation. If you divide the population into  
24 the number of beds and then multiply it by a  
25 1,000, that will give you the ratio. And based

Page 1218

1 on her calculation, northern York would have in  
2 2010, 2.44 beds per 1,000 population. In  
3 comparison, she added together Rock Hill and  
4 western York and said that they would have 1.23  
5 beds per 1,000. So that would be about twice  
6 as many beds per capita in northern York than  
7 there would be in the rest of the county.  
8 Q: And that's if that was a 100-bed facility in  
9 Fort Mill?  
10 A: If there was a 100-bed facility.  
11 Q: Now the point of this -- I mean, what was Ms.  
12 Platt's point in this?  
13 A: I mean, her stated point was that the approval  
14 of 100 beds was too many. That it would create  
15 a maldistribution of resources in York County,  
16 and it would potentially restrict access to  
17 inpatient healthcare services for residents and  
18 other parts of York County if Piedmont were to  
19 shift 36 additional beds to northern York.  
20 Q: Right. And you just went over her calculations  
21 for 2010. She projected that out in 2015,  
22 right?  
23 A: She did. And as you see, the ratios go down a  
24 little bit. They go down faster in northern  
25 York County because the population is growing

Page 1219

1 faster there, but she still showed, you know,  
2 that it would be almost twice as many beds per  
3 capita in northern York than there would be in  
4 the remainder of the county. I've got some  
5 conceptual difficulties with this approach, but  
6 let's kind of focus on her analysis for right  
7 now. And I think there are some mechanical  
8 issues in terms of how this analysis was  
9 presented.  
10 Q: Well, explain those mechanical concerns you  
11 have.  
12 A: Well, if we can go to the right-hand side of  
13 this exhibit, and you will see at the top it  
14 says Platt Exhibit 4 corrected based on 2012  
15 projections. There are actually sort of two  
16 corrections that were made to this or updates  
17 if you will. I believe in the Platt Exhibit 4,  
18 she did not include the population of zip code  
19 29707.  
20 Q: Is that just an oversight or do you know?  
21 A: I don't know, but it wasn't included. I'm sure  
22 she will be here to explain it at some point.  
23 Q: And is 29704 a part of the Fort Mill primary  
24 service area?  
25 A: 707.

Page 1220

1 Q: 707 -- I'm sorry.  
2 A: Yeah, it is. You know, I believe, it was that  
3 zip code that was carved out. It's actually in  
4 Lancaster County, but it's located immediately  
5 adjacent to the site. And as a result, she  
6 understated the population in northern York  
7 County. In addition, at the time she did this  
8 the census data was not out. And so we didn't  
9 know what the actual population counts were  
10 going to be in these various components of York  
11 County. We now have the luxury of knowing  
12 that. And what we see is that the population  
13 in northern York is significantly higher.  
14 Q: What was it and what did she estimate the  
15 population in northern York to be here in her  
16 chart here; do you recall?  
17 A: Yeah, in 2010 there was about 41,000 and then  
18 in 2011 about 48,000.  
19 Q: Okay.  
20 A: And so what we are looking at here is about  
21 26,000 more in 2010 and about 31,000 roughly  
22 additional population in 2015.  
23 Q: All right.  
24 A: So I mean, obviously having a different  
25 denominator in the calculation results in

305 (Pages 1217 to 1220)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001155

| Page 1221                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 1223                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 different bed-to-population ratios.</p> <p>2 Q: All right.</p> <p>3 A: And so if we look at it now, if we look at the</p> <p>4 beds of population, and let's look at all three</p> <p>5 years for northern York, we can see that the</p> <p>6 ratio in 2010 is 1.51. It goes to 1.25 and</p> <p>7 then finally to 1.03 in 2020. You might ask me</p> <p>8 why am I looking at 2020?</p> <p>9 Q: Yeah.</p> <p>10 A: The -- where we are today is 2013. Whatever</p> <p>11 the decision that comes out of this, the</p> <p>12 likelihood is that there is not going to be a</p> <p>13 new hospital opening up in northern York County</p> <p>14 before 2016 or 2017. So the third year of</p> <p>15 operation could well be 2019 or 2020. And so</p> <p>16 I think it's important to look at where we're</p> <p>17 going to be when the new hospital is open.</p> <p>18 Now, if we contrast these ratios with the</p> <p>19 ratios for Rock Hill and western York together,</p> <p>20 we can see there is really not as much</p> <p>21 difference as Ms. Platt had found in her</p> <p>22 exhibit.</p> <p>23 Q: And the difference gets less and less with each</p> <p>24 year, doesn't it?</p> <p>25 A: It does. In 2010, the ratio -- it's a little</p>                                                                                                                              | <p>1 looks at the historical utilization of Piedmont</p> <p>2 Medical Center and it projects that forward.</p> <p>3 And there is nothing about the calculation of</p> <p>4 bed need in the state health plan that has</p> <p>5 anything to do with how many beds are needed in</p> <p>6 northern York County. I mean, the 64 beds,</p> <p>7 it's just an artifact of that methodology. And</p> <p>8 so somehow I think somewhere along the line,</p> <p>9 and I don't know where, it became that the need</p> <p>10 in northern York County was 64 beds. Well,</p> <p>11 that's not true. The need in northern York</p> <p>12 County is based on the population of northern</p> <p>13 York County and what their inpatient</p> <p>14 utilization statistics and so forth are. And</p> <p>15 so I think that what Ms. Brandt sort of latched</p> <p>16 onto this particular analysis of what CHS did</p> <p>17 and sort of bought into the notion that</p> <p>18 northern York County only needed 64 beds.</p> <p>19 Q: Well, let me ask you about that. In her</p> <p>20 analysis did Ms. Brandt reference this</p> <p>21 maldistribution analysis. And if so, how did</p> <p>22 she reference it?</p> <p>23 A: She did. She referenced the fact that this was</p> <p>24 raised, and she agreed with that and said that</p> <p>25 she had concerns, I think is what she said,</p> |
| Page 1222                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 1224                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>1 bit higher bed-to-population ratio in northern</p> <p>2 York. By 2015, it's almost equivalent and by</p> <p>3 2020, the number of beds per capita is actually</p> <p>4 less in northern York than it is in the rest of</p> <p>5 the county. So to the extent that this</p> <p>6 analysis has any meaning, and I think there are</p> <p>7 some questions about that, this would show that</p> <p>8 the approval of 100 beds in York County -- in</p> <p>9 northern York County would not result in a mild</p> <p>10 distribution of beds based on this framework.</p> <p>11 Q: All right. So I think you said earlier before</p> <p>12 you went into detail on this that you are</p> <p>13 explaining here the concerns you have about the</p> <p>14 mechanics of the analysis. And I think you</p> <p>15 also had some reference that the whole</p> <p>16 underlying analysis was flawed. Can you</p> <p>17 explain that?</p> <p>18 A: Sure. Let me go back to my PowerPoint. We</p> <p>19 just talked about the first point, that it</p> <p>20 relied on outdated population estimates and</p> <p>21 projections. It sort of arbitrarily divides</p> <p>22 the county into three areas. If we look at how</p> <p>23 the state health plan calculates bed need, it</p> <p>24 calculates it on a county-wide basis. It looks</p> <p>25 at the whole population of York County. It</p> | <p>1 that there would be a maldistribution of</p> <p>2 resources if 100 beds were to be approved in</p> <p>3 northern York County.</p> <p>4 Q: Did she ever see the corrected analysis with</p> <p>5 the revised population on it?</p> <p>6 A: She did not.</p> <p>7 Q: Go ahead, I'm sorry, go ahead with where you</p> <p>8 were.</p> <p>9 A: And then, I guess finally there is an</p> <p>10 underlying assumption in here that if the bed-</p> <p>11 to-population ratio in Rock Hill is 1.25, that</p> <p>12 is too few. And if it's 2.0 in northern York</p> <p>13 County, that's too many. But there is no</p> <p>14 underlying basis for that. You know, bed-to-</p> <p>15 population ratios really don't tell you</p> <p>16 anything. They just tell you how many beds</p> <p>17 you've got in a given geographic area. They</p> <p>18 don't tell you anything about the needs. If we</p> <p>19 look at Piedmont Medical Center, they have 288</p> <p>20 beds today in Rock Hill.</p> <p>21 Q: Do they need 288 beds in Rock Hill?</p> <p>22 A: They certainly don't need 288 beds, because</p> <p>23 they have an average weighted census of about</p> <p>24 180. So on an average day they have 108 empty</p> <p>25 beds in Rock Hill. So if you said that -- if</p>                                                                                                   |

306 (Pages 1221 to 1224)

1230 Richland Street / Columbia, SC 29201  
 (803) 252-3445 / (800) 822-0896

RECORD 001156

Page 1225

1 you look at the bed-to-population ratio today  
2 in Rock Hill and that number was, let's say  
3 1.5, that doesn't mean that there is a need for  
4 1.5 beds. That just means that's how many beds  
5 there are.

6 And so this bed-to-population ratio I  
7 think assumes there is some sort of normative  
8 value to a particular ratio, but it's never  
9 been established as to what the right ratio  
10 would be. In fact, this bed-to-population  
11 approach was largely abandoned in the health  
12 planning industry sometime in the eighties.  
13 And, you know, when the first standards came  
14 out one of the standards was there needs to be  
15 four beds per thousand in every planning area  
16 in the country. I think we've gone well beyond  
17 that now and know that that sort of static  
18 approach to health planning isn't realistic.

19 Q: Okay. Now, let's go to your next slide, I  
20 believe, and what you just testified about the  
21 number of empty beds on a given day or an  
22 average day at Piedmont, can you elaborate some  
23 more on that?

24 A: Sure. And, you know, probably the more  
25 important point is what happens if you move 36

Page 1226

1 beds from Piedmont? You know, if we know that  
2 they have, on average, 108 empty beds, I mean  
3 hospitals have spikes and utilization during  
4 the year; flu season, whatever; some unusual  
5 occurrence. Let's assume you transfer 36 beds  
6 from Piedmont to Fort Mill Medical Center.  
7 That would leave 72 empty beds on an average  
8 day in the hospital. And right now with a  
9 census of 180, let's say that there was a ten-  
10 percent spike. That would be 18 additional  
11 patients on that day. Let's say it was a  
12 really bad day, it was a 20-percent spike.  
13 Then that would be 36 additional patients. Or  
14 a really significant spike would be 30 percent.  
15 And then you would have 54 additional patients.  
16 So even with the 36 beds gone you still have  
17 significant flexibility in your bed capacity at  
18 Piedmont to accommodate fluctuations and  
19 utilizations that occur throughout the year.

20 Q: Which better addresses -- I'm sorry, let me  
21 back up a second. As a health planner, based  
22 on health planning principles, when you are  
23 planning for a hospital, do you -- is it more  
24 important to plan short term, long term, both?  
25 How do you -- what kind of -- how many years do

Page 1227

1 you look at?

2 A: Well, you know, I think traditionally in  
3 certificate of need applications, you are  
4 looking at a five-year planning horizon to sort  
5 of establish the basic need for the circle.  
6 But when you are talking about building a new  
7 hospital, I mean, that costs many millions of  
8 dollars, you are building a hospital for a 30-  
9 or 40-year life, not a five-year life. It's  
10 different from buying an MRI unit that might be  
11 obsolete in seven years. It's different from,  
12 you know, many other types of activities that  
13 CONs are required for. So in a hospital, you  
14 obviously have to make sure that in the short  
15 term it makes sense. But you also have to look  
16 at what the long-term needs of the population  
17 are going to be in building something that is  
18 going to address both the short and long-term  
19 needs.

20 Q: When you look at the long-term needs of the  
21 Fort Mill area or northern York County, which  
22 size hospital better addresses those long-term  
23 needs, a 64-bed hospital or 100-bed hospital?

24 A: In my view it would be the 100-bed hospital.

25 Q: Okay.

Page 1228

1 A: You know, as I mentioned earlier, the 64-bed  
2 need in the state health plan doesn't have  
3 anything to do with the needs in northern York  
4 County. Fort Mill is the fastest growing area  
5 of York County overall. And if you're looking  
6 at a rapidly growing area you've got a  
7 population base, we saw, that was going from  
8 about 66,000 people up to pushing 100,000  
9 people by 2020. That is significant growth in  
10 the area. And I think it's important to  
11 recognize that when you build a facility there  
12 are certain economies associated with building  
13 a facility in one fell swoop as opposed to  
14 constantly adding on to facilities over time.  
15 It's disruptive and more expensive to have to  
16 constantly modify and expand facilities in the  
17 future. You know, when we look at the  
18 projections that were done for CMC-Fort Mill,  
19 I believe they are projecting that by the third  
20 year they are going to reach 68-percent  
21 occupancy in their 64 beds. That's --

22 Q: I'm sorry, go ahead. What does that tell you?

23 A: Well, that says, you know, that for a facility  
24 that size the 64 beds at 68 percent occupancy,  
25 you are getting to the point where you have to

307 (Pages 1225 to 1228)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001157

| Page 1229                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 1231                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 think about adding more beds because once you<br/>2 get to about 70-percent occupancy in a facility<br/>3 that size you begin -- those spikes and<br/>4 utilizations that I talked about become more<br/>5 significant because if you've got 64 beds and<br/>6 you are at 70 percent occupancy you've only got<br/>7 an 18-bed cushion. And so the bigger the<br/>8 facility the higher the occupancy rate can be<br/>9 and accommodate, you know, fluctuations and<br/>10 demands.<br/>11 And so, you know, CMC's own projections,<br/>12 and I think Presbyterian, when they were<br/>13 involved, projected even higher utilization. I<br/>14 think they projected 71 percent utilization by<br/>15 the third year. So if you're building a<br/>16 facility that is likely to need to be expanded<br/>17 in the not-distant future, it would seem to be<br/>18 a wiser health planning decision to go ahead<br/>19 and build sufficient capacity now.<br/>20 Q: And while we are on this subject of occupancy<br/>21 rates, Piedmont's third-year occupancy rate is<br/>22 58 percent, is that right?<br/>23 A: That's true.<br/>24 Q: Now, does that suggest to you that Piedmont --<br/>25 I'm sorry, not Piedmont, Fort Mill Medical</p> | <p>1 percent says we are going to be pretty well<br/>2 utilized by the third year. We are going to be<br/>3 economically justified based on the projections<br/>4 that were in the application. But beyond that<br/>5 we've got the ability to be able to serve the<br/>6 needs of the population for a longer term than<br/>7 just the first three or four years of<br/>8 operation.<br/>9 So I think from a health planning<br/>10 perspective I think that is advantageous.<br/>11 Q: All right. Anything else you would like to say<br/>12 about the maldistribution issue?<br/>13 A: No.<br/>14 Q: All right. Let's go back. What is your next<br/>15 so-called pivot point?<br/>16 A: Unnecessary duplication.<br/>17 Q: All right.<br/>18 A: And this relates, again, to the 36 additional<br/>19 beds that Piedmont was proposing.<br/>20 Q: Why did you believe this was a pivot point in<br/>21 Ms. Brandt's decision?<br/>22 A: Well, because I think there are certainly two<br/>23 aspects of my reasoning. The first is I think<br/>24 she focused way too much on the 36 beds that<br/>25 Piedmont was proposing to transfer. And the</p>                                                                                                                                                                        |
| Page 1230                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 1232                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>1 Center --<br/>2 A: Right.<br/>3 Q: Fort Mill Medical Center's projected third-year<br/>4 occupancy rate is 58 percent. Does that<br/>5 suggest to you that Fort Mill Medical Center is<br/>6 going to be underutilized?<br/>7 A: It does not.<br/>8 Q: And why not?<br/>9 A: Well, first of all, 58 percent is not low<br/>10 utilization in today's world. I looked at some<br/>11 statistics in the South Carolina state health<br/>12 plan, and I can't remember the exact number,<br/>13 but a significant number of hospitals in South<br/>14 Carolina operate well below 58 percent.<br/>15 Hospitals can operate efficiently and<br/>16 financially feasibly at 58-percent occupancy.<br/>17 Let's suppose we were putting this facility<br/>18 into an area that had a static population. You<br/>19 might be more concerned about having 58-percent<br/>20 occupancy because there would be no ability to<br/>21 go beyond that. If we put this facility in a<br/>22 high growth area like northern York County, we<br/>23 know that the population is likely to continue<br/>24 to expand and that there is going to be<br/>25 increased demand in the future. And so 58</p>                                                         | <p>1 fact that those were already existing beds in<br/>2 the county, so there were no new beds being<br/>3 created. And secondly, you know, I think that<br/>4 Piedmont demonstrated that at Fort Mill Medical<br/>5 Center, those beds would be well utilized.<br/>6 But secondly, I don't believe Ms. Brandt<br/>7 took a look at the unnecessary duplications<br/>8 that would occur between Fort Mill -- I mean<br/>9 CMC-Fort Mill and CMC-Pineville. For reasons<br/>10 I've already talked about earlier, the 2007<br/>11 CMC-Pineville certificate of need application<br/>12 justified the additional capacity they are<br/>13 adding there based on York County residents.<br/>14 And in my view the CMC-Fort Mill facility will<br/>15 duplicate these facilities at Pineville.<br/>16 So if you are concerned about unnecessary<br/>17 duplication, here is a brand new major<br/>18 expansion project for a hospital located on the<br/>19 border of the county. Now, Ms. Brandt doesn't<br/>20 have any authority to review North Carolina<br/>21 hospitals, but she certainly can look at -- and<br/>22 this issue was raised in the review process.<br/>23 It was raised somewhat prominently by<br/>24 Presbyterian that this would be duplication of<br/>25 resources that existed at Fort Mill -- I mean</p> |

308 (Pages 1229 to 1232)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001158



Page 1233

1 at Pineville. And Ms. Brandt gave no  
2 consideration of that.  
3 Q: Okay. Now, you talked already to some extent  
4 about the effect that CMC-Fort Mill would have  
5 on Piedmont's specialty programs. How does  
6 that relate to the concept of unnecessary  
7 duplication?  
8 A: Well, we've already heard testimony about all  
9 the investments that Piedmont Medical Center  
10 has made in the specialty programs over time  
11 and the recruitment and the facilities that  
12 were constructed. We talked about the fact  
13 that CMC-Fort Mill is likely to redirect at  
14 least some of these specialty patients to  
15 programs in North Carolina. And so the  
16 declining utilization of these services at  
17 Piedmont that would likely be exacerbated by  
18 the CMC-Fort Mill project in my view is another  
19 form of unnecessary duplication because it  
20 means these services that are already in place  
21 are going to be underutilized for the benefit  
22 of hospitals in North Carolina.  
23 Q: All right. Are we ready to move to your next  
24 pivot point?  
25 A: I think we are.

Page 1234

1 Q: All right. What is your next pivot point?  
2 A: It is financial access.  
3 Q: Financial access. All right. With respect to  
4 this topic, what is your opinion about CMC-Fort  
5 Mill's projection of charity care?  
6 A: Well, I mentioned earlier that they projected  
7 6.3 percent charity care.  
8 Q: And that is 6.3 percent of what?  
9 A: Of gross patient revenue.  
10 Q: What is gross patient revenue?  
11 A: Well, that is the actual charges that are made  
12 to patients. I think there has already been  
13 some discussion about this, but hospitals  
14 charge patients based on a number of factors.  
15 But they rarely ever collect what they charge.  
16 Medicare and Medicaid have established  
17 reimbursement policies, and they pay  
18 significantly less than the list charges, if  
19 you will. Even commercial carriers, managed  
20 care companies, they negotiate deep discounts  
21 on charges in their managed care contracts with  
22 providers.  
23 So, I mean, the charges are -- they serve  
24 a purpose, but they don't have a whole lot to  
25 do with the amount of money that hospitals

Page 1235

1 actually get paid.  
2 Q: Okay. All right. That is just by way of  
3 context. All right. Why do you think the 6.3  
4 percent of their charges that CMC-Fort Mill  
5 projects, what do you think that number is?  
6 A: Well, first of all, Mr. Levitt, I think, showed  
7 an exhibit and showed what the charity care  
8 commitments were at other applications that  
9 DHEC has approved. And I won't go into that  
10 exhibit again. But that shows that this  
11 projection was the highest of all the  
12 applications by a wide margin. So it is  
13 inconsistent with what DHEC has looked at in  
14 the past. But sticking with the demographics  
15 of northern York County, I believe the exhibits  
16 Mr. Levitt introduced showed that York County  
17 was one of the more affluent counties in South  
18 Carolina and northern York was the most  
19 affluent portion of York County. So you  
20 wouldn't expect there to be a significant  
21 number of indigent patients living in northern  
22 York County. So I think that's a concern.  
23 It's also inconsistent with data that I've  
24 reviewed about the payer mix status of  
25 individuals in northern York County. And I've

Page 1236

1 got a couple of slides that address that. And  
2 the data that we have comes from the South  
3 Carolina Office of Research and Statistics and  
4 from -- North Carolina has a system called  
5 Thompson Reuters. Actually, I think the name  
6 has changed now to Nelson or something. But  
7 they collect information by zip code. And so  
8 we can look at the zip codes. And if you look  
9 at the bottom of this chart the three zip codes  
10 in northern York County are highlighted. And  
11 we can see that in terms of Medicaid services  
12 these are people who fall below certain income  
13 levels, which would be low income individuals.  
14 Only 7.9 percent of the patients served in  
15 hospitals from those three zip codes were  
16 Medicaid recipients.  
17 Q: And Medicaid is not charity care, though,  
18 right?  
19 A: It's not charity care, but it's an indicator of  
20 the level of low income individuals in your  
21 area.  
22 Q: All right.  
23 A: And in the rest of York County the Medicaid  
24 population is 16.4 percent. So it's more than  
25 double. So you wouldn't expect there to be a

309 (Pages 1233 to 1236)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001159

| Page 1237                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 1239                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 disproportionate amount of Medicaid, for<br/>2 example, in northern York County in looking at<br/>3 these statistics.<br/>4 And then if we look at another measure.<br/>5 And this is self-pay and charity. This is how<br/>6 the data is reported. These are people without<br/>7 insurance. Some of them are what is called<br/>8 self-pay. They might have incomes above<br/>9 poverty levels, you know, that would put them<br/>10 in the charity category, but they don't have<br/>11 health insurance. And then there are also<br/>12 people who are charity patients who would be<br/>13 those who met criteria to qualify for free<br/>14 care.<br/>15 Q: All right.<br/>16 A: And again, Fort Mill, for both self-pay and<br/>17 charity was only 5.5 percent. Now, I don't<br/>18 know what the exact percentage of charity<br/>19 versus self-pay is. But in other measures that<br/>20 I've seen those numbers are generally roughly<br/>21 equivalent. So about half or -- you know,<br/>22 roughly half would be charity and half would be<br/>23 self-pay.<br/>24 Q: All right. And so if that were true here, and<br/>25 I realize you said you don't know, but if that</p> | <p>1 Q: Okay. Let me stop you there for a minute.<br/>2 What are Medicare cost reports?<br/>3 A: The federal government requires that all<br/>4 providers who participate in the Medicare<br/>5 program annually submit a very detailed report.<br/>6 I mean, for hospitals it is literally a report<br/>7 that is very thick, and it has many many<br/>8 schedules. And it breaks down in great detail<br/>9 the revenues and expenses associated with each<br/>10 department, you know, in a hospital. And<br/>11 ultimately -- I mean, at one time it was very<br/>12 very important because you got -- hospitals got<br/>13 paid their actual costs in treating Medicare<br/>14 patients. Now it's more indirectly associated<br/>15 with reimbursement, but it goes -- it is also<br/>16 used by the federal government in calculating<br/>17 reimbursement rates.<br/>18 Q: When a hospital or another provider submits a<br/>19 Medicare cost report, do they have to sign any<br/>20 kind of certifications with the government?<br/>21 A: They do have to certify the accuracy of it.<br/>22 And in fact, there are both civil and criminal<br/>23 penalties associated with falsifying<br/>24 information on cost reports.<br/>25 Q: All right. Go ahead and explain your charts</p> |
| Page 1238                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 1240                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 sort of rule of thumb were to be applied, half<br/>2 of 5.5 percent would be what?<br/>3 A: 2.75 percent.<br/>4 Q: And you would expect the charity care<br/>5 population in the Fort Mill area to be around<br/>6 that level?<br/>7 A: Sure. I mean, that would be a reasonable<br/>8 expectation. When we look at the rest of the<br/>9 county we see that the charity care self-pay<br/>10 levels are 9.5 percent, so not quite double,<br/>11 but significantly higher than they are in<br/>12 northern York.<br/>13 Q: All right. What about Pineville, the<br/>14 experience of CMC-Pineville?<br/>15 A: Well, based on the data I have reviewed, it<br/>16 looks like the charity care experience, and<br/>17 they can put them with Pineville's experience,<br/>18 as well.<br/>19 Q: Do you mean charity care projections?<br/>20 A: Charity care projections are inconsistent with<br/>21 the historical experience at CMC-Pineville.<br/>22 Q: All right. And what is the Demonstrative 200<br/>23 here, what does that say?<br/>24 A: This is information taken from Medicare cost<br/>25 reports.</p>                                                                          | <p>1 then.<br/>2 A: Okay. There is a table in the cost report that<br/>3 I think is S10 that shows the dollars of<br/>4 charity care, gross revenue dollars of charity<br/>5 care that are provided. It shows the total<br/>6 gross revenue of the facility so you can<br/>7 calculate the percentage of charity care -- of<br/>8 gross revenue for each of the hospitals. And<br/>9 so we looked for each of the CMC facilities and<br/>10 then we also looked at Piedmont. And we see<br/>11 that Mercy-Pineville, and let me qualify this<br/>12 in one respect. Pineville isn't broken out<br/>13 separately from CMC-Mercy downtown.<br/>14 Q: And CMC-Mercy downtown is another hospital?<br/>15 A: It is. It's another hospital, but they operate<br/>16 under a single license, as I understand it.<br/>17 And they file a consolidated cost report.<br/>18 Q: All right.<br/>19 A: Certainly Pineville is a significant component<br/>20 of that dual operation, but I don't have a<br/>21 specific breakdown for Pineville only. But if<br/>22 you look at the combined charity care for<br/>23 Mercy-Pineville, it's 2.6 percent. That is<br/>24 close to that 2.75 we were talking about a<br/>25 minute ago. And even if we assume that</p>                                       |

310 (Pages 1237 to 1240)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001160

Page 1241

1 Pineville was a little higher than Mercy  
2 downtown, and I don't have any reason to think  
3 that is the case. I mean, you would think  
4 downtown where there is a higher indigent  
5 population it would likely be a little bit  
6 higher. But I don't think it's 6.3 percent.  
7 And so, you know, Pineville's own experience is  
8 2.6 percent. Piedmont, if we look on here, is  
9 3.8 percent. So they had a little higher  
10 experience. But that's because they serve all  
11 of York County, which has somewhat different  
12 demographics than the Fort Mill area. And the  
13 area across in Southern Mecklenburg County is  
14 similar in terms of being sort of a high growth  
15 suburban area with somewhat higher income  
16 characteristics.

17 Q: Now, you read Ms. Brandt's deposition; did you  
18 not?

19 A: I did.

20 Q: And when she was considering the charity care  
21 projections at CMC-Fort Mill based on her  
22 deposition, what weight did you give historical  
23 experience of Mercy and Pineville?

24 A: She gave none.

25 Q: And after a CON facility, like a new hospital

Page 1242

1 is built, how does DHEC go back -- to what  
2 extent does DHEC go at that point and check and  
3 make sure that the charity care facility is  
4 actually providing, is consistent with  
5 projections they gave in their CON application?  
6 A: There's no check that goes on. I mean, Mr.  
7 Grice testified that was the policy when he was  
8 in that position. And I believe Ms. Brandt in  
9 her deposition also indicated that she made no  
10 check after that, that they did not do  
11 anything.

12 Q: Go ahead with where you were. I'm sorry. I  
13 interrupted you.

14 A: So if we look at Pineville's experience, which  
15 I think would probably be the most directly  
16 relevant measure of what the likely charity  
17 care percentage would be at a Fort Mill  
18 facility, it would be less than half of what  
19 was projected for Fort Mill. And then if we  
20 look at again, the payer mix of the Carolina  
21 Physician's Network Physicians, as I've already  
22 discussed, they have relatively low levels of  
23 Medicaid and charity care in their practices.  
24 So there is nothing there that would indicate  
25 that 6.3 percent would be reasonable.

Page 1243

1 Then finally when I look back at the 2005  
2 application that was submitted for Fort Mill by  
3 CMC, they had, I think, 3.5 percent projected  
4 charity care there. And so their projection  
5 now is nearly double of what they projected  
6 initially.

7 So in sort of taking all that together, if  
8 I were DHEC, I might have questioned how much  
9 weight would I give to a 6.3 percent projection  
10 of charity care in the CMC-Fort Mill  
11 application.

12 Q: The updated applications from the -- or updated  
13 submissions from the three parties following  
14 the remand were in October of 2010, is that  
15 right?

16 A: Well, they were for Presbyterian and for  
17 Piedmont. For some reason, CMC-Fort Mill did  
18 not file. They completely filed their updated  
19 application in December. So they had an  
20 opportunity to see the changes that were made  
21 in the other two applications.

22 Q: And when you say they didn't file their updated  
23 application, do you mean they didn't file their  
24 charity care projections specifically in  
25 October of 2010?

Page 1244

1 A: That's true

2 Q: When did you say they filed?

3 A: In December of 2010.

4 Q: Now, when did Presbyterian file its charity  
5 care projections for the second go round?

6 A: October 2010.

7 Q: And Presbyterian -- what did Presbyterian and  
8 Carolinas project back in 2005 and what did  
9 Presbyterian project in October 2010?

10 A: I believe Carolina's was 3.5 and Presbyterian's  
11 was around 3.2 or 3.3.

12 Q: That was back in 2005?

13 A: In 2005. In 2010 in October, Presbyterian  
14 projected six percent, which was quite a  
15 significant jump in its projection. And then  
16 in December of 2010, CMC-Fort Mill projected  
17 6.3.

18 Q: Mr. Sullivan, if between 2005 and 2010, if CHS  
19 changed its charity care policy to cover a  
20 broader range of incomes, would that account,  
21 in your opinion, for the charity care  
22 projection going from 3.5 percent to 6.3  
23 percent?

24 A: I mean, it's possible. And we saw in 2011 that  
25 change -- if that change occurred before 2011,

311 (Pages 1241 to 1244)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001161

| Page 1245                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 1247                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 it didn't have the significant impact on the<br/>2 percentage at Mercy Pineville. But if indeed<br/>3 they had a change in policy after 2011, which<br/>4 would have been after they filed their updated<br/>5 application in this case, they -- it wouldn't<br/>6 change the number of people in the community<br/>7 who need charity care. It would change the<br/>8 bookkeeping in terms of how they counted self-<br/>9 pay patient versus charity care patients. So<br/>10 I don't think that's really -- if they are<br/>11 already serving the patients and they're just<br/>12 putting them in a different pot than they were<br/>13 before, I don't see that really being an<br/>14 expansion of assets.</p> <p>15 Q: What about Piedmont's record on charity care?<br/>16 A: Piedmont has a pretty longstanding record of<br/>17 providing financial access in York County. I<br/>18 think we saw a minute ago that their charity<br/>19 care percentage in 2011 was 3.8 percent.<br/>20 Piedmont has a contract with the county to<br/>21 provide charity care. That contract is going<br/>22 to extend to Fort Mill Medical Center, as we've<br/>23 heard testimony about. Piedmont consistently<br/>24 exceeded the charity care requirements in the<br/>25 contract. I think they've been a pretty</p> | <p>1 A: And --<br/>2 MR. WESTBROOK: Let's go to that slide, please.<br/>3 A: The first statement I make is that Ms. Brandt<br/>4 made comparative findings regarding these<br/>5 financial aspects of the project, which I don't<br/>6 think the CON criteria really support. I think<br/>7 the CON criteria are asking whether the<br/>8 applicant has presented reasonable projections<br/>9 of financial performance that are consistent<br/>10 with other projects that DHEC has reviewed. I<br/>11 don't think it is necessarily a step that DHEC<br/>12 had to take to say well, I think this applicant<br/>13 was better on this point and this point. I<br/>14 think it is more do these applicants provide<br/>15 sufficient documentation that their financial<br/>16 programs that they've set forth are reasonable.<br/>17 This is one where I think that DHEC could have<br/>18 looked at this sort of broadly and are both<br/>19 applicants consistent or is one of them not<br/>20 consistent with the criteria. And my reading<br/>21 of Ms. Brandt's decision is that both<br/>22 applications were consistent with all the<br/>23 criteria, she just liked CMC-Fort Mill's<br/>24 numbers better.</p> <p>25 Q: All right. What's your next bullet point to</p> |
| Page 1246                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 1248                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>1 accessible organization. And Piedmont in<br/>2 preparing the Fort Mill Medical Center<br/>3 application, came up with a projection of<br/>4 charity care. I think it's realistic for the<br/>5 needs of that population consistent with their<br/>6 experience and also consistent with the<br/>7 demographics of that area.</p> <p>8 Q: That was a 3.5 percent, you said?<br/>9 A: 3 percent, I think.<br/>10 Q: 3 percent -- I'm sorry.<br/>11 A: And so, I mean, as a result, this is one of<br/>12 those where Ms. Brandt gave favorable<br/>13 consideration to CMC-Fort Mill. I think this<br/>14 is one where she should have said both of these<br/>15 projects will provide the same level of<br/>16 financial accessibility. There is no reason to<br/>17 differentiate.</p> <p>18 Q: All right. Anything else you want to talk<br/>19 about on the issue of financial access?<br/>20 A: I don't think so.<br/>21 Q: All right. What is your next pivot point in<br/>22 this, Mr. Sullivan?<br/>23 A: This gets into the financing -- in financial<br/>24 projection issues.<br/>25 Q: All right.</p>                                                                                                                                                                                                      | <p>1 address?<br/>2 A: She -- you know, one issue that I thought was<br/>3 unusually prominent in the decision was where<br/>4 she was talking about the methods of advancing<br/>5 proposed by these applicants, and she gave CMC-<br/>6 Fort Mill favorable consideration because she<br/>7 said they proposed a more definitive form of<br/>8 project financing, in that CMC-Fort Mill said<br/>9 that they were going to use cash reserves to<br/>10 finance their project.</p> <p>11 Now, Piedmont had a letter for the Fort<br/>12 Mill Medical Center application that stated<br/>13 that they had access to both debt and equity<br/>14 financing and that they would use the<br/>15 appropriate mix of financing at the time the<br/>16 project was developed. I've been putting<br/>17 together CON applications for 30-plus years.<br/>18 That's a pretty common approach to take in<br/>19 presenting financial documentation in CON<br/>20 applications.</p> <p>21 Q: And why is that a common approach? Why would<br/>22 it be reasonable to present options?<br/>23 A: I mean, market conditions change quite rapidly<br/>24 in the financial world. And, you know, right<br/>25 now we are in a period of very very low</p>                                       |

312 (Pages 1245 to 1248)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001162

| Page 1249                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 1251                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 interest rates. Right now it might make sense<br/>2 to say we would use debt financing. But by the<br/>3 time you're ready to go with the project, the<br/>4 feds may have changed its policies and interest<br/>5 rates may be 2 or 3 percent points higher. And<br/>6 you decide at that point to use cash. So, you<br/>7 know, I think it's important to give the<br/>8 applicant the flexibility of being able to use<br/>9 the type of financing that is most appropriate<br/>10 at the time.</p> <p>11 Q: And, in fact, what kind of financing did<br/>12 Presbyterian propose?</p> <p>13 A: The same as Fort Mill Medical Center. They<br/>14 proposed to use either debt or equity depending<br/>15 on the circumstances. And so this is one<br/>16 where, again, I think Ms. Brandt gave favorable<br/>17 consideration to the CMC-Fort Mill when I think<br/>18 a more appropriate finding would have been that<br/>19 both have demonstrated the ability to finance<br/>20 their projects.</p> <p>21 Q: All right. What about project costs?</p> <p>22 A: This is related to the 100 bed, 36 additional<br/>23 bed issue. She found that CMC was the most<br/>24 favorable because they proposed lower project<br/>25 costs because they're building a smaller</p>                                                  | <p>1 patients that would go to other facilities<br/>2 besides CHS facilities. I don't think that has<br/>3 anything to do with the reasonableness of their<br/>4 financial projections. So again, this is --<br/>5 you know, my bottom line is I think both<br/>6 applicants have presented reasonable financial<br/>7 programs in their applications. And I think<br/>8 the finding should have been that both<br/>9 applicants were consistent with these criteria.</p> <p>10 Q: All right. Are you finished now going through<br/>11 what you call the pivot points of Ms. Brandt's<br/>12 decision?</p> <p>13 A: I am.</p> <p>14 Q: All right. Let me ask you this. With respect<br/>15 to that group of five, I believe it's five<br/>16 pivot points that you just talked about, I<br/>17 believe you identified these as when you<br/>18 consider the pivot points in her analysis.<br/>19 What is, in your analysis, key pivotal point<br/>20 decision making between these two applicants?</p> <p>21 A: In my analysis, it's adverse impact.</p> <p>22 Q: And why is that?</p> <p>23 A: You know, I think that both applicants were<br/>24 proposing to build a new hospital in Fort Mill.<br/>25 So access is somewhat neutral. I think the</p> |
| Page 1250                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 1252                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 facility. But if you look at it in terms of<br/>2 cost per bed, cost per square foot, the Fort<br/>3 Mill Medical Center was actually slightly less<br/>4 than the CMC-Fort Mill project. So this is<br/>5 where the need argument gets tangled up in the<br/>6 financial evaluation argument. But I think<br/>7 that, again, Mr. Levitt showed an exhibit that<br/>8 showed what the project costs for a whole range<br/>9 of different new hospitals that were approved.<br/>10 And these applications are well within the<br/>11 midpoint of that range. So I think, again, a<br/>12 finding should have been that these projects<br/>13 were both consistent with its criteria.</p> <p>14 Q: All right. Ms. Brandt also gave consideration<br/>15 to what she believed were conservative<br/>16 assumption by CHS, is that right?</p> <p>17 A: She did. She said that she thought that the<br/>18 projections of revenues and expenses made by<br/>19 CMC-Fort Mill were more reasonable because they<br/>20 were based on a conservative assumption that<br/>21 CMC-Fort Mill would only shift patients from<br/>22 existing CHS facilities. I won't go again into<br/>23 why I don't think that's a conservative<br/>24 assumption or a realistic assumption. I think<br/>25 CMC-Fort Mill is clearly going to serve</p> | <p>1 Fort Mill Medical Center is superior in the<br/>2 sense that it's a larger facility and will meet<br/>3 the longer-term needs. But in terms of access,<br/>4 in terms of cost, in terms of financial<br/>5 projections, financial access, I think all<br/>6 those things are relatively neutral between the<br/>7 two applications.</p> <p>8 But when we look at adverse impact without<br/>9 going through all my testimony again, I think<br/>10 there is a significant potential for the<br/>11 approval of CMC-Fort Mill to have a negative<br/>12 impact, not just on Piedmont, but on the<br/>13 healthcare system in York County. And I think<br/>14 that should have been giving great weight in<br/>15 the decision because I think that goes directly<br/>16 back to the purposes of the CON.</p> <p>17 Q: All right. Good. Let's go to an issue that I<br/>18 don't believe Ms. Brandt addressed at all. And<br/>19 that's the issue of competition. In your<br/>20 opinion, would approval of CMC-Fort Mill<br/>21 enhance competition?</p> <p>22 A: In my opinion, it would not.</p> <p>23 Q: Why not?</p> <p>24 A: First of all, competition is already strong in<br/>25 the county. Right now more than 40 percent of</p>             |

313 (Pages 1249 to 1252)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001163

| Page 1253                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 1255                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 the patients receiving inpatient hospital care<br/>2 are leaving York County to receive that care.<br/>3 So obviously options exist and patients are<br/>4 exercising those options. CHS has made one<br/>5 very convenient by building a large hospital on<br/>6 the border of York County at CMC-Pineville. In<br/>7 the -- if we looked specifically at the Fort<br/>8 Mill area, you know, if there is a question<br/>9 about whether competition exists in the Fort<br/>10 Mill area, I believe that testimony we've heard<br/>11 so far, and I think we will hear from the CHS<br/>12 witnesses, is that CHS is the dominant provider<br/>13 in Fort Mill. They have something like 60<br/>14 percent market share in those zip codes. So<br/>15 they already have a relatively dominant<br/>16 position there. This is not --<br/>17 Q: What about the larger market outside the Fort<br/>18 Mill area, the larger Charlotte area. Who is<br/>19 the dominant provider?<br/>20 A: Well, if we look at more broadly, I mean -- I<br/>21 think that CHS is by far the largest hospital<br/>22 system in the broader Charlotte market. There<br/>23 was a number of -- there were a number of<br/>24 documents in the submissions to DHEC that<br/>25 talked about the issue of market dominance and</p> | <p>1 having a hospital here is going to allow them<br/>2 to gain even greater leverage in the market<br/>3 than they already have, which is already<br/>4 significant. So from a competitive standpoint<br/>5 Piedmont has hung on for a long time through<br/>6 its efforts. CHS has taken a big step in the<br/>7 last seven years to come in and dilute the<br/>8 level of volume at Piedmont. And giving this<br/>9 hospital to CHS and Fort Mill, I think could be<br/>10 the tipping point, if you will, in terms of<br/>11 significantly destabilizing the healthcare<br/>12 system in York County and resulting in more<br/>13 people leaving the county for care. So I<br/>14 think, if anything, this will just extend the<br/>15 existing dominant position that CHS has further<br/>16 into York County, not to the benefit of York<br/>17 County residents.<br/>18 Q: Thank you, Mr. Sullivan. I don't have any<br/>19 other questions.<br/>20 THE COURT: Thank you, Mr. Westbrook. Any<br/>21 objections to the ten-minute recess?<br/>22 MR. GASKINS: No, Your Honor.<br/>23 (Off the Record)<br/>24 THE COURT: Please be seated. Are you ready?<br/>25 MR. GASKINS: Yes, sir.</p> |
| Page 1254                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 1256                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>1 so forth. And Presbyterian, I think, pressed<br/>2 this issue. I think there are 21 hospitals in<br/>3 the Charlotte area. Eighteen of them are<br/>4 controlled by either Novant or by CHS.<br/>5 Q: And who is Novant?<br/>6 A: Novant is Presbyterian. That's their parent<br/>7 company. Piedmont is one of the little guys.<br/>8 They are one of the three unaffiliated<br/>9 hospitals in the market. And so they are<br/>10 already facing a significant challenge in<br/>11 trying to compete. I mean, even though they<br/>12 are part of Tenet Healthcare, which is a<br/>13 national company, Tenet doesn't have the<br/>14 resources in this market, doesn't have the<br/>15 reach in this market, it doesn't have the<br/>16 physician network in this market that CHS does.<br/>17 And so they are already struggling to compete<br/>18 and to maintain their services in York County<br/>19 so that they can effectively serve York County<br/>20 patients. And in my view, the CHS project is<br/>21 just going to further weaken that with all the<br/>22 reasons we've already talked about. It's going<br/>23 to allow CHS to strengthen its physician<br/>24 network. And given that CHS is now entering<br/>25 into the payer or the health insurance market,</p>                      | <p>1 MR. SULLIVAN - CROSS EXAMINATION BY MR. GASKINS:<br/>2 Q: Good morning, Mr. Sullivan.<br/>3 A: Good morning.<br/>4 Q: As I understand it, you were retained by Tenet<br/>5 or Piedmont in the summer of 2012, is that<br/>6 correct?<br/>7 A: True.<br/>8 Q: Okay. I take it you are being paid for your<br/>9 engagement, is that correct?<br/>10 A: I am.<br/>11 Q: And what is your hourly rate?<br/>12 A: \$325.<br/>13 Q: Now, you were engaged by Piedmont back, I<br/>14 think, in late 2004 or early 2005 when they<br/>15 initially submitted their application; were<br/>16 you?<br/>17 A: There may have been a contact at that time, and<br/>18 I think I declined getting involved.<br/>19 Q: So there was a contact from Piedmont?<br/>20 A: My recollection, yes.<br/>21 Q: But they never engaged you at that time?<br/>22 A: Yes, that's correct.<br/>23 Q: Rather you were engaged by CHS; isn't that<br/>24 correct?<br/>25 A: No. CHS had asked me also about getting</p>                                                                                                                                                                                                |

314 (Pages 1253 to 1256)

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001164

1 Q: But you didn't identify those errors when you  
2 reviewed it; did you?

3 A: I did not. I had not -- I did not go through  
4 and redo the calculations.

5 Q: I believe you got into what you thought the  
6 adverse impact would be, not only on Piedmont  
7 but also on the healthcare system in York  
8 County in general, is that right?

9 A: That's true.

10 Q: Okay. And you said that you had some fears  
11 that Piedmont would have to cut some of the  
12 services that they currently provide, is that  
13 right?

14 A: That's true.

15 Q: And generally speaking that they will have to  
16 cut the services when the volume level gets to  
17 the point where either the quality decreases  
18 and they can't handle it or because it's just  
19 not economically feasible, is that right?

20 A: Right. I think that at some point the doctors  
21 will not want to perform procedures there if  
22 the volumes get too low. And obviously if it  
23 is a very expensive service to maintain and  
24 there is not sufficient patients, ultimately it  
25 probably will have to be discontinued.

1 MR. SULLIVAN - RE-DIRECT EXAMINATION BY MR.

2 WESTBROOK:

3 Q. Thank you, Your Honor. Just a few. Mr.  
4 Sullivan, in the initial application, 2005  
5 application for CHS, I believe you said you  
6 reviewed that, is that right?

7 A: I didn't -- at the time of my deposition, I  
8 didn't recall having done that. I mean, having  
9 seen the proposal and so forth, obviously I  
10 did.

11 Q: Okay. And of course, you reviewed the updated  
12 CHS application, is that right?

13 A: Oh, yeah.

14 Q: And you testified at length today about the  
15 updated application, is that correct?

16 A: Yes.

17 Q: Are your opinions based on the updated  
18 application or based on the original  
19 application primarily?

20 A: The updated application. There were  
21 significant changes.

22 Q: All right. And for example, in the original  
23 application, did CHS propose to shift all of  
24 the patients that would be served at CMC-Fort  
25 Mill from their existing facilities? Was that



1 part of the original application?

2 A: It was not. The original application talked  
3 about there being an impact on Piedmont and  
4 other North Carolina hospitals.

5 Q: All right. Actually in terms of comparing the  
6 original adverse impact of the original  
7 projections from where their patients would  
8 come from with their updated applications,  
9 which were the more recent in your opinion?

10 A: The original application.

11 Q: Mr. Gaskins asked you about some of the South  
12 Carolina hospitals that you had done work for.  
13 And I believe you testified on direct about  
14 some of those. Have you worked with Waccamaw  
15 Community Hospital?

16 A: I did.

17 Q: That was a new hospital project; was it not?

18 A: For Georgetown, yes.

19 Q: All right. Now, I believe Mr. Gaskins also  
20 asked you about your past work for Tenet  
21 Corporation. Did I understand you to say  
22 identifying in addition to this project that  
23 there had been two or three other projects you  
24 had worked on with Tenet in the past?

25 A: I mean, over the course of my whole career

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1           there has been many more. But, I mean, in  
2           recent years there is only one other hospital  
3           I can recall having worked for in say the last  
4           six or seven years.

5       Q:   Have you ever been affiliated exclusively with  
6           Tenet or primarily with Tenet?

7       A:   No.

8       Q:   Have you worked with other large hospital  
9           systems for profit and nonprofit around the  
10          country?

11      A:   I've worked with many, yes. Just in the last  
12          year I've worked with four or five of the  
13          largest hospital corporations.

14      Q:   All right. Let me ask you to look back at your  
15          deposition in a question or two that Mr.  
16          Gaskins was asking about that day.

17      MR. WESTBROOK: Dan, can you pull up Mr. Sullivan's  
18          deposition, page 55?

19      Q:   And let's go over some of the language that Mr.  
20          Gaskins had you read on page 55. That  
21          paragraph that begins on line 13, I don't think  
22          we need for you to read the whole paragraph.  
23          But in particular, why don't we start that line  
24          halfway through 17 where the sentence begins,  
25          "so I knew." Do you see where I'm talking

1 about?

2 A: I do.

3 Q: Would you just start reading "so I knew" down  
4 to through the rocket scientist part of that  
5 paragraph.

6 A: Sure. "So I knew that they were already in a  
7 difficult spot and then putting a competing  
8 hospital seven or eight miles away from  
9 Piedmont, I mean, I don't think you have to be  
10 a rocket scientist to figure out that wouldn't  
11 be an ideal situation."

12 Q: All right. Your comment about the rocket  
13 scientist there and that they would be -- that  
14 Piedmont would be in a heck of a situation. I  
15 need for you to clarify that a little bit.  
16 Were you saying that you didn't have to be a  
17 rocket scientist to know what DHEC was going to  
18 do or you didn't have to be a rocket scientist  
19 to know that PMC was going to suffer some  
20 adverse impact?

21 A: What I meant was the latter. That you wouldn't  
22 have to be a rocket scientist to know that  
23 putting a new hospital that close to the  
24 existing Piedmont Hospital would result in  
25 negative impact.

1 Q: And, in fact, in the newspaper interview, you  
2 said you didn't know what DHEC was going to do  
3 because they hadn't made a decision at that  
4 point, is that correct?

5 A: That's correct. You know, and I knew they had  
6 a new director. And I didn't know what they  
7 were going to do. I mean, my expectation was  
8 that just because Piedmont had been approved  
9 before and they were the South Carolina based  
10 provider, that they would probably get  
11 approved.

12 Q: And that new director that you are talking  
13 about, that's Ms. Brandt, right?

14 A: Yes.

15 Q: And she had just been appointed a year or two  
16 before that newspaper interview?

17 A: Yes.

18 Q: And had you had a lot of experience in working  
19 with Ms. Brandt at that point?

20 A: I think I only had maybe one conversation with  
21 her.

22 Q: With respect to Mr. Gaskins' questions about  
23 physician recruitment and the building of  
24 physician networks. I believe there has been  
25 testimony by you and others about this. I

1 would like for you to elaborate if you could.  
2 Isn't the primary purpose of building a  
3 physician network --

4 **MR. GASKINS:** Your Honor, I'm going to object. He  
5 is leading the witness.

6 **MR. WESTBROOK:** Okay. I'll rephrase my question.

7 **THE COURT:** Sustained. Go ahead. Will you  
8 rephrase, please, Mr. Westbrook?

9 **MR. WESTBROOK:** Sure.

10 Q: For building up -- the purposes for building up  
11 a physician network, can you relate those  
12 purposes to the concept of market share,  
13 please?

14 A: Sure. If you have a large base of physicians,  
15 and the physicians are inclined to use your  
16 facilities for their patients, then having more  
17 physicians gives you the ability to capture  
18 more market share. If you have -- and that's  
19 if they are employed or otherwise contractually  
20 obligated to, you know, primarily use your  
21 services. If you have -- if you recruit  
22 physicians who are independent physicians,  
23 there is another way of developing a network.  
24 That's less effective in developing an  
25 increasing market share because let's say a new

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 hospital were built, those independent  
2 physicians would likely seek privileges of that  
3 new hospital. And even though you may have  
4 recruited them to the area, they were not  
5 necessarily going to come to your hospital and  
6 wasn't going to make any significant  
7 improvement in your market share.

8 Q: All right. Thank you. Now, with respect to  
9 another objective, the objective of serving  
10 patient needs. Is there an advantage -- that's  
11 -- with that purpose in mind, is there an  
12 advantage to an independent physician network  
13 versus an employed physician network? Is there  
14 an advantage, disadvantage or at all?

15 A: Yeah. It's a good question. I mean, it's an  
16 intention that's going on in the healthcare  
17 industry right now that, you know, and I  
18 believe it was Dr. Taylor that said that he  
19 thought the system worked better when the  
20 physicians were independent. And I don't  
21 disagree with that because the physician can be  
22 the advocate for the patient. And when they  
23 are employed by a healthcare system, their  
24 loyalties are a little different. I am not  
25 saying that doctors are making bad decisions,

1 but they make different decisions. But the  
2 direction that healthcare is going in is  
3 further consolidation of physician practices  
4 and hospitals into networks. But I think there  
5 is a dilemma in terms of whether the patient's  
6 needs somehow get overlooked in that process.

7 Q: All right. Mr. Gaskins referred to utilization  
8 leveling out or even an up-tick, I believe was  
9 the term he used in the last or recent years.  
10 Do you recall that question?

11 A: I do.

12 Q: With respect to utilization at Piedmont  
13 leveling out or there being a slight up-tick in  
14 a couple of years, how is the -- I mean, how  
15 is the payer mix break down on that up-tick?

16 A: I believe the testimony that we heard was that  
17 there has been increasing levels of self-pay,  
18 Medicaid and Medicare and a decrease in the  
19 level of commercial/managed care type of  
20 insurance. So as I mentioned in my direct  
21 testimony, I view that as an erosion of the  
22 payer mix in that it is a less profitable mix  
23 of patients.

24 Q: Now, there was some -- you testified about that  
25 you would give greater weight to a physician

1 coming to a courtroom taking an oath and  
2 testifying and subjecting himself to cross  
3 examination than you would to a physician  
4 writing a letter. I assume -- would that be  
5 true for any witness, not just physicians?

6 A: Sure. You know, I think it's easy to write a  
7 letter. It's harder to come and take your time  
8 and put yourself on the line and subject  
9 yourself to examination.

10 Q: And you talked about your experience with  
11 physicians signing form letters or letters that  
12 have been drafted for them. Have you reviewed  
13 the support letters submitted for Piedmont by  
14 independent physicians in this case?

15 A: I have.

16 Q: Did they appear to you to be form letters?

17 A: They did not. You know, and I had an  
18 opportunity to talk individually with a lot of  
19 the guys who wrote support letters for  
20 Piedmont. And it seemed to me that they had  
21 been written independently and not, you know,  
22 not basically authored by someone else.

23 Q: Now, with respect to the sixth addendum to the  
24 York County contract, Mr. Gaskins has asked you  
25 some questions about that, relating that to Mr.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896



1 Miller's testimony about negotiations with CHS.  
2 My question is do you know the extent to which  
3 that sixth addendum was the result purely of  
4 negotiations with CHS or were there other  
5 factors involved; do you know?

6 A: I don't know.

7 Q: I believe you have already testified about the  
8 effect of either Fort Mill Medical Center or  
9 CMC-Fort Mill on physician recruitment in this  
10 area on direct?

11 A: I did.

12 Q: All right. Well, I won't ask you to go through  
13 that again. And I believe Mr. Gaskins asked  
14 you whether -- whichever applicant gets to  
15 build a hospital, I believe you testified would  
16 have some impact on out-migration, is that  
17 right?

18 A: Yes.

19 Q: Can you quantify or explain what you mean by  
20 some impact? Can you be more specific? What  
21 level of impact do you think a hospital --  
22 well, let's start with CMC-Fort Mill. What  
23 level of impact would CMC-Fort Mill, if it were  
24 to be built; how about out-migration?

25 A: I think it would bring back some of the out-

1 migration --

2 Q: I'm sorry -- CMC-Fort Mill. Let's start with  
3 that one.

4 A: Okay. CMC-Fort Mill. I think some of the  
5 patients who are going to Pineville now, I  
6 think some of those will stay and go to the  
7 Fort Mill facility. I think also some patients  
8 who are now going to Piedmont will go to that  
9 facility. So, you know, I think it will have  
10 some impact. And I haven't -- I can't give you  
11 an exact number of patients. Now, if we  
12 contrast that with Fort Mill Medical Center, I  
13 think their sole focus is going to be on trying  
14 to attract patients who are currently leaving  
15 the area. That undoubtedly will serve some  
16 patients who otherwise would have gone to  
17 Piedmont, as well. But I think their effort is  
18 going to be in developing a network of  
19 physicians and services that would be  
20 attractive to patients who right now are  
21 choosing to leave the county for care.

22 Q: All right. And will -- Mr. Gaskins asked you  
23 a number of questions about competition. And  
24 I think you testified about this on direct.  
25 Can you summarize again for us in light of his

1 questions, which of these projects would have  
2 -- in your opinion, which of these projects  
3 would enhance competition more and which would  
4 decrease competition and why you say that?

5 A: Sure, I mean, if you look at the broader  
6 landscape of the competitive market in the  
7 Charlotte area, and that includes York County,  
8 CHS is the largest and most powerful competitor  
9 now. If Fort Mill Medical Center is approved,  
10 there is a greater ability for Piedmont to be  
11 able to hang onto its existing market share and  
12 also to retain some of the specialty patients  
13 who are currently being referred out of the  
14 area by the CHS physicians now. If CHS in  
15 contrast is awarded the CON, then I think we  
16 are going to see a continued out-migration of  
17 specialty patients. And I think we are going  
18 to see Piedmont be somewhat cut off, if you  
19 will, from the ability to refer that out-  
20 migration back into the county. So I think  
21 that what's going to happen is it's going to  
22 weaken Piedmont because it will be dealing with  
23 a smaller service area and a less affluent  
24 service area. And so the bigger system of the  
25 two will get stronger and the smaller player

1 will get weaker and so sort of the market reach  
2 of CHS will be extended.

3 Q: All right. And let me ask you one final  
4 question. The term charity care has been used  
5 a number of times and a lot of witnesses have  
6 used the term charity care. The term indigent  
7 care a lot of witnesses --

8 MR. GASKINS: Your Honor, I'm going to object. I  
9 don't think I asked him any questions about  
10 charity care or indigent care during my cross.  
11 So it's beyond the scope of my cross  
12 examination.

13 THE COURT: I recall there being a charity care  
14 question from Mr. Gaskins. Where we going with  
15 this?

16 MR. WESTBROOK: I think where I was going with that,  
17 there were questions about payer mix. Well,  
18 specifically there were questions that this  
19 relates to the up-tick question about, you  
20 know, things are looking up at Piedmont in the  
21 last couple of years and utilization has  
22 stabilized. And I think the testimony has  
23 been, and I think Mr. Sullivan just commented  
24 that, well yeah, the charity care patients have  
25 increased or there has been an up-tick in

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 charity care patients at Piedmont but not in  
2 paying patients, and I wanted to ask a followup  
3 on that.

4 **MR. GASKINS:** I didn't address payer mix, either.

5 **MR. WESTBROOK:** Well, he didn't address payer mix,  
6 but he addressed utilization. And the point  
7 about utilization is not that utilization --  
8 there's been an up-tick in utilization; the  
9 fact that we are getting -- that Piedmont is  
10 getting more patients doesn't mean anything  
11 unless it is put in the context of who those  
12 patients are. And the payer mix there is  
13 really the issue.

14 **THE COURT:** And Mr. Westbrook, you did an excellent  
15 job of asking this question of Mr. Sullivan.  
16 I took very good notes about the whole -- the  
17 Court is very aware of that end, although there  
18 is perhaps, an increase in patients and the  
19 payer mix between the insured patient versus  
20 charity care or Medicare-Medicaid patients has  
21 shifted at Piedmont.

22 **MR. WESTBROOK:** And can I just, if Your Honor if you  
23 will, and you may sit me down. That's fine.  
24 I promise this is my last question. But what  
25 I would ask him is really a definition

1 question. And that is: It relates to when  
2 he's talking about charity care, sometimes the  
3 term charity care is used. Sometimes the term  
4 indigent care is used. I just want to make it  
5 clear that we are talking about the same thing.  
6 It is not a semantical difference between the  
7 two. I'm not sure what he's going to -- I  
8 think I know what he's going to answer to that,  
9 or I wouldn't ask it. Is charity care and  
10 indigent care the same thing? We talking about  
11 the same thing? That's my only question there.

12 **MR. GASKINS:** And that certainly was not within the  
13 scope of my cross.

14 **THE COURT:** With that limited purpose, I'm going to  
15 overrule your objection, Mr. Gaskins. Mr.  
16 Westbrook, please go ahead and ask.

17 **MR. WESTBROOK:** Let's hope this is the over and the  
18 answer is what I want.

19 Q: Mr. Sullivan, we've talked -- you've talked  
20 about charity care and indigent care, and a lot  
21 of witnesses have. And in your mind, are those  
22 the same thing or are we talking about the same  
23 thing?

24 A: I think the way they are used in common usage,  
25 they are the same thing. I mean, there are

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1       some states that differentiate between those  
2       two terms where charity care would be people  
3       that fell below a certain, you know, income  
4       level. And indigent care would be people above  
5       that who had other requirements. But, yeah, in  
6       general, I think that they are the same.

7       Q:    Thank you. No further questions.

8       MR. WESTBROOK: Thank you, Your Honor.

9       THE COURT: Thank you, Mr. Westbrook. Mr. Gaskins?

10      MR. GASKINS: No further questions.

11      THE COURT: Ms. Biggers?

12      MS. BIGGERS: No questions, Your Honor.

13      THE COURT: All right. And are we finished with  
14       this witness?

15      MR. WESTBROOK: We are.

16      THE COURT: Mr. Sullivan, thank you very much, sir.

17      MR. SULLIVAN: Thank you.

18      THE COURT: You may be excused. Now, ladies and  
19       gentlemen, my understanding is that was all we  
20       were going to do today, is that right? Now, do  
21       we need to have a brief post off-the-record  
22       meeting about just sort of an administrative  
23       discussion? Do we want to take a little break  
24       here and give everybody a chance to filter out.  
25       And then we will perhaps just meet back in this

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: Well, let's look at the state health plan  
2 itself. This is Charleston, CHS Exhibit 12,  
3 Page 11.

4 MR. MULLER: If you would just pull up the -- I call  
5 it Roman Numeral I.

6 Q: Here is the state health plan. This is from  
7 CHS Exhibit 12, which is the 2004, 2005 state  
8 health plan. And the language that they use  
9 here is that an additional finding has been  
10 made in each section as to whether the benefits  
11 of improved accessibility to each such type of  
12 facility, service and equipment may outweigh  
13 the adverse effects caused by the duplication  
14 of any existing facility, service or equipment.  
15 Do you see that?

16 A: Yes, I do.

17 Q: So the question is whether the benefits of  
18 improved accessibility outweigh the adverse  
19 effects caused by a duplication. There is no  
20 words for "protect market share" in there,  
21 correct?

22 A: No, sir. Not those specific words.

23 Q: All right. In terms of increased accessibility  
24 certainly with as many patients as CHS has in  
25 this area of northern York County, the hospital



1           that they would put there would give improved  
2           accessibility to those citizens, correct?

3       A:   Well, I think any hospital built in Fort Mill  
4           would certainly improve access. But there are  
5           some other important reasons here, and that is  
6           that we had our existing hospital, as we've  
7           mentioned. That's been there for 30 years, and  
8           is suffering from out-migration and that  
9           rapidly growing area in Fort Mill with a  
10          satellite could really benefit the system there  
11          at the existing hospitals as satellites have  
12          done in other areas of South Carolina and  
13          counties. And if we put a competitor there  
14          it's going to really further diminish the  
15          services of the existing hospital because the  
16          competitor such as Carolinas will really be  
17          transferring a lot of their patients to their  
18          larger hospitals in Charlotte for more  
19          sophisticated services when necessary.

20       Q:   There is no question, is there, that because  
21           Rock Hill is to some degree a veteran community  
22           of Charlotte; is it not?

23       A:   I'm sorry, a butyrin --

24       Q:   A butyrin community.

25       A:   Yes, sir. I think probably a lot of people

1           that even work in Charlotte live perhaps in  
2           South Carolina.

3       Q:   And the same to some degree or to a greater  
4           degree in areas north of York County closer to  
5           Charlotte.

6       A:   Yes sir.

7       Q:   You've seen, for example, that one of the  
8           doctors who testified for Piedmont actually  
9           lives in North Carolina and travels here to  
10          work.

11      A:   Yes, sir.

12      Q:   And did you notice that every single doctor  
13          that testified for Piedmont is also licensed in  
14          North Carolina?

15      A:   I think being so close to the state line; yes,  
16          sir, I understand.

17      Q:   And there are certain services that would most  
18          likely be logically performed in North  
19          Carolina, correct?

20      A:   Perhaps; yes, sir.

21      Q:   For example, CMC Main, Carolina's main hospital  
22          has a transplant surgery that no other hospital  
23          in Rock Hill could offer.

24      A:   That's correct.

25      Q:   And they have a Level 1 trauma center that is

1           some place where trauma patients are taken from  
2           anywhere in the area.

3       A:    Yes, sir.  I understand.

4       Q:    but let's look at what you said in the prior  
5           review.

6       **MR. MULLER:**  This is CHS-4(b), 941-942.  Would you  
7           go to the bottom there and just enlarge that  
8           last paragraph?

9       Q:    This was in your CON summary sheet in the prior  
10           review.  It says York County population is out-  
11           migrating to Charlotte facilities for tertiary  
12           services but currently there when York County  
13           is P&T are doing so out of choice and/or at  
14           physician's election since none of the --

15       **MR. MULLER:**  Would you go to the next page and  
16           enlarge the top.

17       Q:    -- of the four competing applicants have opted  
18           to offer these type of services, this sudden  
19           out-migration will continue and cannot be  
20           curbed by any of the four applicants.  Only a  
21           portion of the out-migration will be affected  
22           by a community hospital located in a more  
23           convenient location."  Do you recall that  
24           finding?

25       A:    Yes, that was in the 2006 decision, is that

1 correct?

2 Q: And those four were Piedmont, CHS,  
3 Presbyterian, HBA. Those are the four  
4 applicants.

5 A: That is correct.

6 Q: I take it that your view was that if Piedmont  
7 could build in northern York County, then  
8 patients -- South Carolina citizens who wanted  
9 to go elsewhere could simply go to Charlotte or  
10 to Pineville or wherever to CHS Hospital, to be  
11 seen at CHS Hospital.

12 A: They would certainly have that ability of  
13 choice as they do today, yes. They would have  
14 that choice. But I think the hospital -- the  
15 Fort Mill Medical Center developed by Piedmont  
16 and Fort Mill would be better -- better for the  
17 citizens of York County overall in this  
18 situation because it would allow the existing  
19 hospital in Rock Hill to not lose as many  
20 patients in the future. It would help reduce  
21 some of the out-migration and help allow more  
22 transfers of tertiary -- of patients requiring  
23 tertiary services to the Rock Hill facility.

24 Q: I take it that you don't -- I recall your  
25 testimony being you only planned for South

1 Carolina citizens, and you do not plan for  
2 North Carolina citizens.

3 A: I try to be fair. But that was what I was told  
4 by the 3M committee. So, you know, that would  
5 make a big impression. And I do understand the  
6 point there. We live in South Carolina. I  
7 work for South Carolina state government. My  
8 first concern is to make sure that we protect  
9 the services we have in South Carolina that we  
10 have approved in the past and that we don't  
11 make decisions to harm and damage those  
12 services.

13 Q: Did you approve the radiation therapy  
14 application in Lancaster County that was filed  
15 by the Piedmont CHS tri-venture in 2007?

16 A: I don't -- I left the department in December.  
17 I don't know what date that decision would have  
18 been made. And if the application was received  
19 in 2007, I don't know what the decision date  
20 would have been on that. I would have if it  
21 were made, you know, prior to December 3rd,  
22 2007.

23 Q: Do you recall that application?

24 A: I don't recall that right offhand.

25 Q: I want to turn to the state health plan.

1 utilization had decreased to the point that it  
2 was now asking to go from 131 beds to 124 beds,  
3 is that correct?

4 A: Yes, if that's what it says, yes.

5 Q: So in effect what happened in this instance is  
6 the hospital in a prosperous portion of  
7 Georgetown County close to Horry County got  
8 bigger and the hospital that was in the steel  
9 mill town of Georgetown got smaller and had  
10 decreased in utilization. Is that correct?

11 A: Yes, that's correct.

12 Q: Thank you, Mr. Grice.

13 MR. MULLER: I believe those are all the questions I  
14 have.

15 THE COURT: All right. Thank you, Mr. Muller.

16 MS. BIGGERS: I don't have any questions.

17 THE COURT: Okay. No questions from the department.  
18 Mr. Andrews?

19 MR. ANDREWS: Thank you, Your Honor.

20 MR. GRICE - RE-DIRECT EXAMINATION BY MR. ANDREWS:

21 Q: Mr. Grice, let's pick up where Mr. Muller left  
22 you concerning Waccamaw. Based on your  
23 familiarity with Georgetown County and  
24 historical bed utilization there, what is your  
25 opinion concerning the performance of

1 Georgetown Memorial Hospital and the effect  
2 that Waccamaw has had on that? Specifically  
3 what I would like you to address of how you  
4 believe the presence of Waccamaw affected  
5 utilization of Georgetown after Waccamaw was  
6 established?

7 A: Well, where the existing Georgetown Memorial  
8 Hospital is, I don't think -- it is similar to  
9 York County with the rapid growth like we're  
10 seeing in York County right now. But I think  
11 the Waccamaw satellite has really -- you know,  
12 that's probably taken a lot of business away  
13 from existing Georgetown. Georgetown Hospital,  
14 I don't believe, has the tertiary type services  
15 that York County has. I may be wrong, but I  
16 just don't think it has the size of the  
17 hospital that Piedmont Medical Center does or  
18 some of the associated services.

19 Q: Are you familiar with the financial performance  
20 of Georgetown?

21 A: No sir, not right offhand. I've probably  
22 reviewed it, but I imagine, you know, they may  
23 be suffering.

24 Q: Are you familiar with the financial performance  
25 of Waccamaw?

1 A: No, sir; not specifically.

2 Q: So you really don't know or have the  
3 information one way or the other?

4 A: No, sir, I don't.

5 MR. ANDREWS: All right. Dan, turn to Piedmont  
6 Exhibit 16 please, Page 79.

7 Q: Mr. Grice, Mr. Muller asked you about your  
8 review of the language in the York County  
9 contract. Now, did you have -- did the  
10 department have copies of all the contracts?  
11 Do you remember that?

12 A: Yes, sir. I believe that we did in that  
13 decision, the 2006 decision.

14 Q: Okay. And specifically --

15 MR. ANDREWS: Dan, let's pull out the language  
16 related to the questions.

17 Q: Mr. Grice, I want to ask you about your  
18 understanding of the obligations that Piedmont  
19 had under the agreement. Specifically, Mr.  
20 Muller asked you about the pricing standards  
21 that existed in the agreement. Read the  
22 highlighted language if you would.

23 A: It says, "AMI agrees to exert every effort to  
24 so conduct its operations and finances to  
25 maintain prices for services of the hospital at



1 reasonable competitive levels via -- vis-a-vis  
2 other hospitals in the peer group as defined in  
3 Section 340-13(a)(xii hereof) for which MEDPAR  
4 pricing information is provided pursuant to  
5 Section 3.13 (a)(xi)."

6 Q: All right. Now based on your review of this  
7 term in the sixth addendum, what's your  
8 understanding of Piedmont's obligation with  
9 respect of assurances it made to the county  
10 concerning prices?

11 A: Well, I think what it says here they agree to  
12 use every effort possible, you know, to  
13 maintain the prices that are competitive and  
14 reasonable with others in the peer group.

15 Q: Now, let me take you to another document that  
16 Mr. Muller asked you about.

17 MR. ANDREWS: Dan, pull up Piedmont Exhibit 3,  
18 please, Pages 339-340.

19 Q: You remember that Mr. Muller asked you about  
20 the letters from Ms. Fechtel concerning the  
21 project review criteria and the other review?

22 A: Yes, sir.

23 Q: And your testimony was that Ms. Fechtel  
24 prepared these letters. And while you  
25 supervised her you didn't review them, is that

1 right?

2 A: That is correct.

3 Q: All right. Let's look at the second page in  
4 the listing. Now, first of all -- before we go  
5 there, I'm sorry. Let's go back in to the  
6 first page. What is the date of this letter?

7 A: February 8, 2005.

8 Q: Okay. And this is the first complete letter  
9 following the January 2005 submission, is that  
10 right?

11 A: Yes, sir; that's correct.

12 Q: Now, do you remember whether the January 2005  
13 application was submitted with the first or the  
14 second application for the 64-bed hospital that  
15 Piedmont submitted?

16 A: I believe it was the second, and that is a good  
17 point, because basically one of the main things  
18 that changed was just the licensee.

19 Q: Okay. And the record will reflect that the  
20 date of that first filing was November 2005.  
21 Is that your recollection?

22 A: I'm sorry?

23 Q: November 2005 was the very first -- I'm sorry,  
24 November 2004?

25 A: Yes, sir; that's correct.

**CREEL COURT REPORTING, INC.**  
1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001192

1 Q: Is that right?

2 A: Yes, sir.

3 Q: All right. And do you remember whether there  
4 under that November 2004 application, whether  
5 there was any request for additional  
6 information than Ms. Fechtel submitted to Mr.  
7 Levitt who filed the application on behalf of  
8 Piedmont?

9 A: I can't recall right now. It may have been.  
10 But certainly it was complete. And, therefore,  
11 the second submission on February or later --  
12 relative to this complete one on February 8,  
13 2005, would have been very similar. And it was  
14 basically complete when submitted.

15 Q: What are you referring to that would have  
16 complete when submitted?

17 A: The application -- the certificate of need  
18 application would have been complete for a  
19 decision, review of the decision.

20 Q: That is the 64-bed application submitted by  
21 Piedmont?

22 A: Yes, sir. That is correct.

23 Q: That would have been the second or first  
24 application?

25 A: Second.

1 Q: Okay, all right. Now, with regard to the  
2 request for additional information, Mr. Grice,  
3 in your experience of 29 years in the CON  
4 office, are the requests for additional  
5 information to any degree a reflection of the  
6 experience of the healthcare planner who's  
7 preparing -- and a planner's experience for  
8 South Carolina with your office in preparing  
9 the application?

10 A: Yes, sir. It is.

11 Q: In what way?

12 A: Well, generally if an applicant has prepared  
13 many other applications, they're more familiar  
14 with the type information we need specifically.  
15 And, you know, if they are not, we have to  
16 sometimes consider additional information  
17 to be able to get the appropriate information  
18 we use to make the review. And of course, you  
19 know, Tenet Healthcare has hospitals over the  
20 state and has submitted numerous applications.  
21 So they were familiar with the process.

22 Q: And who was the consultant working on behalf of  
23 Piedmont?

24 A: David Levitt.

25 Q: And what was your -- the degree of your

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 experience with Mr. Levitt filing CON  
2 application?

3 A: Mr. Levitt had filed applications for many many  
4 years and did an excellent job, and he knew  
5 exactly what to give us. They were generally  
6 complete when submitted.

7 Q: Okay. And who filed the application on behalf  
8 of Carolinas? Do you recall?

9 A: Right offhand I don't recall exactly.

10 Q: All right. Was it -- do you recall it being  
11 that the application for Carolinas was  
12 submitted by anyone who had had considerable  
13 experience with the department in filing CON  
14 applications?

15 MR. MULLER: Your Honor, I'm going to object to the  
16 question. The witness has just testified that  
17 he did not recall who had submitted it.

18 MR. ANDREWS: I understood the response, Your Honor.  
19 The reason for the question is even if he  
20 didn't recall a name, the question is a  
21 different one -- whether he recalled whoever  
22 submitted that? Whether it was someone he was  
23 familiar with based on their experience with  
24 the department.

25 MR. MULLER: And I also object to it being leading.

1 He's trying to lead the witness on redirect.

2 **MR. ANDREWS:** I think it's a question of fact, Your  
3 Honor.

4 **THE COURT:** Mr. Muller, I'm going to overrule your  
5 objection and let the witness answer the  
6 question.

7 A: Would you --

8 Q: Sure, the question is whether you recall, one  
9 way or the other, whether the individual  
10 responsible for communicating with the  
11 department concerning Carolinas' application  
12 was one with whom you had had experience in the  
13 filing of CON applications?

14 A: No, sir. We had not. I mean, this is the  
15 first application we ever got from the  
16 Carolinas Medical Center. And so that person  
17 had not submitted applications to South  
18 Carolina previously.

19 Q: Okay. Now, the letter that's appearing here  
20 was prepared by Ms. Fechtel. How many -- well,  
21 let's look at the second page, and it's dated  
22 February 2005. And the project review criteria  
23 that are prepared here, Mr. Grice, at the time  
24 that these criteria were identified by Ms.  
25 Fechtel, how many applications had been

1 submitted to establish a hospital in Fort Mill?

2 A: This was the first one, I believe, as I recall.

3 Q: I believe in examining you, Mr. Muller said I'm  
4 going to ask you if you recall March was the  
5 date -- the month in which the others applied?

6 A: Yes, sir.

7 Q: So in February, who had filed?

8 A: It was just Piedmont Medical Center for the  
9 Fort Mill Medical Center.

10 Q: And among the project review criteria that are  
11 listed, number six is the adverse affects on  
12 other facilities. Do you see that?

13 A: Yes, sir, I do.

14 Q: Why would that be listed last, Mr. Grice?

15 A: Well, you know, I guess -- I think in doing  
16 review I think there has been other  
17 applications that had been listed higher. But  
18 one thing, I think Ms. Fechtel, when she was  
19 listing all this, she probably looked at some  
20 other very similar type applications for  
21 hospitals. New hospitals had been done, and  
22 this is just the way it fell. But it certainly  
23 could have been higher.

24 Q: Well, how many facilities were there in York  
25 County that could have been adversely affected

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

- 1 in February of 2005?
- 2 A: None. So that could be a reason, you know,  
3 that it was -- in this first application when  
4 we're talking about adverse effects of other  
5 facilities there were no other hospitals in  
6 York County. So this would be a low priority  
7 -- lower priority than the other criteria.
- 8 Q: Now, also look at the numbering, the sequence  
9 from the first to the last. What's number one?  
10 What's the criterion number for number one?
- 11 A: Number one.
- 12 Q: And what's the criterion for number two?
- 13 A: They're all two, A, B, C, D and E.
- 14 Q: And then three, correct?
- 15 A: Yes, sir.
- 16 Q: And for the third criterion, what's the number?
- 17 A: For the third one, 6, A, B, and 7.
- 18 Q: And for the next one?
- 19 A: Also in three, we've got 15.
- 20 Q: All right. Do you see a pattern that's  
21 evolving there, Mr. Grice?
- 22 A: Yes, sir. I think some people would say  
23 they're almost like in chronological order.
- 24 Q: Or numerical order?
- 25 A: I meant numerical order, yes.



1 Q: And there are a few that are exceptions. The  
2 next one is one, correct?

3 A: That's correct.

4 Q: But by and large, what is the pattern you see  
5 of the listing of the order of criteria?

6 A: They appear to be related in numerical order.

7 Q: That they appear where?

8 A: Compared to Section 802 of Regulation 61.15.

9 Q: I have no further questions, thank you.

10 **THE COURT:** Thank you, Mr. Andrews. Mr. Muller.

11 **MR. MULLER:** Very few, Your Honor.

12 **MR. GRICE - RE-CROSS EXAMINATION BY MR. MULLER:**

13 **MR. MULLER:** If we could just go back to Piedmont  
14 Exhibit 16, Page 79. If you could enlarge the  
15 sentence that starts in the middle, "in the  
16 event."

17 Q: This is a sentence after the sentence that Mr.  
18 Andrews showed you.

19 A: Yes, sir.

20 Q: Can you read it and tell me whether it was  
21 incumbent upon Piedmont to self-report when --

22 A: Would you like me to read aloud or just read  
23 it?

24 Q: You're welcome to read it aloud or silently,  
25 whatever you prefer.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 A: Okay. I graduated high school in 1976. I went  
2 to a branch campus of USC in Allendale for two  
3 years. And I went on to Columbia and graduated  
4 in 1980. I went to work for DHEC. And after  
5 I'd been there for a few years I went to  
6 graduate school. And I have a masters in  
7 Public Health. I went to graduate school part  
8 time from 1986 until 1991, and that's when I  
9 did get that graduate degree.

10 Q: And when did you begin working for DHEC?

11 A: It was approximately May of 1981.

12 Q: What area of DHEC did you work in to start off  
13 with?

14 A: I started off in the Bureau of Radiological  
15 Health, and I spent around 22 years with that  
16 program.

17 Q: And what program did you work with next?

18 A: I was then a public health preparedness  
19 planner, and I was part of the health resources  
20 and services administration grant. So I spent  
21 five years in that position.

22 Q: And then what did you do after that?

23 A: After that I did get hired on as the bureau  
24 chief for the division that oversees the CON  
25 program, the Bureau of Health Facilities and

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 Services Development.
- 2 Q: When did you begin in that position?
- 3 A: It was February of 2008.
- 4 Q: And have you retired from the department since
- 5 the time you made this decision?
- 6 A: Yes, I retired this past February.
- 7 Q: Were you involved with the initial decision
- 8 that the department made when the applications
- 9 were first submitted to DHEC?
- 10 A: No, I was not.
- 11 Q: Were you still in your public preparedness
- 12 position at that time?
- 13 A: Yes, I was.
- 14 Q: Okay. And then can you tell us, what was your
- 15 involvement when Judge Matthews remanded this
- 16 matter back to DHEC?
- 17 A: At the time of the remand, I was the bureau
- 18 chief. So I was responsible for responding to
- 19 her decision with the remand.
- 20 Q: In responding to that remand order and
- 21 reviewing the applications, did you rank the
- 22 project review criteria to be applied to the
- 23 review?
- 24 A: Yes, I did.
- 25 Q: What was that?

1 A: It is focused on the projected utilization,  
2 that that is sufficient to justify the  
3 expansion or implementation of the proposed  
4 service.

5 Q: And did you find that Carolinas' projected  
6 utilization justified their application?

7 A: Yes, it did because their projections were  
8 based on the high level of their current market  
9 share. That is, the South Carolina patients  
10 that were leaving South Carolina to be served  
11 in North Carolina. So they had some  
12 statistical information to support that. And  
13 I felt that the need for the project, you know,  
14 was based on their current patients that they  
15 served, and that they would be able to  
16 successfully shift the patients that they --  
17 South Carolina patients back to South Carolina.  
18 And they had a detailed analysis. And so that  
19 is contained in this document. And I felt that  
20 their analysis was reasonable.

21 Q: And did you find that Piedmont's projected --  
22 current and protected utilization were  
23 sufficient to justify its project?

24 A: No, I did not.

25 Q: Why is that?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 A: Because they had been steadily losing market  
2 share and their services -- utilization of  
3 their services was substantially declining.  
4 And then they felt that, you know, building  
5 this hospital that all of a sudden the market  
6 share was going to increase substantially and  
7 that they would be able to successfully  
8 redirect patients from the 29730 and 29732 zip  
9 codes. It just didn't seem plausible or  
10 reasonable to me.

11 Q: Okay. In your analysis of the two applications  
12 that we are looking at here, it started on 1309  
13 and now we are 1310. It goes on to 1311. The  
14 statistics that you cite, are those based on  
15 information in the two applications?

16 A: Yes, they are.

17 Q: Let's look at distribution. What did you find  
18 with regard to -- well, first let's look at  
19 3(a).

20 A: I found that 3(a) only applied to Piedmont.

21 Q: And what about -- did you find that Piedmont  
22 met it?

23 A: I didn't feel that they had adequately  
24 justified the duplication of services by  
25 transferring the 36 beds.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 MR. ANDREWS: Thank you, Your Honor.

2 MS. BRANDT - CROSS EXAMINATION BY MR. ANDREWS:

3 Q: Good afternoon, Ms. Brandt.

4 A: Good afternoon, Mr. Andrews.

5 Q: Ms. Brandt, when you joined the department you  
6 had a masters in public health, is that  
7 correct?

8 A: I obtained a masters after I started working  
9 with DHEC.

10 Q: So you started working in the eighties and then  
11 you got your masters degree about ten years  
12 later?

13 A: Yes, that was the time I got through that part.

14 Q: Okay. And your master's degree was in  
15 environmental and radiological health related  
16 construct; wasn't it?

17 A: That was the primary focus for my masters in  
18 public health?

19 Q: Right. And you didn't have any advance  
20 training in healthcare planning or healthcare  
21 finances apart of that process did you?

22 A: No, but I had certainly worked hand-in-hand  
23 with healthcare facilities and through my  
24 entire tenure with the DHEC in my career.

25 Q: Okay. And when you became bureau director in

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1           2008, you had never been involved with CON  
2           decisions or CON process before had you?

3       A:    I was certainly not involved in decisions.    I  
4           was on the periphery of the process through  
5           \*shielding approval        letters    and    their  
6           relationship to CON projects.

7       Q:    For radiological health imaging concerns, is  
8           that right?

9       A:    Yes.

10      Q:    So relating to MRIs, CAT scans and other  
11           medical equipment, you saw the effects of some  
12           healthcare facility applications. That is the  
13           extent of your exposure to CON at that point;  
14           wasn't it?

15      A:    Yes, I suppose.

16      Q:    And when you took the job, you replaced Mr.  
17           Grice, correct?

18      A:    Yes, I did.

19      Q:    And during that time you hadn't received any  
20           additional formal CON training had you?

21      A:    No, not at that time.

22      Q:    You had a couple of some seminars and some on-  
23           line courses concerning healthcare planning and  
24           finance that you participated in, is that  
25           correct?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 A: That was more recently, yes.

2 Q: And you had a half day of kind of some in-house  
3 training related to healthcare reimbursement,  
4 right?

5 A: It was probably half a day, maybe a full day,  
6 I don't --

7 Q: But it would be accurate to say that your CON  
8 training really consisted of on-the-job  
9 training you received after you assumed the  
10 position of CON director; would that be fair to  
11 say?

12 A: Yes, but certainly I brought a lot of skills  
13 and experience that transferred to the  
14 position. And obviously at a certain point in  
15 time I was chosen, you know, over other  
16 applicants for the position because of my  
17 qualifications.

18 Q: Sure. And you had a lot of administrative  
19 experience. But you hadn't had any depth in  
20 healthcare management and finance; wouldn't  
21 that would be fair to say?

22 A: Yes, that would be fair.

23 Q: And you've never been qualified as an expert  
24 witness in healthcare planning or in  
25 certificate of need or in healthcare finance?



- 1 A: No. But that would have been requested by  
2 somebody else. I don't believe I would have  
3 offered myself as that.
- 4 Q: All right. And you testified in two previous  
5 cases prior to this, is that right?
- 6 A: Oh, goodness. Certainly the home health case  
7 and Berkeley County Hospital cases. I  
8 certainly have been deposed more but --
- 9 Q: Been deposed more but in terms of offering  
10 testimony for the benefit while in court, it's  
11 been a couple of times that you can think of?
- 12 A: Yes.
- 13 Q: Now, when you began your work on this case in  
14 2010, you were initially assisted by Lisa  
15 Sanders who was a relatively senior reviewer at  
16 the time in the department; isn't that right?
- 17 A: Yes, I was.
- 18 Q: And she left before you completed the review,  
19 correct?
- 20 A: Yes, she left a few months prior to the  
21 decision.
- 22 Q: And she didn't participate at all in the  
23 decision; did she?
- 24 A: No, she did not.
- 25 Q: And Mr. Grice had gone. Ms. Fechtel was there,

1 but she had been involved in the previous  
2 decision, and you didn't consult with her on  
3 this case either; did you?

4 A: Well, Mary served kind as a sounding board for  
5 me. And I bounced a lot of things off of her.  
6 I was involved in so many projects and so many  
7 decisions, it wasn't unusual for me to speak  
8 with her.

9 Q: Okay. But you didn't talk with her  
10 specifically about the adjustments she needed  
11 to make in this case; did you?

12 A: No, I did not.

13 Q: All right. Okay. So Ms. Sanders was gone, Ms.  
14 Fechtel wasn't available, and Mr. Grice was  
15 gone and you made this decision on your own,  
16 right?

17 A: Yes, I did. I certainly did utilize with  
18 Shelton in some capacity, as well.

19 Q: But he didn't review the applications or  
20 participate in the review; did he?

21 A: He was at the project review meeting, and he  
22 performed some analyses under my direction.  
23 But no, he was not involved in the decision.

24 Q: Okay. All right. Let's turn to some of the  
25 concerns you expressed in your testimony and

1           were reflected in your decision.   Now with  
2           regard -- let's start with the questions that  
3           you raised about Tenets, Piedmont in particular  
4           in its ability to finance the project.   You  
5           never formed an opinion that Piedmont couldn't  
6           pay for the construction of the hospital; did  
7           you?

8   A:   No, because they were owned by Tenet and has a  
9           lot of financial means.

10   Q:   And Tenet, through their senior vice president,  
11           communicated with the department and said Tenet  
12           that can stand behind the construction costs  
13           and will build and will finance the  
14           construction of the new Fort Mill Medical  
15           Center; didn't they?

16   A:   Yes.   I believe there is a letter to that  
17           effect.

18   Q:   And you didn't have any reason to doubt that;  
19           did you?

20   A:   No, I did not.

21   Q:   And in fact, are you aware that in 2006 Tenet  
22           owned the facility called East Cooper Medical  
23           Center, built a new replacement hospital that  
24           was approximately \$150 million and financed  
25           that facility down in the Charleston area?

1 A: I was aware that it was being built. I wasn't  
2 aware of how it was financed.

3 Q: You're not aware of budget department -- I  
4 mean, that East Cooper, the Tenet facility,  
5 would have communicated to the department that  
6 they had closed out the project, and they  
7 didn't have any trouble, that you're aware of,  
8 financing the project did; they?

9 A: I'm just not aware. We got their closeout  
10 report, I believe, but they don't have to  
11 report anything about financials.

12 Q: Okay. And you're not -- and they built a  
13 hospital and as far as you know it's  
14 operational and paid for it or certainly being  
15 paid for?

16 A: Well, certainly operational, yes.

17 Q: Okay. All right. Now, with regard to the  
18 concern that you expressed then. Let's focus  
19 -- your concern was not whether not Tenet could  
20 build a hospital, your concern was in whether  
21 they could finance the construction of the  
22 hospital. Your concern was whether or not they  
23 identified a definitive approach about how they  
24 would finance the construction of it, is that  
25 right?

1 A: Well, that certainly was a concern. They  
2 identified several means and chose the one that  
3 was resulted in around \$2 million of interest  
4 expense.

5 Q: Okay. Now, you had said, I believe, in your  
6 testimony that your preference was for a  
7 definitive approach. That is an applicant  
8 saying this is how we intend to finance it  
9 period; end of story. That was your  
10 preference; wasn't it?

11 A: Well, my preference was what the regulations  
12 stated. And the regulations stated, and this  
13 is probably isn't the exact words, but it  
14 indicated that they had to chose a method that  
15 they were going to utilize.

16 Q: And you referring to the provision in Paragraph  
17 16(a), I believe; are you not?

18 MR. ANDREWS: Well, let's pull it up. Dan, if you  
19 would, let's pull up 802, Section 16(a) in the  
20 DHEC reg.

21 Q: Okay. Read that into the record please, Ms.  
22 Brandt?

23 A: "The applicant should have identified and  
24 sought alternative sources and/or methods of  
25 funding and demonstrated that the method chosen

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 was the most feasible option."

2 Q: Now, in fact, you testified that Carolinas said

3 we're going to use cash, correct?

4 A0: Yes, from later reserves.

5 Q: Cash and cash equivalents is what you put.

6 A: Uh-huh (affirmative response).

7 Q: They didn't identify alternatives; did they?

8 A: (No Response)

9 Q: Does the reg say the applicant should have

10 identified and sought alternative sources of

11 financing?

12 A: Yes, it says should not shall.

13 Q: That's a meaningful distinction to you?

14 A: Well, shall means -- is more of an absolute.

15 And they identified something that the cash

16 reserve was reasonable, and I felt that was

17 sufficient.

18 Q: Okay. Did they offer any alternatives? Did

19 they identify alternatives that they

20 considered?

21 A: No.

22 Q: And in Tenet's letter, they did identify

23 alternatives; did they not?

24 A: Yes, they did.

25 Q: And it shows one of the alternatives, which was

1 to make themselves -- to allow themselves to  
2 form the judgment about which would be most  
3 prudent from a business perspective at the time  
4 they were ready to build. Isn't that what they  
5 did?

6 A: Well, I probably wouldn't have couched it as  
7 chosen an alternative. I mean, this has  
8 demonstrated the method chosen. And so the  
9 method they chose was financing.

10 Q: Well, let's be clear about this. First of all,  
11 the department did not have a policy about this  
12 issue; did they?

13 A: Could you be more --

14 Q: Sure, yeah, about your definitive approach.  
15 You didn't have a policy as to whether or not  
16 the applicant should be definitive; that is,  
17 express a particular preference and inform the  
18 department what it intended to do three to five  
19 years in the future when the hospital was  
20 built?

21 A: Well, this does say -- demonstrate the method  
22 chosen, and it's singular. So if they laid out  
23 a variety for future means to finance a  
24 project, then we expect them to step up and  
25 tell us exactly what they intend to do.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: But you didn't tell the applicant that; did  
2 you?

3 A: Well, it's mentioned in this. And then I think  
4 if we look at some other parts of the  
5 regulations, it mentions that as well. No, I  
6 did not send back a letter saying, okay,  
7 Piedmont, you know, figure it out; if that's  
8 what you're asking.

9 Q: Yeah, I'm asking if you communicated to  
10 Piedmont that you wanted and expected  
11 applicants to make a determination years before  
12 they would build a hospital as to which method  
13 of financing or any method of financing they  
14 would choose?

15 A: Well, I feel that they discussed it  
16 sufficiently enough in their application,  
17 particularly because they did have a line for  
18 interest expense that they had basically  
19 declared how they were going to proceed with  
20 the project.

21 Q: Now Ms. Brandt, are you aware that in its --  
22 originally in its application to the department  
23 that Tenet presented the very same alternatives  
24 to the department about how it would finance  
25 the project?



1 A: No, I'm not aware.

2 **MR. ANDREWS:** Dan, let's pull that up, if you would,  
3 and let's look at what would be Exhibit --  
4 Petitioner's Exhibit 2, Page 252. Let's pull  
5 out the first sentence of the second paragraph.

6 Q: Could you read that sentence into the record,  
7 Ms. Brandt?

8 A: "Tenet Healthcare Corporation will fund this  
9 project utilizing a mix of debt and cash flow  
10 from operations as part of its overall capital  
11 investment budget."

12 Q: Now, are you aware that in reviewing Piedmont's  
13 application in 2006, Ms. Fechtel found that the  
14 presentation or the method of financing for all  
15 the applicants was adequate; did not raise any  
16 issues with the department?

17 **MS. ROBERTS:** Your Honor, I'm sorry to interrupt. I  
18 would like to object to this line of  
19 questioning. I think Ms. Brandt has testified  
20 that she was not involved in the first review  
21 and did not participate in it. That was Ms.  
22 Fechtel, Mr. Grice. And Mr. Grice has already  
23 testified this witness was not involved in this  
24 first review.

25 **THE COURT:** Mr. Andrews.

1     **MR. ANDREWS:**     Your Honor, we're aware that she  
2     wasn't involved in the first review. She's  
3     also said she conferred with the department and  
4     with Ms. Fechtel, in particular; and not about  
5     the application but the general principles.  
6     And we think as the sole representative of the  
7     department that she needs to be able to speak  
8     to anything in the department such as to be  
9     concerned in this case or other cases, whether  
10    she was personally involved or not.

11   **THE COURT:**     All right. I'm going to overrule the  
12    objection. Thank you, Ms. Robertson. Go  
13    ahead, Mr. Andrews.

14   **Q:**     All right, sir. So the question for you, Ms.  
15    Brandt, is whether or not you were aware that  
16    based on the September 30, 2005 letter that you  
17    just read an excerpt from Mr. Corbeil, who is  
18    senior VP operations for Tenet, that your  
19    predecessors in your position found that this  
20    form of financing that Tenet presented was  
21    acceptable.

22   **A:**     Well again, I was not aware of what Mr. Grice  
23    decided or what Ms. Fechter decided. I know  
24    and I recollect that in general I had  
25    conversations with Ms. Fechtel, and she said

1           that the applicants had to be clear about their  
2           method of financing.

3       **MR. BIGGERS:**   All right.   Now, let's look at the  
4           next letter.   You will see that -- Dan, if you  
5           pull up the Joint Exhibit B(1), Page 223.   And  
6           let's pull out again the second paragraph,  
7           first sentence.

8       Q:   Read that sentence into the record, please, Ms.  
9           Brandt.

10      A:   "Tenet   Healthcare   Corporation   intends   to  
11           finance   the   project   through   the   most  
12           appropriate and cost effective capital funds  
13           available at the time utilizing existing cash  
14           reserves, existing lines of credit or the  
15           issuance of debt and/or equity."

16      Q:   Wasn't this basically the same position that  
17           Tenet took when they conveyed their willingness  
18           and ability to the department in 2005 about how  
19           they intended to finance the project then, and  
20           they adopted the same position in 2010?

21      A:   The intent appears to be the same.   I mean, I  
22           don't believe the wording is identical.   And I  
23           certainly do appreciate this line of  
24           questioning; but this didn't really make or  
25           break my decision.

1 Q: Okay. All right. Now, in your deposition, you  
2 testified that the way the department  
3 historically had applied 16(a) and 13(b)  
4 concerning the financing of the project was to  
5 look for definitive methods of financing. I  
6 believe I understood that to be your testimony,  
7 is that right?

8 A: That sounds correct. I certainly haven't  
9 reviewed those. But definitive meaning of it,  
10 but they need to state or would certainly know  
11 would how they planned to finance the project.

12 Q: But in this case Piedmont, in its first round,  
13 expressed they would use a mix of cash or debt  
14 and do whatever from a business point of view  
15 was prudent at the time. And it would have  
16 been reasonable, since there were no objections  
17 made to it in the first round, for them to take  
18 the same approach in the second; wouldn't it?  
19 Wouldn't that make sense to you?

20 A: It would make sense, but I did not review the  
21 first round.

22 Q: I know that. But you're the department's  
23 representative. And the department did not  
24 express any concern that you are aware of  
25 toward this mixed approach to financing in its

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 first round. And if you assume that to be the  
2 case, wouldn't you believe it would be  
3 reasonable for the company to rely on that  
4 department maintaining in the same position in  
5 the second round with regard to financing?

6 A: I can certainly see your point, Mr. Andrews,  
7 but again, you know, I was taught that the  
8 applicant had to come up with a means. What  
9 they say and what they do, I can't control  
10 that.

11 Q: You were taught by Ms. White, Ms. Patricia  
12 White?

13 A: I recall raising the issue with Ms. Fechtel.  
14 I can't say Ms. White didn't mention it. I  
15 just don't specifically recall that.

16 Q: But based on Ms. Fechtel's writing the CON  
17 summary approving Piedmont, it doesn't appear  
18 that Ms. Fechtel believed it was an issue of  
19 any concern, does it?

20 A: Well, I can't speak to what Ms. Fechtel  
21 thought, but I can state that she didn't appear  
22 to raise that as an issue.

23 Q: All right. And there is no question in your  
24 mind, is there, that Tenet has the financial  
25 wherewithal to finance the project and to build

1 Fort Mill Medical Center; isn't it?

2 A: Based on the cash reserves that they reported  
3 to us, they could certainly financially swing  
4 it. But we certainly did look at the project  
5 itself as well as the financial capability of  
6 the parent.

7 Q: And based on the financial capability of the  
8 parent on that specific issue, you can't, as  
9 you are sitting here today, express any basis  
10 for a concern about whether Tenet could finance  
11 the construction of the new hospital at Fort  
12 Mill; can you?

13 A: It appears with this \$700 million cash reserve  
14 to be able to finance the project.

15 Q: And let me move on to another subject. And  
16 that has to do with your statement and your  
17 decision letter about annual cost of the  
18 project for Piedmont. Let's begin your  
19 testimony on this by establishing one of the  
20 things that you try to do in reviewing  
21 competing applications. And this is the first  
22 competing hospital application you've ever  
23 reviewed; isn't it?

24 A: I believe you are right.

25 Q: Okay. All right. But generally based on in

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 your -- was it four or five years that you were  
2 in your position?

3 A: Five, yes.

4 Q: That you tried to create an apples-to-apples  
5 comparison among applicants to make sure when  
6 you're measuring them against each other you  
7 are doing that on an apples-to-apples basis.  
8 That is so you can fairly compare and contrast  
9 them. Isn't that one of the things you try to  
10 do?

11 A: Yes, I attempt to -- it's much easier said than  
12 done.

13 Q: Agree, but that's one of your objectives in  
14 this review process; isn't it?

15 A: Well yes, you've got to be able to place them  
16 side by side in some capacity.

17 Q: Okay. Now and because you would recognize that  
18 different assumptions and different  
19 methodologies could produce different results  
20 in what's being presented to the department;  
21 isn't that right?

22 A: Yes.

23 Q: And if you don't try to understand the basis  
24 for their projections and what the underlying  
25 assumptions are and the underlying

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 methodologies, then you can't fairly evaluate  
2 them against each other; can you?

3 A: No, and we certainly have to have good  
4 information to go on.

5 Q: All right. Let's talk about the construction  
6 costs and the capital costs.

7 MR. ANDREWS: Dan, let's pull up Demonstrative 153-  
8 1, please.

9 Q: There's been testimony, Ms. Brandt, prior to  
10 your arriving that Piedmont, when it submitted  
11 it's application and then reviewed it and the  
12 other applications that were presented  
13 following it, that it realized there were  
14 different assumptions that affected the total  
15 project cost; do you remember that?

16 A: Yes.

17 Q: And do you remember then that Piedmont made  
18 adjustments to try to get to the point of  
19 presenting data used that would allow you to  
20 look at the applications for their cost on a  
21 fairly equal apples-to-apples basis, is that  
22 right?

23 A: Yes.

24 Q: All right. Okay. And these three particular  
25 issues were the ones that there has been prior



1 testimony about. And I just want to review  
2 with you to see if you agree with me concerning  
3 these; that these were three issues related to  
4 the areas that affected the total project cost  
5 of the Fort Mill Medical Center, that there  
6 were differences between what Piedmont  
7 presented and what either or both of the other  
8 applicants presented. And those three areas  
9 are capitalized interest, the question of  
10 whether or not the construction costs were  
11 inflated or were then current, and then finally  
12 whether or not the projected equipment costs  
13 were at list price or reflected a volume  
14 discount that the applicants had. Do you  
15 remember that?

16 A: Yes.

17 Q: Okay. And you would agree with me that to  
18 achieve your apples-to-apples objective, that  
19 each of those adjustments were appropriate;  
20 wouldn't you?

21 A: Yes, in theory. But I have no issue with  
22 updating costs based on more up-to-date  
23 information or more accurate information such  
24 as the deflation of the construction costs or  
25 the discount. However, I didn't feel it was

1 necessarily appropriate to eliminate the  
2 capitalized interest because what is more  
3 important is to get a realistic picture of the  
4 proposed costs for the project. Now, while I  
5 certainly appreciated what was attempting to be  
6 done, the bottom line is what are your  
7 projections.

8 Q: All right. To make sure that we understand  
9 each other, so with regard to the adjustment of  
10 the construction costs, you didn't have any  
11 concerns about that adjustment, correct?

12 A: No.

13 Q: Okay. And with regard to making sure that the  
14 assumptions were the same with regard to  
15 medical equipment, that is whether they were  
16 listed or were using the discounts available to  
17 the applicants. That was appropriate, too. So  
18 you agree with 2 and 3?

19 A: Yes.

20 Q: All right. Now, with regard to the capitalized  
21 interest costs, at the time the applications  
22 were filed and you reviewed them, the  
23 department had no position, no policy, no  
24 practice, no position on whether imputed  
25 interest costs should be included or not in

- 1           their application; isn't that right?
- 2    A:    That's right.
- 3    Q:    Okay. Now, if an applicant, to be conservative
- 4           to be careful, and that means, doesn't it, that
- 5           when an applicant is being conservative, that
- 6           they are overstating their costs, understating
- 7           their expenses; doesn't it? Would you agree
- 8           with that?
- 9    A:    Well, yes. They are certainly giving it their
- 10          best shot for accurate representation.
- 11   Q:    Well, that's always true; isn't it?
- 12   A:    Well, yes.
- 13   Q:    Don't you expect every applicant to do that?
- 14   A:    Well, yes.
- 15   Q:    Okay. When an applicant is being conservative,
- 16          they are overstating there again, cost because
- 17          understating it would aggressive, overstating
- 18          it would be conservative. Would you agree with
- 19          that?
- 20   A:    Yes.
- 21   Q:    Okay. And on the expense side -- well, on the
- 22          revenue side, understating revenue would be
- 23          conservative. That is, they are going to err
- 24          on the side of projecting less revenue than
- 25          what they think might come in to be careful.

1 If they're demonstrating a higher extent of  
2 revenue, that's being aggressive, not  
3 conservative. Would you agree with that?

4 A: Yes.

5 Q: Okay. Now, with regard to the question about  
6 identifying interest costs, the conservative  
7 thing to do if an applicant is unsure years  
8 before they intend to actually finance the  
9 construction, if they include interest costs,  
10 that's a conservative approach; isn't it?

11 A: Yes.

12 Q: All right. Even as Tenet has said in their  
13 letters, they are unsure. They have the cash.  
14 They could put a zero there based on their  
15 ability. But a conservative approach is to  
16 identify that cost so they won't mislead the  
17 department, and they will be conservative in  
18 identifying potential costs. Wouldn't that be  
19 an accurate way of analyzing what that would  
20 yield at the start of that application process?

21 A: Well, yes. I mean, it's ultimately their  
22 decision.

23 Q: And as you said, the department doesn't check  
24 up on it when the project is completed. It's  
25 not even reported as part of the final reports

1 of the department when they complete a project;  
2 is it?

3 A: Not the interest expense. We look at the  
4 resulting total priority costs.

5 Q: Okay. But at the time that these applications  
6 were filed, the department hadn't developed a  
7 position about whether an applicant should,  
8 even when they don't intend -- when they intend  
9 to use cash should identify the cost of having  
10 that cash available, which would be imputed  
11 interest; wouldn't it?

12 A: Well, to my knowledge, no, there wasn't. And  
13 because I got really bombarded so much during  
14 my deposition about imputed interest, after my  
15 deposition I did go back and talk to Ms.  
16 Fechtel about imputed interest specifically.  
17 And she told me that they never or she never  
18 made a point of specifically asking for imputed  
19 interest.

20 Q: Right. And so you didn't ask for it. And if,  
21 in fact, interest were incurred later, you  
22 wouldn't even have any way of knowing it; would  
23 you?

24 A: Not if it didn't affect the total project  
25 costs.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: Right, okay. So if your goal is to compare  
2 applications on equal footing, apples to  
3 apples. And if one party includes imputed  
4 interest to be conservative and another one  
5 doesn't, you'd have apples and oranges;  
6 wouldn't you?

7 A: Yes. But I believe Piedmont stated it as  
8 interest expense and not imputed interest. So  
9 I ultimately relied on that to be their best  
10 projection of how they calculated their  
11 finances.

12 Q: Okay. So your position would be that Piedmont  
13 should, even though they said they may use  
14 cash, to include an interest expense even  
15 though they conservatively incorporated it?

16 A: I'm sorry, Mr. Andrews, can you repeat?

17 Q: Sure, yeah. Your position should be that even  
18 if Tenet had not made the decision that it  
19 would incur interest, that they should leave  
20 the interest in there and not remove it and not  
21 impute.

22 A: I'd don't believe Piedmont ever said, oh, you  
23 know, we've decided that we are going to fund  
24 this from cash reserves. That would have been  
25 -- I would have certainly accepted not having

1           an interest line item. I'm not sure if I'm  
2           understanding you.

3       Q:     That's fine.     But they said they might use  
4           cash; didn't they?

5       A:     Yes, sir; they said might..

6       Q:     And they said, we'll make that decision when it  
7           comes     because     that's     the     best     business  
8           decision, not to do it years in advance when we  
9           don't know what the market looks like and we  
10          don't know what our interest would be.

11      A:     Yes, they certainly said that.

12      MR.    ANDREWS:       Well,     let's     take     a     look     at  
13           Demonstrative 151.   And Dan, let's pull out the  
14           comparison.   This is Ms. Brandt's demonstrative  
15           about which has been evidence in testimony  
16           provided relating to the relevant -- the  
17           relative total project costs and total project  
18           costs per bed.   Dan, pull out the CMC-FM and  
19           the FMMC lines just for a moment if you would.  
20           We'll just highlight those.

21      Q:     Now, I'll represent to you, Ms. Brandt, that  
22           the 119 million and some change for FMMC  
23           reflects the adjustments for the three  
24           different items you've identified that you just  
25           testified about.   And CMC-Fort Mill represents

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1           their total project costs in their application.

2           Do you see that?

3       A:    Yes.

4       Q:    Now, if you look at the total project costs per  
5           bed, which of the two applicants has the lower  
6           total project costs?

7       A:    Based on this information that is presented, it  
8           would be Fort Mill Medical Center.

9       Q:    And I'm going to hand you a computer.

10      MR. ANDREWS: Your Honor, if I may approach.

11      THE COURT: Yes, please.

12      Q:    I'm sorry, a calculator not a computer. That's  
13           about the extent of my technology knowledge and  
14           experience. Ms. Brandt, how about do a simple  
15           little computation and determine the difference  
16           between on a per-bed basis the cost on -- look  
17           at that right-hand column. How much more --  
18           that's right, each bed at CMC-Fort Mill costs  
19           compared to each bed at FMMC?

20      A:    All right. If I've done this right, I've  
21           gotten \$13,354. However, when I did my  
22           calculations, I used the figure that included  
23           the interest expense to do this.

24      Q:    And do you know what the interest expense is?

25      A:    It varied from year to year, but the rough

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



1 average is around \$10 million.

2 Q: Well, I remember it being less. But even if it  
3 were 10 million, and you had 10 million to  
4 1,198,000 and what do you get?

5 A: That would be -- I'm sorry, Mr. Andrews, you're  
6 talking about the total project cost per bed?

7 Q: That's right.

8 A: I'd have to add it to the total project cost  
9 and divide.

10 Q: And multiply -- I mean, divide it by the 100.  
11 Well, in any event -- well, why don't you go  
12 ahead and do that. Let's just do the quick  
13 math. Let me just, for purposes of -- would  
14 you accept a correction on the cost of the --  
15 the interest cost, interest expense that was  
16 identified? Remember it was approximately 8  
17 million?

18 A: I think that was year one, and it went up, I  
19 think, maybe eight, nine or ten. I'm not sure  
20 without looking up the figures.

21 Q: Okay. All right. I can't put my hands on it  
22 at this moment.

23 A: But I'll certainly accept that for purposes of  
24 what you want me to do.

25 Q: All right. I've got it right here. It's

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 closer to nine -- 8,962,000. And we're going  
2 to pull it right up for you.

3 **MR. ANDREWS:** Dan, if you will, pull up Piedmont  
4 Supplemental CON, Page 8. I don't know what  
5 that is. It's a different one here. Scroll --  
6 there we go, that's the page.

7 Q: All right. Here we go, 8.9 million?

8 A: Now, that's financing cost and construction.

9 Q: Okay, you had something different in mind?

10 A: Yes, sir. It was on their financial statement.

11 Q: Okay. All right. Why don't you add the 10  
12 million to the total cost and let's see what  
13 we're looking at there.

14 **MR. ANDREWS:** In the meantime, I'm going to ask Mr.  
15 Westbrook to find the interest.

16 A: So you said to add the 10 million.

17 Q: Well, first of all, let me just clarify  
18 something with you, Ms. Brandt. What's  
19 included in the total project cost is the  
20 construction interest expense; isn't it?  
21 What's included on an operational cost for  
22 paying down the interest to the loan would be  
23 an operational expense, not a total project  
24 capital cost; isn't that right?

25 A: Yes, that's correct.

1 Q: So it would be that \$8,962,000. That would be  
2 the -- part of the total project cost if it  
3 were to be included; wouldn't it?

4 A: Yes, you're correct. I see where you're going.

5 Q: All right. Well, why don't you add that.

6 **MR. ANDREWS:** Dan, let's pull that document back up,  
7 please. Let's get the precise figure.

8 Q: So Ms. Brandt, we'll cut back 8962851 and ask  
9 you to add that to the 119 million and divide  
10 by --

11 A: That's approximately, I guess \$1.29 million per  
12 bed. I've got exact number right here if you'd  
13 like me to read that.

14 Q: Yeah, how about giving me the exact number.

15 A: \$1,287,718.05.

16 Q: All right, good. So even if the interest  
17 expense were included, then the cost of --  
18 total project bed cost would be about the same;  
19 wouldn't it? Would you regard them as being  
20 materially different?

21 A: I would have to look at the percentage. But I  
22 would say, you know, for the purposes of your  
23 questioning, no. But, however, I was choosing  
24 which one had specifically I believe in my  
25 analysis it was stated which one calculated to

1 be the lowest. So out of the three the lowest  
2 or the highest of the three applicants, the  
3 cost per bed was what I had stated in my  
4 analysis. In other words, Carolinas was less  
5 than Fort Mill.

6 Q: Well, in fact, you -- what you characterized as  
7 the lower cost for the construction of hospital  
8 was one of the reasons you approved Carolinas;  
9 wasn't it?

10 A: That was one of many.

11 Q: Yeah, I know. We're going to go over them.  
12 But we're talking about that single issue.  
13 That was what you -- this differential by  
14 including the capitalized interest expense and  
15 determining that on a per-bed basis, Carolinas  
16 -- there was no material difference as you just  
17 testified, but yet that was one of the reasons  
18 that you believed that CMC-Fort Mill should be  
19 approved; isn't that right?

20 A: I stated for the purposes of your comparison,  
21 there was no material difference. But when I  
22 aligned all three up, that's when I made the  
23 distinction as to who was the higher or the  
24 lower.

25 Q: Okay. Well now, the regulations do not support

1 your analysis of the comparison of these  
2 expenses at all; do they, Ms. Brandt?

3 A: Well, Mr. Andrews, you would probably have to  
4 show me where it doesn't support it. I was  
5 charged with determining the best candidate,  
6 and my analysis concluded that the cost of  
7 Carolinas per bed was less.

8 Q: Let's take a look at the regulation that is  
9 intended to provide you guidance on evaluating  
10 the reasonableness of project costs.

11 MR. ANDREWS: Dan, pull up 8027, please.

12 Q: All right, Ms. Brandt, you've been working with  
13 the regulations for five years, right?

14 A: Yes.

15 Q: And you're familiar with them; aren't you?

16 A: Yes.

17 Q: All right. Now, do you know whether or not  
18 there are any regulations that address the  
19 issue of how the department should evaluate the  
20 reasonableness of projected expenses other than  
21 this Section 7 -- subsection seven of Section  
22 802 in the regulation?

23 A: No, I don't recall anything that specific.

24 Q: This is the reg that addresses how you should  
25 evaluate expenses; isn't it?

- 1 A: Well, this is the project review criteria which  
2 may or may not have been chosen for  
3 evaluation.
- 4 Q: Well, it is chosen. It has been.
- 5 A: In this case, yes.
- 6 Q: Right, okay. And whenever there is a question  
7 raised, and it's identified as a priority  
8 criterion, you try to follow it, right?
- 9 A: Yes.
- 10 Q: Okay. Now here, let's take a look at what it  
11 says. "Projections of construction costs." Do  
12 you see that?
- 13 A: Yes.
- 14 Q: And then it identifies other costs. "Should be  
15 consistent with those experienced by similar  
16 facilities offering a similar level and scope  
17 of activities (sic)." That's what it -- or  
18 service -- sorry, "scope of services"; isn't  
19 that what it says?
- 20 A: Yes.
- 21 Q: And where in your CON decision letter or  
22 summary have you described how you reviewed the  
23 projections of Piedmont and Carolinas against  
24 the expenses experienced by similar facilities?  
25 It's not in there, is it?

- 1 A: No, Mr. Andrews. But I would also want to  
2 state that this project review criteria can be  
3 applied to any type of application. It's not  
4 specifically for competing applicants. So in  
5 some cases it can be used to compare with  
6 existing facilities.
- 7 Q: Well, it always, based on the way it reads, it  
8 always would have to be compared with existing  
9 facilities or services; wouldn't it? I mean,  
10 it doesn't create an option for when it  
11 wouldn't apply. I mean, this is the only reg  
12 dealing with expenses.
- 13 A: Correct.
- 14 Q: This is the only reg dealing with expenses.  
15 And you were looking at expenses, but you never  
16 did this; did you?
- 17 A: I certainly looked at what the applicants'  
18 proposals.
- 19 Q: That's not there, but the applicants' proposals  
20 weren't existing facilities; were they? They  
21 were proposed facilities; isn't that right?
- 22 A: Right, but it's also reasonable to assume that  
23 if a facility is built 20 or 30 or 40 years ago  
24 that there was no way that you could have done  
25 an apples-to-apples comparison.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: Absolutely fair. But you had available at your  
2 disposal within the last five years, an  
3 extensive list of applications available that  
4 you could consult about the proposed project  
5 costs; couldn't you?

6 A: Yes. But that doesn't necessarily mean that  
7 they had similar demographics. I mean, there  
8 is certainly a lot of considerations.

9 Q: Ms. Brandt, demographics had nothing to do with  
10 how much it cost to build a hospital; did it?

11 A: Certainly in coastal areas, typically things  
12 are more expensive.

13 Q: You're talking then not about demographics, but  
14 you're talking about how the market shapes in  
15 different locales across the projects. Is that  
16 what you mean?

17 A: Well, yes, certainly the costs --

18 Q: All right. But did you even look at the costs  
19 to draw a comparison?

20 A: I believe that that information was provided to  
21 us by one of the applicants.

22 Q: And that would have been Piedmont, correct?

23 A: Yes, I believe so.

24 **MR. ANDREWS:** All right. Well, let's take a look at  
25 Demonstrative 151 that we just got up there.



1 Dan, let's slide back to it.

2 Q: Now, you'll see that from 2005 through 2008,  
3 there were no less than eight showing here.  
4 Other applications that provided a range of  
5 hospital beds from 48 to 150, the same range as  
6 these proposed facilities and total project  
7 costs; do you see that?

8 A: Yes.

9 Q: And the regulation -- and these would be  
10 similar facilities in that they were community  
11 facilities or satellite hospitals offering a  
12 similar range of services to what was being  
13 proposed in Fort Mill; isn't that right?

14 A: Yes.

15 Q: Okay. And you didn't undertake this analysis?

16 A: No, I did not.

17 Q: Now, in fact, isn't it true that the proposed  
18 bed cost for both Fort Mil, that is Piedmont's  
19 proposed facility and Carolinas' proposed  
20 facility fall right down in the middle of this  
21 range of other satellite hospitals that the  
22 department had approved; don't they?

23 A: Yes, they do.

24 Q: And in fact, you reviewed some of these  
25 facilities and approved some of these

1 applications yourself. So you were very  
2 familiar with them; weren't you?

3 A: Yes.

4 Q: And let's actually look at the applications  
5 that you personally had approved.

6 **MR. ANDREWS:** Dan, let's turn to Demonstrative 266,  
7 please.

8 Q: Now Ms. Brandt, you've, I think, reviewed and  
9 approved the replacement hospitals. Let's  
10 start at the top and go down with Georgetown  
11 Memorial Hospital, right?

12 A: Yes.

13 Q: And they had a total project cost of \$154  
14 million?

15 A: Yes.

16 **MS. ROBERTSON:** Your Honor, I'm sorry to interrupt.  
17 This line of questioning we object to. I think  
18 Ms. Brandt found that all applicants met  
19 project review criteria number seven. And it  
20 seems that Mr. Andrews is continuing to  
21 question on that, but she found they equally  
22 met.

23 **MR. ANDREWS:** Well, something that was pointed out  
24 to me earlier in my prior examination. In  
25 fact, Your Honor, I mean, we can go without it.

1 The answer is she -- she said -- it's not  
2 clear, but that she made a finding explicitly  
3 about Section 7. There is a reference to it,  
4 and I'll point that out in a minute. But she  
5 said in her decision letter and in three or  
6 four places and again in her testimony that the  
7 total project costs were a reason that she  
8 ruled in favor of Carolinas and against  
9 Piedmont. So even though there is a sentence,  
10 and I'll read it to you, in Ms. Brandt's letter  
11 that addresses Section 7 along with -- it does  
12 it together with Section 6(a). And let me  
13 point that out to you, and then I can explain  
14 the ambiguity. And I'm reading from Page 7 of  
15 Ms. Brandt's CON summary, second sentence.  
16 "All applicants provided projections of  
17 immediate and long-term financial feasibility  
18 and comparable projected inpatient charges per  
19 patient." There is a parenthetical that says  
20 6(a) and 7. 6(a) is the criterion that  
21 addresses inpatient charges.

22 **THE COURT:** Yes.

23 **MR. ANDREWS:** And she did find that, and she  
24 testified to that. Seven has nothing to do  
25 with that subject. It has nothing to do with

1 the subject about immediate or long-term  
2 financial feasibility. And in contrast she  
3 says in three other places in her decision  
4 letter that she is -- and also in the summary  
5 decision letter in paragraph two, that one of  
6 the reasons she ruled against Piedmont was  
7 because of its high -- the high capital costs  
8 for its hospital. So that's why we have to go  
9 down this path, Your Honor.

10 **THE COURT:** Okay, Ms. Robertson?

11 **MS. ROBERTSON:** Yes, Your Honor. I would submit  
12 that she has determined that they all equally  
13 met seven. She testified in her testimony  
14 earlier today that that was the case. She does  
15 not list Carolinas as better meeting criterion  
16 seven in her letter. I think the record  
17 demonstrates that her findings as to seven was  
18 that all were equally met.

19 **MR. ANDREWS:** Your Honor. Let me just address it  
20 this way: Paragraph two, she says --

21 **THE COURT:** And you're referring to her letter?

22 **MR. ANDREWS:** I am, yes, sir. I'm sorry. Yes, sir,  
23 her cover letter to the CON analysis -- one of  
24 the things the department is concerned about is  
25 the substantial cost of the project. The costs

1 of the project are addressed based on what she  
2 said solely in paragraph seven. And then I  
3 could cite several examples of where she says,  
4 Piedmont has the highest cost per bed of all  
5 the applicants. And then after finding that  
6 Carolinas best meets and Presbyterian have  
7 total project costs and FTEs per adjusted  
8 occupied bed. That they have comparable costs  
9 and found that Carolinas best meets that.  
10 That's a Section 7 issue, Your Honor. And  
11 another page, and I don't intend to stop with  
12 construction costs, where she finds that the  
13 operating costs for Piedmont are higher yet  
14 hasn't performed the only analysis in the  
15 project new criteria that addresses. So that  
16 is why I'm trying to lay or establish a record.

17 **THE COURT:** Based on this, Ms. Robertson, I see your  
18 point. She did clearly state apparently that  
19 she found them equal. However, there do appear  
20 to be some, what appear to be statements that  
21 reflected perhaps she made some considerations  
22 and did some comparisons there. I am going to  
23 allow Mr. Andrews to go into this. And then if  
24 you want to rehabilitate her, please absolutely  
25 do so.

- 1 MS. ANDREWS: Okay. Now Dan, pull back up  
2 Demonstrative 266, please.
- 3 Q: Now again, Ms. Brandt, you reviewed each of  
4 these applications and approved them, right?
- 5 A: Yes, I did.
- 6 Q: Georgetown replacement facility, 124 beds at a  
7 total project cost of \$1.24 million per bed,  
8 \$154 million total, correct?
- 9 A: Yes.
- 10 Q: All right. And then you approved Millennium,  
11 same year?
- 12 A: Yes.
- 13 Q: At a cost of nearly \$3 million dollars, \$2.9  
14 million dollars a bed, right?
- 15 A: Yes.
- 16 Q: That was a 52-bed hospital at the size of the  
17 proposed Fort Mill Medical Center that was  
18 approximately \$30 million greater, correct?
- 19 A: Yes, but there were very clear in their  
20 application as to why the costs were  
21 considerably greater to include the green  
22 technology. It was a deliberate effort on  
23 their part to incorporate some technology that  
24 was admittedly expensive.
- 25 Q: And two other proposals that you approved were

1 the two competing Berkeley County or the two  
2 Berkeley County applications. I believe you  
3 found them not competing at the end of the day,  
4 is that right?

5 A: Yes.

6 Q: All right. Each \$50 million and -- I'm sorry,  
7 50 beds and comparably priced was Fort Mill  
8 with, even though half the size, true?

9 A: Yes, that's true. But again, I know this is a  
10 comparison, but you have to drill down and look  
11 at certainly some of the details. At the time  
12 most of these applications came in, there were  
13 still some aftereffects from what I recall a  
14 post Katrina inflation. And so that would not  
15 have been unreasonable for them to have  
16 accounted for the increased construction costs  
17 and labor costs and steel costs at the time of  
18 issue, not the Katrina issue. There are  
19 certainly reasons for the total project cost  
20 that you have to look at in more detail.

21 Q: All right. The point is that based on the four  
22 projects that you approved in 2008, that the  
23 costs for construction for the Fort Mill Center  
24 was imminently reasonable; wasn't it?

25 A: Yes, according to this chart in comparison.

1 Q: And the regulations direct you to determine  
2 whether or not the proposed project costs and  
3 specifically the proposed construction costs  
4 are consistent with the costs incurred by  
5 similar facilities offering similar services;  
6 isn't that right?

7 A: Yes.

8 MS. ANDREWS: All right. Now, let's take a look at  
9 -- let's go back to the reg, please Dan.  
10 802.7.

11 Q: Now, another cost that the regulations instruct  
12 the reviewers to take into consideration is the  
13 operating costs, right?

14 A: Yes. And I want to point out that -- I mean,  
15 I looked at all of this as a whole. I didn't  
16 -- and these things were covered in all the  
17 applications. So I did look at those and  
18 consider what they were presenting to us.

19 Q: All right. I know you looked at them as a  
20 whole. You considered a lot of different  
21 project review criteria. We are looking at  
22 these related to project expenses. And you've  
23 identified one of the reasons, again, in your  
24 cover letter that you denied Carolinas was  
25 because of their substantial project costs;



- 1           that's what you said, right?
- 2    A:    Yes.    And if you look at the paragraph, it
- 3           captures other issues as a whole.
- 4    Q:    Well, do you want us to strike it out and focus
- 5           on some of those other issues?
- 6    A:    Well, no.    They're just all related is my
- 7           point.
- 8    Q:    All right.   Well, we understand that, but the
- 9           only way we can talk about them is one at a
- 10          time, okay?
- 11   A:    Okay.
- 12   Q:    So.   Now, with regard to projected operating
- 13          costs.   There is no place in these regulations
- 14          where the regulations approved by the General
- 15          Assembly say the lowest cost is best; is there?
- 16   A:    No.
- 17   Q:    And you would agree that the lowest cost may
- 18          not be the best, correct?
- 19   A:    That's correct and certainly you can compare a
- 20          lot of things about these applications.
- 21          Carolinas may not have had the lowest cost.
- 22          Again, I looked at and considered all factors.
- 23   Q:    All right.   But the ones you talked about and
- 24          emphasized in your decision letter and in this
- 25          analysis had to do with where Piedmont's costs

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

- 1           you've described as higher. And so let's move  
2           on to look at the operating costs here. Would  
3           you agree that one of the reasons in particular  
4           that you are careful about how you compare  
5           operating costs is because it's very difficult  
6           for the department to understand the  
7           assumptions that underlie the proposed pro  
8           forma and operating costs of an applicant?
- 9    A:    Mr. Andrews, you said you don't understand what  
10       they're saying?
- 11   Q:    That it's very difficult for you to understand  
12       when you're reviewing an application for a  
13       multi-million dollar hospital to understand all  
14       the assumptions related to what goes into the  
15       applicant of the pro forma.
- 16   A:    So Mr. Andrews, are you saying individually?  
17       I can't -- I'm not able to --
- 18   Q:    No, not individually. I mean anyone in the  
19       department that it is difficult to comprehend  
20       because they are complex.
- 21   A:    Well, yes they are complex, but the applicants  
22       are required to state the assumptions to us.
- 23   Q:    Okay. Do you believe then that it's good or  
24       bad if one applicant has more FTEs than  
25       another?

1 A: I don't think it's good or bad. We have to  
2 look and see are they loaded up on janitors or  
3 nurses. I mean, there is a lot to consider.

4 Q: Okay. And it could be a sign that it's better  
5 patient service. That would be one potential,  
6 wouldn't it, if there were more nurses in a  
7 place where the nurses were needed; that could  
8 be a good thing, couldn't it?

9 A: Well, yes. I mean, it can go either way. You  
10 just want to make sure you have the appropriate  
11 staff for your needs; that you are not  
12 overstaffed or understaffed.

13 Q: Well, isn't it true in reviewing these  
14 applications, Ms. Brandt, that you relied  
15 heavily, if not entirely, on what the  
16 applicants represented to you about their needs  
17 for personnel?

18 A: Yes, I do. In certain cases, I may compare  
19 previous applicants for other projects. But,  
20 yes, I do rely on the applicants to know what  
21 they are doing.

22 Q: And you are relying on them because every one  
23 could have a different approach to how -- what  
24 services they provide in a hospital versus what  
25 they provide in headquarters for backup

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 services, right?

2 A: Yes.

3 Q: Okay. And they could have different management  
4 to front-line ratios; couldn't they?

5 A: Yes.

6 Q: And none of those are necessarily good or bad,  
7 but they're just different approaches; aren't  
8 they?

9 A: Yes.

10 Q: And others could have more inpatient services  
11 or more outpatient services; couldn't they?

12 A: Yes, that would be a decision on their part.

13 Q: Right. Well, it may reflect their own  
14 practices and patterns of operating within  
15 their different hospitals; wouldn't that be  
16 true?

17 A: Yes, it could.

18 Q: And where there are more inpatient services  
19 provided than outpatient services as a rule of  
20 thumb; wouldn't you expect there to be greater  
21 staffing and greater expenses to support the  
22 inpatient services and the outpatient services?

23 A: Yes.

24 Q: Okay. And that's going to raise the expense  
25 level, isn't it, for those where there is a

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001250

1 higher degree of inpatient services?

2 A: Yes.

3 Q: Okay. Now, let's turn to your analysis and see  
4 what you've addressed with regard to operating  
5 costs.

6 **MR. ANDREWS:** Dan, if you will pull up Page 7 of Ms.  
7 Brandt's analysis. I want to start there. And  
8 let's go to the last paragraph. And highlight,  
9 Dan, please the sentence beginning, "Both  
10 Carolinas and Presbyterian have comparable  
11 total project costs."

12 Q: All right. And we've just dealt with total  
13 project costs as it relates to capital costs.  
14 But let's look at the second element of that  
15 statement, Ms. Brandt. It says, "Both  
16 Carolinas and Presbyterian have comparable FTEs  
17 per adjusted occupied bed." You see that?

18 A: Yes.

19 Q: What does that mean?

20 A: Usually the adjusted occupied beds, if I'm  
21 remembering correctly, consider both inpatient  
22 and outpatient services. And there is an  
23 adjustment made for occupancy.

24 Q: Do you know how to calculate that and  
25 reconstruct what your finding was here?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 A: I can't say that I know the calculation off the  
2 top of my head, and I don't believe that that  
3 was part of this analysis. I just made a  
4 statement that their costs were comparable. I  
5 mean, I'm not sure where you're going, but I  
6 did make that statement they were both  
7 proposing the same amount in beds.

8 Q: Well, they're both, what you say here is that  
9 both -- they have comparable FTEs per adjusted  
10 occupied bed.

11 A: Yes.

12 Q: All right. Do you know how to calculate that?

13 A: I would have to look at the figures, and I  
14 would also assume that -- or presume that that  
15 information is provided to me. I don't recall  
16 that I specifically did that calculation  
17 myself.

18 Q: Okay. So that would have been a calculation  
19 that either or other applicants would have  
20 provided to you. And you were making a  
21 statement based on that; would that be your  
22 recollection?

23 A: I suppose, Mr. Andrews. I'm just trying to  
24 think about this so I could appropriately, you  
25 know, respond. And perhaps I did look at the

1 total project costs and divide it by FTEs. At  
2 this point, I honestly don't remember.

3 Q: Do you ever remember performing that  
4 calculation in this case?

5 A: I don't recall, Mr. Andrews.

6 Q: Do you ever recall using that measurement in  
7 any case to determine whether an applicant has  
8 reasonable expenses?

9 A: I honestly don't remember, Mr. Andrews.

10 Q: Ever having used it before.

11 A: But, I don't believe that I stated that there  
12 was a need for this.

13 Q: Well, I think if you look down believe, you  
14 said, "Piedmont least meets this criteria,"  
15 correct? Do you see that?

16 A: Yes, but that was -- I was talking about the  
17 profit in year three.

18 Q: Okay. Well, let's move to the next page where  
19 your statement related to Piedmont. It's a  
20 little more direct.

21 **MR. ANDREWS:** Dan, highlight the first three lines,  
22 please. All right.

23 Q: Now, read the first sentence into the record.

24 A: "The department has received numerous  
25 projections or expenses per adjusted discharge

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 making it difficult to assess impact for  
2 adjusted discharge. However, it appears that  
3 Piedmont has the highest cost in revenue per  
4 adjusted discharge."

5 Q: Now, in the first sentence you acknowledge that  
6 you've gotten a lot of data concerning this  
7 analysis of expenses per adjusted discharge and  
8 that it's difficult to assess?

9 A: Yes.

10 Q: And that would mean hard to figure out; isn't  
11 it?

12 A: Well, we kept getting different information,  
13 and it was certainly difficult to keep it  
14 calculated.

15 Q: Well, it made it hard, but it didn't prevent  
16 you from forming the conclusion that you did  
17 that Piedmont has the highest cost in revenue  
18 per adjusted discharge?

19 A: Well, it says it appears that Piedmont has the  
20 highest cost in revenue per adjusted  
21 discharge.

22 Q: Well, does that mean you disregarded -- I mean,  
23 it's qualified by it here. Does that reflect  
24 a conclusion that they did that you took into  
25 consideration in making the decision?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



- 1 A: I did not hold that in this ranking. I don't  
2 see where I held that against Piedmont. I  
3 don't believe it says that Piedmont did not  
4 meet.
- 5 Q: Well, in fact, which -- in fact, the  
6 organization of this, Ms. Brandt, would suggest  
7 that the expenses under -- which you've  
8 discussed under Section 7, or it should be  
9 evaluated under Section 16, which has to do and  
10 16(a) in particular with the method of  
11 financing, right? That's where this is; isn't  
12 it?
- 13 A: Yes, sir. I'm a bit confused by the statement  
14 you just made.
- 15 Q: I'm a bit confused by the placement of an  
16 expense analysis in the analysis of the method  
17 of financing which is 16(a). So clarify that  
18 for me if you would.
- 19 A: Well, certainly 16(c) deals with the cost of  
20 provided services and charges, and that would  
21 be figured into the expenses.
- 22 Q: Well, let's look at 16(c) if you think that  
23 provides an answer to you. Ms. Brandt, do you  
24 know that 16(c) is in effect an adverse impact  
25 analysis wanting to know what the reg invites

1 is your review of the effect of the proposed  
2 project costs on existing providers.

3 A: You would have to refresh my memory.

4 **MR. ANDREWS:** All right, let's pull it up. Dan,  
5 pull up 16(c) if you would.

6 Q: Okay. Have you had an opportunity to look at  
7 it?

8 A: Yes.

9 Q: All right. So this is the impact of the  
10 project. "Upon the applicant's cost to provide  
11 services and the applicant states the charges  
12 to be reasonable. The impact of the project  
13 upon the cost of charges of other providers for  
14 similar services should be considered as the  
15 data are available." So 16(c) really doesn't  
16 have anything to do with the calculation of  
17 costs and revenue per adjusted discharge; does  
18 it?

19 A: Well, it doesn't say that specifically, but it  
20 does mention costs to provide services.

21 Q: Well, did you -- did you find that Piedmont's  
22 cost of providing services in its application  
23 were high, higher than Carolinas, and that  
24 would be a basis for deciding against them. If  
25 you didn't, we can move on.

1 A: I don't believe I computed that.

2 Q: Did you find anywhere in your analysis and more  
3 importantly as you're testifying today, is it  
4 your position that the department does not have  
5 any concerns about the expenses that Piedmont  
6 projected to incur in this project?

7 A: I don't recall having any concerns.

8 Q: All right. Good. Now, let's move to your  
9 testimony concerning financial feasibility and  
10 net income. Now, let me begin by talking with  
11 you about the purpose of this. Isn't this  
12 fundamentally through Section 9 of the regs and  
13 Section 15 the way the department intends to  
14 evaluate whether or not the proposed project is  
15 likely to be financially successful and to be  
16 able to operate over a long term?

17 A: Yes.

18 Q: And the most concrete way that that's evaluated  
19 is if it shows improvement over the three years  
20 of its operation; isn't that right?

21 A: Yes.

22 Q: And all of the applicants, including Piedmont  
23 and Carolinas application showed that; didn't  
24 it?

25 A: Yes.

- 1 Q: All right. You deemed Piedmont -- you found  
2 that they didn't perform as well as Carolinas  
3 because they didn't show profitability until  
4 year three; isn't that right?
- 5 A: I believe I identified that as a concern.
- 6 Q: Well, I mean, is it a mild concern or is it one  
7 that was a basis for your ruling in this case?
- 8 A: It didn't make or break the decision.
- 9 Q: Meaning it's inconsequential?
- 10 A: No. I had a specific way to rank the project  
11 review criterion. And I don't believe that was  
12 the top one.
- 13 Q: You mean it wasn't particularly important to  
14 you but it was on the list so you needed to  
15 make a judgment about it, and you made a  
16 judgment; is that fair?
- 17 A: Well, it's certainly important because I was  
18 directed to consider it. But it didn't make or  
19 break the decision.
- 20 Q: Okay. Well, I'm not sure what you mean when  
21 you say it didn't make or break the decision.  
22 It was a factor which you wrote -- was it a  
23 factor that you relied on in deciding for  
24 Carolinas and against Piedmont?
- 25 A: It was certainly something that I had to

- 1 consider and so I did consider it.
- 2 Q: Okay. Let me repeat the question. That's not
- 3 -- I didn't ask whether you considered it. I
- 4 know you considered it. The question is
- 5 whether it's a factor that affected your
- 6 judgment in deciding for Carolinas and against
- 7 Piedmont?
- 8 A: Yes, I would say so. At this point, I don't
- 9 recollect what my decision letter said or even
- 10 the analysis, but I know I made the statement
- 11 that the other two applicants showed a positive
- 12 net income by year two that Piedmont or Fort
- 13 Mill did not.
- 14 Q: Well, that's a question of fact, Ms. Brandt.
- 15 And yes, the records are clear about that. The
- 16 question is: Is that -- is it a degree of
- 17 significance, the degree of weight you placed
- 18 on that in making a decision in this case; was
- 19 it major factor, was it a minor factor or was
- 20 it a non-factor?
- 21 A: I would say that it wasn't a major factor.
- 22 Q: Was it a minor factor then?
- 23 A: Yes, as I recollect.
- 24 Q: Okay. Well, let's take a look at it, in any
- 25 event, if it was a factor at all. Now, the --

1 **MR. ANDREWS:** Dan, let's pull up Section 9 of the  
2 regs to be sure what we're looking at here.

3 Q: All right. Now, it's the first sentence of  
4 Section 9 Ms. Brandt states, "The project  
5 should show an improvement in its net revenue  
6 position over time, especially the first three  
7 years until a steady positive net income trend  
8 is attained." Now, Piedmont did that; didn't  
9 they?

10 A: Oh yes, they did.

11 Q: The -- and again, the goal here is to  
12 demonstrate economic viability and  
13 sustainability, correct?

14 A: Yes.

15 Q: Now, in your review of CON applications, there  
16 has been a wide range of financial performance  
17 demonstrated; wouldn't you say that would be  
18 fair?

19 A: Yes.

20 **MR. ANDREWS:** Okay. And let's pull up Demonstrative  
21 267, please, Dan.

22 Q: These are the hospital cases you reviewed prior  
23 -- well, prior to what you reviewed here. And  
24 you had found all of these cases to -- you  
25 approved them all. And you found them all to

- 1 have been financially feasible; haven't you?
- 2 A: Yes. But I recall that we requested a lot of
- 3 additional information from Georgetown. And
- 4 honestly I didn't even remember the year three
- 5 figure or any of the other figures for their
- 6 applications. But I know, as a policy, if it
- 7 doesn't look like a facility is going to
- 8 increase their debt, that we should get more
- 9 information from them.
- 10 Q: Right. And you approved Georgetown, and yet it
- 11 showed not -- didn't show a positive trend.
- 12 It's losing more money each of the three years;
- 13 isn't that right?
- 14 A: Yes, but --
- 15 MS. ROBERTSON: If I might just object. I believe,
- 16 just so the record is clear so there is no
- 17 confusion, Mr. --
- 18 MR. ANDREWS: Andrews.
- 19 MR. ROBERTSON: Yeah, I'm sorry. Thank you. Yes,
- 20 Mr. Andrews, I know your name.
- 21 MR. ANDREWS: That's not my --
- 22 MR. ROBERTSON: I was just going to point out that
- 23 the Georgetown application that is on this
- 24 demonstrative, I believe we've heard testimony
- 25 from Mr. Levitt that it was withdrawn. And Mr.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Andrews keeps referring to it as something  
2 being approved by Ms. Brandt, and I'm not sure  
3 that's accurate.

4 **MR. ANDREWS:** Let me clarify the record. It was  
5 approved. It was not implemented. The project  
6 was abandoned as Millennium was, too. I was  
7 going to go there. Two of the four projects  
8 were approved but not implemented.

9 **THE COURT:** Right. Okay. All right. Objection is  
10 overruled. Objection is overruled.

11 **MS. ROBERTSON:** That's right, Your Honor. I just  
12 wanted it to be clear for the record.

13 **THE COURT:** Yes. And thank you for clarifying that,  
14 Ms. Robertson because that's important.

15 **MR. ANDREWS:** Thank you.

16 Q: And you approved these, right, Ms. Brandt?

17 A: Yes. But again, I'm not disputing the accuracy  
18 of this information. But it's merely a  
19 snapshot in time and doesn't give a lot of  
20 detail about why I was willing to accept the  
21 financials for Georgetown, for example.

22 Q: Well, do you recall that one of the reasons you  
23 were willing to accept the finances for  
24 Georgetown is that the operation of the  
25 Georgetown hospital system, which included



1 Waccamaw and Georgetown Memorial, was performed  
2 at a viable level as a result of Waccamaw's  
3 profit margins and contributions. Do you  
4 remember that?

5 A: Yes, sir. I'm sure I also considered the fact  
6 that this hospital is located in a real  
7 disadvantaged community, and that it was in  
8 their best interest to have a new facility, as  
9 well. Again, there is other considerations to  
10 that.

11 Q: Okay. And ultimately they abandoned the  
12 project after you approved it and decided not  
13 to go forward, correct?

14 A: Yes.

15 Q: Now, the next project, Millennium, was on the  
16 other end of the spectrum with regards to the  
17 proposed financial performance, right?

18 A: Yes.

19 Q: They expected to make a lot of money each year?

20 A: Yes.

21 Q: And this was the project that was nearly \$3  
22 million a bed, right?

23 A: Yes.

24 Q: And they decided also that it was too expensive  
25 and not to go forward?

1 A: I'm not sure why they decided not to go forward  
2 with it, but they decided not to.

3 Q: Okay. And so both of these applications you  
4 approved. One at \$3 million a bed, the other  
5 showing a total of nearly \$45 million in losses  
6 the first three years of operation; but you  
7 approved them anyway, right?

8 A: Well, I approved them based on a lot of other  
9 information in addition to what's captured in  
10 this statement.

11 Q: And then the two Berkeley County projects.  
12 They are quite similar, are they not, to the  
13 financial progress made from year one, year  
14 two, year three with the Fort Mill Medical  
15 Center application; aren't they?

16 A: Well, I'd say more so Trident Berkeley for the  
17 first two years and Roper Berkeley for the last  
18 year, yes.

19 Q: And Roper Berkeley has an enormous loss for  
20 year one; doesn't it?

21 A: Yes.

22 Q: And that's the hospital, again affiliated with  
23 Roper which is owned in part and managed by  
24 Carolinas, correct?

25 A: Yes.

- 1 Q: All right. Now, would you -- have you thought  
2 about the relationship between the instructions  
3 that the department is given in evaluating the  
4 reasonableness of the revenue projections and  
5 the reasonableness of the expense projections  
6 in forming the proposed net income for various  
7 applicants? The question may be a bad one, and  
8 if you don't understand me, just tell me, and  
9 I'll start over.
- 10 A: Yes, it is. No, I'm having trouble with that,  
11 Mr. Andrews.
- 12 Q: Okay. All right. Just a quick review then.  
13 Under six -- Section 6(b), the department is  
14 instructed to determine the reasonableness of  
15 utilization projections, right?
- 16 A: Yes.
- 17 Q: And the way you do that, isn't it true, is that  
18 you look to make a determination whether the  
19 proposed applications are consistent with  
20 similar facilities providing similar services,  
21 right?
- 22 A: Well, that's one thing if that information is  
23 available, we can do it.
- 24 Q: Well, that's the only thing that is identified,  
25 isn't it, in 6(b) as you are determining

1 revenues --

2 MR. ANDREWS: Dan, let's go there.

3 A: Yes, thank you.

4 Q: Sorry. Okay. So for purposes of projecting  
5 levels of utilization, this regulation says  
6 that the department should -- the projected  
7 levels of utilization should be reasonable  
8 consistent with those experienced by similar  
9 facilities in the service area or the state and  
10 should be similar and consistent with the need  
11 as a second of the target population, the  
12 second sentence, right?

13 A: Yes.

14 Q: Now, and so the -- for purposes just like we  
15 were talking about earlier, for expenses. What  
16 the regulations guide you to review or to do is  
17 to determine among other things whether  
18 projected levels of utilization is consistent  
19 with those experienced by the facilities,  
20 similar facilities with similar services,  
21 right?

22 A: Well, yes, reasonably services.

23 Q: It doesn't mean exact. It's kind of a baseline  
24 measurement that you are taking, right?

25 A: Yes.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 Q: Now, the reason you are looking at projected  
2 levels of utilization is because that ties to  
3 revenues, projected revenues, right?  
4 Utilization drives the money that comes into  
5 the facility, correct?
- 6 A: Yes.
- 7 Q: Okay. And so the guidance that is provided  
8 from the regs is looked up at facilities to  
9 determine their general levels of utilization  
10 as a marker to determine the reasonableness of  
11 projected utilization and revenues by the  
12 applicant, right?
- 13 A: Yes.
- 14 Q: You didn't do that here either; did you?
- 15 A: Well, I certainly looked at Piedmont Medical  
16 Center's reference of utilization.
- 17 Q: As a guide for determining the reasonableness  
18 of Carolinas' projections?
- 19 A: No, as a guide for determining the  
20 reasonableness of the Fort Mill Medical  
21 Center's --
- 22 Q: Well, the regulations say you apply to all  
23 applicants, not just one, right?
- 24 A: Yes, it does. But Carolinas had established  
25 what their utilization was.

1 Q: Well, let me drop a footnote on that. We'll  
2 come back to that. I didn't mean to get too  
3 far on that radical. But what we're talking  
4 about is net income. Would you agree with me  
5 that the regs provide guidance for how you are  
6 to look at the reasonableness of projected  
7 revenue in 6(d) that we just looked at, right?

8 A: Yes.

9 Q: And under 7, it provides guidance as to how you  
10 look at the reasonableness of projected  
11 expenses; remember that?

12 A: Yes.

13 Q: Okay. And when you put revenue and expenses  
14 together, the balance, bottom line is net  
15 income, correct?

16 A: Yes.

17 Q: All right. So it would be reasonable, wouldn't  
18 it then, that you looked to the performance of  
19 other's similar facilities and what their  
20 projected net income is and reviewing the net  
21 income of a proposed applicant. Doesn't that  
22 stand to reason?

23 A: Well yes, as guidance.

24 **MR. ANDREWS:** So as we're -- Dan, let's go back to  
25 Demonstrative 267, please.

1 Q: All right. So as we are then looking at the  
2 extent to which the proposed net income  
3 progression over the three -- first three years  
4 of its operation for Fort Mill are, it is  
5 comparable to at least three of those, probably  
6 two, both Ropers. It's far lower, far better  
7 if you want to apply a qualification to it than  
8 Georgetown's, right, and not as good as  
9 Millennium's in the sense it is not showing as  
10 much profitability, right?

11 A: Yes.

12 Q: Okay. And CMC-Fort Mills is more comparable  
13 but not as high as Millennium's, right?

14 A: Yes.

15 Q: And it's not showing the losses that the others  
16 show, correct?

17 A: Correct.

18 Q: Now, isn't the goal here, Ms. Brandt, as you  
19 are reviewing these proposals to determine the  
20 consistency with other applications really to  
21 determine whether or not the financial  
22 projections are reasonable?

23 A: Yes, I would agree with that.

24 Q: It's not a better or worse than. It's just are  
25 they reasonable given what they are proposing

1 to do. Isn't that the bottom line?

2 A: Yes, that's true.

3 Q: Okay. And based on your experience in  
4 approving these other applications in addition  
5 to the one that approved before you arrived,  
6 Fort Mill Medical Center's projected financial  
7 feasibility is consistent with many of the  
8 other satellite hospitals that the departments  
9 approved in the five years prior to approving  
10 the ones in this case.

11 A: I would have to look at those figures. But  
12 again, the figures from Fort Mill Medical  
13 Center were predicated upon them recapturing a  
14 significant amount of market share. So it's  
15 not just a number on a piece of paper but how  
16 those projections were derived.

17 Q: But that's not a financial feasibility question  
18 as much as it is a projected utilization  
19 question; isn't it?

20 A: Well, if you can't obtain your projected  
21 utilization, then your project is probably not  
22 going to be financially feasible.

23 Q: But your financial feasibility analysis is not  
24 based on not showing more profitability but  
25 based on questions you raised about whether

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896



1           they could recapture enough market share.

2       A:    Yes, I believe I'm understanding you correctly.

3       Q:    Well, in other words, there is nothing  
4           inherently inconsistent with the regulations  
5           based on the financials that were presented in  
6           the financial projections done by Piedmont.  
7           Where you have a concern is what the  
8           assumptions were that were the basis for their  
9           projections?

10      A:    Right, right. And you are talking about,  
11           again, what was the financial performance over  
12           time with this --

13      Q:    All right. And so I just want to make sure the  
14           record is clear on this. I mean, you've  
15           already testified, and we'll examine that a  
16           little bit later about what you think may be  
17           the questions about whether or not Piedmont  
18           reasonably projected the utilization. But  
19           again, there is another section in the regs  
20           dealing with utilization. This on financial  
21           feasibility has to do with forecasting income  
22           and the likelihood of economic viability if  
23           the assumptions were achieved?

24      A:    Yes.

25      Q:    All applicants you could say the same thing.

1 If their assumptions aren't achieved, then  
2 their financial projections are going to be  
3 off, right?

4 A: Yes.

5 Q: Okay. All right. But the purposes of this --  
6 question is as they presented their application  
7 whether or not looking just at their financial  
8 forecasting, there was any probably, in and of  
9 itself. And your answer to that is: No, there  
10 is not, is that right?

11 A: Correct. I don't recall saying they did not  
12 meet that criterion.

13 Q: Okay. All right. Well, let's go back then to  
14 the criterion that addresses utilization. And  
15 that will lead us into your testimony in that  
16 regard. Now, as I understood your testimony  
17 and reading your report, Ms. Brandt, my  
18 impression, and you tell me if I'm off base on  
19 this, that there are really two reasons that  
20 you felt that Piedmont's application didn't  
21 work for you and that the 100 beds they  
22 proposed were not justified. One was because  
23 of by transferring the 36 beds, it would create  
24 maldistribution of beds in York County. Is  
25 that one of the two?

- 1 A: Yes, that was certainly a concern for us.
- 2 Q: And the other was that as you put it, in
- 3 shifting patients from Piedmont to Fort Mill,
- 4 patients would have to, as you said, drive by
- 5 Piedmont, and you didn't think, as you put it,
- 6 that was logical, right?
- 7 A: Yes, yes. That's correct.
- 8 Q: Now, the idea of this the maldistribution
- 9 theory, that was not a term that you coined;
- 10 was it?
- 11 A: No, it was not, but I certainly did look at the
- 12 beds and the population distribution.
- 13 Q: Okay. Ms. Platt, one of the consultants for
- 14 Piedmont, did an analysis that presented a per-
- 15 bed rate. Did I misspeak? I'm sorry. Yeah,
- 16 they're reminding me that I'm confusing my
- 17 client -- their names. Ms. Platt, as everybody
- 18 in the room probably knows, works with
- 19 Carolinas and not Piedmont. I misspoke. And
- 20 Ms. Platt provided you an analysis showing that
- 21 based on a bed-to-population ratio that by
- 22 moving 36 beds to Fort Mill there would be a
- 23 shortage of beds available to Rock Hill and to
- 24 western York County, is that right?
- 25 A: Yes.

1 Q: And that analysis made sense to you?

2 A: Yes. I mean, certainly she focused on Rock  
3 Hill. I honestly don't recall about western  
4 York. But I believe you're right.

5 Q: Had you ever performed that analysis before?

6 A: No, not that specific analysis. But I  
7 certainly was aware of the population of  
8 greater Rock Hill and that it was substantially  
9 more than northern York County. And I  
10 certainly knew how many beds were proposed to  
11 be where and how many were existing and all  
12 that at Piedmont.

13 Q: And so -- now, you're aware that in the  
14 approval of a lot of satellite hospital  
15 applications, there are transfers of unused  
16 beds, aren't you, as a basis for the approved  
17 creation of satellite hospitals?

18 A: Yes.

19 Q: Roper did that to establish Roper Berkeley;  
20 didn't they?

21 A: They did. But again, Mr. Andrews, the  
22 specifics of why they did it, I just don't want  
23 to say -- blanketly say, you know, without  
24 truly knowing. But certainly that's what Roper  
25 proposed.

1 Q: Well, Roper had underused beds in its inventory  
2 and used 50 of them to propose the creation of  
3 Roper-Berkeley; isn't that true?

4 A: Yes, but I know as far as the population of the  
5 peninsula of Charleston, that was a factor, as  
6 well.

7 Q: Okay. And Roper also had another 85 beds in  
8 its inventory and used that to create Roper  
9 Mount Pleasant just a few years before; isn't  
10 that also right?

11 A: I believe you're correct.

12 Q: And, in fact, if you are familiar with the  
13 creation of satellite hospitals over the last  
14 ten years, most of them have been created  
15 through the transfer of under utilized beds and  
16 the shifting of patients from the underutilized  
17 facility to the high growth area; isn't that  
18 right?

19 A: Yes.

20 Q: So that's -- in that regard what Fort Mill is  
21 proposing to do is consistent with what  
22 hospitals, particularly tertiary hospitals,  
23 have done throughout the state. Do you know  
24 that to be true?

25 A: I guess I would say as a general rule.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: Now, and with regard to the transfers of -- the  
2 proposed transfer of the beds to the Fort Mill  
3 Hospital

4 MR. ANDREWS: Dan pull up, if you would, Carolinas'  
5 Exhibit 33. And let's look at Page 4 first of  
6 all and call that out.

7 Q: Now, does this look familiar to you, Ms.  
8 Brandt?

9 A: Yes, it's been awhile, but I do recall.

10 Q: You can see from the heading it's updated. And  
11 so it may be a bit different than the one Ms.  
12 Platt would have provided you during the staff  
13 review. But what do you understand is the  
14 purpose of this document?

15 A: The purpose is to examine where the populations  
16 are and where the beds are and correlate the  
17 beds to the population per 1,000 population.

18 Q: All right. And has -- now, the state health  
19 plan does not use this methodology in  
20 determining bed need; does it?

21 A: No, it does not. It certainly uses population  
22 projections and utilization projections, but it  
23 doesn't drill down to the specific areas of the  
24 county.

25 Q: Well, and there is no utilization projection at

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 all factored into this analysis; is there?

2 A: This is purely based on beds and population.

3 Q: And there is no -- and there is no weighted  
4 factor that's applied within the population  
5 recognizing that folks over 65 use hospitals  
6 with a much greater frequency than those from  
7 21 to 50 do, right?

8 A: No, this is purely based on population.

9 Q: So it has limited, if any, reliability from a  
10 healthcare planning methodology without any  
11 utilization or use data; does it?

12 A: I will say limited. It certainly goes as a  
13 reference for comparison.

14 Q: And well, you relied on it, didn't you, in your  
15 analysis?

16 A: I certainly looked at this, but I relied on my  
17 knowledge of the population of the county and  
18 the population trends.

19 Q: Well, in addition to population trends, if  
20 that's enough, did you have the utilization  
21 trends by region within the state by zip codes  
22 within York County?

23 A: I know I had the population by zip code. I'd  
24 have to really look to see if I had utilization  
25 or not. I know in the broad areas maybe but

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 not by zip codes. I don't recall.

2 Q: Okay. And you didn't have any use rates by zip  
3 code or utilization data by zip code and only  
4 had population data by zip code, then this  
5 analysis would have limited utility; wouldn't  
6 it?

7 A: Again, it would be one of many things that  
8 would have been looked at for comparison.

9 Q: Well, I know, but we are talking about your  
10 concern about the effect under Section 2(d) of  
11 relocating the beds. Now, you remember what  
12 Section 2(d) provides; don't you?

13 A: I'm sorry. I would have to look at that.

14 Q: Okay. Let's take a look at 2(d). All right.  
15 Now, Section 2(d) asks the fundamental question  
16 about whether the relocation of beds causes any  
17 harm to medically served groups. Isn't that  
18 really what 2(d) gets to?

19 A: Yes.

20 Q: Okay. Now, as you are sitting here right now,  
21 you said you didn't know and you applied, as I  
22 understood it, and you tell me if I'm wrong,  
23 that you didn't give much weight to the western  
24 York County factor at all; your concern was  
25 Rock Hill, right?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



1 A: I certainly looked at it. It's a sparsely  
2 populated area and certainly probably more  
3 under-served, but I certainly looked at that  
4 and considered that.

5 Q: Well, I thought you said your primary concern  
6 was Rock Hill. Did I misunderstand you?

7 A: Well, I know I said that that's where most of  
8 the population was.

9 Q: Okay. The question is did you make a finding  
10 that there would be an adverse impact on a  
11 medically under-served group by Piedmont's  
12 transfer of 36 beds at Fort Mill?

13 A: I don't recall with that specificity, but I do  
14 know that the Tega Cay, Fort Mill area is known  
15 to be an affluent area.

16 Q: Okay. I can see that. But that really didn't  
17 relate to my question. You would agree with  
18 me, wouldn't you, that Section 2(d) is intended  
19 to have the department make a determination  
20 about whether the change in a service, in this  
21 case the relocation of beds, would create a  
22 harm on a medically under-served group? That's  
23 where the focus is.

24 A: I believe that's what the last half of it  
25 focuses on. I mean, there are other things

1           within that.

2       Q:   Did you find that there would be harm caused to  
3           a medically under-served group as a result of  
4           the relocation?

5       A:   No, I did not specifically.

6       Q:   Okay. All right. And, in fact, isn't it true  
7           that you raised a concern about whether 2(d)  
8           had been met by Piedmont, and then in your  
9           deposition said, you know, I guess they met it  
10          because I really didn't find that they didn't.  
11          Do you remember that?

12      A:   I really don't recall what I said in my  
13          deposition.

14      Q:   Did you find here on this page --

15      **MR. ANDREWS:** Let's turn to Page 3, Dan. And if you  
16          call out that middle part of the paragraph in  
17          the middle of the page.

18      Q:   And in this regard, Ms. Brandt, did you make a  
19          finding here that Piedmont did not meet 2(d)?

20      A:   No, I just stated that we were concerned that  
21          this criterion had been inadequately  
22          demonstrated.

23      Q:   Now, the -- and that leads to the second  
24          question. So the maldistribution issue relied  
25          on this plat for -- you recognize a limited

1 utility of looking only at bed-to-population  
2 bed ratios. And so let's take a look at the  
3 second basis for the concern you raised, which  
4 has to do with the shift of patients and beds  
5 to Fort Mill Medical Center. First of all, the  
6 64 beds -- Your Honor, this might be a good  
7 time to take a break. It's been long in the  
8 afternoon.

9 **THE COURT:** It has been. Any objection to that?

10 **MS. ROBERTSON:** No, Your Honor.

11 **THE COURT:** Let's take about a 15-minute break. All  
12 right. We'll recess.

13 (Off the Record)

14 **THE COURT:** Okay, we're back on the record. Mr.  
15 Andrews, sir?

16 **MR. ANDREWS:** Thank you, Your Honor.

17 Q: Ms. Brandt, let me draw your attention to your  
18 CON analysis, Page 5 of 10 where you are  
19 discussing the relocation of the 36 beds.

20 **MR. ANDREWS:** Dan, if you will call out the bottom  
21 paragraph, please.

22 Q: And Ms. Brandt, you say here on the second  
23 sentence beginning with relocation, that the  
24 relocation replacement of 36 beds in northern  
25 York County does not appear to equitably

1 distribute beds within the county and reduces  
2 accessibility to greater Rock Hill and western  
3 York. Do you see that?

4 A: Yes.

5 Q: And that was -- the basis for that equitable  
6 distribution theory was the maldistribution  
7 analysis that Ms. Platt presented; isn't that  
8 right?

9 A: Well, I'm sure it certainly contributed, but I  
10 also did look at the populations and the  
11 greater Rock Hill population was approximately  
12 four times greater than that of the northern  
13 area.

14 **MR. ANDREWS:** Okay. And the -- let's take a look at  
15 -- let's pull back up, Dan, if you would,  
16 Carolinas' Exhibit 33, Page 4.

17 Q: This is the analysis based on 100-bed  
18 application submitted by Piedmont, right?

19 A: Yes.

20 Q: And it applies to the population that you've  
21 identified. Notice that the year that it's  
22 presented are 2010 to 2015, correct?

23 A: Yes.

24 Q: And operations third year maybe 2017, the pace  
25 we are moving in this case including this cross

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 examination, we may be at 2020 before we're  
2 near through, right?

3 A: Yes.

4 Q: All right. So the point is to make this a fair  
5 comparison, you really need to look out into  
6 the future not just the first year of operation  
7 which Ms. Platt did in her analysis; isn't that  
8 fair?

9 A: Yes. And I mean I think the point is that  
10 there had been a period of extreme rapid growth  
11 in the county. But yeah, I don't recall. I  
12 know there is more information submitted by  
13 Piedmont, but I don't recall it.

14 Q: And you looked at it at 2017. So let's see  
15 what kind of analysis, what this looks like  
16 that's dated 2017.

17 **MR. ANDREWS:** Dan, pull up Demonstrative 149.

18 Q: Now, Ms. Platt (sic), this has been the subject  
19 of prior testimony from Mr. Sullivan related to  
20 a comparison of Ms. Platt's exhibit on the  
21 left. And then provide -- you see that?  
22 That's what we've just taken a look at, the  
23 100-bed -- her breakdown of the population 2010  
24 to 2015 and showing the maldistribution of  
25 beds. Within northern York, you see in 2015 it

1 would be a little over two beds per 1000. And  
2 then for the rest of the county it would be a  
3 little over one bed per 1000. Do you see that?

4 A: Yes.

5 Q: And that's part of what led you to conclude  
6 that there was a maldistribution in the county,  
7 right, if the 36 beds were transferred?

8 A: I'll say that was only part. Again, there was  
9 a lot of conflicting, if you will, information.  
10 Piedmont had a different point of view and  
11 Carolinas had a different point of view. And  
12 I'm pretty well tasked with trying to figure  
13 out where the truth lies. So I didn't  
14 necessary accept either one but formed my own  
15 conclusions.

16 Q: You looked at the population, I think you've  
17 already testified to. And you identified the  
18 year 2017 and looked at the difference in the  
19 population, the fact that the Rock Hill area is  
20 four times greater than northern York, I  
21 believe is what you testified to, right?

22 A: Yes.

23 Q: And you did that for the purposes of  
24 determining whether or not the distribution of  
25 beds among those two different population

1 groups would be equitable or not. Wasn't that  
2 the reason you did that?

3 A: Yes.

4 Q: Which was consistent with what Ms. Platt  
5 presented to you, right?

6 A: Yes.

7 Q: All right.

8 **MR. MR. ANDREWS:** Let's take a look then at the next  
9 table in this demonstrative.

10 Q: Now, we are casting out. We are projecting  
11 forward the population into 2020. Do you see  
12 that?

13 A: Yes.

14 Q: And look at the distribution in northern York  
15 County. Do you see the beds per 1000, it's  
16 1.03?

17 A: Yes.

18 Q: And look at the beds for Rock Hill and western  
19 York County, and you see that as 1.07?

20 A: Yes.

21 Q: So in other words, if there were 100 beds  
22 established in Fort Mill, the distribution of  
23 the beds for that Fort Mill area or northern  
24 York population would be fewer than those  
25 available to the rest of the county including

1 Rock Hill and western York. Do you see how  
2 that would play out?

3 A: Yes. I mean, if you're looking at 1.03 and  
4 1.07, they're pretty close.

5 Q: And you see the population differences. You  
6 had said you projected it in 2017. I don't  
7 know what you looked at, but here looking at  
8 the zip codes that would constitute northern  
9 York, and that would be three, not two. Do you  
10 remember whether you included 29715, 29708 and  
11 29707 in your analysis or just 708 and 715?

12 A: I don't recall. And at this point, I don't  
13 know what areas they correlate to.

14 Q: Okay. Well, you don't have any reason to  
15 believe that these numbers would be inaccurate;  
16 do you?

17 A: No, not off the top of my head.

18 Q: Okay. And so we got here 96,000 -- nearly  
19 97,000 would be the projected population for  
20 those three zip codes in 2020, and the  
21 population of the rest of the county Rock Hill  
22 and western York would be 215,000. I'm  
23 rounding up to 216; do you see that? So it's  
24 just a little over twice; isn't it?

25 A: Yes.



1 Q: And there would be 100 beds for northern York  
2 and 232 for the rest of the county. And that  
3 distributes based on population alone the beds  
4 quite equitably; wouldn't it.

5 A: Well yes. But, I mean, the 100 beds weren't  
6 solely in to serve northern York because it was  
7 -- part of the population was coming from Rock  
8 Hill.

9 Q: Right, that's true indeed. Now, let's -- let  
10 me turn to the second issue, Ms. Brandt. You'd  
11 expressed concern in your testimony and in your  
12 analysis about something you referred to as  
13 "go-by" or "drive-by," and you didn't find that  
14 logical. And again, this is an issue that  
15 Carolinas coined for you; didn't they; that  
16 Piedmont was proposing to serve patients who  
17 would have to drive by Piedmont to get to Fort  
18 Mill Medical Center? Isn't that what they said  
19 in their criticism of Piedmont's application?

20 A: Yes. But we certainly had information  
21 available from Piedmont that identified the zip  
22 codes and what zip codes were considering the  
23 primary service area. That wasn't something  
24 that I would not have considered.

25 Q: And your concern was that there were patients

1           who would be served by Fort Mill Medical Center  
2           from zip codes that were south of the river  
3           that separated northern York County from the  
4           Rock Hill area; isn't that right?

5    A:   Well, I would say south of Rock Hill. I don't  
6           believe I ever talked about a river. But one  
7           zip code was the Rock Hill vicinity and one zip  
8           code was south of Rock Hill.

9    Q:   All right.

10   **MR. ANDREWS:** Well, let's pull up Demonstrative 38,  
11           please, Dan.

12   Q:   Now, there has been testimony concerning  
13           drive-time studies that were the basis for this  
14           demonstrative, Ms. Brandt. And let me just  
15           represent to you the testimony in the record  
16           shows that Mr. Walsh testified that the pink  
17           areas represent areas in which individuals who  
18           live there, the residents of the pink area  
19           would be able to drive to the Fort Mill Medical  
20           Center location, which you will see at the H  
21           area, there you go, right where that is, more  
22           quickly than they would be able to get to the  
23           Piedmont Medical Center which is the H in the  
24           center of this map. Do you see that?

25   A:   Yes.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 Q: And those in the tannish color, and I don't  
2 want to make a representation, but I think it's  
3 5 to 10, 0 to 10 minutes; and the blue would be  
4 further away, 10 to 20 from Fort Mill Medical  
5 Center. And you remember that Piedmont  
6 represented to you that there would be  
7 individuals living in 730 zip code. And do you  
8 see the 730 zip code?
- 9 A: Yes.
- 10 Q: And are you aware enough of the geography of  
11 York County to note that zip code continues on  
12 over onto the right, the far right, or the  
13 eastern border of York County where that --  
14 where Mr. Bupp has his arrow. Do you recognize  
15 that as being 29730 zip code area?
- 16 A: Yes.
- 17 Q: And then 732 would be the one that's more  
18 central in which Piedmont Medical Center is  
19 located, right?
- 20 A: Yes.
- 21 Q: All right. Now, when you had expressed  
22 concerns about the shifting of patients from  
23 Piedmont to the Fort Mill Medical Center, and  
24 you said you were concerned about that because  
25 that would mean patients would be driving by

1 Piedmont Medical Center to get to Fort Mill.  
2 Isn't that what your concern was?

3 A: Yes.

4 Q: Now, you can see by the pink zones that there  
5 could be many residents of York County,  
6 particularly residents of zip code 29730 and  
7 29704 down on the far right and a bit of 29732  
8 for whom it would be a faster drive and one  
9 simply requiring getting on the interstate to  
10 go to the Fort Mill Medical Center. Do you  
11 recognize that?

12 A: Yes, I can see that. I'm sure there are more  
13 roads.

14 Q: Sure there are, this is background. This is  
15 just looking at the major arteries and very few  
16 roads. But the point is, is it not, based on  
17 your review of this map, you'd recognize,  
18 wouldn't you, that Piedmont could shift  
19 patients that it has historically served at its  
20 inner city hospital to Fort Mill Medical Center  
21 for whom it would be a shorter drive for them  
22 to get there.

23 A: Yes. But, I mean, I don't know what the  
24 population-distribution is in those areas. But  
25 I can see in theory what your point is.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: Well, that was Piedmont's point that it made  
2 during the staff review that there would be  
3 many individuals for whom it would be more  
4 convenient and certainly not require driving by  
5 Piedmont Medical Center in order to get access  
6 to Fort Mill; isn't that right?

7 A: I believe that's what they had stated.

8 Q: Okay. And you didn't accept that, but you  
9 weren't aware of this population sector. And  
10 I understand you don't have any data -- you're  
11 sitting here today about the extent of that.  
12 But residents who lived there could have been  
13 -- well those that Piedmont was intending to  
14 encourage the movement up, and expects  
15 reasonably the movement up to Fort Mill rather  
16 than driving through in-town traffic to get to  
17 Piedmont Medical Center, right?

18 A: It could be, but I know that the concentration  
19 of the population of Rock Hill is near the  
20 hospital as far as the bulk of the population  
21 of Rock Hill. You didn't say it was urban. So  
22 again, I don't know what the population-  
23 distribution is. But I certainly do see what  
24 you are trying to demonstrate.

25 Q: Okay. And are you also aware that the patients

1           that would be shifted to address the beds that  
2           would be moved would just -- there are 19 beds  
3           that are unutilized and un-staffed at Piedmont,  
4           right? You are aware of that, correct?

5   A:   Yes.

6   Q:   And there were 17 that were underutilized that  
7           the hospital was proposing to move to  
8           accommodate the patients who would be going to  
9           Fort Mill rather than Piedmont. Isn't that the  
10          way that Piedmont presented it to you?

11  A:   Yes, that's the way they presented it.

12  Q:   Okay. And that would still leave in the  
13          vicinity of well over 100 beds to serve the  
14          population of the county; wouldn't it? I mean,  
15          that Piedmont could serve the other patients  
16          that it would intend?

17  A:   Yes. And I know that was brought up. But  
18          there was certainly other related issues to  
19          include the decrease in utilization through the  
20          years. And if the patients aren't going there  
21          to Piedmont, they're not going to Piedmont. I  
22          mean, you have to look at why is there in this  
23          capacity. I mean, there are other factors to  
24          consider.

25  Q:   And, in fact, Piedmont identified those

1 factors, which was the change in referral  
2 patterns and the acquisition of hospitals --  
3 excuse me, acquisition by Carolinas of  
4 physician practices and the change in those  
5 referral patterns among the physicians who  
6 historically had served their patients at  
7 Piedmont. Do you recollect that?

8 A: I recollect them stating that.

9 Q: Was there any doubt in your mind that was true?

10 A: Well again, there has got to be reasons that  
11 patients leave an area. And certainly referral  
12 patterns evidently did change, but it's  
13 ultimately patient's choice as to whom they go  
14 with.

15 Q: Well, it's ultimately patient's choice, but  
16 you've testified in depositions that patients  
17 often follow the encouragement and the lead of  
18 their physicians; isn't that right?

19 A: Yes, I'm sure I did say that.

20 Q: All right.

21 **MR. ANDREWS:** Let's take a look at the regulations  
22 again, Section 3(a), Dan.

23 Q: Now Ms. Brandt, as we are pulling this up, I  
24 want you to -- if you can do this from memory,  
25 fine. If not, we can go back to the document.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 But for Section 3(a) you stated that this only  
2 applies to Piedmont. Do you remember that?

3 A: Yes.

4 Q: Why did you say that?

5 A: Because Piedmont was going to transfer beds, in  
6 part, to create Fort Mill Medical Center. So in  
7 other words, they were going to create the same  
8 services within York County as were already  
9 existing with Piedmont Medical Center.

10 Q: Now, Section 2(d) deals with the relocation of  
11 36 beds. You've already testified about that,  
12 right?

13 A: Yes.

14 Q: Section 3(a) says it requires the department to  
15 focus on the question of whether or not there  
16 is duplication and to prevent unnecessary  
17 duplication, right?

18 A: Right.

19 Q: Now, every applicant that applied needed to be  
20 evaluated to determine whether or not their  
21 proposal would unnecessarily duplicate existing  
22 services in York County; isn't that right?

23 A: Yes. I see your point. But I think that  
24 Piedmont even acknowledged that this only  
25 applied to them.



1 Q: No. I'll state for the record Piedmont did not  
2 acknowledge that.

3 A: But my approach was that Piedmont was  
4 duplicating Piedmont.

5 Q: Exactly. You believed that approval of Fort  
6 Mill Medical Center would duplicate Piedmont,  
7 correct?

8 A: Yes.

9 Q: Because there were two hospitals with the  
10 exception of the tertiary services providing  
11 similar services, right, in York County?

12 A: Right.

13 Q: Isn't that right? And you believed that the  
14 applications by Carolinas and by Hospital  
15 Partners of America and by Presbyterian would  
16 not duplicate existing services because they  
17 weren't proposed by an existing provider of  
18 services in that county; isn't that true?

19 A: Well, I'm not familiar with Hospital Partners  
20 of America.

21 Q: HBA, I'm sorry, was the third applicant. They  
22 dropped out by the time you came into the  
23 picture. So I apologize. So those are the  
24 two.

25 A: No. I did not believe they would because they

1           were different institutions, different referral  
2           patterns.

3       Q:    So the question of duplication of existing  
4           facilities and services, you were analyzing  
5           based on Piedmont duplicating itself, and you  
6           determined they were?

7       A:    Yes.

8       Q:    And you did not find that Carolinas duplicated  
9           itself because it's facilities were in  
10          Mecklenburg County, is that right?

11      A:    Correct. And again, they were proposing to  
12          shift current patients, yes.

13      Q:    And so that's how you understood the practice  
14          that the department has not to take into  
15          consideration the out-of-state entities. You  
16          used that against Piedmont to favor the  
17          approval of Carolinas and to deny them, deny  
18          Piedmont because Carolinas did not have a  
19          facility in York County. Isn't that what  
20          you're saying?

21      A:    That's not what I'm saying.

22      Q:    Isn't that the effect of what you're saying?

23      A:    Well, Piedmont was established, and they were  
24          going to provide the same services. So I did  
25          not -- I mean, that's not what I set out to do.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 I set out to perform an analysis based upon the  
2 fact that Piedmont was already offering the  
3 services.

4 Q: Ms. Brandt, who trained you on the principle  
5 related to the extent to which you should take  
6 into consideration out-of-state facilities?

7 A: It was definitely Ms. White, and I am sure Ms.  
8 Fechtel actually is probably in here somewhere,  
9 too.

10 Q: And do you know how long Ms. White had been  
11 with the department in the CON program?

12 A: No, I don't.

13 Q: It wasn't more than several years; was it?

14 A: I don't believe so.

15 Q: Okay. Now, the purpose -- would you agree with  
16 me that the purpose of the issue related to the  
17 consideration of out-of-state entities was that  
18 the department should plan for South Carolina  
19 residents, right?

20 A: Yes.

21 Q: The department should not take into  
22 consideration the effect on out-of-state  
23 facilities the establishment of in-state  
24 facilities would have, true?

25 A: Yes. The focus was South Carolina.

1 Q: Did anyone suggest to you that you should not  
2 consider the effect of the existence of out-of-  
3 state facilities in their operations on in-  
4 state facilities? Do you understand the other  
5 side of that?

6 A: So Mr. Andrews, you're asking me if somebody  
7 told me I should not?

8 Q: Yes. Did someone tell you that you should not  
9 consider the effect, for example, of CMC-  
10 Pineville on the operations of a proposed  
11 facility by Carolinas in York County?

12 A: Yes.

13 Q: Someone did tell you that?

14 A: I was trained that it's -- you look at what's  
15 affecting South Carolina and South Carolina  
16 patients.

17 Q: But if your testimony, then, that you believe  
18 that Fort Mill Medical Center duplicated  
19 Piedmont, which is right beside -- just by --  
20 the proposal of another hospital by Piedmont in  
21 York County some eight miles, 15 minutes away,  
22 duplicated Piedmont; isn't that what your  
23 testimony is saying?

24 A: Yes.

25 Q: Now, CMC-Fort Mill would be just about the same

1 drive time, about 15 minutes away from CMC-  
2 Pineville. Are you aware of that?

3 A: Yes, sir.

4 Q: But you didn't regard that as a duplication of  
5 the Pineville facility, correct?

6 A: That's correct.

7 Q: And the effect of that is to put at a  
8 disadvantage Piedmont because Carolinas doesn't  
9 have an existing facility in Rock Hill; does  
10 it?

11 A: No, I disagree. I had the applicants before  
12 me, and I had to consider what was in  
13 existence. I mean, it's beyond my control of  
14 about what's located where.

15 Q: But based on that principle, Piedmont could do  
16 nothing in your mind to avoid the conclusion  
17 that a second hospital within a 15-minute drive  
18 time would duplicate itself?

19 A: It did duplicate. And the issue was the  
20 justification of the duplication, not the  
21 duplication itself.

22 Q: All right. So -- well, you stated that the  
23 duplication would be their beds are being  
24 transferred, so they're not duplicating those,  
25 correct?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

- 1 A: No. The beds themselves, I mean --
- 2 Q: Would not be duplicated.
- 3 A: Not the beds but services associated with those
- 4 beds.
- 5 Q: Well, anyone who's going to provide the
- 6 services would be the same services that
- 7 Piedmont was providing, correct? Carolinas --
- 8 CMC-Fort Mill services would duplicate the
- 9 services; wouldn't it?
- 10 A: Yes. But again, the purpose of the CMC
- 11 application was to serve existing patients.
- 12 Q: Well, we're going to deal with the shift issue
- 13 in a minute. But with regard just to the focus
- 14 under this section on whether there is a
- 15 duplication of services, the services that are
- 16 proposed by CMC-Fort Mill and the services
- 17 proposed by Fort Mill Medical Center are
- 18 virtually identical; aren't they?
- 19 A: Yes.
- 20 Q: All right. So the services are not being
- 21 duplicated. They will both be consistent with
- 22 the services provided by Piedmont with the
- 23 exception of the tertiary more advanced
- 24 services; wouldn't they?
- 25 A: Yes. And again the issue is the justification.

1 Q: All right. So you are referring to the  
2 question of who has the established patient  
3 base?

4 A: How do they prove that this duplication is  
5 necessary.

6 Q: And in fact, Piedmont proposed that it was  
7 necessary in order to continue to maintain the  
8 base of volume and the quality of services that  
9 would be needed to support a tertiary hospital.

10 A: Yes, that's what they proposed.

11 Q: And wouldn't you agree that a core volume of  
12 services is necessary to sustain tertiary  
13 services?

14 A: Yes.

15 Q: And wouldn't you agree that there is a direct  
16 correlation between sustaining that volume and  
17 increasing the volume at a level that without  
18 which the tertiary services will be in decline?

19 A: Yes. But again, I had to look at the facts  
20 before me. I mean, you're making a blanket  
21 statement. And yes, that does make sense.

22 Q: Well, weren't you concerned that if Piedmont's  
23 decline in utilization continued, that if they  
24 were denied what they first planned before any  
25 other hospital in the area did, which is

1 establish a satellite hospital to recapture  
2 that lost market share, that Piedmont could  
3 possibly not be in a position to recover the  
4 volume to support the high quality services  
5 that York County had become accustomed to?

6 A: I believe in my analysis reports, that I took  
7 that under consideration and looked at that  
8 very carefully. In fact, I even made a  
9 statement about the impact that Presbyterian  
10 would have, and that Carolinas would have a  
11 lesser impact on Piedmont. I certainly  
12 considered those facts very carefully. The  
13 intent of my decision was not to put Piedmont  
14 out of business.

15 Q: Piedmont may not go out of business, but if the  
16 volume of their open heart services and their  
17 cath services and their neurosurgery services  
18 and their neonatal services continues to  
19 decline, are you aware that those programs  
20 would be put in jeopardy?

21 A: I certainly could see where they could be. But  
22 again, and this goes to the whole premise of  
23 their application is they feel that if they  
24 build this hospital, then magically they are  
25 going to recover from years and years of



1 declined utilization. And I just did not  
2 accept that.

3 Q: In fact, are you aware, Ms. Brandt, that it's  
4 not so many years; that in 2004 and 2005  
5 Piedmont was operating at a level which  
6 established the benchmark to which they were  
7 planning to return?

8 A: Yes, the decline started when --

9 Q: Yeah. So it's not ancient history; is it?

10 A: Well, it's been quite a few years.

11 Q: Well, the effect of the extended application  
12 process contributed to that happening?

13 A: Yes, it has.

14 Q: Now, the -- so you are aware that their goal  
15 was to achieve a certain historical level. And  
16 if they achieved that, they would roughly  
17 comparable to where they were at the time they  
18 filed the application?

19 A: That makes sense, yeah.

20 Q: Now, and you believed they wouldn't be hurt  
21 because you believed that Carolinas would be  
22 successful in shifting their patient beds?

23 A: Yes.

24 Q: Isn't that what you believed? And that's what  
25 Carolinas represented to you; didn't they?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: Yes.

2 Q: And when Ms. Biggers asked you -- I'm sorry, it  
3 may have been Ms. Robertson, I forget which.  
4 If you believe that Carolinas would serve the  
5 same patients that they served historically,  
6 your answer was yes because that is what you  
7 believed; isn't it?

8 A: Yes, and that was their intent.

9 Q: Well, you don't know what their intent was; do  
10 you? That's what they said to you; isn't that  
11 right?

12 A: Yes. And again, I went into the fact that they  
13 weren't even proposing to capture 100 percent.  
14 You know, they had, based on the areas of the  
15 county, different projections for what they  
16 intended to capture and that they did consider,  
17 I believe it was 10 percent in-migration.

18 Q: And those in-migrating patients could be there,  
19 as well; you don't know, do you?

20 A: Well, I believe they specified outside of the  
21 county.

22 Q: Well, they could be folks who live outside the  
23 county they serve that would come into the  
24 county, correct?

25 A: Yes.

1 Q: From Chester County or Lancaster County,  
2 patients they already served who may choose to  
3 use that facility; that's certainly possible?

4 A: Yes, that's possible.

5 Q: All right. So the -- but your approval of  
6 Carolinas was dependent on their being able to  
7 redirect their patients, to shift their  
8 patients successfully in a way that they  
9 wouldn't have to use, and they wouldn't take  
10 from the Piedmont patient basis; isn't that  
11 right?

12 A: Yes.

13 Q: Now, you've not studied, have you, as part of  
14 this process how patients are admitted in the  
15 hospitals; have you?

16 A: Well, I know they are done so by either they  
17 enter through the emergency department or  
18 through a physician referral. I can't say that  
19 I've studied it, but I have knowledge how they  
20 enter the system.

21 Q: All right. And do you have any sense of the  
22 percentage of admissions that come through the  
23 emergency department of a hospital?

24 A: I know I've heard that figure. But I don't  
25 believe I can quote with accuracy right now.

**CREEL COURT REPORTING, INC.**

*1230 Richland Street / Columbia, SC 29201*

*(803) 252-3445 / (800) 822-0896*

1 Q: Would it surprise you if there were well over  
2 half?

3 A: I'd -- nothing would really surprise me at this  
4 point.

5 Q: Well, wouldn't you recognize -- wouldn't you  
6 agree with me that Carolinas has absolutely no  
7 control over the patients that show up in their  
8 ED at CMC-Fort Mill?

9 A: No, I would agree that Carolinas can't control  
10 who shows up.

11 Q: Right. And for that reason, particularly given  
12 a hospital immediately adjacent to an  
13 interstate exchange, that there could be  
14 patients coming to CMC-Fort Mill who for years  
15 have used Piedmont or who may not have a doctor  
16 and may not have used any hospital and would  
17 not be a part of Carolinas' historical mix;  
18 isn't that certainly not only possible but  
19 likely?

20 A: Well, I agree that it's possible. But  
21 historically, you know, patients, if they are  
22 going to utilize one healthcare system, they  
23 continue to utilize that hospital system unless  
24 there's some compelling reason.

25 Q: What are you basing that on?

1 A: Just information that I've gleaned from CON  
2 applications.

3 Q: Well, CON applications all the time talk about  
4 shifting -- new hospitals taking market share  
5 from others; don't they?

6 A: Oh, yes. But typically, I mean, this was  
7 testimony that certainly was hashed out ad  
8 nauseum at the Berkeley County Hospital  
9 hearings that patients typically stick with  
10 their provider.

11 Q: Well, they come through the ED and often based  
12 on proximity, don't they? They are going to go  
13 to the ED, the emergency department that is  
14 closest to them; aren't they?

15 A: Yes, I would think so.

16 **MR. ANDREWS:** Dan, let's pull up Demonstrative 38  
17 again.

18 Q: And then look in the area in the pink. And  
19 then look in the area in the pink above the  
20 dash line, it's white which would, of course,  
21 be the northern York County area. Any patient  
22 that Piedmont has served historically that has  
23 a need to go to the emergency department, it  
24 would be a closer drive for them to get to CMC-  
25 Fort Mill, which is just above the pink left of

1 the interstate than it would be to go to  
2 Piedmont, correct?

3 A: I see where that could be accurate, yes.

4 Q: And you didn't take into consideration, did  
5 you, the extent to which patients who have been  
6 part of those -- who have been historically by  
7 Piedmont, would, because of proximity if for no  
8 other reason, would be admitted into CMC-Fort  
9 Mill through there ED because of sheer  
10 proximity?

11 A: Well, I took everything into consideration that  
12 was before me. And I drew my own conclusions  
13 that it was more likely certainly that they  
14 would follow the facility that they had  
15 typically done business with.

16 Q: Are you -- and your other assumption, Ms.  
17 Brandt, is that concerning the admission of  
18 patients into CMC-Fort Mill, as they come in  
19 through physicians who admit them there, right?  
20 That's the other way it's done?

21 A: Yes.

22 Q: All right. And CMC-Fort Mill is not going to  
23 be a closed medical staff?

24 A: No.

25 Q: That would be improper under the DHEC regs;

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1           wouldn't it?

2       A:     Yes.

3       Q:     And you don't have any reason to believe, do  
4           you, that physicians who are on the medical  
5           staff of Piedmont Medical Center who have  
6           patients in the Fort Mill area or in eastern  
7           York County who want to try the new hospital in  
8           town would not get privileges at Carolinas  
9           facility in Fort Mill; wouldn't you expect them  
10          to do that?

11      A:     I would expect them to consider it.    I mean,  
12           clearly there is a lot of reasons why they may  
13           or may not grant privileges, but they would  
14           certainly be open to that.

15      Q:     I'm talking about why -- I should tell you  
16           because everyone -- most folks in the room  
17           know, and you didn't have the benefit of being  
18           here, that three physicians who are active  
19           members of the medical staff at Piedmont,  
20           testified saying that if CMC-Fort Mill were  
21           built, they would apply for privileges there.  
22           And they would admit their patients there  
23           because they believe they're patients who live  
24           there and even patients who don't live in that  
25           area will want to try a new hospital.   And they

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 would admit their patients, even though they  
2 don't support the approval of that, they would  
3 admit their patients there because they don't  
4 want to lose their patients. Doesn't that make  
5 sense to you?

6 A: Well, it boils down to patient's choice then,  
7 in essence.

8 Q: Doesn't it make sense to you that patients  
9 would want to try a new facility and use the  
10 one that is convenient to them and for that  
11 reason, those who had been going to Piedmont  
12 historically, not because they want to leave  
13 Piedmont but because they want a hospital  
14 closer to home, would use the new Carolinas  
15 facility in Fort Mill?

16 A: I think it's conceivable. But what it boils  
17 down to is patient choice and where they're  
18 used to having their services rendered.

19 Q: It would also boil down to the choice of these  
20 same physicians and these same patients to use  
21 a Fort Mill Medical Center if you gave them the  
22 opportunity by approving that. It's not a  
23 choice of one provider over another; it's a  
24 choice to prefer to use a hospital in their --  
25 that's convenient to them and a new facility,



1           which is attractive. Don't you recognize the  
2           possibility of those considerations?

3       A:    I certainly do recognize the possibility, yes.

4       Q:    Finally, Ms. Brandt, let me turn your attention  
5           to the indigent care issues. Now, you've  
6           testified in your deposition that all the  
7           applicants we are talking about and the great  
8           things they were doing in the community, and  
9           you basically blocked that out and turned your  
10          focus to their proposed percentage of indigent  
11          care. Did I remember that correctly?

12      A:    Well, yes. That's what we're directed to do.

13      Q:    And Carolinas' proposal nearly doubled that of  
14           Piedmont or more than doubled that of Piedmont.  
15           And you found that instructive; didn't you?

16      A:    Well, I found it a point of comparison.

17      Q:    Right. And did you do anything to evaluate the  
18           reasonableness of their projection of 6.3  
19           percent of indigent care?

20      A:    I know they had provided financial statements,  
21           but I don't recall at this point exactly what  
22           the figures were. But I know they did provide  
23           the information.

24      Q:    Do you remember what kind of information?

25      A:    Well, if it was financial statements, it would

1 have indicated indigent care figures. I just  
2 don't recall what they are.

3 **MR. ANDREWS:** Well, Dan, let's put up Demonstrative  
4 118, please.

5 Q: You had already approved several applications,  
6 and you had access to others. You knew what  
7 new hospitals proposed in the way of indigent  
8 care; didn't you?

9 A: Yes.

10 Q: All right. And you were aware that Carolinas'  
11 proposal exceeded by more than half the highest  
12 among all the other projected indigent care  
13 proposals of satellite hospitals; did you know  
14 that?

15 A: I know that typically the indigent care is all  
16 over the board. And I don't recall if this was  
17 presented by Piedmont at any point prior to my  
18 decision.

19 Q: Well, you were specifically involved and  
20 approved the Roper-Berkeley again and the Roper  
21 and Trident-Berkeley, correct?

22 A: Yes.

23 Q: And you believed when you were reviewing those  
24 applications, those indigent care proposals to  
25 be reasonable, right?

1 A: Yes.

2 Q: And Dorchester County, you are familiar with  
3 the demographics of it generally; aren't you?

4 A: Generally.

5 Q: It is not nearly as affluent as York County; is  
6 it?

7 A: I would say not.

8 Q: And you are aware, aren't you, that the Fort  
9 Mill Medical Center and CMC-Fort Mill are  
10 proposed to be located in one of the most  
11 affluent of the areas of the county in the  
12 state; did you know that? I think testified  
13 earlier that they are notable Tega Cay and even  
14 Fort Mill are recognized as a highly affluent  
15 area?

16 A: Yes. But CMC certainly proposed to serve more  
17 than Fort Mill and Tega Cay.

18 Q: Well, but nearly half of their client base was  
19 coming out of Fort Mill and Tega Cay; wasn't  
20 it?

21 A: I believe that's correct. That certainly  
22 leaves the other half.

23 Q: Okay. It does. And these other applications,  
24 did you take those into consideration in  
25 evaluating the reasonableness of CMC-Fort

1 Mill's proposal of indigent care?

2 A: No. I relied on the fact that Carolinas had  
3 provided what they were currently providing and  
4 that they had based their figures on historical  
5 experience.

6 Q: But you can't point, just sitting here today,  
7 any historical experience that's consistent  
8 with 6.3 percent; can you?

9 A: I would have to look at what they've provided  
10 in their application.

11 Q: Well, you are here on the stand. Can you  
12 identify anything that would be the basis to  
13 support 6.3 percent as a projection?

14 A: I don't believe I can really answer that  
15 without more information.

16 Q: Well, then you can't do it?

17 A: No.

18 Q: Okay. That was the question, can you do it  
19 now?

20 A: No, not right this minute, no.

21 Q: All right.

22 **MR. ANDREWS:** Now, just one moment Your Honor.

23 Q: One final set of questions, Ms. Brandt. Let me  
24 take you back to the issue of any consideration  
25 you gave to Pineville, CMC-Pineville in this

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 case. The -- are you aware that Piedmont and  
2 Presbyterian alleged or they were presented  
3 information to you that they believed that CMC-  
4 Pineville added beds and over 100 beds in large  
5 part based on their reliance on the historical  
6 utilization of Pineville by York County  
7 residents; do you remember that?

8 A: Yes. There was reams of information submitted  
9 by all applicants about that in Carolinas  
10 submitted information that to me clearly  
11 indicated that that was not a part. In other  
12 words, there were different projects -- that  
13 there was a recent Pineville expansion and was  
14 not based upon York County residents.

15 Q: Well, I thought you said earlier that you  
16 didn't take into consideration anything related  
17 to Pineville's performance in determining  
18 whether or not CMC-Fort Mill should be  
19 approved.

20 A: I did say that. But what I'm saying now is  
21 that all the applicants presented me with  
22 information. So I read what they presented.  
23 That didn't mean I necessarily used it, but I  
24 didn't ignore it; the fact that they submitted  
25 this.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: Did you give any consideration to the adverse  
2 impact that the operation of CMC-Pineville  
3 would have, could have on Piedmont?

4 A: No, no. What I'm saying is the issue was  
5 raised, the information was provided and I read  
6 that information.

7 Q: All right. Did you recognize anywhere in your  
8 review process that as a result of the  
9 establishment of Carolinas Hospital in Fort  
10 Mill that it would exacerbate the effect on  
11 Piedmont by sending more tertiary patients into  
12 North Carolina?

13 A: Well, since Piedmont is a tertiary center  
14 itself, then I mean, they are already offering  
15 their services. Maybe I don't understand -- I  
16 mean, clearly if the patients are Carolinas'  
17 patients and they are in need of tertiary  
18 services, it would stand to reason that they  
19 probably would be transferred to Carolinas in  
20 Pineville, Charlotte or wherever those services  
21 are offered. But again, these are already  
22 Carolinas' patients, not Piedmont's patients.

23 Q: Did you give any consideration, Ms. Brandt, to  
24 how Carolinas got those patients? Do you think  
25 the patients made the choice to use Carolinas

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

RECORD 001316

1 Q: And I believe you testified that it was your  
2 understanding that Carolinas' percentage was  
3 based on its historical experience; is that  
4 what you said?

5 A: Yes.

6 Q: No further questions, Your Honor.

7 THE COURT: All right.

8 MR. ANDREWS: Just a short one, Your Honor.

9 THE COURT: Yes, sir.

10 MS. BRANDT - RE-CROSS EXAMINATION BY MR. ANDREWS:

11 Q: Ms. Brandt, do you remember then in October  
12 2010 that the deadline -- the parties have for  
13 submitting information to you to update their  
14 application, that Carolinas did not update  
15 their application; do you remember that?

16 A: Yes. I recall that we had asked them in the  
17 first round of additional information for  
18 updating information.

19 Q: All right. But Piedmont provided its  
20 projections and its updated application in  
21 October of 2010; didn't they?

22 A: Yes.

23 Q: And Presbyterian did, as well; didn't they?

24 A: Yes. But they did later make some changes when  
25 the census 2010 data was released.

1 Q: All right. And in Presbyterian's original  
2 application they had proposed, do you remember  
3 this, indigent care in the range of 3.5  
4 percent?

5 A: I honestly do not, no.

6 Q: But in their 2010 -- their October 2010 filing  
7 they projected somewhere in the range of 6 and  
8 a half, 6.3 to 6.7; does that sound about  
9 right?

10 A: Yes.

11 Q: All right. And that Carolinas had -- do you  
12 remember that they had somewhere in the range  
13 of 3 and a half percent in their 2005  
14 application?

15 A: I absolutely do not remember that. I don't  
16 have any recollection of that.

17 Q: And they had two months to review two months to  
18 review Presbyterian's application and decide  
19 during that period of time to increase their  
20 indigent care projections as well; didn't they?

21 A: I really can't testify as to what they thought  
22 or did.

23 Q: I know. My question was they had time to do  
24 that; didn't they?

25 A: Well, that's reasonable again.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



1 Q: Thank you. Nothing further.

2 THE COURT: All right.

3 MS. ROBERTSON: Just one or two.

4 THE COURT: Yes.

5 MS. BRANDT - RE-CROSS EXAMINATION BY MS. ROBERTSON:

6 Q: Ms. Brandt, when Carolinas submitted their  
7 updated application in October, I think Mr.  
8 Andrews suggested that there were no updates in  
9 that submission. Do you recall, in fact, that  
10 they were updated, there was updated  
11 information in October?

12 MR. ANDREWS: Objection, leading Your Honor.

13 A: I --

14 THE COURT: Oh, wait. Can you rephrase it?

15 MS. ROBERTSON: I'll rephrase it.

16 THE COURT: Can you rephrase?

17 MS. ROBERTSON: I will. Yes, Your Honor.

18 THE COURT: Thank you.

19 Q: In the submission by Carolinas in October,  
20 after the remand, do you recall if there were  
21 any updates by Carolinas in that submission to  
22 the department?

23 A: Yes. I do recall some sort of table of  
24 comments and some comparative information.

25 Q: Okay. And do you recall that the department

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1           The processes are a little different. In  
2 North Carolina, when you file your certificate  
3 of need application, you know, there is a  
4 filing date. And at that date you can't submit  
5 any additional documentation to the state in  
6 Raleigh.

7           You know, in South Carolina the process is  
8 different. You file your application. If the  
9 folks at DHEC have questions, the process  
10 allows you to communicate with the CON  
11 officials and provide additional information.

12           That process is very different. But I  
13 would say overall in terms of developing  
14 certificate of need applications and developing  
15 projects that you want the state to approve, I  
16 think they are very similar.

17 Q:   What was your role in this particular CON  
18 Application that we are about here for this  
19 case with the Fort Mill Hospital?

20 A:   I was basically the representative of Carolinas  
21 Healthcare System to DHEC, the certificate of  
22 need department, and I was also responsible for  
23 really the totality of our filing and the  
24 development of our filing.

25 Q:   Okay. Now, I would like to talk about

1 Carolinas Healthcare System and who is  
2 Carolinas Healthcare System? Mr. Murphy, have  
3 you prepared some demonstratives with respect  
4 to describing Carolinas Healthcare System?

5 A: I have.

6 **MS. ROBERTS:** Lynn, would you please.

7 Q: And if you could just first generally describe  
8 to us who is CHS, Carolinas Healthcare System?

9 A: Well, a very big picture, Carolinas Healthcare  
10 System is a public, not for profit, healthcare  
11 system that mostly serves citizens who live in  
12 the two Carolinas. And we're headquartered in  
13 Charlotte.

14 Q: And I would like to look at the mission, if we  
15 could. And I think this is in the record at  
16 Joint Exhibit A, CHS, Page 367. I think you've  
17 if you've excerpted it into a demonstrative.  
18 If you could talk about the mission of CHS.

19 A: Yeah, this demonstrative was actually a part of  
20 our record. I think it was in our October 4  
21 submission. And we wanted to basically convey  
22 to DHEC, you know, what our core mission is,  
23 the reason we exist as an organization. And I  
24 wanted to take a minute and read it for the  
25 Court. "It is to create and operate a

1 the Medical University of South Carolina, and  
2 you think about the care that's rendered in a  
3 hospital, in general, about 75 percent of the  
4 care can be cared for in a community hospital.  
5 There is about 25 percent of hospital care that  
6 really needs to go to a facility that has, you  
7 know, more sub-specialists, more capability to  
8 take care of the really significantly injured  
9 patient or medically complex. And that's what  
10 we refer to as the tertiary quaternary facility  
11 versus a community hospital. And CMC-Fort Mill  
12 is intended to be a community hospital.

13 **MS. ROBERTSON:** Okay. Let's look at Page 1115 in  
14 the record if we could, Lynn, still Joint A,  
15 CHS.

16 **Q:** Mr. Murphy, can you talk about this page and  
17 what Carolinas experience has been for the  
18 inpatient discharges for York County patients?

19 **A:** Sure. This is again a slide that we showed  
20 earlier on in our Project Review presentation  
21 as evidenced by the people being highlighted  
22 under those three points up there in the top  
23 right. What it shows is that from 2005, from  
24 the year of our first filing, we've had a 69-  
25 percent increase in patients that are coming to

1 different type witness.

2 **THE COURT:** Okay.

3 Q: So, Mr. Murphy, if you will try to -- if we  
4 can, rather than express opinions beyond that  
5 that is reflected in what you've submitted to  
6 the department, talk about what you submitted,  
7 why and keep it as factual as we can.

8 A: Okay. I can do that. This shows that from  
9 2005 to 2010 we had a 69-percent increase in  
10 York County citizens discharge -- total  
11 inpatient discharges from our Charlotte  
12 Hospital. The purpose of the slide was to  
13 demonstrate to DHEC and those at project review  
14 that we were the people's choice. We wanted to  
15 make it clear to DHEC that we felt we were the  
16 people's choice. And this type of information  
17 supported that theme.

18 Q: Okay. Thank you. Now, I would like to talk  
19 about kind of the key features of the hospital.  
20 And if we can look at a record on Page 1112,  
21 Mr. Murphy. And before we kind of get into the  
22 details of the application and what you  
23 submitted, tell us about the key features of  
24 CMC-Fort Mill?

25 A: Okay. Just the picture that's inset. That's

1 determined our market share assumption for CMC-  
2 Fort Mill and knowing it was going to be a 64-  
3 bed community hospital serving the primary-  
4 secondary needs of patients. We evaluated the  
5 market share positions of the other four  
6 community hospitals that were located in  
7 Mecklenburg County and just to look at what  
8 type of market share positions they had,  
9 because again, they are offering similar  
10 services, similar types of settings. So these  
11 are the four hospitals that you see listed  
12 here; two operated by CM-CHS, CMC-University  
13 opened in 1985; CMC-Pineville opened in the mid  
14 eighties. Also Presbyterian Matthews opened in  
15 the early nineties and Presbyterian  
16 Huntersville, all community hospitals similar  
17 in service to CMC-Fort Mill. So we looked at  
18 those and then we basically targeted our market  
19 share for CMC-Fort Mill to be reflective of  
20 what a community hospital's market position  
21 would be.

22 Q: Okay. and I think you have another  
23 demonstrative talking about the home zip codes.  
24 Can you please describe this?

25 A: This slide shows -- basically these are the

1 MS. ROBERTSON: Yes, sir.

2 THE COURT: All right. Let's do that -- 15

3 minu  
4 tes.

5 (Off the Record)

6 THE COURT: All right, Mr. Westbrook. Oh, I'm  
7 sorry. Mr. Murphy, please return to your seat.  
8 That would be a difficult cross examination  
9 with an empty chair; wouldn't it? They do that  
10 in Hollywood, I think.

11 MR. MURPHY - CROSS EXAMINATION BY MR. WESTBROOK:

12 Q: Mr. Murphy, how are you doing?

13 A: Doing well.

14 Q: Good, good to see you. Mr. Murphy, you know,  
15 I would like to start off by talking about Dan  
16 Sullivan a little bit. Now, my understanding  
17 is that early in the development process of  
18 your application of your first application,  
19 2005 application. Early in that process before  
20 you filed that initial application, you had a  
21 conference call with Mr. Sullivan, is that  
22 right?

23 A: Correct.

24 Q: And during that call you asked him about some  
25 of the parameters of the South Carolina CON

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 process, correct?

2 A: I don't remember really exactly what we talked  
3 about on the call. I know generally.

4 Q: Well, and I certainly understand 2005 is a long  
5 time ago. So I'm going to ask Dan, my friend  
6 Dan, not Dan Sullivan, to put up on the screen  
7 your testimony from the 2009 trial because it  
8 is a lot closer in time --

9 A: Right.

10 MR. WESTBROOK: -- to the event. And Dan, if you  
11 could, pull up Bates Page 1447 of the trial  
12 testimony from that 2009 trial where Mr.  
13 Murphy's on the stand. And we'll get there in  
14 a minute. Let's focus on Page 1447.

15 Q: And Mr. Murphy, I mean, we can read as much of  
16 that as you want to. But for me, the relevant  
17 part is starting on line 11 where you sort of  
18 introduced this topic, you say, "Can I make one  
19 comment?" Do you see that?

20 A: Uh-huh (affirmative response).

21 Q: And I'm going to ask, if you would, if you  
22 would just read that answer starting at Line  
23 11. I will interject my one-word question on  
24 Line 12 and let you read the reset of it, okay.  
25 So start with, if you don't mind, Line 11,



1 please, sir?

2 A: Can I make one comment from your prior  
3 question?

4 Q: And I say, sure. And then you say what?

5 A: I just remembered, early in our development  
6 process, we had a conference call just as a  
7 very high-level call with Dan Sullivan in  
8 Atlanta who is a CON consultant and just asked  
9 him about some of the parameters about the  
10 South Carolina CON process. But he was not  
11 involved in the development of our application.

12 Q: And then after that, I asked you the question,  
13 do you know about what time that call to Mr.  
14 Sullivan would have been made, roughly? And  
15 you answered what?

16 A: Early February.

17 Q: All right. Does that coincide with your  
18 current memory of that involvement with Mr.  
19 Sullivan?

20 A: That's what I said at the time. And my only --  
21 you know, the only thought I've given it since  
22 then was preparing for this trial discovered  
23 the proposal from Dan to do the technical  
24 review of our application.

25 Q: All right. But again, this would have taken

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 place you said early in February. Would that  
2 have -- is that what you said, yeah, early  
3 February there on Line 22? Would that have  
4 been February of 2005 or February of 2004?

5 A: 2005.

6 Q: 2005, okay. So that was, what, about four  
7 years before your testimony in this trial but  
8 about, what, 12 or 13 years ago from today, is  
9 that right?

10 A: No, it's not that long.

11 Q: Let me quickly state for the record that I have  
12 no expertise in mathematics. Now, would you  
13 clarify for us how long that was -- 13 minus 4.

14 A: Well, the question here is about the time. And  
15 I said early February. And this was sometime  
16 before our March 2005 application,  
17 approximately, you know.

18 Q: All right. Thank you. And in fact, when I  
19 asked you about the -- on the previous page,  
20 if we go to 1446, when I asked you about the  
21 question about consultants you've worked with.  
22 Initially you didn't remember Mr. Sullivan, is  
23 that right?

24 A: Let's see. I think so.

25 Q: Okay. And then as an afterthought, you

1 interrupted me a little --

2 A: Yeah.

3 Q: -- on the next page and said, oh, yeah, I had

4 --

5 A: Yeah. I just remembered.

6 Q: All right, good.

7 **MR. WESTBROOK:** Now -- that's fine, Dan. Thank you.

8 Q: With respect to the 2005 application and the

9 2010 application, it's not surprising there

10 were differences. Now, there were probably

11 differences in all the applicant's

12 applications. Would that be correct?

13 A: There were.

14 Q: There certainly were differences in yours;

15 isn't that true?

16 A: Yes.

17 Q: And just some of these differences, and I'm not

18 trying to give you a comprehensive list. But

19 I believe in the first application, for

20 example, that the proposal was that 50 percent

21 of the northern York County population would be

22 -- 50 percent of northern York County patients

23 that CMC-Fort Mill would serve would actually

24 be redirected from Piedmont, is that correct?

25 Do you recall?

- 1 A: I don't recall specifically.
- 2 Q: But there was a percentage; would you agree?
- 3 A: There was, yeah.
- 4 Q: And in the 2010 application, the assumption was  
5 that no patients were going to be redirected to  
6 Piedmont, is that correct?
- 7 A: Correct.
- 8 Q: And in the 2005 application, CHS projected a  
9 first-year net loss of about 1.7 million, is  
10 that right?
- 11 A: Sure. But could I back up just a minute?
- 12 Q: Sure.
- 13 A: Just to make one point. In the 2005  
14 application, we were basically looking at one  
15 point in time, 2003. And we had, you know, six  
16 years of history of market share changes. And  
17 that's why we selected to keep the market share  
18 percentages the way we did in the 2010  
19 application. And could I back up even a little  
20 bit further?
- 21 Q: Well --
- 22 A: Well, similar to my testimony, maybe in the  
23 first trial, just something -- I said in the  
24 first trial that Dan didn't have anything to do  
25 with the development of our application. But

1 in preparation for this trial, discovered the  
2 memo or the proposal from Dan. And we did send  
3 him the application, and he did do a review.  
4 And that's what the conference call was about.  
5 Sorry I didn't say that earlier as I have been  
6 sitting here processing your questions. I just  
7 want to make that clear for the Court.

8 Q: So it was your understanding Mr. Sullivan  
9 reviewed the application the first time?

10 A: He did.

11 Q: All right. And the application he reviewed, of  
12 course, was the 2005, not the 2010 application?

13 A: Correct.

14 Q: And that 2005 application, again, had a first-  
15 year net loss of 1.7 million, is that right?

16 A: I haven't looked at that application in quite  
17 awhile.

18 Q: We can pull that up if we need to. Does that  
19 sound about right to you? Would you dispute  
20 that or --

21 A: You know, if -- I won't go to the trouble of  
22 having you pull it up. If that's what it is,  
23 I'll take your word for it.

24 Q: All right. And but there was a loss. you do  
25 recall that, I'm sure; or do you?

1 A: No.

2 MR. WESTBROOK: I tell you what -- Dan, why don't we  
3 just pull it up just to make sure I'm not  
4 confused as I often am. CHS 341, I believe is  
5 the Bates Page. And can you identify this as  
6 your pro forma from the 2005 application?

7 A: Yes, that does look like it.

8 Q: And does it look like you have a first-year  
9 loss of about 1.7 million?

10 A: We do. And again, it was a different  
11 application with a different point in time.

12 Q: Different application, different point in time.  
13 And your second application, the 2010  
14 application, different application, different  
15 point in time; there was a first year profit of  
16 about over 600,000, is that right?

17 A: I believe so.

18 Q: And in your first application, the 2005  
19 application, you projected charity care at  
20 about 3.5 percent of gross revenue, right?

21 A: That sounds about right.

22 Q: And in this application, your projection is 6.3  
23 percent of the gross revenue, right?

24 A: That's correct. And I did talk about the  
25 economic issues we had most recently to this

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 filing that impacted, you know, those  
2 estimates. So lots of contextual factors that  
3 I don't know if I should go into.

4 Q: I tell you what, I will ask you a question if  
5 I want you to go into them. So let's go then  
6 to one other thing. There is also a  
7 distinction. You had a different site in 2005.  
8 It was close by but it was a different site.

9 **THE COURT:** Mr. Westbrook, if you hold on for a  
10 second.

11 **MS. ROBERTSON:** I'm sorry to interject, but I do  
12 think the witness ought to have the opportunity  
13 to respond and say what he'd like to say  
14 without being cutoff.

15 **MR. WESTBROOK:** Sorry to cut off, Your Honor. I  
16 think that it was responsive to the question.  
17 He could certainly -- you know, he doesn't have  
18 to just answer yes or no. He can certainly  
19 respond to the question. If it's going down  
20 another issue or answering something I haven't  
21 asked, I would say we are going to be here all  
22 day.

23 **THE COURT:** Let me just clarify this for the  
24 proceeding. I do want the witness to be  
25 allowed to fully and completely answer any

1 question asked of him. However, if the witness  
2 if going to go off on another subject that  
3 wasn't a part of the question, then perhaps  
4 that can be something addressed by counsel in  
5 redirect or something like that. Yes, let's  
6 give the witness and full and complete  
7 opportunity to answer fully the question that  
8 was asked of him.

9 Q: All right. The last question I believe I  
10 asked, and Ms. Robertson can correct me if I am  
11 wrong, was about the 6.3 percent. I believe  
12 that in 2005 you projected 3.5 percent of gross  
13 revenue as your charity care. In 2010, you  
14 projected 6.3 percent; isn't that correct?

15 A: That's correct. And I would just add that you  
16 can't compare the two directly because many  
17 things have transpired or changed over that  
18 course of, I would guess about six years.

19 Q: All right. And in 2005, you had a different  
20 site than the currently proposed site; isn't  
21 that correct?

22 A: We were at Exit 83 in 2005, slightly down the  
23 road from Sutton, slightly down the road from  
24 our current site. We changed the site because  
25 during the review the owner filed bankruptcy.



1 And so we had a contingency contract and felt  
2 we needed to change the site just to secure the  
3 land for the hospital.

4 Q: All right.

5 MR. WESTBROOK: All right. Dan, let's pull up CHS  
6 524 for the first -- no, I guess that's for the  
7 second application, please. This showed the  
8 two sites, the 2005 site and the 2010 site.

9 Q: Aren't those identified on this page?

10 A: Yes, right. The yellow site closer to 277 is  
11 the current site.

12 Q: So the application again, and I'm sure there  
13 were other changes made between these two  
14 applications. I'm not sure they were with the  
15 other applications, Presbyterian and  
16 Piedmont's. But the application that Mr.  
17 Sullivan reviewed, the 2005 application, not  
18 the 2010 application; correct?

19 A: Correct.

20 Q: Now, CHS - Carolinas Healthcare System. The  
21 official name is Charlotte Mecklenburg Hospital  
22 Authority, right?

23 A: Well, there is a the in there. It's The  
24 Charlotte Mecklenburg Hospital Authority.  
25 That's the official legal name.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: All right, The Charlotte Mecklenburg Hospital  
2 Authority. That's a -- and you testified some  
3 about that organization. That's a North  
4 Carolina Hospital Authority, which is a type of  
5 North Carolina public hospital system, is that  
6 right?

7 A: That's correct.

8 Q: All right. And it's created by a North  
9 Carolina statute; isn't that correct?

10 A: That's correct.

11 Q: And South Carolina, I believe, has hospital --  
12 at least one hospital authority; are you  
13 familiar with that?

14 A: I don't believe so.

15 Q: Under the North Carolina statute, CHS has power  
16 of eminent domain; doesn't it?

17 A: I'm not familiar with all of the parts of that  
18 statute.

19 Q: Are you familiar with that particular issue?  
20 Do you know whether or not it has the power of  
21 eminent domain?

22 A: I don't know that for a fact, no.

23 Q: Do you know that it was created according to  
24 the statute to serve North Carolina residents;  
25 do you know that?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 A: You know, I don't know that for a fact. It's  
2 a North Carolina statute. I do understand  
3 that.

4 MR. WESTBROOK: All right. Let's take a look at,  
5 Dan, bear with me a second. Okay 273 -- let's  
6 pull up Demonstrative 273.

7 Q: Now, this is a complaint. And the caption  
8 says, "The Charlotte Mecklenburg Hospital  
9 Authority;" does it not?

10 A: It does.

11 Q: Now, I want to ask you about a statement that  
12 made this complaint where Charlotte Mecklenburg  
13 Hospital Authority is the Plaintiff and see if  
14 you believe they are accurate or not. Now,  
15 this is a complaint filed by -- you recognize  
16 this as a complaint filed by The Charlotte  
17 Mecklenburg Hospital Authority?

18 MS. ROBERTSON: Your Honor, sorry to interrupt  
19 again. But I believe this is a demonstrative.  
20 I just want to make sure I understand what this  
21 is. But I don't believe there is anything in  
22 the record upon which this demonstrative is  
23 made from. I may be wrong, but I don't believe  
24 this is in the record.

25 MR. WESTBROOK: This is a demonstrative. It's not.

1 an exhibit. It's not part of the record.

2 **THE COURT:** It's not part of the record. Okay --

3 **MR. WESTBROOK:** I want to ask him a question here  
4 whether he knows whether it's accurate or not.  
5 If he doesn't, he doesn't. If he does; he  
6 does.

7 **THE COURT:** Any objection?

8 **MS. ROBERTSON:** Well, demonstratives, as I thought,  
9 were to be based on matters and sources within  
10 the record. But, you know, I think that is our  
11 objection that we are looking at something that  
12 is not in the record. And I believe Mr.  
13 Westbrook objected earlier to his belief when  
14 I was questioning Mr. Murphy of something not  
15 being in the record when we placed it up on the  
16 screen. So I would make that same suggestion  
17 or objection as to this overlying the  
18 demonstrative.

19 **MR. WESTBROOK:** I would say this is a public record.  
20 It's -- Mr. Murphy has been or clearly is  
21 CHS's primary witness or at least fact witness.  
22 The -- this is a public document. It is not a  
23 hearsay document, therefore. And it and it has  
24 some questions on the first page -- excuse me,  
25 some statements on the first page about CHS.

1 Mr. Murphy testified at some length about the  
2 nature of his organization in what it did and  
3 what it was involved in. And these are  
4 statements that are certainly not going to be,  
5 you know, derogatory in any way because they  
6 are made by CHS itself on the first page of its  
7 complaint. And I just want to see factually if  
8 he knows whether they are true or not.

9 **MS. ROBERTSON:** Well, Your Honor, I think at a  
10 minimum he would have to establish a foundation  
11 that Mr. Murphy knows anything about this  
12 complaint or what's alleged in it and any  
13 specifics to be able to talk about it. I don't  
14 think we've done that yet.

15 **MR. WESTBROOK:** I think the only way I could do that  
16 is by actually showing him the question and  
17 then if Ms. Robertson has an objection. I'm  
18 not even going to show an allegation. What I'm  
19 going to show is you see that first heading as  
20 a party as a description of CHS, and I just  
21 want to see if that's an accurate description.

22 **MS. ROBERTSON:** One final comment, Your Honor. I  
23 think there is an attempt here to get this  
24 document into evidence through testimony for an  
25 exhibit that is not in the record. This is not

1 in the record, and he's going to elicit  
2 testimony and place it in the record.

3 **MR. WESTBROOK:** I'm not going to -- you know, this  
4 is not an exhibit. I'm not going to try and  
5 make it an exhibit. But I certainly -- it  
6 seems like to me that I can ask him about  
7 public documents. He testified a great deal  
8 about -- from public documents and non-public  
9 documents about the nature of CHS and the  
10 nature of that organization and actually a lot  
11 of other things, as well. So I'm going to put  
12 a public document up there and ask him some  
13 questions about if he knows they are true or  
14 not. If he doesn't -- if he knows they are  
15 true or false, then he can say so. If he  
16 doesn't know, then he can say that, as well.  
17 But, you know, I mean I think that was a large  
18 part of his direct testimony was going into the  
19 nature of CHS, describing that organization,  
20 what they did, what they didn't do, what kind  
21 of organization they are and so --

22 **THE COURT:** And yes, Mr. Westbrook, I do recall him  
23 in the initial parts of his testimony talking  
24 about the general nature of CHS, its mission  
25 statement, what it did. But this appears to be

1 a matter that isn't -- this isn't a complaint  
2 that is any way related to this matter, is that  
3 right?

4 **MR. WESTBROOK:** Well, I think it is. But that's not  
5 the purpose that I am asking him questions  
6 about it; at least not now.

7 **THE COURT:** Maybe we can establish whether he has  
8 any knowledge or whether he was involved or has  
9 any knowledge of this particular matter first.  
10 And then I think maybe that might alleviate --  
11 that might answer the question of whether he  
12 knows anything about it.

13 **MR. WESTBROOK:** Let me go to another document.  
14 Maybe there will be objections to this document  
15 or maybe there won't. But let me go to another  
16 document that I think I can establish the same  
17 thing. So Dan why don't we follow up on that.

18 **Q:** In your early testimony, Mr. Murphy, you were  
19 talking about CHS and things that CHS did. It  
20 is a North Carolina Hospital Authority, I think  
21 you've established. And I believe Ms.  
22 Robertson actually asked you some questions  
23 relative to MUSC, the Medical University of  
24 South Carolina in Charleston. Do you recall  
25 that?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 A: I do.

2 Q: All right. And I believe the question was  
3 something in the nature of were those  
4 facilities or those systems comparable. Do you  
5 recall that?

6 A: I don't know if she used the word systems. I  
7 think -- I do recall her asking something along  
8 the lines of is the Medical University of  
9 South Carolina similar to Carolinas Medical  
10 Center? I think she was inferring that there  
11 were, or asking that they were both academic  
12 medical centers; you know, large hospitals  
13 where there's teaching programs and lots of big  
14 trauma services. I think that was the  
15 questioning, but that's what I remember.

16 Q: And Medical University of South Carolina is a  
17 South Carolina Hospital Authority; isn't it?

18 A: I'm not aware of their legal structure.

19 Q: All right. Medical University of South  
20 Carolina has one hospital, correct?

21 A: I don't know. Again, I don't know the details  
22 of that system. I know the Medical University  
23 is a large academic medical center.

24 Q: You do know that the Medical University of  
25 South Carolina doesn't have any hospitals in

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



1 North Carolina; isn't that true?

2 A: I don't believe they do.

3 MR. WESTBROOK: Let's look at 6890, CHS. This is a  
4 document produced by CHS, CHS 6890.

5 Q: And this is somewhat similar to an exhibit that  
6 you put up or that was put up during your  
7 testimony. It lists in the margins sort of  
8 toward the bottom of that page the various  
9 facilities. And I think they are organized --  
10 aren't they organized in the same way that they  
11 were on the map that you used, Mr. Murphy?

12 A: They look to be very similar.

13 Q: All right. So there's primary enterprise,  
14 component facilities and managed facilities.  
15 Are those the categories? Am I missing  
16 anything? And then future hospitals down at  
17 the bottom, is that right?

18 A: Yes.

19 Q: Okay. And looking -- pulling that away, just  
20 looking at the map. What does the red indicate  
21 on the map?

22 A: It says -- the key here at the bottom, just  
23 right inside the bottom right corner is the  
24 key. It says, "Those are CHS affiliated  
25 hospitals."

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: And so -- and each one of them has a number, is  
2 that right?

3 A: Yes.

4 Q: And the number corresponds to the facilities  
5 that are listed at the bottom on either side of  
6 the page, is that right?

7 A: That's correct.

8 Q: All right. And those do not include -- those  
9 are not limited to acute care general hospital,  
10 is that right? What kind of facilities do we  
11 have represented there?

12 A: I think the majority of these are acute care,  
13 licensed acute care hospitals. I'm looking  
14 down the list. I see. if you look at Number 9,  
15 Carolinas Rehabilitation Mount Holly. That's a  
16 rehabilitation. It's a licensed general  
17 hospital with only rehabilitation beds. And  
18 just below that you see Behavioral Health  
19 Center, CMC-Randolph. That's a 66-bed facility  
20 that serves behavioral health patients. So  
21 there may be -- just looking down the first  
22 column, I don't see any other non -- well,  
23 there's Carolinas Rehabilitation, Number 8.  
24 that's another acute care -- excuse me, a  
25 rehabilitation hospital. I think the majority

1 of these are acute care hospitals.

2 MR. WESTBROOK: All right. And Dan, if you could  
3 focus in just a little tighter on the  
4 Charlotte/York County area, please.

5 Q: And these would be the facilities that I guess  
6 are closest to proximity to York County, is  
7 that right?

8 A: Well, those are facilities that are -- you  
9 know, this is clearly not to scale. When you  
10 say in proximity to York County, if we go back  
11 to the first column most of those facilities  
12 are located within a mile or two of each other  
13 in the center of Charlotte. They are not all  
14 spread out over the Mecklenburg County.

15 Q: You wouldn't have room to put that many red  
16 squares in the area that represents Charlotte,  
17 right?

18 A: All I'm saying is this is not a geographic  
19 depiction of where facilities are located.

20 Q: Right. Do you recognize this is a document CHS  
21 created then?

22 A: It looks familiar. I think I've seen it  
23 before.

24 Q: And you recognize York County there? In fact,  
25 what does Number 35 represent there in the red

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 square? Isn't that the CMC-Fort Mill proposed  
2 site?

3 A: If we could go back to the -- I think it was  
4 maybe --

5 MR. WESTBROOK: Sure, let's check the -- I think it  
6 was blocked in.

7 Q: It would be at the very bottom there?

8 A: Right, that is.

9 Q: All right. Good. Now, you know, I think you  
10 testified to this. You're responsible for, is  
11 it a 14-county region; is that right, Mr.  
12 Murphy?

13 A: Well, we plan -- when we look at the map here,  
14 we do -- we work with all of our hospitals and  
15 where they're located. But when I talked about  
16 market development in the 14-county region,  
17 those are natural counties that go together in  
18 terms of natural geography and trade patterns  
19 and that type of thing.

20 Q: And that 14 counties would include -- one of  
21 those is York, right?

22 A: Correct.

23 Q: And then are all -- and then I think that it  
24 also includes Chester and Lancaster counties in  
25 South Carolina, is that right?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

- 1 A: That's right.
- 2 Q: And then, I guess that would be -- I'm  
3 delegating the math again, but I think that's  
4 11 North Carolina counties then?
- 5 A: I believe so.
- 6 Q: Three South Carolina and 11 North Carolina make  
7 14?
- 8 A: Uh-huh (affirmative response).
- 9 Q: Now, in that region, that 14 county region,  
10 there -- do you know offhand how many acute  
11 care hospitals you have? Is it about ten or  
12 11?
- 13 A: I don't know the number right off. I was  
14 thinking the acute care was around nine. And  
15 then there is some speciality of rehab and the  
16 other health facilities.
- 17 Q: And those acute care would include Mercy,  
18 Pineville, University, Union?
- 19 A: Correct.
- 20 Q: Among others?
- 21 A: Yes, and some Lincoln.
- 22 Q: All right. And none of those hospitals are  
23 unsuccessful in your opinion; are they?
- 24 A: It depends on how you define unsuccessful.
- 25 Q: By any of your definition would they be

1           unsuccessful?

2       A:    No, I don't believe so.

3       Q:    And within that 14-county area, there are a lot  
4           of competitors; aren't there?

5       A:    There are.

6       **MR. WESTBROOK:**   Now, let's take a look at  
7           Demonstrative 212.

8       Q:    I think that's already been admitted through  
9           another witness. And I don't know if you've  
10          seen this or not. And the source is given  
11          there at the bottom, net income of CMC  
12          Hospitals 2010 through 2011 based on Medicare  
13          Cost Reports. Are you familiar with these cost  
14          reports, Mr. Murphy?

15      A:    No, I haven't looked at these cost reports.

16      Q:    Do you have -- is it any part of your job for  
17           you to prepare cost reports?

18      A:    No.

19      Q:    All right. So do you know then whether the  
20           figure of \$241,939,850 net income for 2010 CMC-  
21           Main. Do you know whether that's accurate or  
22           not?

23      A:    I don't believe it's -- I believe it probably  
24           ties to the cost report. I don't believe it  
25           ties maybe to the net income of Carolinas

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Medical Center. And I know that from talking  
2 to Gregg Stewart who is going to testify about  
3 these cost reports and financial statements.

4 Q: All right. Well, cost reports are -- Medicare  
5 cost reports are reports that are submitted to  
6 the government, is that right?

7 A: That's right.

8 Q: Now, did I understand you to say that your job  
9 doesn't entail filling out cost reports or  
10 submitting cost reports?

11 A: Correct, I do not fill out cost reports.

12 Q: Well, if I'm asking you questions that you  
13 don't know the answer to, all you have to do is  
14 say I do not know. But do you know that  
15 Medicare cost reports are submitted to the  
16 federal government, and they are certified to  
17 be accurate?

18 A: I believe they are certified. Yeah, they are  
19 submitted to the government, and they are  
20 certified to be accurate. But the way Medicare  
21 evaluates certain costs -- they have certain  
22 costs that are allowable and not allowable from  
23 a Medicare reimbursement perspective. And  
24 that's about the extent of my knowledge on the  
25 topic. So that's why I don't think you can

1 make a comparison of what you find in a  
2 Medicare cost report to financial statements  
3 that are developed for financial reporting  
4 reasons. I think there's some methodologies  
5 that Medicare has. I'm not familiar with that,  
6 I just believe that's the reason they do it.

7 Q: Whatever the net revenue is that CHS Hospital  
8 makes -- you know, whatever that amount is,  
9 whether it's the cost report amount or  
10 financial statement amount, that amount goes  
11 back to the CHS system; isn't that correct?

12 A: That's correct. It is.

13 Q: And then the system would distribute it back  
14 out to the hospitals based on need, is that  
15 correct?

16 A: That's correct.

17 Q: And just -- just because Hospital A, say, makes  
18 more money and sends more money back to the  
19 system than Hospital B, that doesn't mean that  
20 Hospital A is going to get the same  
21 distribution back from the system. It doesn't  
22 even mean it's going to get more money back  
23 from the system than Hospital B; isn't that  
24 correct?

25 A: That's correct. I don't think there is a pro



1       rata of distribution of net income by hospital  
2       back to each hospital.       The capital is  
3       allocated based on where the need is. And the  
4       example I gave in my earlier testimony, we  
5       allocated \$20 million of capital to Anson  
6       Community Hospital, and they have operated a  
7       long period of time with no income.

8       Q: Now CHS, I believe you testified on direct, CHS  
9       you characterized it as a comprehensive system,  
10      right?

11     A: Correct.

12     Q: And I think you discussed and explained a  
13      number of financial services and reporting  
14      companies, including Standard and Poors; do you  
15      recall that?

16     A: I do remember mentioning them.

17     Q: And Standard and Poors is a financial service  
18      and a credit rating agency. And I believe we  
19      put up -- you actually put up some slides that  
20      had been submitted to DHEC about your S&P  
21      rating, is that correct?

22     A: I believe the slide I had up as an example was  
23      Moody's Investor Service. But I mentioned  
24      there were three major rating agencies. And  
25      Standard and Poors is one of the three.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: All right. And you have a good rating with  
2 S&P; don't you?

3 A: We do.

4 MR. WESTBROOK: All right. Let's look at  
5 Demonstrative 235, please.

6 Q: This is a Standard and Poors -- what's the date  
7 up there, Mr. Murphy?

8 A: April 23, 2012.

9 Q: All right. I suppose there has been more  
10 recent editions than this?

11 A: I don't know.

12 Q: Let's --

13 MS. ROBERTSON: Your Honor, I've got to interrupt  
14 again. This is the same objection as we had to  
15 the earlier demonstrative. Again, we are  
16 seeing demonstratives. I think this is not in  
17 the record. I'm going to object on the use of  
18 the demonstrative that is not in the record.

19 THE COURT: Mr. Westbrook?

20 MR. WESTBROOK: I don't know why a demonstrative  
21 would need to be in the record. A  
22 demonstrative is going to help illustrate Mr.  
23 Murphy's testimony. This is something that was  
24 taken from the CHS website. It is something  
25 that he mentioned in his direct testimony. In

1 his direct testimony he talked about the credit  
2 rating.

3 **THE COURT:** He did, I recall. He talks about Moodys  
4 or --

5 **MR. WESTBROOK:** Moodys, Standard and Poors.

6 **THE COURT:** And so you are -- the intent of this  
7 line of questioning is to pursue what he said  
8 -- to pursue more into what he said on direct  
9 about the rating?

10 **MR. WESTBROOK:** Well, it's not so much -- no, it's  
11 not so -- I didn't want to talk about the  
12 rating. I think he's put in plenty of evidence  
13 about the rating. But I did want to talk about  
14 if he is relying on -- if Standard and Poors is  
15 obviously a credible financial services report,  
16 to talk about the -- I'm going to ask him some  
17 questions in this report that describe  
18 Carolinas Healthcare System, and again ask him  
19 if they are correct now. I think these are  
20 fundamental questions. They are things  
21 actually that he testified about. Not the  
22 ratings -- some other things he testified. He  
23 talked about the different kinds of hospitals  
24 that they have in the system, component  
25 facilities, the leased facilities, the

1 management facilities, the owned facilities.  
2 And this report talks about those and just  
3 gives some very factual descriptions and  
4 summaries. I think it's stuff he's going to  
5 agree with.

6 **MS. ROBERTSON:** Your Honor, and I think some of the  
7 concern is that when we started the trial, we  
8 had objections on exhibits. We had a series of  
9 exhibits on some Tenet information, public  
10 record type information, other things that we  
11 had actually marked as exhibits. We received  
12 objections on all of those. And this seems to  
13 be a kind of back end way to now have exhibits  
14 talked about that are not exhibits and coming  
15 in through demonstratives. So --

16 **MR. WESTBROOK:** But they're not coming in. I mean,  
17 I am not offering this as an exhibit. I just  
18 want to ask him a question and say do you know  
19 if it's true or not.

20 **MS. ROBERTSON:** Well, and I guess, Your Honor, when  
21 you elicit testimony from a document that is  
22 not in the record and how he responds or that  
23 information then becomes part of the record.  
24 So it is seeking to admit information in a  
25 document not in the record. It's just doing it

1 from testimony, but it is still getting in the  
2 record.

3 **THE COURT:** Well, but if what Mr. Westbrook is going  
4 to do is ask him if he's familiar with this  
5 document or with this Standard and Poors  
6 research guide. And then ask him questions  
7 from that, I mean, he is permitted. I don't  
8 see how -- what the objection is to ask him  
9 this. The actual document itself isn't going  
10 to be marked or come in or at least they  
11 haven't marked it and ask that it be entered  
12 into the record as an exhibit. And of course,  
13 if it is, we can have that discussion at that  
14 time. But if the witness is aware of this and  
15 can answer questions about it, he certainly --  
16 I don't see where -- what's the objection to  
17 him doing that?

18 **MS. ROBERTSON:** Well, I guess he could ask him those  
19 questions without this information being up  
20 before him. And maybe as he starts to do that,  
21 we will see if this becomes appropriate. But  
22 I still see this as somewhat -- you know, the  
23 objections to the similar type of Tenet  
24 information as exhibits. And now them seeking  
25 to do this through demonstratives, I just want

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 the Court to appreciate that as we go down the  
2 road and seek to have our exhibits considered,  
3 as well. But I think it is trying to get  
4 information in the record that's not in the  
5 record.

6 **THE COURT:** And Ms. Robertson, I do appreciate your  
7 concern to the extent that exhibits that  
8 haven't been admitted as exhibits are being  
9 offered. I am not going to permit that to  
10 happen. But at the same time, I am going to  
11 permit Mr. Westbrook to at least go down this  
12 line a little bit to see if Mr. Murphy has  
13 knowledge of this and what's in this document.

14 **MR. WESTBROOK:** Thank you, Your Honor.

15 **THE COURT:** You can proceed, Mr. Westbrook.

16 **MR. WESTBROOK:** I appreciate it. Now, Dan, would  
17 you turn to Page 4 of this report, please.

18 **Q:** And, Mr. Murphy, there is a heading down there  
19 that says, Enterprise Profile. I want to start  
20 with a couple questions about this. And you  
21 can read as much of this as you like for  
22 context sake. The only thing I want to ask you  
23 is that first file out there it says, "CHS is  
24 the larger of two healthcare systems serving  
25 the Charlotte region." You testified on direct

1 about Presbyterian and comparing CHS with  
2 Presbyterian or Novant, I guess is  
3 Presbyterian's parent company. There were a  
4 number of slides. Is CHS the -- is the other  
5 large healthcare system serving the Charlotte  
6 region, is that Presbyterian or Novant?

7 A: It's Novant Health.

8 Q: Okay. And then the second highlight it says,  
9 "CHS's primary enterprise consists of ten  
10 hospitals." And then as a parenthetical  
11 describes those. Is that accurate? Do you  
12 know?

13 A: Well, if I can back up just for a minute. I  
14 just want to point out I have not seen this  
15 before to my knowledge. And this is  
16 information written by a rating analyst. And  
17 it says, "CHS is the larger of two healthcare  
18 systems serving the Charlotte region." And  
19 there are quite a number of other healthcare  
20 systems serving the Charlotte region. So  
21 there's not just two. So I would not agree  
22 with that first statement.

23 Q: All right. Would you agree that CHS in the  
24 Charlotte region is the largest healthcare  
25 system serving the Charlotte region?

1 A: I would agree that we are the largest of many  
2 healthcare systems serving the Charlotte  
3 region.

4 Q: All right.

5 A: Yes, sir.

6 Q: Fine. And does your primary enterprise consist  
7 of ten hospitals as it says here? Is that  
8 accurate?

9 A: I believe so, yeah.

10 Q: And two long-term care facilities, is that  
11 correct?

12 Q: Yes. And then it goes on to say two large-term  
13 facilities and 292 licensed beds and a large  
14 physician network of primary and specialty  
15 physicians and faculty at Carolinas Medical  
16 Center. Is that an accurate summary of the CHS  
17 system in the Charlotte region?

18 A: The quantitative statistics about our system I  
19 think are accurate. I just, you know, didn't  
20 agree with that first part.

21 Q: All right. The next paragraph, the first  
22 sentence says, "CHS's strategy of broadening  
23 its geographic outreach for the network of non-  
24 obligated entities including 23 hospitals and  
25 eight related nursing homes." Is that -- I

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



1 know on the chart we looked at earlier on the  
2 chart that you showed in your direct  
3 examination there was a list of I think the  
4 term is component facilities. Is that correct  
5 or is this something different?

6 A: I'm not sure it including 23 hospitals. There  
7 is likely a page in this report that would show  
8 what those 23 hospitals are. So I'm not  
9 exactly sure through a network of non-obligated  
10 entities. I believe those are referring to our  
11 managed hospitals. Now, that I am reading the  
12 non-obligated entities, I believe that's mostly  
13 the managed hospitals.

14 Q: And that's a term that you are familiar with  
15 that you use and that you use; isn't it,  
16 obligated entities and non-obligated entities  
17 or obligated group and non-obligated group?

18 A: Yes.

19 Q: And the obligated group would be what?

20 A: I believe the naming there refers to a group of  
21 hospitals that are obligated to pay on any bond  
22 debt.

23 Q: Okay.

24 A: That's the obligation term.

25 Q: And the non-obligated entities obviously would

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 not?

2 A: Right. Again, those are -- you know, when you  
3 contrast our healthcare system against Tenet or  
4 Novant we are very different. We have these  
5 non-obligated facilities that are simply  
6 managed hospitals.

7 Q: All right.

8 A: And many times remote areas from Charlotte.

9 Q: All right. And the third sentence in that  
10 paragraph states, "The component units which  
11 are separately included in the CHS audit are  
12 profitable and generate solid coverage of debt  
13 and related lease payments." Would you agree  
14 with that?

15 A: Yes. I believe those are the facilities that  
16 are listed below the primary enterprise on that  
17 list.

18 MR. WESTBROOK: Let's go over to the next page,  
19 number five.

20 Q: There is a heading that says, "Utilization."  
21 And again feel free to read as much of that as  
22 you like. The thing I was interested in was  
23 the reference to "Continued growth of CHS's  
24 physician network which has contributed to  
25 greater downstream admissions and outpatient

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 volume." Is that an accurate sentence?

2 A: If you don't mind, I'm just going to read the  
3 whole paragraph here.

4 Q: Sure.

5 A: Yeah, I think the -- I think that, you know,  
6 part of the sentence that you've highlighted is  
7 accurate. I think that there are many things  
8 before that that talks about the growth of our  
9 system. And as I testified earlier though, it  
10 is care coordination percentages when  
11 physicians refer to one of our affiliated  
12 physicians. There can be growth related to  
13 that. But again, the greater value of the  
14 physician network is the care coordination.

15 Q: All right. And the last sentence in that  
16 paragraph says, "Management reports that CHS  
17 volume growth during 2011 outpaced that of  
18 other providers of the service area." Is that  
19 correct?

20 A: For 2011, that may be correct. And again, our  
21 system as you go from the center of Charlotte  
22 and go out to the bedroom communities, they are  
23 much more densely populated, much higher  
24 population growth. So we benefit from that  
25 growth versus how providers outside that region

1 might be growing. So that's likely a large  
2 reason for that statement.

3 Q: All right. The next paragraph is headed,  
4 "Market Physician Network." And again, you can  
5 read as much of it, of course, as you like. My  
6 only question, though, about that relates to  
7 the final sentence. It says, "CHS competitors  
8 have experienced some payer mix erosion because  
9 CHS's Medicaid and uncompensated care inpatient  
10 market share has decreased in recent years."  
11 Is that correct?

12 A: Well, let me just take -- just reading that  
13 again to see if it's -- Well, when I was  
14 looking at some recent payer mix information  
15 for our inpatient hospitals in Charlotte, again  
16 this was -- I guess this is referring to 2011  
17 because this was dated April 2012. When you  
18 look at 2012, I think, and look back, our  
19 Medicaid payer mix for inpatient hospital is  
20 flat. I think our ED Medicaid is increasing  
21 through 2012. And I would say that Novant, a  
22 large healthcare system that has a number of  
23 hospitals in that region, over the last years  
24 they have increased their level of Medicaid and  
25 uncompensated care to a degree from this

1 competition because as we pointed out five  
2 years ago there was a huge disparity in our  
3 mix. So I think that may be what this is  
4 referring to.

5 Q: All right. And then the next paragraph or the  
6 next heading on this page, it says, "County  
7 Relationship." And again, feel free to read  
8 that first sentence if you'd like. But where  
9 I wanted to ask you about started with the  
10 second sentence. It's highlighted there. It  
11 says, "Mecklenburg County has historically  
12 funded the operating deficits of Carolinas  
13 Medical Centers, Outpatient Indigent Care  
14 Clinic as well as other indigent care provided  
15 to Mecklenburg County residents."

16 **THE COURT:** Ms. Robertson.

17 **MS. ROBERTSON:** Yes, Your Honor. I'm sorry to  
18 interrupt, but I have to renew my objection.  
19 Mr. Westbrook is reading into the record this  
20 document that's not an exhibit, which is  
21 exactly what I thought he was going to do. I  
22 do have to object on that basis. And I would  
23 also say just on this prior page we were  
24 looking at, he was having Mr. Murphy comment on  
25 competitors. We went through a long line of

1 objections on Mr. Murphy having any opinions  
2 about competitors or being able to refer to  
3 Tenet in its ability to compete and other  
4 competitive stuff that he has, on his direct,  
5 has mentioned. So I think this is crossing the  
6 line for a demonstrative at this point clearly.

7 **MR. WESTBROOK:** Your Honor, I'm not asking to  
8 comment on any particular competitor or whether  
9 any other competitor has the ability to  
10 compete. This is a document that obviously is  
11 about CHS. It's about CHS, and I'm asking him  
12 questions about CHS. I'm asking whether this  
13 document that he mentioned in his direct,  
14 whether these statements are accurate or not.  
15 And he can say, as he has. Sometimes he's  
16 explained it and said, no, I agree with this or  
17 I don't agree with this. That's all.

18 **THE COURT:** How much longer is this? I mean, how  
19 much more of this document are you planning on  
20 going through?

21 **MR. WESTBROOK:** I've got one more question.

22 **THE COURT:** One more question. I am concerned that  
23 this document appears to be just becoming a  
24 part of the record, a large section of it.

25 **MR. WESTBROOK:** Well, I mean, I can ask him a

1 question without -- I mean, basically I can ask  
2 him the same question, I guess, without the  
3 document. You know, on the screen or without  
4 him looking at it. In other words, if I ask  
5 the question: Isn't it true that Mecklenburg  
6 County has historically funded indigent care in  
7 Mecklenburg County? That would be the same  
8 thing but without a point of reference. And  
9 then he can say yes or no.

10 **THE COURT:** All right. Ms. Robertson.

11 **MS. ROBERTSON:** And Your Honor, I think if that's  
12 what he wants to do, that would be the  
13 appropriate way to ask the witness the  
14 question, not read the demonstrative into the  
15 record. So if he wants to ask the question,  
16 ask the question. But I don't think we need to  
17 refer to a document that's not in the record  
18 and, in fact, place it in the record by doing  
19 that.

20 **THE COURT:** Mr. Westbrook, could you ask your  
21 question without reading the document into the  
22 record?

23 **MR. WESTBROOK:** Yes, Your Honor.

24 **THE COURT:** Please, thank you.

25 **MS. ROBERTSON:** Thank you, Your Honor.

1 Q: Bear with me just a minute. Mr. Murphy,  
2 Mecklenburg County historically has funded  
3 indigent care provided by CHS; isn't that  
4 correct, to North Carolina residents?

5 A: I believe they have subsidized the losses we've  
6 incurred on certain indigent care clinics over  
7 the years.

8 MR. WESTBROOK: Over the years. Let me ask Dan to  
9 pull up CHS 5991, please. This is a document  
10 produced by CHS during the discovery process.

11 Q: Look at the top of the page. You talked on  
12 direct about attending project review. You  
13 were there as one of CHS's principal speakers;  
14 isn't that correct?

15 A: I was there, yes.

16 Q: June 29, 2011; does that sound --

17 A: That sounds about right.

18 Q: -- right? All right. This document, beginning  
19 at the top as you see, it says, "Potential  
20 Questions." And then number one says, "How  
21 much money does Mecklenburg County pay you each  
22 cashier indigent care?" And then Del in caps  
23 next to it. You're the only Del there and so  
24 I'm not --

25 A: That's me, correct. Yeah.



1 Q: And tell me, Mr. Murphy, I would assume that  
2 this is a document sort of prepping you and  
3 other participants for the project review in  
4 case you got questions from DHEC or anybody  
5 else about how to respond to those questions,  
6 is that right?

7 A: Yes. We were, you know, again anticipating  
8 criticism and wanted to be prepared from our  
9 competitor's criticism. And I haven't seen  
10 this document in almost two years. But this  
11 is, I believe the document we prepared for the  
12 project review.

13 Q: And you say you anticipated criticism. I  
14 understand that having been through some  
15 project reviews myself. But, you are also  
16 anticipating questions from DHEC staff, right?

17 A: Not necessarily. It was more, if -- I guess if  
18 we did get questions we'd be prepared. But it  
19 was just, again, in a broad sense for us to be  
20 very knowledgeable about what was going on with  
21 Mecklenburg County because I haven't been  
22 involved in those. At the time, I wasn't  
23 involved in the Mecklenburg County issues over  
24 the budget, and I just wanted to learn more  
25 about it.

- 1 Q: In the South Carolina project review meetings  
2 that you attended, the applicants don't ask  
3 each other questions; isn't that correct?
- 4 A: No, that's correct.
- 5 Q: Even staff intends to have -- usually ask  
6 questions of the outcome. Isn't that true?
- 7 A: That's true.
- 8 Q: All right. And in this one, the question is  
9 how much money does Mecklenburg County pay you  
10 each year for indigent care? And your response  
11 was -- just read the first sentence of the  
12 response. You can read more if you like to but  
13 that was --
- 14 A: "Mecklenburg County provides us about 16-and-a-  
15 half million each year for indigent care  
16 funding."
- 17 Q: All right. I'm sure that's -- I'm sure that's  
18 an accurate response; is it not, or it was at  
19 the time?
- 20 A: I believe so. Yeah, at the time.
- 21 Q: Let's go to question number two down there,  
22 please. And this questions says, "Why are you  
23 having so much trouble with Mecklenburg County  
24 at this time?" Dennis -- would that refer to  
25 Dennis Phillips?

- 1 A: It would.
- 2 Q: And he's another CHS executive?
- 3 A: He was. And he also was at project review as
- 4 one of our speakers.
- 5 Q: All right. And what's Mr. Phillip -- what was
- 6 he going to say if he received that question?
- 7 A: I don't know what he was going to say if he
- 8 received the question. I can tell you what was
- 9 on the page.
- 10 Q: And the purpose of this page, did we not
- 11 establish, was to prep Mr. Phillips and
- 12 yourself and the other speakers for appropriate
- 13 responses in case you got these questions?
- 14 A: That would be true. And if I could just put a
- 15 little context on this, at least for myself and
- 16 the job I had. Again, I wasn't familiar with
- 17 what was going on with discussion with the
- 18 County and the lawsuit and just wanted to be
- 19 prepared and was working with Dennis to prepare
- 20 for project review like I think our competitors
- 21 would, as well.
- 22 Q: All right. What was the prepared answer for
- 23 Mr. Phillips if he got that question? Can you
- 24 read it?
- 25 A: Sure, I can read it. "We have a wonderful

1           longstanding relationship with Mecklenburg  
2           County. And we have every reason to believe  
3           this relationship will extend into the future  
4           for many years to come. Quite frankly,  
5           Mecklenburg County is in the middle of their  
6           budget process. And given the situation, they  
7           are just doing their due diligence to ensure  
8           their financial house is in order. This has  
9           created some stress, but this is really to be  
10          expected from time to time."

11        Q: All right. And let's look at question number  
12           three: "Why is there a controversy of your  
13           proposed behavioral health facility?" It  
14           doesn't look like there is a person assigned to  
15           that. Do you remember who was assigned to that  
16           question?

17        A: No.

18        Q: What's the response?

19        A: "There is no real controversy. It is just a  
20           matter of Mecklenburg County sitting down with  
21           us and fully understanding the project need.  
22           In addition, the county has a concern with how  
23           the project could impact their budget given  
24           their ownership of CMC-Randolph, their 66-bed  
25           behavioral facility. Our discussions are

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1       progressing in the right direction." And I  
2       guess I would back up. I think this is  
3       referring to a behavioral health facility we  
4       were proposing to build at the time in north  
5       Mecklenburg County. I believe the county was  
6       concerned about how that was going to impact  
7       their budget. Because I think that all of  
8       these discussions, it's my understanding, were  
9       primarily about county budget shortfalls and  
10      the way they didn't provide us notice to  
11      terminate the contract.

12     Q: All right. At the time that the project review  
13       was held and at the time these answers were  
14       drafted, in fact, the county had put you on  
15       notice of a breach of contract; hadn't they?

16     A: That -- I don't know the timing of that. I'd  
17       have to -- again, that's not something I work  
18       on. I couldn't -- I know the date of project  
19       review. And I can't recall specific dates that  
20       were related to this issue with the county.

21     Q: All right. But you do know that they put you  
22       on -- at some point in time they put you on  
23       notice of breach of contract; isn't that  
24       correct?

25     A: I believe so. That sounds familiar.

1     **MR. WESTBROOK:**   Let's look at -- let's forget that  
2                   date and try to put it in context of the --  
3                   let's first back up and see what the date was  
4                   for the Project review meeting. Well, this  
5                   was prior to the Project review meeting, so  
6                   June 29, 2011. Let's put up that demonstrative  
7                   again, the complaint, Dan. And once again this  
8                   -- you've seen the cap -- let's turn over to  
9                   Page 28 of the Complaint just to get a date on  
10                  this.

11    **Q:**   This is the 14th of July 2011 from the Smith  
12           Moore Leatherwood firm, is that right?

13    **A:**   That's the date I see there.

14    **THE COURT:**   Ms. Robertson.

15    **MS. ROBERTSON:**   Yes, Your Honor. I think we've  
16                   talked about this demonstrative earlier. And  
17                   there's some concern about it obviously not  
18                   being in the record. And I think, Your Honor,  
19                   we talked about it not being related to this  
20                   case. And it's back up on the screen so --

21    **THE COURT:**   Mr. Westbrook, again, where --

22    **MR. WESTBROOK:**   Where are we going with this?

23    **THE COURT:**   Yes, where are we going with this?

24    **MR. WESTBROOK:**   There was -- has been a good bit of  
25                   testimony about the CHS as a nonprofit and its

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 mission, and the things that it does as part of  
2 that mission and the charity care that it  
3 offers. I think this contract relates to all  
4 of that. Excuse me, this complaint, this  
5 lawsuit relates to all of that. I think Mr.  
6 Murphy will testify that he has some knowledge  
7 of this. How much knowledge of this, I don't  
8 know. I don't expect him to have detailed  
9 knowledge. He just said, for example, that he  
10 didn't know the date that the county offered --  
11 he had notice of breach. I think we can  
12 clarify what that date was, put it in context  
13 with the project review date, and I think it's  
14 relevant for those reasons. I think it's --  
15 there are serious allegations by the county in  
16 their notice of breach of contract. There are  
17 serious back allegations by CHS against the  
18 county in their complaint. And it all relates  
19 to -- it's all over indigent care and  
20 behavioral health. Those are the two primary  
21 issues involved in that. And just seeing a  
22 document that showed what they were prepared to  
23 tell DHEC about that situation about indigent  
24 care and about behavioral health and about  
25 their relationship with the county. And so I

1 think it relates to all that.

2 **THE COURT:** All right.

3 **MS. ROBERTSON:** Your Honor, I don't think it's  
4 related. This is not in the record. And if he  
5 wants to ask Mr. Murphy questions about what he  
6 knows about it, then that's the way to ask  
7 these questions. But we are looking at a  
8 complaint that is not related to this case.

9 **MR. WESTBROOK:** And the other thing I would say,  
10 this and the other document that I am about to  
11 go into are public documents and not hearsay.  
12 They are not -- the complaint is obviously a  
13 part of the record. It was filed by CHS. And  
14 the other point I would like to make is that  
15 Mr. Murphy is clearly CHS's spokesman in this  
16 case. He's their witness they've designated to  
17 talk all about their system and about how they  
18 operate and their relationship with the county  
19 and the county and the good things that they  
20 do. And that's what his testimony is all  
21 about. I'm not trying to get this admitted  
22 into evidence. I think if I ask questions  
23 about it, his answers would be limited by his  
24 knowledge.

25 **MS. ROBERTSON:** Your Honor, there has been no

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



1 foundation laid to question this witness on  
2 this. It's hearsay really, and he's not laid  
3 any foundation to accept it out of that.

4 **MR. WESTBROOK:** It can't be hearsay. I mean, it's  
5 subject to the documents, public records.

6 **MS. ROBERTSON:** And the point I make is there is no  
7 foundations, and it's not authenticated through  
8 this witness for this witness to know that he  
9 knows anything about this. He asks him  
10 questions about it, then maybe he gets  
11 somewhere. But right now, we don't have any  
12 authentication. We don't have any information  
13 from this witness on this document.

14 **THE COURT:** Mr. Westbrook, I see where you're -- I  
15 see, I think. where you're going. And I don't  
16 know that asking questions about the witness'  
17 knowledge of this matter or of the lawsuit  
18 itself or if he has knowledge of the actual  
19 document itself. If he has knowledge of those  
20 and can testify about those, I think you can  
21 inquire into that and ask him, assuming that  
22 it's relevant -- that it bears no relevance to  
23 this proceeding. I would -- however, since the  
24 document is just a demonstrative exhibit, I  
25 would prefer we not read the document into the

1 record, since it hasn't been admitted into the  
2 record. But if you want to ask the witness  
3 about his knowledge of this lawsuit, about the  
4 underlying allegations or about the document  
5 itself whether he has any knowledge of it, help  
6 prepare it, was involved in it, has seen it, is  
7 aware of what it says; I think you are  
8 permitted to go down that angle. But as to  
9 actually reading it into the record, since it's  
10 not been admitted as an exhibit, let's not go  
11 there.

12 **MR. WESTBROOK:** All right. I understand. Thank  
13 you.

14 **THE COURT:** Thank you.

15 **MS. ROBERTSON:** Okay.

16 Q: Okay. I think I asked you this question, but  
17 given I was interrupted, I may not have.  
18 You're aware, are you not, at some point in  
19 time that Mecklenburg County gave a notice that  
20 it felt CHS was in breach of the contract  
21 between those two parties, is that correct?

22 A: I can tell you what I -- maybe the easiest way  
23 is for me to tell you what I know about this.

24 Q: Well, that's fine. But I want you to first  
25 answer the question, yes or no or I don't know

1 and then explain all you want to.

2 A: I have heard -- I recalled the county claim we  
3 were in breach of the contract. I've heard  
4 that from executives in our system. What I was  
5 going to say that I do know about this is that  
6 I've been at CHS for 17 years, and I don't  
7 recall another situation like this over my 17-  
8 year history with CHS where there were issues  
9 like this with the county. We work with county  
10 governments in North and South Carolina. I  
11 don't recall any controversies. We've had  
12 great relationships in Mecklenburg. And what  
13 I know about this is that the county did not  
14 give us proper notice to terminate. That's  
15 what my understanding is. And that's about the  
16 extent of my knowledge of this. I have not  
17 seen this before. And again, I was not  
18 involved in the discussion with the county, the  
19 lawsuits. And that's about the extent of it.  
20 And the project review document preparation  
21 was, again, that's not part of my job to be  
22 involved in these discussions. We have other  
23 folks working on these type matters. And  
24 again, we've had a long great relationship with  
25 the county, Mecklenburg County. And I think

1           there were budget constraints. And things just  
2           evolved. And that's about the extent I have.

3   **MR. WESTBROOK:** Let me ask Dan to put up on the  
4           screen something that is in the record. And  
5           that is from the project review submission by  
6           Piedmont, and I believe this is slide 19; is  
7           that correct, Dan? And that's slide 24. All  
8           right, from the project review submission by  
9           DHEC. And you see there's an article there of  
10          the Charlotte Observer June 12, 2011. And a  
11          call out from that article says the June 3  
12          letter from Carolinas Healthcare CEO Mike  
13          Tarwater, County Manager Harry Jones contended  
14          the hospital system has breached the contract  
15          by failing to provide requested information  
16          about CMC-Randolph's patients and finances.  
17          And you were at the project reviews, is that  
18          right?

19   A: I was.

20   Q: Do you recall this slide being put up?

21   A: I do recall the slide. And as I read it here  
22          today, I mean, it's county managers contending  
23          that we breached it.

24   Q: Right, I realize that's --

25   A: I do recall this, if not this exact slide, it

1 was something similar.

2 Q: And the date there, June 3rd, does that ring a  
3 bell as the date the county manager put you on  
4 notice -- put CHS on notice of a breach?

5 A: You know, I assume this is accurate. Again, I  
6 haven't seen the letter, didn't know the date.  
7 But if -- it looks like this reporter probably  
8 had a copy of the letter. I assume that's the  
9 correct date. Again, I'm not familiar with the  
10 letter.

11 MR. WESTBROOK: Let's look at the next line, Dan;  
12 again from the project review.

13 Q: The Charlotte Observer June 12, 2011. CHS  
14 doesn't intend to provide immediate details or  
15 responses to many of the questions Jones has  
16 raised. And Jones is the county manager, is  
17 that correct?

18 A: That's correct.

19 Q: Hospital spokeswoman Gail Rosenberg said, "It  
20 doesn't feel that there is a lot to be gained  
21 by that," she said. Do you recall that  
22 response at project review?

23 A: I don't recall this specific response. And I  
24 think as a policy we don't discuss issues that  
25 are in litigation with the press. It's just

1 sort of a policy that we have. I don't know if  
2 that's a formal policy; it's just my  
3 understanding.

4 Q: Now, after to this notice, you are aware that  
5 at some point in time the county actually  
6 terminated the contract with CHS; isn't that  
7 correct?

8 A: I believe so.

9 Q: And then as a result of that, you are aware,  
10 are you not, that CHS filed a lawsuit against  
11 the county, is that correct?

12 A: My limited understanding is that we did file a  
13 lawsuit. And it was because they didn't file  
14 the proper termination notice when they ended  
15 the contract.

16 Q: And that lawsuit is now over, is that correct?

17 A: I believe so.

18 Q: And as a result of that lawsuit, am I also  
19 correct that the county no longer funds that  
20 \$16-and-a-half million to CHS for those  
21 indigent care programs?

22 A: I don't believe they did.

23 Q: So is the county providing any indigent funding  
24 since this 2012 or 2011 or whenever the  
25 contract was finally terminated, have they

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 funded any indigent care for CHS since then?

2 A: I am not sure. I wouldn't know. They may  
3 have. I don't know if they terminated funding  
4 when those terminations might -- I don't know  
5 specific dates.

6 Q: All right. Mr. Murphy, you're aware, are you  
7 not, that in 2012, the Charlotte Observer ran  
8 a series of articles focused on CHS and other  
9 nonprofit hospitals in North Carolina, is that  
10 correct?

11 A: That is correct.

12 MR. WESTBROOK: And let me -- excuse me, ask Dan to  
13 put up the first of those articles and see if  
14 this is the site.

15 Q: This article says, "Charlotte Observer."  
16 What's the date on this?

17 A: Saturday, April 21, 2012?

18 THE COURT: I apologize, Mr. Westbrook. Is this an  
19 Exhibit number?

20 MR. WESTBROOK: No, it's just a demonstrative.

21 MS. ROBERTSON: At the bottom corner.

22 MR. WESTBROOK: Is there a demonstrative number on  
23 this?

24 MS. ROBERTSON: There is something on the corner of  
25 the bottom. I couldn't tell what it was.

1 **MR. WESTBROOK:** Oh, okay. It's from -- I'm sorry.  
2 There is the Bates Page. So this is from PMC  
3 documents produced, Bates Page  
4 11.2013.00030120. Now Dan, if you would go  
5 back up to the top. And Dan, if you could  
6 highlight where it says the five-part series.  
7 **Q:** Is this -- I asked you a question about it,  
8 were you familiar with a series of articles by  
9 the Charlotte Observer? Is this the series  
10 that you were talking about?  
11 **A:** Well, you asked me if I was familiar with the  
12 series? I assume this is the series that you  
13 were referring to, the one I am familiar with.  
14 **Q:** Well, and my question I think originally was  
15 are you -- something of this nature, are you  
16 aware that the Charlotte Observer ran a series  
17 of articles that were critical of CHS and other  
18 nonprofit hospitals in North Carolina? I  
19 believe you said you were, is that right?  
20 **A:** Yes. And I would, just for the Court, you  
21 know, I don't agree with what was published.  
22 And as an example, nonprofit hospitals thrive  
23 with profits. I don't agree with that  
24 statement. I mean, we have a profit. But we  
25 also operate in an industry that has the



1 highest capital requirements of many  
2 industries, if you want to talk about a lot  
3 of other industries. So the moneys we make are  
4 required to sustain our mission and to replace  
5 facilities and build new facilities as  
6 populations increase. And I think that, you  
7 know, we are responsible fiduciaries of the  
8 jobs that we have. And we have to have a  
9 viable healthcare system that has a profit so  
10 we can fulfill our mission. But I don't think  
11 we -- I just don't agree with the headings and,  
12 you know, much of these articles. It's my  
13 understanding that a lot of the information we  
14 gave to the Charlotte Observer didn't get  
15 printed.

16 Q: All right.

17 MS. ROBERTSON: Your Honor, if I may, and I don't  
18 know how we get around that. But we received  
19 an objection. And I think you might recall on  
20 exhibits and items or newspaper articles and  
21 treatises that we had sought to have admitted,  
22 this was a demonstrative, but it's the same  
23 concept of getting information in the record  
24 that's hearsay, and it's not admitted.

25 MR. WESTBROOK: My response, Your Honor, is, you

1 know, I'm not planning on reading into the  
2 record. This information is not being offered  
3 as an exhibit. I asked him if he was familiar  
4 with it. I am going to ask him some questions  
5 about his familiarity, his knowledge of some of  
6 the issues raised in this series, and I'm not  
7 offering it as evidence.

8 **THE COURT:** Okay. Ms. Robertson.

9 **MS. ROBERTSON:** Your Honor, I guess he could ask him  
10 the questions about these articles. And, you  
11 know, to the extent he ask the questions and  
12 we've got it in front of us and we're  
13 highlighting sections of it and portions of it  
14 are becoming parts of the record in an  
15 inappropriate way, I think.

16 **THE COURT:** Mr. Westbrook, you're going to ask him  
17 about -- you started down this line of  
18 questioning where you asked him if he's  
19 familiar with this series of articles done by  
20 the Observer. And he has testified that he is  
21 somewhat familiar with that. And then he has  
22 disagreements with the conclusions drawn, and  
23 he has given some of his reasons and rationale  
24 for why he's concluded, that he doesn't think  
25 those conclusions by the paper with regard to

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1       these issues were proper. You're then -- you  
2       want to proceed a little further into this and  
3       ask him about some specifics. But then about  
4       the article, to ask him if he is familiar with  
5       that and if he has an opinion about that; is  
6       that where you're going?

7       **MR. WESTBROOK:** Well, something of that nature. I'm  
8       going to bear in mind the instruction you gave  
9       me previously a few minutes ago not to read  
10      from the documents. So I wasn't planning on  
11      doing that.

12      **THE COURT:** And because at this point, now we are  
13      talking about a newspaper article that is a  
14      pubic document.

15      **MR. WESTBROOK:** So, you know, he said he is familiar  
16      with them. I am going to ask him about some of  
17      the issues that were raised in this series of  
18      articles by the Observer and ask him what he  
19      knows about it and some follow-up issues. But  
20      I'm not going to read from them.

21      **MS. ROBERTSON:** Your Honor, I would think a  
22      newspaper article is an exception to the  
23      hearsay rule. It's not an official public  
24      document that gets out of hearsay. I think it  
25      is hearsay. And I guess when he asks these

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 questions, we can see where this goes. But we  
2 are continuing to look at these on the screen,  
3 and we are continuing to refer to them. And it  
4 is hearsay and it is not of record.

5 **MR. WESTBROOK:** And I guess -- I mean, I agree with  
6 Ms. Robertson that the newspaper article is  
7 hearsay. I'm sure that's true. I don't think  
8 it is hearsay, though, if I'm asking a  
9 question, "Are you aware,?" because I don't  
10 think it's offered for the truth of the matter  
11 asserted. If I say, "Are you aware that the  
12 newspaper criticized you for having excess  
13 profits or whatever?"; yeah, I'm aware of  
14 that. But that's not being offered for the  
15 truth of the matter asserted. It's just  
16 something that happened. The newspaper made  
17 that accusation.

18 **THE COURT:** Well, but at this point if it is  
19 hearsay, what relevance does it have to this  
20 proceeding?

21 **MR. WESTBROOK:** Well, I think it is very relevant  
22 because it's going to get into the issues that  
23 relate to all the criteria. But I think again,  
24 we're not -- I'm not going to be reading from  
25 the newspaper article. I'm going to ask him if

1           it's true or not. And then his response will  
2           be, I think -- my guess is I think he's already  
3           indicated that he disagrees with a lot of these  
4           allegations that they are not true.

5   **MS. ROBERTSON:**       And I think Mr. Westbrook's  
6           description does mean he is offering for the  
7           truth of the matter asserted. I think that is  
8           what he is trying to do in violation of the  
9           hearsay rules.

10   **THE COURT:** Mr. Westbrook, I'm just trying to figure  
11           out if we're not -- if it is not being offered  
12           for the truth of the matter asserted, and  
13           you're just merely asking him are you aware of  
14           these series of articles, he's testified he is.  
15           He's testified that he disagreed with some of  
16           the conclusions drawn. Now, if we go further  
17           into that, you're talking about inadmissible  
18           hearsay. And you're asking him if he's  
19           familiar with the specific allegations where  
20           there may apparently be conclusions drawn and  
21           the allegations made, whatever, by these  
22           newspaper articles, which again are hearsay and  
23           therefore not admissible, and then ask him what  
24           his opinion of that is. I mean, in essence  
25           you're saying, well, do you think it's true

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1        what the newspaper article is saying? I don't  
2        know -- if we don't -- if this Court isn't  
3        going to assume that this is being offered for  
4        the truth of the matter asserted, then asking  
5        him do you agree or disagree with these  
6        assertions, then I'm not sure what other basis  
7        this is being offered for. And therefore, I  
8        can't get over the fact that it seems to be  
9        inadmissible hearsay to pursue this line of  
10       questioning.

11    **MR. WESTBROOK:** I'll move on.

12    **THE COURT:** All right. Thank you, sir.

13    **MR. WESTBROOK:** Let's go to Exhibit -- excuse me,  
14       114 please. I think this is something that you  
15       testified about in your direct. This is the  
16       one that is CHS's response to Piedmont's  
17       interrogatory.

18    **Q:** Do you recognize this, Mr. Murphy?

19    **A:** Yes, I believe this is --

20    **Q:** The one with the chart that we talked about?

21    **A:** Right.

22    **Q:** Let's go on down to what the question is, first  
23       of all. Well, that's fine. Let's just go to  
24       the chart since you've already talked about the  
25       chart. That's fine. And you've already

1 explained the chart. So I think I just want to  
2 ask you a couple of questions about the bottom  
3 half of the chart. I think you have already  
4 testified that the bottom half really  
5 summarizes its compilation of the top half,  
6 right?

7 A: That's correct.

8 Q: All right. And this gives by year, I take it,  
9 the data related to all CHS facilities or CHS  
10 facilities in North Carolina or what is this  
11 limited to?

12 A: I'm not certain of that, which facilities are  
13 included. My assumption would be that it's the  
14 primary enterprise that is wholly owned.

15 Q: I thought you testified you prepared the chart,  
16 but I assume you meant that somebody under your  
17 supervision prepared it, is that correct?

18 A: I actually formatted the chart into this format  
19 you see here. Someone else collected the data  
20 and sent it to me.

21 Q: All right. And the number of lawsuits by year  
22 is in that column, is that correct?

23 A: That is.

24 Q: And I don't think have to go through all these  
25 columns but -- skip a column. And then that's

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 the number of liens that were obtained, is that  
2 correct?

3 A: Correct.

4 Q: Now you -- I believe you testified under direct  
5 about the number of patient encounters and that  
6 this final column indicated a low percentage of  
7 patent encounters. Any lawsuits that would be  
8 filed by CHS against patients, those would be  
9 against patients that didn't pay the bills, is  
10 that correct?

11 A: Yeah, that's my understanding.

12 Q: So wouldn't the vast majority of these patients  
13 fall into the self-pay category?

14 A: No. I think the lawsuits are filed against --  
15 I think our financial counselors evaluate  
16 people's ability to pay their bills. And the  
17 lawsuits are filed against people who we deem  
18 have an ability to pay but aren't. And it is  
19 to get a dialogue going to work out a payment  
20 plan.

21 Q: I understand that, but you are not suing  
22 insured patients; are you, because insured  
23 payments would be paying their bills, right,  
24 through the insurance company?

25 A: Again, my understanding of this is the folks

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



1       who fall into this category and fall into, for  
2       instance, in 2011, the 4310, they are folks who  
3       have a wherewithal to pay part of their bill.  
4       And we are working this process to basically  
5       get a dialogue because we deem them able to pay  
6       their bill.

7       Q:   All right.   Let me try this one more time.  
8       Wouldn't you anticipate in your position that  
9       most of the people who end up being sued,  
10      wouldn't you anticipate that the vast majority  
11      would either fall in -- would fall into the  
12      self-pay category, they would be uninsured;  
13      wouldn't you believe that to be true?

14      A:   That's an area I'm not familiar with.   Again,  
15      I have an understanding of this.   And there are  
16      citizens who are, you know, less fortunate who  
17      have no ability to pay.   And it's my  
18      understanding we don't file lawsuits, judgments  
19      or liens against that group because they have  
20      no means to pay; therefore, we don't go down  
21      that road.

22      Q:   But you don't really know that; do you?

23      A:   You know, that's my understanding.   So, you  
24      know --

25      Q:   But you don't have first-hand knowledge of

1           that; do you?

2       A:    I don't process the lawsuits, judgments or  
3            liens, and I don't work in patient accounting.  
4            But from my understanding of working at the  
5            healthcare system, again it goes back to what  
6            I testified earlier, there is a very small  
7            group of patients who have the means to pay,  
8            And this is a process and philosophy that I  
9            think is -- you know, again it shows that a  
10          very small group of patients that fall into  
11          that category that have an ability to pay. And  
12          we believe, as fiduciaries of Carolinas  
13          Healthcare System, we need to have them pay  
14          part of their bill.

15       Q:   And isn't the definition of self-pay, a person  
16            who doesn't fall into the charity  
17            classification but who does not have insurance;  
18            isn't that correct?

19       A:    I'm not -- I can't say specifically how you get  
20            categorized into the self-pay from a payer mix.  
21            I'm assuming those folks are not sponsored by  
22            a federal or state government, Medicare or  
23            Medicaid. They are not commercially insured.  
24            So those may well be the classic charity  
25            patients that have no ability.

1 Q: Well, once again, I'm distinguishing -- I'm  
2 trying to distinguish my question. And if you  
3 don't know the answer to this, that's fine.  
4 Between charity patients and self-pay patients,  
5 charity patients are patients who qualify for  
6 charity care under the policy of the CHS  
7 agreement with the hospital; isn't that  
8 correct?

9 A: Right.

10 Q: Self-pay patients are patients who are  
11 uninsured but who don't qualify for charity  
12 care; isn't that correct?

13 A: That seems like the case, yes.

14 Q: I mean, you've been working in this business  
15 for a long time and that is correct. It  
16 doesn't seem correct, it is correct; isn't it?

17 A: Well again, I don't get into the details of our  
18 billing processes in how we categorize payer  
19 mix.

20 Q: Mr. Murphy, you've prepared how many CON  
21 Applications over the years?

22 A: Close to 200 or more.

23 Q: And each one of those would have some kind of  
24 financial projections, payer mix assumptions in  
25 them; wouldn't they?

1 A: They would.

2 Q: And you tell me you're not sure what self-pay  
3 means?

4 A: I'm not telling you what -- self-pay means that  
5 you are not sponsored by federal-state  
6 government or an insurance program. It means  
7 you have no other ability from federal  
8 government, state government. Do you have  
9 other means to pay? You might.

10 Q: But self-pay would be by definition not  
11 insured; isn't that correct?

12 A: That's true.

13 Q: Okay. And wouldn't you agree that the patients  
14 -- if you're saying that you're not suing  
15 charity patients, wouldn't you agree that you  
16 are only suing patients who are not paying  
17 their bills; isn't that correct?

18 A: You know, again, I'm not sure I understand your  
19 question. I guess I have to stick to what I  
20 know and what I understand. And what I  
21 understand is the patients who fall into the  
22 category of where we will, you know, file a  
23 lawsuit or judgment or lien are people we have  
24 deemed to have an ability to pay but aren't,  
25 for whatever reason in their lives, and we

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 believe we want to work with them to work out  
2 a payment plan.

3 MR. WESTBROOK: All right. Let's go to Page 44 of  
4 Mr. Murphy's deposition, please.

5 Q: Mr. Murphy, I'm just going to hand this up here  
6 to you, if that's all right, Your Honor. And  
7 if you can just break the seal and just turn to  
8 Page 44, please. And Dan will put it on the  
9 screen, too.

10 A: (Complies)

11 Q: All right. Where I'm going to ask you to go,  
12 Mr. Murphy, is there is a question that begins  
13 actually the last line of Page 43; Line 25 of  
14 Page 43 and then spills over. And I want to  
15 ask you the question from your deposition, I'll  
16 read in Ms. Robertson's objection that she  
17 makes for the question. And then I would like  
18 you to read in your response, okay?

19 A: You're on Page 43, 44?

20 Q: Yeah, I'm going to start Line 25 on Page 43,  
21 the very last line on that page.

22 A: Okay.

23 Q: The question says at the bottom of the page if  
24 you read the last two paragraphs, I'll just  
25 read them into the record. It says, "In a

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001395

1           sampling of 100 suits that Carolinas Healthcare  
2           filed against Mecklenburg County residents, the  
3           newspapers found that 71 of them didn't --  
4           either didn't own property in the county or  
5           owned houses assessed at less than \$150,000  
6           interviews with --"

7       **THE COURT:** Mr. Westbrook, let me stop you for one  
8           second. Go ahead, Ms. Robertson.

9       **MS. ROBERTSON:** And, Your Honor, I do need to object  
10           to this. And I did object to it at the time of  
11           the deposition, too. I think we're going back  
12           to referring to newspaper articles through this  
13           line of questioning. It is hearsay, it's not  
14           in the record, and we're back to that topic  
15           again. So I must object to this. And again  
16           it's hearsay.

17       **THE COURT:** Okay. Mr. Westbrook.

18       **MR. WESTBROOK:** Your Honor, this goes -- this really  
19           is for impeachment purposes. So Mr. Murphy has  
20           testified that they see charity care patients.  
21           He's testified to that on direct, and he's said  
22           it again here on cross. I think that is an  
23           emphasis of statement here, and I want to get  
24           him to read the reference of the question so I  
25           can set up a context of what he's answering to.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1     **MS. ROBERTSON:**     The question, Your Honor, is  
2     referring, and again, he is again reading from  
3     a newspaper article, which is hearsay. So I do  
4     object to the reading of the question in the  
5     record. And if it's something else -- I mean,  
6     if it's to a response that Mr. Murphy gave,  
7     maybe that's different. But this again is  
8     reading from a newspaper article into the  
9     record.

10    **THE COURT:**     Well, this is an impeachment. So I'm  
11    just trying to clarify here. You are seeking  
12    to impeach some testimony here because you  
13    think there's been an inconsistent statement  
14    made by the witness. And so there was a set-up  
15    question in the deposition which was objected  
16    to. And then is it the answer to that question  
17    that Mr. Murphy gave that is inconsistent with  
18    --

19    **MR. WESTBROOK:**   Right.

20    **MS. ROBERTSON:**   To get to the answer, you've got to  
21    get to the question. And the question is  
22    premised on hearsay. And the objection is in  
23    the record preserving that -- this discussion  
24    here today, Your Honor. So I object to the  
25    question that's hearsay. And I do not believe

1           it should be read into the record or asked of  
2           this witness.

3   **MR. WESTBROOK:** Your Honor, and again, maybe this is  
4           something you can review for yourself and make  
5           that decision. But the point of the question  
6           -- really the question, the final question is  
7           this: Do you have any way of knowing whether  
8           these statements are true or not? That is the  
9           question. And his answer is what I'm trying to  
10          elicit, the answer that he gave in his  
11          deposition. And that's -- so the setup about,  
12          you know, reading from the newspaper article  
13          here at the deposition is not being offered  
14          other than do you know whether it's true or  
15          not?

16   **MS. ROBERTSON:** And, Your Honor, I guess for context  
17          I'm not sure -- I mean, I think we were back on  
18          the answers to interrogatories and what Mr.  
19          Murphy did to prepare the answer to  
20          interrogatory on the practices of Carolinas.  
21          I don't even know if those interrogatories have  
22          been responded to, and maybe Mr. Westbrook will  
23          correct me, at the time of this line of  
24          questioning. So I don't know that this hearsay  
25          questioning can be impeachment to something he



1 subsequently did and has now testified about  
2 what he did in that process when he prepared  
3 the answers to the interrogatories. I don't  
4 believe that is proper impeachment, use of  
5 hearsay information.

6 **MR. WESTBROOK:** Well, you know, what I'm impeaching  
7 is this, on his direct testimony, Mr. Murphy  
8 said we don't sue charity patients. In his  
9 deposition, he says, I don't know.

10 **THE COURT:** I kind of see where that's where you're  
11 going. And to that, Ms. Robertson, it kind of  
12 doesn't seem -- the question that was posed  
13 prior to the answer that you objected to, Ms.  
14 Robertson, at that time, all that question is  
15 whether the truth of those allegations in the  
16 question are not at issue here. That question  
17 -- if it's -- all that does is set up his  
18 answer, which is that I don't have any way of  
19 knowing if those statements are true. Whether  
20 those statements are true or false or  
21 completely made up numbers or right on, spot-on  
22 accurate, is irrelevant. It's -- as I  
23 understand what Mr. Westbrook is attempting to,  
24 at this time do is to get into -- get into at  
25 that time Mr. Murphy then responded by saying

1           that he didn't have any way of knowing what the  
2           -- he didn't have any way of knowing whether  
3           those statements were true or not. So I don't  
4           think that we've got a hearsay problem at this  
5           point. I think at this point, what would be  
6           your objection to it?

7   **MS. ROBERTSON:** Well, he said he is doing this for  
8           purposes of impeachment. I think this  
9           deposition predates the work that Mr. Murphy  
10          did in responding to the interrogatory and the  
11          knowledge that he has about what he did and  
12          what's contained in that exhibit in the  
13          interrogatory response. So I don't know that  
14          you can back up to a previous time and impeach  
15          him on something that precedes what he just  
16          testified about and the basis for his  
17          testimony.

18   **THE COURT:** Okay. I think at that point, that would  
19          be something you could rehabilitate him on. So  
20          I am going to go ahead and allow Mr. Westbrook  
21          ask the question. And then if you wish to  
22          rehabilitate your witness or if he could  
23          explain his answer, then he can at that point.  
24          Go ahead, Mr. Westbrook.

25   **MS. ROBERTSON:** Thank you, Your Honor.

1     **THE COURT:** Thank you.

2     **Q:** Mr. Murphy, let's go back and start over there  
3         at Line 25 on the previous page. I will try to  
4         get through this quickly.

5     **MR. WESTBROOK:** Dan, if you could pull up 25.

6     **Q:** All right. At the bottom of the page, if you  
7         read the last two paragraphs, I'll just read  
8         them into the record. It says, "In a sampling  
9         of 100 suits that Carolinas Healthcare filed  
10        against Mecklenburg County residents, the  
11        newspaper found that 71 of them didn't --  
12        either didn't own property in the county or  
13        owned houses assessed at less than \$150,000.  
14        Interviews with 15 who were sued suggests at  
15        least a third of them probably should have  
16        qualified for charity care based on the incomes  
17        and assets. Do you have any way of knowing  
18        whether those statements are true or not?" Ms.  
19        Robertson, "object to the form. Go ahead". The  
20        witness?"

21    **A:** I said, "I don't have any way of knowing if  
22        those statements are true."

23    **Q:** All right. And you go on in your deposition  
24        and talk about how you gained some  
25        understanding of this from talking with a

1 gentleman named, Steve Burr, is that correct?

2 A: Correct.

3 Q: All right. But Mr. Burr, this is in his area,  
4 is that correct?

5 A: That's correct.

6 Q: All right. It's not in your area. I believe  
7 you testified already that you're not involved  
8 in how collections are run in your  
9 organization. Is that correct?

10 A: That's correct. And responding to the  
11 discovery request, I've learned more about this  
12 area. But again, it's not what I do in my job.

13 Q: All right. Now, the liens that are listed on  
14 that chart that you created that we went over  
15 a few minutes ago, those are liens on homes, is  
16 that correct?

17 A: I assume so.

18 Q: And you -- I believe you testified on direct  
19 that you use those liens, you put liens on  
20 homes for the purpose of really getting  
21 leverage on folks to enter into payment plans,  
22 is that correct?

23 A: That's correct.

24 Q: Now, if somebody wanted to refinance their  
25 house or put a lien on their home or CHS or

1           anybody else had a lien on their home, don't  
2           you think they'd have some trouble refinancing  
3           their house?

4    A:    Well, and this is -- I'll tell you what I know.  
5           What my understanding is that we have never not  
6           allowed a home to be sold or refinancing to  
7           take place.

8    Q:    But that's based on what Steve Burr tells you?

9    A:    That is.

10   Q:    All right. And, in fact, if somebody wanted to  
11          refinance their house and Carolinas had a lien  
12          on it, they went to the bank and the bank said,  
13          no, we can't refinance. I mean, Mr. Burr,  
14          wouldn't have any way of knowing that; would  
15          he?

16   A:    If the bank didn't call him, I guess not.

17   MR. WESTBROOK: Now, Your Honor, at this point we  
18          have been going for awhile and it's --

19   THE COURT: You'd like to take a break?

20   MR. WESTBROOK: -- which I take responsibility for  
21          in large part. Yeah, it might be a good time  
22          for a break.

23   THE COURT: Yeah, if this -- yeah, about 15 minutes.

24   MR. WESTBROOK: Yeah.

25   MS. ROBERTSON: Thank you.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

And Mr. Westbrook, sir.

Q: Mr. Murphy, there's been a good bit of testimony about the expansion at Pineville, CMC-Pineville over the last several years. Just to clarify, the -- I think you said this, but I want to make sure I understand, the service area for CMC-Pineville as articulated in the 2007 application included -- it's larger than York County but it included York County in it; isn't that correct?

Q: It includes all of York County, is that right?

Q: And the -- and I think there has been a good bit of testimony about the bed increase. And there were also different kinds of services that were added to Pineville; isn't that correct, that they had a number of speciality tertiary services like open heart, neurosurgery and neonatal and that kind of thing. Is that right?

A: That's correct.

1 Q: Now, currently there are about 70 to 90 CHS  
2 employee positions in York County, is that  
3 correct?

4 A: That's approximate, I think.

5 Q: And CHS -- excuse me, CMC-Fort Mill, its  
6 service area is entirely York County, is that  
7 right?

8 A: It's primary and secondary service oriented  
9 that cover York County, yes.

10 Q: That's right. So together they cover York  
11 County, is that right?

12 A: Right.

13 Q: Now, CHS through Pineville and I guess through  
14 other facilities as well have been serving York  
15 County since at least 2007 if not before, is  
16 that right?

17 A: CHS has been serving York County for, you know,  
18 probably since, you know, the 1940's. I would  
19 assume the patients travel as long as we needed  
20 to assist them, and that dates back to 1943.

21 Q: Now, there was testimony about the, I believe,  
22 about the provision of care that CHS has  
23 offered in northern York County. And you have  
24 some Urgent Care Centers that you have opened  
25 up recently in northern York County, is that

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 correct?

2 A: There is an Urgent Care Center in Fort Mill  
3 that was opened a couple of years ago.

4 Q: What's that called; do you recall? Do you have  
5 the name of it?

6 A: I'm not positive. It may be CHS-Fort Mill or  
7 something to that effect. It has Fort Mill in  
8 the name.

9 Q: And you're building another one that is  
10 referred to as Ballentine, is that correct? Is  
11 that in the process of being build; do you  
12 know?

13 A: I'm not aware of an Urgent Care Center being  
14 built in Ballentine.

15 Q: Is it a NOB rather than an Urgent Care Center  
16 or medical office building?

17 A: I'm not aware of it right now. I may be  
18 drawing a blank, but I'm not aware of any  
19 construction. There is a construction, I  
20 believe, of potentially a children's Urgent  
21 Care Center in Blakeney which is close to  
22 Ballentine, if that's what you're referring to.

23 Q: Let me ask you, is the Celanese Road exit off  
24 I-77, what's being constructed there?

25 A: I'm sorry. That Calanese Road and 77, that is



1 a medical office building where we are  
2 consolidating a number of our York County  
3 practices. But that is Rock Hill and not  
4 Ballentine.

5 Q: Are there plans to provide urgent care services  
6 there?

7 A: Not that I'm aware of.

8 Q: Has CHS ever offered to establish an Urgent  
9 Care Center in western York County?

10 A: Memory is a little vague on it. I think we may  
11 have had one in western York County years ago  
12 and closed it. I know there's been discussion  
13 about it during this process, but I don't  
14 remember exactly what our services were in  
15 western York, but that's my recollection.

16 Q: When you say discussion during this process,  
17 CHS hasn't proposed to provide urgent care  
18 services as a part of this process in western  
19 York County; has it?

20 A: No, no; we haven't.

21 Q: And CHS hasn't proposed to the county to offer  
22 24/7 ambulance services in York County; have  
23 they?

24 A: I'm not familiar with what we may be doing in  
25 the emergency services area with the ambulance

1 services. I know there has been discussions  
2 about that. But I don't know with York County  
3 or not. I know we have discussions with Tega  
4 Cay and whatnot.

5 Q: As part of this, you are in charge of this CMC-  
6 Fort Mill CON initiative, is that correct?

7 A: Right.

8 Q: As part of that, I'm going to say initiative or  
9 project or whatever the most perfect word would  
10 be. As part of that project, there hasn't been  
11 any proposals by CHS to offer county-wide free  
12 ambulance services; has it?

13 A: No.

14 Q: And there hasn't been any proposal as part of  
15 that project to offer quarterly or financial,  
16 quarterly or annual financial reports to York  
17 County by CHS or CMC-Fort Mill; has there?

18 A: There hasn't been any proposal. And we haven't  
19 been required to do that in any county where we  
20 operate. So we just haven't been -- unlike  
21 Tenet, we haven't been required to do that.

22 Q: And in fact, when going back to the question  
23 about the Urgent Care Center, didn't CHS  
24 represent to DHEC that an Urgent Care Center in  
25 western York County wasn't relevant to these

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 CON Applications or these CON projects?

2 A: Well, I think I remember a representative from  
3 Novant Health basically saying, I believe at  
4 the first project review, that if they were  
5 awarded the certificate of need application,  
6 they would build an Urgent Care Center in  
7 western York County. And we may have said  
8 something along those lines that there is  
9 nothing in the criteria that would require you  
10 to build an Urgent Care Center as a part of  
11 getting approved for this project.

12 Q: So it was CHS's position, was it not, that that  
13 Urgent Care Center in western York County  
14 wasn't relevant to the project; isn't that  
15 correct?

16 A: You know, I don't think an Urgent Care Center  
17 in western York County is relevant to the CMC-  
18 Fort Mill proposal that we have. I mean, it's  
19 relevant in the sense that both are about  
20 meeting healthcare needs. But, you know,  
21 western York is not Fort Mill, and it's a  
22 different type of service.

23 Q: Now, you talked about CHS. On direct, you  
24 talked about CHS being an integrated system I  
25 believe, is that right?

1 A: Correct.

2 Q: And an integrated healthcare system, as I  
3 understood you to testify, and I've heard you  
4 talk about that before is a system that in  
5 which hospitals and physicians and the entire  
6 continuum of care is working together towards  
7 trying to be bring about high-quality low cost  
8 care; is that accurate?

9 A: That's correct, that's right.

10 Q: And an integrated system, if its managed  
11 correctly, should increase efficiency; would  
12 that be true? Wouldn't that be one of the  
13 points of it?

14 A: Yes.

15 Q: And being able to provide tertiary and  
16 community services within one system through  
17 hospital services and physician services, that  
18 would be one aspect or one goal of an  
19 integrated system; would it not?

20 A: To -- I'm not sure I understand your question.

21 Q: Let me rephrase that. That's all right. Yeah.  
22 In other words, one of the goals of an  
23 integrated system would be to provide both  
24 community services and tertiary service?

25 A: Right.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: And it's possible, I think, you agree; would  
2 you not, for a system to be integrated. And  
3 you could have a great number of facilities or  
4 as few as just two hospitals; wouldn't that be  
5 possible?

6 A: That would be possible, yes.

7 Q: Let me ask you about the projections in your  
8 updated application. First of all -- and you  
9 testified about this. My understanding is it  
10 was your understanding, based on your  
11 understanding of what was required, CHS  
12 submitted its -- really its updated  
13 projections, its updated financial projections  
14 and utilization projections and cost  
15 projections and things of that nature in  
16 December of 2010, is that right?

17 A: That is correct. We submitted them following  
18 the October -- the first submission I believe  
19 it was December the 3rd.

20 Q: Right. And the -- that was -- what was that,  
21 two months after Presbyterian and Piedmont  
22 submitted their projections, is that correct?

23 A: The initial projections were submitted in March  
24 of 2005. So I mean, to be technical about it,  
25 it was four years later.

1 Q: Well, let me put it this way then. Would you  
2 agree that updated submissions following the  
3 remand, the first submission is following the  
4 remand that Presbyterian and Piedmont made were  
5 in October 2010; isn't that correct?

6 A: They filed their updated information in  
7 October. We filed ours in December. And as I  
8 testified, we were uncertain what to file in  
9 October. And so we took the course of action  
10 that we did and then filed our updated  
11 projections in December. And that was based on  
12 what was written in Judge Matthew's order, and  
13 it was based on -- and I don't know if I can  
14 get -- not getting any clarity from DHEC on  
15 what to file.

16 Q: Now, going into those utilization projections,  
17 it's your position, is it not, or CHS's  
18 position in the updated projections that it  
19 filed in or submitted to DHEC in December of  
20 2010, that the CMC-Fort Mill project would not  
21 take any more patients from Piedmont than CHS  
22 is currently taking; isn't that your position?

23 A: Yeah. Our position was after looking, you  
24 know, again when we initially filed the  
25 application, when we looked at the market

1 share changes that had occurred from 2000-2003,  
2 and we looked at that. And then we looked at  
3 what community hospitals typically maintain in  
4 market share. We set our market share for CMC-  
5 Fort Mill at approximately 40 percent to be  
6 representative of what other community  
7 hospitals would maintain. So we didn't, in  
8 essence, assume that CHS overall would grow its  
9 market share of York County through the  
10 development of CMC-Fort Mill.

11 Q: And I appreciate that explanation. And I  
12 remember your testifying to that on direct.  
13 But going back to my question just to clarify,  
14 isn't it your position that CMC-Fort Mill will  
15 not take anymore patients from Piedmont than  
16 CHS is currently taking; isn't that right?

17 A: We assumed that we would not increase our  
18 market share.

19 Q: Well, my question is not about market share.  
20 I will get to that in a minute. I understand  
21 your testimony about market share, and I  
22 understand there is a correlation between  
23 market share and patients. But in terms of  
24 numbers of patients, that's a slightly  
25 different question; isn't it? In terms of

1           numbers of patients, isn't it true that CHS is  
2           not proposing to take anymore patients from  
3           York County than it's currently serving; isn't  
4           that correct?

5       A:   No, that's not really the way I sort of see it.  
6           The way I would explain it is if you look at  
7           our model, we held our use rate constant and  
8           let the market level grow with population  
9           growth. So the number of patients from York  
10          County increased over our projection period.  
11          And we held our market share constant. So we  
12          were taking more patients. But again it was  
13          relative. It's a relative thing in terms of we  
14          maintained that approximate 40 percent market  
15          share. And over the course of our projection,  
16          the demand -- or for inpatient hospital  
17          community service was increasing. So we were  
18          taking more patients from York County. But we  
19          weren't taking market share from Piedmont. I  
20          think that's the way I process your question.

21       Q:   All right. Let me ask you to turn to Page 10  
22           of your deposition, please, sir.

23       **MR. WESTBROOK:** And Dan if you would put that on the  
24           screen for us please.

25       Q:   And I'm going to -- I have a question, Mr.



1           Murphy, that starts at the bottom of Page 10 on  
2           Line 20. But to try to just -- it's the first  
3           part of the first couple of lines. It's just  
4           sort of a setup. My real question begins on  
5           22, Line 22. I'm going to read that and ask  
6           you to read your answer. Starting at Line 22.  
7           "Is it Carolinas' position that they will not  
8           take anymore patients from Piedmont than they  
9           are currently taking?" And your answer was  
10          what?

11       A:    "Correct."

12       Q:    So isn't that correct?

13       A:    Well, that's what I just said.

14       Q:    I'm sorry. I didn't understand you. All  
15              right. Now, so going back to market share,  
16              your market share, you're proposing that you  
17              would shift your market share of York County  
18              patients to CMC-Fort Mill. That is -- and when  
19              I say your market share, I'm saying CHS's;  
20              right?

21       A:    That's correct.

22       Q:    And so I believe the projection is that  
23              essentially over 3,300 patients would be  
24              shifted to CMC-Fort Mill in its first year of  
25              operation, is that right?

1 A: Well, the market share would be shifted,  
2 correct. The patients that had typically gone  
3 -- or the population in need of healthcare or  
4 inpatient community service that had typically  
5 gone into Mecklenburg, we assume that the  
6 market share would shift from the hospitals in  
7 Charlotte to CMC-Fort Mill.

8 Q: And as a result of that shift that you just  
9 talked about, would be, would it not -- if CMC-  
10 Fort Mill is built, you would not expect there  
11 to be any increase in patients from York County  
12 going to CHS?

13 A: No. That's again not the way I see it. I  
14 mean, if we build CMC-Fort Mill and our  
15 projections held true with the use rate plat  
16 growing with -- and market demand growing with  
17 population, from just the math standpoint, we  
18 would be seeing more patients from York County  
19 than we are now.

20 Q: All right. Let me ask you to look on Page 18  
21 of your application, please. All right, your  
22 application -- I mean your deposition. And  
23 there on Page 18, Mr. Murphy, my question  
24 starts at Line 15. My question on Line 15  
25 says, "My understanding is from your earlier

1 testimony and from the material submitted to  
2 DHEC that you don't expect there to be any  
3 increase in patients from York County going to  
4 CHS if CMC-Fort Mill is built; right?"

5 A: Yeah, and I see your line of question.

6 Q: Just read your answer.

7 A: My answer was, "That's correct."

8 Q: Okay. So since I interrupted you there, once  
9 again, my question was -- I'll just read the  
10 second half, "you don't expect there to be any  
11 increase in patients from York County going to  
12 CHS if CMC-Fort Mill is built, right?" And  
13 then just read your answer, and then you can  
14 explain it if you want to.

15 A: I said, "That's correct." And prior to my  
16 deposition, I didn't go back through our model  
17 and really evaluate, you know, the implications  
18 of our projection. I know -- I remembered how  
19 we did it, but when you look at the forecast,  
20 we actually are taking more patients. But I  
21 think what the focus here is are we taking more  
22 market share. You know, that's why I'm sitting  
23 here today thinking about that projection. And  
24 we are holding market share constant. But  
25 because we assumed inpatient demand would grow

1 with population growth, we would be capturing  
2 some additional patients. But they wouldn't be  
3 coming from Piedmont.

4 Q: All right. And your goal, CHS's goal in this  
5 project is not to increase it's market share  
6 but simply to maintain its current market  
7 share; isn't that right?

8 A: Yeah. Our goal in this project is to serve  
9 patients who currently --

10 Q: Let me ask you to answer my question yes or no  
11 and then explain it. Okay?

12 A: Okay.

13 Q: So my question again was: CHS's goal in this  
14 project is not to increase its market share but  
15 to maintain its market share; would you agree  
16 with that, yes or no?

17 A: Our goal in this project is not to increase  
18 market share. It's to serve patients who are  
19 currently leaving York County closer to home.

20 Q: It's actually to maintain your current market  
21 share; isn't that part of your goal?

22 A: We would like to, yes.

23 MR. WESTBROOK: Okay. All right. Let me ask my  
24 friend Dan to put up Demonstrative 155 on the  
25 screen, please.

1 Q: Now, you testified on direct about your  
2 observations to proposed sites, is that right?

3 A: I'm sorry. I was looking at your map.

4 Q: That's okay. Over -- on your direct  
5 examination you gave some testimony about your  
6 personal observations of the two proposed  
7 sites, the Fort Mill Medical Center site and  
8 the CMC-Fort Mill site; do you remember that?

9 A: Yes.

10 Q: All right. And I don't know if you were here  
11 for the testimony of Mr. Walsh earlier, but  
12 this is the demonstrative from Mr. Walsh. And  
13 I guess my question, you testified about the  
14 traffic levels. And I believe you gave some  
15 information that had been presented to DHEC  
16 about the traffic volume at those two sites, is  
17 that right?

18 A: Yes, we did. We went to the Department of  
19 Transportation and just got, I think, hours  
20 daily of traffic volume.

21 Q: All right. And for the traffic volume of the  
22 Fort Mill site, did you check the traffic  
23 volume of both Highway 160 and Highway 21 or  
24 just 160; do you know?

25 A: I don't recall, no.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 Q: And did you check the capacity of those two  
2 highways for dealing with traffic?

3 A: I don't recall checking the capacity.

4 Q: And do you recall whether you checked the  
5 unused capacity or the excess capacity for  
6 those two highways?

7 A: No.

8 Q: Do you recall -- moving down to the CMC site,  
9 I guess that would be Demonstrative 156,  
10 perhaps? Do you recall if you checked with the  
11 Department of Transportation about the  
12 capacity, current data traffic or the unused  
13 capacity at the Sutton Road exit off of I-77?

14 A: You know, when we were responding after project  
15 review and we put the information in our  
16 submittal after project review, it was in  
17 response to the criticism of our site. And as  
18 a part of the certificate of need process. I  
19 don't select hospital sites. We have a team of  
20 people with deep expertise.

21 Q: And so you don't -- do I understand to say that  
22 you don't have expertise in selecting hospital  
23 sites?

24 A: I don't do that as a part of my job. But I  
25 rely on folks. And as I pointed out two

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 healthcare systems that have a track record for  
2 building healthcare facilities, both chose Exit  
3 83.

4 Q: And the Presbyterian site is on the other side  
5 of the interstate, correct?

6 A: It is.

7 Q: It is not directly across from Love's Truck  
8 Stop; is it?

9 A: No.

10 Q: When I say is it, I guess was it would be a  
11 better way of saying it.

12 A: Yeah, it's on the other side.

13 **MR. WESTBROOK:** Let's take a look at something that  
14 was introduced at project review. Dan, let's  
15 go to the videotape.

16 Q: This is a short -- I think it's a minute and a  
17 half, something like that, video. See if you  
18 remember seeing this at project review. Now,  
19 you remember seeing this at project review,  
20 don't you, Mr. Murphy?

21 A: I do remember a video like this at project  
22 review.

23 Q: And during the project review process after  
24 that video was played, didn't you tell DHEC  
25 that you had been at the site many times and

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

RECORD 001421

1 had never seen a truck?

2 A: You know, I did. And as I reflect on that,  
3 what I probably should have said is that I  
4 didn't notice a truck. And it would be  
5 tantamount to me asking today when you drove  
6 here did you see a Honda Accord? You may have,  
7 but your brain didn't, you know, register that  
8 you had seen a truck. But I have been to this  
9 site many, many times, and I've never seen  
10 what's demonstrated in this video, nothing  
11 remotely close to it. And that's why I believe  
12 I reacted the way I did at project review. And  
13 I drive up and down 77 and have never seen  
14 anything remotely close to this. And last  
15 Thursday when I went home, as I testified  
16 earlier, I took the loop going up 21 and came  
17 back down Sutton Road. And if you go drive  
18 south on Sutton Road, you don't see the truck  
19 stop until you're literally there. And, you  
20 know, again, I don't know when this video was  
21 done. And, again, I've never seen anything  
22 remotely close to it.

23 Q: On direct, you testified about the support  
24 letters --

25 A: Okay.



1 Q: -- that CHS collected and the other applicants  
2 collected.

3 MR. WESTBROOK: I would like to ask Dan to put on  
4 the screen please, Joint Exhibit 1B.

5 Q: And this is already into evidence, Mr. Murphy.  
6 This is the analysis from Ms. Brandt  
7 accompanying her decision letter. And you  
8 testified about the number of letters that were  
9 submitted.

10 MR. WESTBROOK: I want you to highlight the third  
11 sentence there, Dan, for me.

12 Q: And Mr. Murphy, can you read that sentence,  
13 please?

14 A: "The current reported totals are 10,004 letters  
15 for Presbyterian, 5,053 for Carolinas, and more  
16 than 5,400 for Piedmont."

17 Q: All right. So according to Ms. Brandt's count,  
18 both Piedmont and Carolinas submitted over  
19 5,000 letters, is that correct?

20 A: Well, I don't believe this accurately reflected  
21 all of the letters we had submitted.

22 Q: I see.

23 A: As I testified earlier, I think our count was  
24 over 9,000.

25 Q: All right. So what else is inaccurate

1 factually about Ms. Brandt's report?

2 A: I didn't see anything else other than this.

3 Q: Let's look at the next sentence, please. It  
4 says, "The department received -- directly  
5 receives 34 letters of opposition to Piedmont  
6 from the community." Didn't you testify on  
7 direct that you had seen thousands of letters  
8 of opposition to Piedmont?

9 A: Well, in our letters of support packages,  
10 again, we put all of our letters and internet  
11 responses into notebooks. And we would put  
12 them all in there. And then we would put in  
13 front of the notebook a table with every  
14 person's name and their address. And my  
15 estimate is that there were thousands of  
16 letters that we received that supported us but  
17 also mentioned something negative about  
18 Piedmont. That's what I meant.

19 Q: Okay. Well, Ms. Brandt counted 34 letters of  
20 opposition? Do you think that's another  
21 inaccuracy?

22 A: Well, I think here she is referring to letters  
23 the department directly received. And I take  
24 that to mean someone wrote her a personal  
25 letter. And what I'm referring to are letters

1 that were directed to us.

2 Q: And you didn't submit those letters to DHEC?

3 A: Yes, they are all on file with DHEC.

4 Q: All right. And apparently Ms. Brandt didn't  
5 count as an opposition letter to Piedmont, is  
6 that right?

7 A: No, I think she is saying here the department  
8 directly received 34. I believe she means, and  
9 you'd have to ask her obviously, my assumption  
10 was these were letters someone addressed  
11 directly to her submitted. And what I'm saying  
12 is our letters were embedded in our notebooks  
13 and mentioned a lack of non-support for  
14 Piedmont. So I think they are two different  
15 things.

16 MR. WESTBROOK: Let me ask Dan to pull up CHS 5908,  
17 please. This is a document submitted in  
18 discovery by CHS. And just pull it up closer  
19 where we can read it.

20 Q: This is a -- it looks like an email from you to  
21 Martha Ann McConnell. Who is Martha Ann  
22 McConnell?

23 A: She is our vice-president of government  
24 relations.

25 Q: All right. What is the date of email?

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 A: June 23, 2011.

2 Q: All right. And at the beginning, how about  
3 reading that first paragraph for us, please.

4 A: "I believe Chris may have spoken to you about  
5 this a few weeks ago. As you are aware,  
6 Governor Haley replaced all but one member of  
7 the seven-member DHEC board several months ago.  
8 The question I have is this: Could our South  
9 Carolina lobbyist visit with each DHEC board  
10 member over the next 30 days to educate them  
11 about the CHS mission, our role in South  
12 Carolina, etcetera. The purpose of the visit  
13 is simply to let them know who CHS is and why  
14 we need a hospital to serve our South Carolina  
15 patients in northern York County. Obviously  
16 the board members may have questions about CHS  
17 or our proposal."

18 Q: Did the lobbyist or another CHS representative  
19 make those contacts with board members?

20 A: I don't believe so. I don't think so.

21 Q: Do you know for sure or just -- you indicate  
22 some uncertainty?

23 A: My memory, you know, again; this is a couple of  
24 years ago. My memory is that no one from CHS  
25 visited those DHEC board members.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

- 1 Q: All right. Did you ever get an email, because  
2 I don't see one produced by CHS in response to  
3 this saying that that did not occur?
- 4 A: No. But my memory is there was conversation  
5 after this where it was my belief is that there  
6 was no context. I don't recall anything in  
7 writing.
- 8 Q: Who was the lobbyist you were referring to  
9 there, your South Carolina lobbyist?
- 10 A: I don't know the lobbyist by name.
- 11 Q: Do you have more than one South Carolina  
12 lobbyist?
- 13 A: I think we have a firm that has more than one  
14 lobbyist that we work with.
- 15 Q: What's the name of the firm?
- 16 A: I couldn't tell you.
- 17 Q: All right. Let me just broaden my question  
18 that I asked you a few minutes ago. I think I  
19 -- I'm not sure exactly how I worded the  
20 question, but it was probably something to the  
21 effect: Did anyone from CHS or CHS lobbyist  
22 visit board members, to your knowledge? And if  
23 you don't know, that's fine. To your  
24 knowledge, did anyone, whether employed by CHS  
25 or whether a lobbyist or not, did anyone meet

1 with DHEC board members on behalf of CHS  
2 related to this project?

3 A: To my knowledge, no one on behalf of CHS met  
4 with any DHEC board members to discuss the  
5 project.

6 Q: All right. But you proposed that they do, is  
7 that correct?

8 A: Well, as I read this -- let me just read it  
9 again, because I'm not -- you know, let me just  
10 take a minute.

11 Q: All right. While you are taking a minute, I  
12 think I'm going to read it, too. I'm going to  
13 read it out loud so we can all concentrate on  
14 what it says, "Martha Ann, I believe Chris,"  
15 and who is Chris, by the way?

16 A: Chris Summer is the administrator of CMC-  
17 Pineville.

18 Q: Okay, "Martha Ann, I believe Chris may have  
19 spoken to you about this a few weeks ago. As  
20 you are aware, Governor Haley replaced all but  
21 one member of the seven- member DHEC board  
22 several months ago. The question I have is  
23 this: Could our South Carolina lobbyist visit  
24 with each DHEC board member over the next 30  
25 days to educate them about the CHS mission, our

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1           role in South Carolina and so forth? The  
2           purpose of the visit is simply to let them know  
3           who CHS is and why we need a hospital to serve  
4           our South Carolina patients in northern York  
5           County. Obviously the board members may have  
6           questions about CHS or our proposal." Okay.  
7       A:    Can I make a comment about that now that I --  
8       Q:    You certainly can. Let me first, and I think  
9           my question was, and you can answer that and  
10          then you're free to comment. My question I  
11          believe was: To your knowledge, did anyone on  
12          behalf of CHS contact a South Carolina board  
13          member?  
14       A:    To my knowledge, no one at CHS contacted a DHEC  
15          board member. And as I reflect on this memo,  
16          I sent this memo to Martha Ann to give her  
17          basically a heads up. I think Chris Hummer had  
18          some concern. And again, Chris is not a  
19          certificate of need person; but I think he had  
20          just concern for some reason that the DHEC  
21          board had changed and do we need to educate  
22          them about CHS? And I immediately alerted  
23          Martha Ann. And I think we concluded that it  
24          wouldn't be appropriate for us to do that. And  
25          I think that was something Chris was

1           questioning the process, is this something we  
2           should do? And I remember in the first review,  
3           you know, something about some county officials  
4           becoming involved. And I think Chris was  
5           concerned that, you know, how does this process  
6           work? And I think after, you know, we  
7           contacted Martha Ann, we concluded that it  
8           wouldn't be appropriate for us to do that. And  
9           I educated Chris on that process.

10       Q:   And you have a specific memory of educating  
11           Chris on that process?

12       A:   Well, my memory --

13       Q:   The reason I ask this, Mr. Murphy, I'm not  
14           doubting what you're saying, but I'm just  
15           saying that you started off responding with  
16           something to a degree of uncertainty. And the  
17           more you're talking it's even more uncertainty.  
18           So I'm trying to ascertain what exactly you  
19           know and what your department speculated about.

20       A:   Well here's, you know, I'm sitting here and you  
21           put a letter in front of me that I haven't seen  
22           -- or a memo or email that I haven't seen in a  
23           couple of years. And initially it takes a  
24           while to remember the context. And my memory  
25           is that Chris made me aware of this. And I've

**CREEL COURT REPORTING, INC.**

*1230 Richland Street / Columbia, SC 29201*

*(803) 252-3445 / (800) 822-0896*



1 asked Martha Ann about this. And we very  
2 quickly after this concluded that it wouldn't  
3 be appropriate. That's my memory.

4 Q: And your memory that it wouldn't be  
5 appropriate, is that because it's against the  
6 law?

7 A: I believe so, right.

8 MR. WESTBROOK: In fact, let's put up Section 44-7-  
9 200 of the South Carolina Code. And let's look  
10 just at Section 200. I think it's the bottom  
11 half of that page.

12 Q: Mr. Murphy, have you seen this statute before;  
13 do you recall? And just take a minute to  
14 familiarize yourself with it. It says  
15 application for certificate of need notice  
16 prohibit communications. Review Section B  
17 there, please. All right. It refers to the  
18 applicant publishing notification. And then go  
19 on to Section C, it says, "Upon publication of  
20 this notice until a contested case hearing is  
21 requested." And look at Number 2.

22 A: Yeah. I have seen that before. My  
23 recollection is, you know, because of what  
24 transpired in the first case where some county  
25 government officials got involved, one of our

1 administrators, and I think in his role, you  
2 know, suggested to me that we do it. And we  
3 quickly concluded that because of this statute,  
4 we can't -- we couldn't do that.

5 Q: All right. Mr. Murphy, you testified on direct  
6 about Joint Commission Certifications that CHS,  
7 Presbyterian and Piedmont had. And I believe  
8 you showed a slide that had been presented to  
9 that effect. It showed CHS by my notes, and  
10 correct me if I'm wrong, had according to the  
11 slide presented to DHEC, over 20, I think it  
12 was 21, Novant 13 and Piedmont one, is that  
13 correct?

14 A: That's correct.

15 Q: Now again, I know we've already established  
16 this. But remind me, about how many hospitals  
17 are in the CHS system?

18 A: We have, you know, roughly 14 to 15 in that  
19 obligated component unit column and another --  
20 we have 42 total.

21 Q: And the Novant system has how many hospitals in  
22 it?

23 A: Less than us. I'm guessing, you know, maybe  
24 ten less than us. And it's a guess, I don't  
25 track their numbers.

**CREEL COURT REPORTING, INC.**

*1230 Richland Street / Columbia, SC 29201*

*(803) 252-3445 / (800) 822-0896*

- 1 Q: And the comparison that was made that you made  
2 on direct and you made to DHEC was among the  
3 CHS system, the Presbyterian system and  
4 Piedmont Medical Center, it wasn't with the  
5 Tenet system; was it?
- 6 A: No, it was comparing Piedmont Medical Center.
- 7 Q: So you're comparing one hospital with two  
8 systems, is that correct?
- 9 A: That would be correct. But I think the point  
10 that we were just making is that we made a  
11 significant investment in those programs. And  
12 I don't think there would be anything  
13 prohibiting Piedmont from doing the same thing.
- 14 Q: I see. But you're point then, and you weren't  
15 trying to say that you hadn't -- that you had  
16 more Joint Commission Certifications than  
17 Piedmont? That wasn't your point?
- 18 A: No, the point was we had, I think at the time,  
19 21 programs certified by the Joint Commission  
20 for the clinical quality improvement. And  
21 Piedmont had one. And at the time, I -- it  
22 wasn't to demonstrate -- I mean I didn't really  
23 consider the fact that we had more than one  
24 hospital.
- 25 Q: I see.

1 A: Because I don't think there is anything  
2 prohibiting a single hospital for getting many  
3 certifications.

4 Q: So Piedmont could have gotten 21.

5 A: They could have.

6 Q: That's right. And how many of your individual  
7 hospitals have 21 Joint Commission  
8 Certifications?

9 A: I don't know the answer to that.

10 Q: Yes, you do. It's zero; isn't it?

11 A: I don't know.

12 Q: You don't know? You wouldn't know in your  
13 position that one of your hospitals had 21  
14 Joint Commission Certifications? Is that what  
15 you're saying under oath?

16 A: What I'm saying under oath is when we were  
17 preparing this information, contacted the  
18 quality department for this information. And  
19 they told us our system, to the best of my  
20 recollection, we had 21 certified programs from  
21 the Joint Commission in clinical quality and  
22 Piedmont had one. I don't recall looking at  
23 our facility -- I don't recall looking at those  
24 numbers by facility. I may have. I just don't  
25 recall.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 MR. WESTBROOK: Let's look at -- Dan, let's pull up  
2 Exhibit Joint B, Page 782 and 783.

3 Q: This is a submission from Piedmont to DHEC in  
4 July -- excuse me, July of 2011. You testified  
5 on direct, you had a number of slides comparing  
6 your Medicaid numbers for South Carolina  
7 patients to Presbyterian, is that right? Do  
8 you recall that?

9 Q: Yes.

10 A: Now, this is something that was submitted to a  
11 project review, and you see figure five there  
12 shows 2009, which was the most recent data at  
13 the time. South Carolina Medicaid Emergency  
14 Department's submissions. And then the chart  
15 on the right shows 2009 South Carolina Medicaid  
16 discharges, which would not be emergency  
17 department, obviously hospital discharges. And  
18 it confirms your point, does it not, that  
19 Carolinas has had a lot more than Presbyterian;  
20 isn't that correct?

21 Q: It does.

22 A: But it also shows that Piedmont had a lot more  
23 than Carolinas; isn't that correct?

24 Q: But the purpose of my slide wasn't to compare  
25 Piedmont to Carolinas because they are not

1 apples-and-apples comparisons. I think we put  
2 our slide together to demonstrate to DHEC,  
3 while we were being criticized by Presbyterian,  
4 we wanted to show the number of South Carolina  
5 patients we serve compared to Presbyterian, not  
6 Piedmont. I think Piedmont operates a hospital  
7 in York County and received a lot of Medicaid  
8 patients through the ED. And their numbers  
9 would be larger than ours because we don't  
10 operate a hospital there. So I don't think  
11 that's real apples and apples.

12 **MR. WESTBROOK:** Let's look at CHS Exhibit 28,  
13 please.

14 **Q:** This is an exhibit, I think, you testified  
15 about on your direct. As I understand it, Mr.  
16 Murphy, this shows the number of referrals that  
17 the CHS practices refer on to other CHS  
18 facilities or physicians or providers of any  
19 type, is that right?

20 **A:** It shows the rates of referrals for these four  
21 different types of services to physician  
22 partners.

23 **Q:** All right. And I think your point was, at the  
24 bottom of the page, that the sort of aggregate  
25 number, the average or however you calculated

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1           that was, it's actually

2   **MR. WESTBROOK:** Dan if you can pull it up.

3   Q:     It's six percent, is that right?

4   A:     Right.

5   Q:     All right. Now, the lowest -- if you look at  
6           that last column.

7   **MR. WESTBROOK:** And Dan, move up so that we can see  
8           the last but total column there.

9   Q:     That's the one that, you know, totals up all  
10           the ancillary diagnostic, medical and surgical,  
11           is that right?

12   A:     That's correct.

13   Q:     And the lowest there is Carolina Cancer  
14           Specialist at nine percent, is that correct?

15   A:     Right.

16   Q:     And that is located in Rock Hill; is it not?

17   A:     I believe so.

18   Q:     And the second lowest is towards the bottom, I  
19           believe, it's Shiland Family Medicine at 36  
20           percent, is that right?

21   A:     That's correct.

22   Q:     And that's also in Rock Hill; is it not?

23   A:     Correct.

24   Q:     And the third lowest is Medical Associates of  
25           Rock Hill, which I would assume from the name

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 is also located in Rock Hill, is that correct?

2 A: That's correct.

3 Q: And that's 43 percent, the third lowest, is  
4 that right?

5 A: Yes.

6 Q: And the others are all located -- well, there's  
7 Rock Hill Pediatric Associates in Fort Mill.  
8 But the other practices are located in --  
9 excuse me, there's Rock Hill Pediatric  
10 Associates, which is in Rock Hill; and then  
11 Rock Hill Pediatric Associates Fort Mill, which  
12 I think is in Fort Mill; correct?

13 A: Right. There is three other practices on that  
14 list that are Rock Hill; Palmetto Pediatrics,  
15 Piedmont GYN-OB -- well, actually maybe four;  
16 Rock Hill Pediatric Associates and Sanger Heart  
17 Vascular Institute of Rock Hill. So there are  
18 four other ones in Rock Hill in addition to the  
19 three you highlighted.

20 Q: But the three lowest on this chart -- in that  
21 chart -- the three that are under 45 percent  
22 are all in Rock Hill, is that right?

23 A: They are.

24 **MR. WESTBROOK:** Let's look at CHS-27, please.

25 Q: CHS-27. Have you seen this one before?



1 A: Yes.

2 Q: CPN 2012 payer mix by practice?

3 **MR. WESTBROOK:** Let's go to Page 2, Dan.

4 Q: Now, my question is; and let's look at the  
5 Medicaid line there. This shows from 2007 to  
6 2012, right?

7 A: That does.

8 Q: And this is a CHS Exhibit, Exhibit 27?

9 A: Yes.

10 Q: And it shows the Medicaid percentage. And just  
11 to clarify. We've probably clarified this  
12 before, but I don't think we have with you.  
13 CPN is the name -- is the acronym for the CHS  
14 Physician Network in York County, is that  
15 right?

16 A: Yeah, Carolinas Physicians Network.

17 Q: Okay. And Medicaid during that period of time,  
18 during that 2007 to 2012 it starts off at 8.4  
19 percent. And it actually goes down and then  
20 kind it goes up a little bit. But would you  
21 characterize that as relatively flat?

22 A: No, I wouldn't. I think you can't just look at  
23 that particular line in isolation. That's why  
24 I reformatted it and testified to it earlier.  
25 I look at a trend from 2009, an upward trend.

1 I think it was about two and half percent a  
2 year, but 6.4, 8.7, 10.1, 10.9. And, you know,  
3 in light of the testimony from the physicians  
4 that I sat here and heard, this doesn't show  
5 that we are reducing our Medicaid in volumes  
6 while increasing theirs. And then I combined  
7 our commercial and managed care to show that  
8 actually that had been flat, it hadn't been  
9 growing. And again, I think I testified that  
10 the economy had a lot to do with these numbers  
11 between 2007 and 2009.

12 Q: Right. And the -- from 2007 forward, it goes  
13 from 8.4 percent -- it actually decreases into  
14 7.6 in 2008 and then decreases again in 2009 to  
15 6.4, is that correct?

16 A: That's what these numbers indicate. Yes, it  
17 decreased for the most -- from between '07 and  
18 '08 and down in '09 and then back up.

19 Q: And then self-pay goes in 2007 from 3.1 and  
20 decreases to 2.6. And then is it's at 2.8 in  
21 2009, decreases a little bit, 2010 to 2.4 and  
22 then goes down to 1.8 percent --

23 A: Right.

24 Q: -- is that correct?

25 A: And then back up.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

- 1 Q: And then back up to 2.2 percent.
- 2 A: Right.
- 3 Q: Again, but you testified about the effect of
- 4 the general recession on these numbers.
- 5 General recession was at its peak in 2008,
- 6 2009, is that correct?
- 7 A: I believe so.
- 8 Q: All right. You testified about the profits
- 9 that CHS hospitals make. I think I asked you
- 10 a question or two about that; and I think you
- 11 testified about that on direct, as well. I'm
- 12 relying on my memory in regard -- it's already
- 13 established that's not very good. So you
- 14 correct me if I'm wrong, but my memory is that
- 15 you testified that it is important for CHS
- 16 hospitals to make profits because to keep up
- 17 with population growth was one reason I believe
- 18 you testified, is that right?
- 19 A: Well, I believe I said that, yeah.
- 20 Q: And another reason I believe you said was so
- 21 that you could maintain -- essentially maintain
- 22 a viable healthcare system.
- 23 A: Right.
- 24 Q: And I'm not sure that's your exact words, but
- 25 was it something to that effect?

1 A: Well, when I go back and start with a mission  
2 statement, it is to create a comprehensive  
3 healthcare system. And creating that  
4 comprehensive system requires us to be  
5 financially, you know, good stewards. And  
6 that's where the income is required to be able  
7 to do that. So that's our mission; that's our  
8 purpose.

9 Q: Good, thank you.

10 MR. WESTBROOK: Bear with me a minute, Your Honor,  
11 if you don't mind.

12 Q: Mr. Murphy, let me ask you to -- let me ask  
13 you, the Medicaid line up there, again, if you  
14 will. This is again Page 2 of Exhibit, CHS  
15 Exhibit 27.

16 Q: Did I understand you to say that you calculated  
17 -- well, let me just ask you; what was the  
18 percentage of growth that you calculated for  
19 Medicaid? And I think you did it for 2009  
20 forward, is that right?

21 A: Yeah. I think what I -- if you compare 2.9 --  
22 excuse me, 10.9 in 2012 to 8.4 in 2007, the  
23 number I was thinking about was the change. It  
24 was 2.5 percent change. I may have said growth  
25 rate, but it's -- it's actually the -- I think

- 1           what I had on my exhibit were the percentage  
2           changes in that far right column. And I think  
3           it was -- as I look at 10.9 minus 8.4, it's  
4           2.5.
- 5       Q:   What is the growth rate, did you calculate  
6           that?
- 7       A:   No, I haven't.
- 8       Q:   Could you do that or is that --
- 9       A:   I don't know that -- you know, I don't think  
10          the growth rate from '07 -- again, you know,  
11          I think you look at these trends and you look  
12          at different points in time.
- 13      Q:   Well, what would it be from '07 to 2012?  
14          Whether that's the way you did it or not, I'm  
15          just asking what would that --
- 16      A:   It's not a very high growth rate.
- 17      Q:   Well, what would it be?
- 18      A:   I don't know. I would need a calculator.
- 19      Q:   I paid \$10.00 for this.
- 20      A:   Let's see. I'm looking for the on button.  
21          That's not the type of calculator I use. Well,  
22          can I use my calculator?
- 23      Q:   Certainly.
- 24      A:   It might be a little quicker. It's in my bag  
25          back there.

1 Q: Okay.

2 MS. ROBERTSON: If I may approach --

3 THE COURT: Absolutely.

4 MS. ROBERTSON: Thank you.

5 A: If you just take the number 8.4 percent, and  
6 you calculate the number. The percentage  
7 change between 8.4 and 10.9, let's see -- and  
8 it's not calculating because I don't think this  
9 calculator recognizes growth rates between  
10 percentages. But I think the point you are  
11 trying to make is that it's not a large change  
12 between 8.4 and 10.9 over that period of time.  
13 And I guess I would just say you have to look  
14 at the trend line because again, I put this  
15 together in response to the criticism I heard  
16 from the physician witnesses from Piedmont that  
17 seemed to suggest we were systematically  
18 steering the Medicaid patients to their  
19 practice and the commercial patients to ours.  
20 And I don't think that's the case. I don't  
21 think these trends show that.

22 Q: All right. Mr. Murphy, you are -- in the  
23 beginning you gave your current job title and  
24 responsibilities. Could I ask you to repeat  
25 that. What's your -- because I know there's

1           been a change from the last time we --

2       A:    Right.   My current job title is Senior Vice-  
3           President, Planning and Development, and I was  
4           promoted a few weeks ago to that position.

5       Q:    Are you an officer of any type with CHS?

6       A:    No, I'm not.

7       Q:    All right.   Are you familiar -- are you aware  
8           of an investigation at CHS by Senator Grassley,  
9           the United States Senate Judiciary Committee?

10      A:    I'm not aware of that, no.

11      Q:    You're not aware that an investigation is  
12           ongoing? I'm not asking you about the details.  
13           I'm asking whether you know whether an  
14           investigation, and let me just clarify what my  
15           question is. I'm not asking whether you know  
16           the details, I am asking do you know whether  
17           Senator Grassley, ranking member of the U.S.  
18           Senate Judiciary Committee is currently  
19           investigating CHS with respect to the 340(b)  
20           drug program?

21      **MS. ROBERTSON:** Your Honor, if I may, Mr. Westbrook  
22           is in effect testifying with the information he  
23           is putting before the witness. He is setting  
24           forth the information. He's asking him what he  
25           knows, but he's in effect testifying. We have

1 no idea of what he is saying is accurate or not  
2 with no foundation for it.

3 **MR. WESTBROOK:** I thought cross examination was  
4 where the attorney got to testify. That is the  
5 way I was the way I was taught in law school.  
6 It's a leading question -- certainly it's a  
7 leading question. And I don't think I have to  
8 lay a foundation for a question. I just asked  
9 the question. He can say yes or no. He either  
10 is or he isn't. And then I may or may not  
11 follow up.

12 **THE COURT:** Thank you, Mr. Westbrook. I'm going to  
13 overrule your objection. Please go ahead and  
14 answer that question, Mr. Murphy. Do you know?  
15 Are you aware?

16 **A:** Well, I'm not -- what I'm aware of is -- and  
17 then my memory here is a little fuzzy. But  
18 within the last, it seems like a month, it  
19 could have been the last few weeks, I recalled  
20 some article in the Charlotte Observer about  
21 that topic. And I didn't read the article.  
22 And when you mentioned the 340(b) drug pricing,  
23 that sort of helped me better -- I recall  
24 seeing that in the paper, but I don't know any  
25 details about it.



1 Q: The 340(b) drug program is a federal program  
2 that provides nonprofit hospitals, the hospital  
3 systems with discounts for certain drugs; isn't  
4 that correct?

5 A: I believe so.

6 Q: And the idea behind the program is those  
7 discounts should be passed on to the citizens  
8 who are less financially well off than others,  
9 is that correct?

10 A: I believe so.

11 Q: And is the gist of Senator Grassley's  
12 investigation that CHS is not passing on those  
13 discounts?

14 A: Again, I don't know what his focus is. I just  
15 recall seeing an article, and that's about it.

16 Q: Thank you.

17 MR. WESTBROOK: I have no further questions.

18 THE COURT: Okay. Does the department have any  
19 questions of witness?

20 MS. BIGGERS: No, Your Honor.

21 THE COURT: Thank you, Ms. Biggers. Any redirect?

22 MS. ROBERTSON: Yes, Your Honor, I do have just a  
23 few.

24 THE COURT: All right.

25 MS. ROBERTSON: And I think it will be short, but I

1           those.

2       Q:    Thank you.   And in closing, Mr. Stewart, I want  
3           to -- let's pull back up Demonstrative 168.1 of  
4           the Petitioner.   And if you could, remind us of  
5           what you believe was Mr. Levitt's assessment of  
6           the Carolinas financial criteria or the project  
7           review criteria with respect to the financials.

8       A:    And as we've gone through all of those sort of  
9           demonstratives that were somewhat critical of  
10          CHS's financial statements, overall Piedmont's  
11          expert agreed with DHEC that CHS met all the  
12          financial criteria 6(a)(b) 7, 9, and 15 for the  
13          approval of the CON.

14       Q:    And those checkmarks are from the Petitioner's  
15          Demonstrative Exhibit, is that correct?

16       A:    That is correct.

17       Q:    Thank you, Mr. Stewart.   Please answer any  
18          questions Mr. Westbrook may have.

19       **MR. WESTBROOK:**   I'm ready, Your Honor.

20       **THE COURT:**   Yes, sir.

21       **MR. STEWART - CROSS EXAMINATION BY MR. WESTBROOK:**

22       Q:    Mr. Stewart, good morning.   How are you?

23       A:    Good.   How are you?

24       Q:    Fine, thank you.   Mr. Stewart, why don't we  
25          just start with just the last -- actually next

1 to the last demonstrative you were looking at,  
2 which is the one that was based on the audited  
3 financials. That is -- I can't remember the  
4 number.

5 **MS. ROBERTSON:** David, do you want us to -- I'd be  
6 happy to pull it up.

7 **MR. WESTBROOK:** Well, we could or I could just hand  
8 the hard copy. But yeah, if you don't mind  
9 doing it, that would be great.

10 **MS. ROBERTSON:** Glad to do it.

11 **MR. WESTBROOK:** Yeah, I'm not going to do too many  
12 of those, but I might do a couple of them.  
13 Let's look at that -- the one that was based on  
14 the approximate percentages.

15 **MS. ROBERTSON:** Is it 2010, 2011.

16 **MR. WESTBROOK:** Great, thanks. And I had a hard  
17 time seeing that on my little screen. So I'm  
18 going to move up here if I can and try -- as  
19 you said, your old man eyes. You are a lot  
20 younger man than I am, Mr. Stewart. Mr.  
21 Stewart, I know you explained some things about  
22 this demonstrative 2.22. This is the -- or the  
23 demonstrative based on the 2010-2011 audited  
24 financials I think; isn't that correct?

25 **A:** This is from the 2011, 2010 audited financial.

1           It is from the 2011 audited financial  
2           statements which includes results from 2011 and  
3           2010.

4   Q:   Okay. All right. And the very last line there  
5           is the end of year net assets, is that right?  
6           The last line item; end of year net assets?

7   A:   Yes.

8   Q:   Is that what that says?

9   A:   Yes.

10   Q:   It's hard for me to read it from here, and I  
11           can't read it on my monitor. And for 2011, the  
12           total reporting -- what does headline -- that  
13           heading on that column says total reporting  
14           entity; is that what it says?

15   A:   I'm not sure which -- it's primary enterprise  
16           or are you looking above the primary  
17           enterprise?

18   Q:   Well, let's start with 2011. At the top of the  
19           columns in bold face, each one of them says  
20           primary enterprise, the second one says  
21           combined component units. And what does the  
22           third one say?

23   A:   Total reporting entity.

24   Q:   Okay. For the total reporting entity column,  
25           what's the end of the year net assets? Can you

1 read that, please?

2 A: Not really. I think it's --

3 Q: Is it 3 billion and something.

4 A: It's -- yeah, it's 3 point, I think 5 billion.

5 Q: All right. And for the combined component

6 units, what is it? Can you read that? Is it

7 800? I just can't see that.

8 A: I'm not sure what number you are looking at.

9 Q: I was looking at the combined component units

10 end of the year net assets. So it's the very

11 bottom of that column.

12 A: Oh, yeah, the middle column.

13 Q: Yeah, the middle column.

14 A: It looks like it's about \$800 million.

15 Q: About \$800 million?

16 A: Uh-huh (affirmative response).

17 Q: And for the primary enterprise, is that 2 point

18 something?

19 A: Yes, \$2.9 billion.

20 Q: \$2.9 billion. Okay, thank you.

21 **MR. WESTBROOK:** Now, let's -- Dan, can I ask you to

22 pull up, please, CHS-511. This is a -- I think

23 you will recognize, Mr. Stewart, this is

24 something from the CHS-Application. It says at

25 the top "CMC-Fort Mill assumptions for

1 projected financial statements." And I am  
2 going to represent to you this was something  
3 produced to us -- produced -- well, not  
4 produced to us so much. It was submitted to  
5 DHEC. Do these look familiar to you?

6 A: Uh-huh (affirmative response).

7 Q: These the ones for your new current  
8 application, is that right?

9 A: I don't know if this is the most recent  
10 submission but --

11 Q: Well, take a look. Take a look. For example,  
12 does anything like the payer mix. Is that  
13 payer mix?

14 A: It looks accurate but --

15 Q: All right. Well, I'm going to ask you to  
16 assume that this is your --

17 MR. WESTBROOK: And uncross it, if I'm wrong, Ms.  
18 Robertson and correct me.

19 MS. ROBERTSON: Okay.

20 Q: These assumptions -- these are the assumptions  
21 upon which the pro forma projections are based;  
22 is that a fair way of saying it?

23 A: Uh-huh (affirmative response). Correct.

24 Q: And you went through and walked through how you  
25 created the pro forma budget for this

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

- 1 application, right?
- 2 A: Yep.
- 3 Q: So these would be the assumptions that were
- 4 behind those pro formas, is that right?
- 5 A: Uh-huh (affirmative response). Yes.
- 6 Q: All right. Now, the assumptions, themselves,
- 7 I believe you told me were provided to you by
- 8 somebody from Mr. Murphy or someone in working
- 9 his group, is that correct?
- 10 A: Which assumptions are you talking about?
- 11 Q: I'm sorry, the payer mix assumptions?
- 12 A: That is correct.
- 13 Q: All right. The -- the other assumption. Now,
- 14 you got four categories, Medicare, Medicaid,
- 15 managed care and other. And my understanding
- 16 is that the other category is made up largely
- 17 of self-pay and charity care; is that true?
- 18 A: Largely, yes.
- 19 Q: All right. Vast majority, right?
- 20 A: I don't know the exact percentages, but most --
- 21 Q: I wasn't asking for the exact percentages.
- 22 Wouldn't you agree that the big majority is
- 23 made of those two categories?
- 24 A: It is.
- 25 Q: Self-pay and charity. Okay. And there is a

1 difference between self-pay and charity; isn't  
2 there?

3 A: Yes.

4 Q: And that difference is that charity is somebody  
5 who qualifies under CHS's policy, or whatever  
6 the hospital is for charity care, is that  
7 right? So that's written off on the outset, is  
8 that right?

9 A: I mean, I would say that there is a bucket of  
10 uncompensated care. And in uncompensated care  
11 you have bad debt, which are people who can't  
12 pay or people who don't pay. You have charity  
13 care where people who can't pay. And you then  
14 you have charity care discounts which are, you  
15 know, people where you may have worked out a  
16 payment plan with us, some of the self-pay  
17 patients.

18 Q: And a self-pay patient is that -- who -- a  
19 self-pay patient who does not pay is what you  
20 call bad debt, is that right?

21 A: It depends on if they -- it depends on their  
22 financial picture. So there are -- I mean,  
23 there are criteria that determine whether that  
24 patient would fall into the -- either way, it's  
25 uncompensated care. And there is criteria as



1 to whether or not that patient is classified as  
2 charity care or bad debt.

3 Q: All right. Well, before we get to charity --  
4 let's make sure of the distinction. You're  
5 making a distinction between charity care and  
6 bad debt, and I appreciate that distinction.  
7 I want you to educate me now on something else;  
8 the distinction between charity care and self-  
9 pay, okay? Is there a distinction between  
10 charity care and self-pay?

11 A: I mean -- I guess I'm not quite sure I  
12 understand the question.

13 Q: Is there a distinction between charity care and  
14 self-pay?

15 A: Well, I heard the question, but I'm not quite  
16 sure I understand the question.

17 Q: All right. I'm sorry. For somebody who  
18 doesn't -- for somebody who is uninsured and  
19 who does not qualify for charity care, what  
20 would you call that person? What  
21 classification would that person fall under?  
22 If they are uninsured and they don't qualify  
23 for charity care?

24 A: They could -- in our financials, they could be  
25 under a couple of buckets. They could be

1           either in the bad-debt category or they could  
2           be in the sort of category that we classify as  
3           self-pay discounts.

4       Q:    I'm sorry. I didn't hear you.

5       A:    Self-pay discount.

6       Q:    Self-pay discount. All right. So those would  
7           be the two buckets. Self-pay discount and bad  
8           debt, is that right?

9       A:    For the folks that don't --

10      Q:    That don't qualify for charity care?

11      A:    Correct.

12      Q:    And most of the time you would get little or no  
13           reimbursement from those folks, is that  
14           correct?

15      A:    I mean, it depends on what you are talking  
16           about.

17      Q:    Well, I'm talking about, you know,  
18           reimbursement, getting paid for a hospital  
19           bill.

20      A:    Well, I think if you look at self-pay for some  
21           of your lower acuity stuff that may occur in  
22           the hospital, like an x-ray, the difference in  
23           your collection rate may be a little higher  
24           than if you are in there from a car accident,  
25           and show up in the hospital and you're having

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 a major trauma, that could be significantly  
2 more in cost.

3 **MR. WESTBROOK:** All right. Let me ask Dan to pull  
4 up your trial testimony from the last trial.

5 A: Uh-huh.

6 Q: Perhaps you can explain this to me so I can  
7 understand it.

8 **MR. WESTBROOK:** And I'm asking -- Dan, how about  
9 pulling up Page 1652.

10 Q: Hold on just a minute and I'll give you a line.  
11 Page 1652. This is from your direct exam at  
12 trial. And let's start on Line 5, I think, and  
13 with that word "and." And I'm going to read  
14 your attorney's question to you during your  
15 direct exam and -- oh, I'm sorry, this is part  
16 of the answer. Never mind.

17 So let me go back up to 1651 to get the  
18 question. Page 1651, Line 23. That's where  
19 your -- the attorney asks the question. And  
20 then there is a fairly long response. And  
21 maybe if you could just read the answer into  
22 the record, Mr. Stewart and then comment on it.  
23 So the question on Line 23 of Page 1651 is.  
24 "All right. How about the other categories?  
25 How do they compare?" And just please read

1 your answer in.

2 A: Okay, sort of look -- I'm not sure what the  
3 other categories mean. Is it alright if I read  
4 higher than that before to understand the  
5 context?

6 Q: Sure. Uh-huh. In fact, why don't we go on up  
7 to -- you take your time to look at it. But  
8 let's go to Page 1651. And you see at the top  
9 of the page where it says, "Mr. Muller." I  
10 think that sort of starts that line of  
11 questions. Let's see if there is a -- just for  
12 the sake of time, maybe we don't have to go all  
13 the way. Let's start at Line 5, okay. I'm  
14 going to read the questions, and you just read  
15 the answers, okay. And you can comment on the  
16 answers or explain the answers. In fact, I'd  
17 like you to. But first of all, just for the  
18 record, we need to read this in verbatim, okay.  
19 Okay? Okay?

20 A: Sure.

21 Q: Okay. I'll be Mr. Muller. Question starting  
22 Line 5. "Do you see the category of net  
23 operating revenue?" Answer?

24 A: My answer in that testimony was, "yes."

25 Q: Can you just read it, please, verbatim without

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1           commenting until we get through?

2       A:     Sort of feels like I'm -- I guess --

3       Q:     I'll tell you what, I'll read it in.   That's  
4           okay.   And then after I read it in, you can  
5           comment on it.   So Line 5,

6           "Question:   Do you see the category of net  
7           operating revenue?"

8           "Answer:   Yes."

9           "Question:   All right.   Can you -- well,  
10          let's start with this.   Can you explain to the  
11          Court what payer mix means?"

12          "Answer:   Sure.   What payer mix is, is  
13          payer mix represents the number of patients  
14          that you have for each one of the categories,  
15          so for Medicare, Medicaid, Managed Care,  
16          other."

17          "Question:   In terms of the category that  
18          is most lucrative for a hospital, what category  
19          would that be?"

20          "Answer:   Typically, the most of your  
21          margin occurs in from a managed care pair."

22          "Question:   Most of your margin meaning  
23          profit margin?"

24          "Answer:   Correct."

25          "Question:   Okay, so managed care would be

1 the most lucrative?"

2 "Answer: Correct."

3 "Question: All right. How about the  
4 other categories? How do they compare?"

5 "Answer: Typically, Medicare -- typically  
6 with Medicare, you know, your goal is to break  
7 even. Or sometimes if you are very efficient,  
8 you can make some money on Medicare. Medicaid  
9 usually pays a rate that is -- does not cover  
10 your full expenses. And then self-pay  
11 includes, you know, includes your indigent  
12 care, your charity care, and your bad debt.  
13 And most of the time you are getting very  
14 little to no reimbursement for those  
15 categories."

16 That's all I want to read into the record.  
17 My question before we brought this page up was  
18 this. Well, I don't know precisely what my  
19 question was. So, let me ask it again and  
20 maybe it'll be somewhat close to my question.  
21 My question is, isn't from the self-pay bad  
22 debt categories, most of the time you get very  
23 little to no reimbursement in those categories;  
24 wouldn't that be true?

25 A: I would sort of go back to my previous answer.

- 1 It depends on what the procedure is. I mean,  
2 there are procedures that cost \$100. You have  
3 procedures that cost \$100,000. I mean, if it's  
4 a safe-pay \$100 account, there is a pretty  
5 good chance that we should be able to collect  
6 it. If it's \$100,000, probably not.
- 7 Q: Okay. But -- and I understand that it differs  
8 with individual patients and individual  
9 amounts. But it seemed to me in your testimony  
10 at the trial is that you were making a general  
11 statement that most of the time, more than --  
12 or most of the time, as you say, you are  
13 getting very little to no reimbursement in  
14 those categories.
- 15 A: Our collection rates on self-pay, that whole  
16 uncompensated care bucket is lower than what it  
17 would be from other payers.
- 18 Q: Now, the charity care assumption of 6.3 percent  
19 of gross revenue, I think you testified that  
20 you were the one that came up with that  
21 assumption and you explained how you did it,  
22 right?
- 23 A: Uh-huh (affirmative response). That's correct.
- 24 Q: All right. And you based it, I think, on a  
25 weighted average from internal financial

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

1 statements, a weighted average from CMC-  
2 University and CMC-Pineville for 2009, is that  
3 right?

4 A: That's correct.

5 Q: Okay. Now, you did not -- when you came up  
6 with that 6.3 percent you only looked at those  
7 two hospitals, is that right?

8 A: That was what the weighted average was based  
9 on. I looked at more than just the two  
10 hospitals. But on weighted average, the number  
11 that was in our financials was based on those  
12 two hospitals.

13 Q: All right. And you based it on one year, 2009,  
14 is that right?

15 A: We based it on that year, but we looked at a  
16 series of years.

17 Q: All right. And you did not take into account,  
18 did you, the demographics of York County, and  
19 more specifically northern York County; did  
20 you?

21 A: Specifically -- when you say demographics, what  
22 do you mean by demographics?

23 Q: Well, I mean you are a health care planner,  
24 right?

25 A: Yeah.



1 Q: You know what demographics means. What does  
2 demographics mean to you?

3 A: Well, I think we had testimony that was very  
4 very different. We had people who talked about  
5 demographics in terms of inpatients and  
6 inpatient payer mixes. And we had people who  
7 talked about demographics in terms of average  
8 salary, average wages for people in that  
9 market.

10 Q: Well, let me ask you this. Regardless of the  
11 definition of demographics, did you -- when you  
12 came up with that 6.3 percent, did you factor  
13 in any demographics of York County regardless  
14 of definition?

15 A: I mean, it included Pineville. Pineville  
16 includes and serves a lot of population of the  
17 York County population today. So, in part,  
18 it's included there. But one of the things  
19 that I think is important to note is when you  
20 look at payer mix, the public data that is  
21 available on payer mix is inpatient. You know,  
22 you cannot look at public data on ED's payer  
23 mix. You can't look at public data on imaging  
24 payer mix. You can't look at public data on  
25 ambulatory surgery payer mix. Particularly in

1 South Carolina, it's not available. So 70 to  
2 80 percent of our charity care comes from the  
3 outpatient setting. You know, we have drawn on  
4 our experience at other hospitals and what we  
5 are writing off in the charity care  
6 perspective.

7 Q: All right. When you came up with 6.3 percent,  
8 and you combined that weighted average, did you  
9 look at any employment data, employment data  
10 related to York County? Did you specifically  
11 take out any data about employment and look at  
12 it?

13 A: I did not.

14 Q: Did you look at it in any kind of population  
15 statistics specifically, particularly if there  
16 were any that were related to age factors. Did  
17 you look at that?

18 A: I did not.

19 Q: Did you look at any poverty or income --

20 A: Let me -- the age factors. I'm not sure how  
21 age factors would play into charity care. I  
22 know how it would play into the Medicare  
23 percentages, but I don't know how it would play  
24 into charity care.

25 Q: All right. Did you look at any income levels

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 for York County when you came up with that?

2 A: I didn't. And I think that's one of the things  
3 that is often misunderstood with income.  
4 Really income is not really reflective of an  
5 ability of a patient to pay. You could be a  
6 patient, you know, someone who makes \$25,000 a  
7 year. But if you work for a company that  
8 offers insurance, the payment the hospital is  
9 going to get is the same as someone who makes  
10 \$150,000 and has that same insurance working  
11 for that same company. So income is not always  
12 the best benchmark for estimating what charity  
13 care would be in a market.

14 Q: So I take it from your answer that you did not  
15 look at any specific income data, is that  
16 right?

17 A: I did not. That's correct.

18 Q: Okay. Did you look at any CPN or CHS employed  
19 physician payer mix data?

20 A: I didn't.

21 Q: Did you look at the percentage of charity care  
22 that other satellite hospitals in North or  
23 South Carolina provided during their first  
24 three years of operation?

25 A: I looked at what other providers were currently

1       paying. I didn't go through and look at other  
2       providers and other markets that were starting  
3       up new hospitals. I looked at other hospitals  
4       in the market and what they were seeing from  
5       a charity care perspective.

6       Q: And you relied on two of those hospitals:  
7       Pineville and University, right?

8       A: The assumption was built off of those two. But  
9       it was tested against lots of other hospitals.

10      Q: But you didn't -- if I understood your answer,  
11      you didn't look at the percentage of care  
12      provided by other satellite hospitals in South  
13      Carolina; did you?

14      A: We've used this term satellite hospital, and I  
15      don't view this as a satellite hospital. I  
16      view this as a community hospital. A satellite  
17      hospital to me implies is all you're doing is  
18      get patients from here and ship them out  
19      somewhere else. Our goal is not to ship  
20      patients out somewhere else. Our goal is to  
21      treat patients at this facility as much as  
22      possible.

23      Q: All right. Did you look specifically at any  
24      new hospital charity care data or new hospitals  
25      in South Carolina that have been started in the

1 last few years?

2 A: I did not look at new hospitals that had been  
3 started in the last few years in other markets.  
4 Once again, it's not a great benchmark, I  
5 don't think for what we would expect here.

6 Q: Okay. And you didn't look at or you didn't  
7 factor in the charity care listed on the cost  
8 reports. And you've given a number of reasons  
9 for that, is that correct?

10 A: That's -- well first, there was not that data  
11 available in 2010. It was not included in the  
12 cost reports at that point in time.

13 Q: All right. There was a demonstrative cost  
14 report income, and it's income is listed on its  
15 report to York County; do you recall that?

16 A: I do.

17 Q: It is -- looks like Demonstrative 2.8.

18 MR. WESTBROOK: Would it be possible to put that up  
19 for us?

20 MS. ROBERTSON: Yes, sir. We got it.

21 MR. WESTBROOK: Okay.

22 Q: Let's just take a look at that. And the  
23 difference is, if I understand the red lines,  
24 and you correct me. It appears that on  
25 Piedmont's cost report, it reported net income

1 of \$15,266,000, is that right?

2 A: That's correct.

3 Q: And on it's report to the county, it reported  
4 net income of \$9,160,000, is that right?

5 A: That's correct.

6 **MR. WESTBROOK:** I'm going to ask Dan to pull up our  
7 cost report, Piedmont's cost report for 2011.  
8 Is that an exhibit? Can someone tell me the  
9 number of that piece. It's 81? Let's pull up  
10 Exhibit 81, Dan; 81(b) to be precise.

11 Q: And let's just look at the top of the page and  
12 establish and make sure that's our 2011 --  
13 Piedmont's 2011 cost report. Where does it say  
14 the year? There it is, okay. All right. Now,  
15 let's go to Bates Page 103. And if we go down  
16 to line -- looks like Line 26. Let's just take  
17 a look and see if that's consistent with the  
18 number on your demonstrative \$15,266,176. Is  
19 that the net income reported by Piedmont on  
20 it's cost report?

21 A: Yeah, I believe that's what I pulled into that  
22 demonstrative.

23 Q: Right. So that's consistent with your  
24 demonstrative.

25 A: Uh-huh (affirmative response).

1 **MR. WESTBROOK:** Let's look now at the York County  
2 report for 2011. And I believe that would be  
3 Exhibit 17(c) Dan. Let's try for that.

4 Q: All right. And, yeah, this is the 2011 annual  
5 report to York County.

6 A: Uh-huh (affirmative response).

7 **MR. WESTBROOK:** All right. Let's go to Bates Page  
8 362. And go down to the after tax income line.  
9 Actually, I think it's the third line or maybe  
10 the second line from the bottom.

11 Q: Figure \$9,160,000; do you see that, Mr.  
12 Stewart?

13 A: I do.

14 Q: And that's in thousands. So that's actually 9  
15 million, right?

16 A: That's correct.

17 Q: And that's the number that you had on your  
18 demonstrative, right?

19 A: That's correct.

20 Q: I'm showing you a different number from the 15.  
21 million on the cost report.

22 **MR. WESTBROOK:** Now, let's move up -- Dan, why don't  
23 you take that back down. And let's move up a  
24 few lines where it says, "listing for federal  
25 income taxes."

- 1 Q: Do you see that line?
- 2 A: I do.
- 3 Q: And that's 5,343,000, is that right?
- 4 A: It's 5,343,000, correct.
- 5 Q: All right. This is what Mr. Andrews calls a
- 6 computer.
- 7 A: Thank you.
- 8 Q: And the next line under the federal income tax
- 9 line is state income taxes, right? And that's
- 10 763,000, is that right?
- 11 A: That's correct.
- 12 Q: Could you add those two together, please?
- 13 A: Sure. 6,106,000.
- 14 Q: And could you add that to the 9,160,000 that's
- 15 the after tax income.
- 16 A: It's 15,266,000.
- 17 Q: And that's the number that's on the cost
- 18 report; isn't it?
- 19 A: That's sort of the point.
- 20 Q: Well, first of all, you can explain why it's
- 21 the point. But first, is that the number on
- 22 the cost report?
- 23 A: That is.
- 24 Q: All right. And so what's the point?
- 25 A: The point is that in the Medicare cost report,