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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III
Chief Administrative Law Judge

APPELLATE CASE NO. 2020-001323

ADMINISTRATIVE LAW COURT CASE NO.: 18-ALJ-07-0358-CC
ADMINISTRATIVE LAW COURT CASE NO.: 18-ALJ-07-0360-CC
ADMINISTRATIVE LAW COURT CASE NO.: 18-ALJ-07-0366-CC

CareAlliance Health Services, d/b/a Roper St. Francis Healthcare,
Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc.,
Roper St. Francis Berkeley Hospital and Roper Mount Pleasant
Hospital,.....Respondent,

v.

South Carolina Department of Health and Environmental Control and
Medical University Hospital Authority, d/b/a MUHA Community Hospital,.....Respondents,

AND

Walterboro Community Hospital, Inc., d/b/a Colleton Medical Center,.....Appellant,

v.

South Carolina Department of Health and Environmental Control and
Medical University Hospital Authority, d/b/a MUHA Community Hospital,.....Respondents,

AND

Trident Medical Center, LLC d/b/a Trident Medical Center
and Summerville Medical Center,.....Appellants,

v.

South Carolina Department of Health and Environmental Control and
Medical University Hospital Authority, d/b/a MUHA Community Hospital,.....Respondents.

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1 THE COURT: Well, he's modifying that somewhat. I'm
2 going to take that into consideration.

3 MS. HOLLINGSWORTH: That's fine, Your Honor. And
4 we'll ---

5 THE COURT: And I'm going to review ---

6 MS. HOLLINGSWORTH: We'll ---

7 THE COURT: I mean, I will ultimately review the
8 record ---

9 MS. HOLLINGSWORTH: That's right, Your Honor.

10 THE COURT: --- on all this, so I'll -- I'll take
11 that in light of your testimony.

12 MS. HOLLINGSWORTH: Thank you, Your Honor.

13 THE COURT: Go ahead.

14 **Q:** Mr. Levitt do you have anything else to say
15 about that exhibit?

16 **A:** Yes. So, I think the 35 percent is low. It's
17 not consistent with the experience of other
18 community hospitals. It's conservative. So,
19 I did a sensitivity. And I guess, I would look
20 at the -- the last column to say, so if the
21 revenue were equal, 50/50, outpatient-inpatient
22 revenue, which is pretty consistent with most
23 hospitals' experience, maybe a little less,
24 maybe 65/45 instead of 50/50 or 60/40, you
25 know, somewhere around there, but closer to

1 equal. If you assume a 50/50 split then the --
2 the bottom line would be about a 30 million
3 dollar profit. So, you can see, I assumed, you
4 know, in the CON application, we have 72
5 million dollars in personnel expense with more
6 outpatient volume, you'd have more people
7 providing the care, so we have 94 million
8 dollar personnel expense. So, we'd have about
9 20 million dollar more -- 20 million dollars
10 more in personnel expense for people to provide
11 that outpatient care. So, I -- I -- I
12 accounted for both revenues and expenses, and
13 it shows a profitability of about 30 million
14 dollars. So, then there was some -- some
15 discussion and questions about did we
16 overstate. You know, I -- I don't know how you
17 could possibly overstate with 35 being low and
18 conservative. If that was overstated, if we
19 double counted ER visits or whatever, the
20 argument was that it was overstated. I did a
21 sensitivity and said, what if it's lower. So,
22 if it's lower, the first one was an absolutely
23 unreasonable assumption of 15 percent. If we
24 only had 15 percent outpatient revenue, which
25 would never happen, but if it did, we'd still

1 make four million dollars. So, again, I gave
2 affect to revenues and expenses and we still
3 make four million dollars. If we had a 25
4 percent/75 percent split in inpatient-
5 outpatient revenue, giving affect to revenue
6 and expenses, we'd make about nine million
7 dollars. So, under all of these scenarios with
8 a lower outpatient percentage, which I don't
9 think it's reasonable, we'd make money. With
10 a higher outpatient percentage, we'd make more
11 money.

12 Q: In community hospitals in your work in the 48
13 states, what is the normal -- in today's time,
14 what is the normal percentage inpatient-
15 outpatient revenue split you see?

16 A: You know, it depends on the facility and the
17 range, but usually it's pretty close. The
18 outpatient-inpatient revenue are fairly close
19 to one another. Some facilities have more
20 outpatient revenue than inpatient revenue. And
21 some facilities have less -- slightly less
22 outpatient revenue than inpatient revenue.

23 Q: Do you know what it is at MUSC downtown, what
24 the ratio is?

25 A: Yeah. I think it's around 40 -- mid-40s, like

1 45 percent outpatient revenue.

2 Q: Let's look at Trident 94. This is attachment
3 N. Or I'm sorry, it's not. It's object to
4 redirection percentage from MUHA downtown.

5 (TMC Exhibit Number 94 was introduced into the record
6 at this time.)

7 Q: This is revised. Corrected attachment N.

8 Q: Okay. Have you -- did you develop and produce
9 this?

10 A: I did.

11 Q: Would you please explain to the Judge what this
12 is?

13 A: So, this is the, again, the corrected
14 attachment N. So, the CON application -- if
15 you page down toward the very bottom, the next
16 page, yeah. So, the next page, you can see.
17 So, this shows the outside the tri-county area,
18 the two percent redirection. So, in the
19 original attachment N, these, I believe, were
20 10 percent, but that's not the way the math
21 worked. That's not the way the updated
22 projections worked and so, this -- this is the
23 correct way the math worked. This is the
24 corrected attachment and as described in the
25 CON application methodology.

1 Q: What volume objections were used in the pro
2 forma?

3 A: The volume projections that are associated with
4 these calculations.

5 Q: Based on the two percent as opposed to the 10
6 percent; is that correct?

7 A: Yes.

8 Q: Okay. As well as all the others.

9 A: Yes, sir.

10 Q: Okay. And let's look at Trident 95. Do you
11 recognize this?

12 (TMC Exhibit Number 95 was introduced into the record
13 at this time.)

14 A: I do.

15 Q: Did you develop and produce it?

16 A: I did.

17 Q: Well, explain to the Court what is, please,
18 sir.

19 A: So, this look at the cost per bed of
20 miscellaneous projects in South Carolina. And
21 you can the total estimated from the CON
22 applications, the numbers of beds that were
23 associated with that, and then, just the math
24 dividing the two. So, the CON costs per bed
25 for the different applications. I think Ms.

1 Murdock talked about the Lexington Medical
2 Center, a 421 million dollar project for 71
3 beds. That comes out to be about 6 million
4 dollars per bed. If you go down toward the
5 middle there where it says 2015 and 2018, I
6 think that 4 -- 421 million dollars included a
7 lot of other space, not just for the 71 beds.
8 So, I added them, those two projects because
9 the -- the second project for 72 beds was only
10 8 million dollars. So -- I'm sorry. Six
11 million dollars, yeah. So, if you add those
12 two together, you get 428 million dollars for
13 143 beds. Per bed that's still about 3 million
14 dollars per bed. Looking at some other ---

15 Q: Let me ask a real quick question. Look at
16 Roper Berkeley 2009. That you had a -- the
17 total in the CON -- total project cost was
18 112,978,000 plus?

19 A: Yes.

20 Q: And did -- did you hear Mr. -- Mr. Johnson
21 testify that it was 117 million is what it came
22 in as?

23 A: I did.

24 Q: Okay. You have inflated the cost to 3,746,458,
25 the cost per bed?

1 **A:** **Yes.**

2 **Q:** **Would you divide 50 beds into 117 million**
3 **dollars and see what you get?**

4 **A:** **2.34 million.**

5 **Q:** **Okay. So -- okay. All right, sir.**

6 **OBJECTION:**

7 **MR. THOMAS:** Your Honor, I think that I need to
8 object to this one for -- for a couple of
9 reasons. First of all, unless I'm wrong, a lot
10 of these -- for instance, like the Lexington
11 Medical Center combined that CON application is
12 not in evidence. We've got an A down, assume
13 slide percent annual inflation, which to me is
14 something that an expert would do in
15 construction costs inflation. There are
16 experts on that because I've used one in this
17 very court before. He is not being qualified
18 as an expert in construction cost inflation.
19 So, we've got, you know, this inflated to 2019
20 column that's just wrong. And then, I know for
21 a fact the -- the -- that the Lexington Medical
22 Center project there, that -- that cost has a
23 massive central energy plan built into it and
24 is actually redone to support all the beds at
25 Lexington Medical Center. So, he's essentially

1 taking that costa and he's putting it onto the
2 beds. So, I just think this -- this entire
3 slide is wholly improper. I'd ask that the
4 testimony be stricken because it's definitely
5 much more prejudicial than it is probative,
6 Your Honor.

7 MS. CRUM: Well, Your Honor ---

8 THE COURT: It certainly does -- it does -- or it
9 does appear that it assumes fact that aren't in
10 evidence. All these different -- like
11 Lexington Medical Center ---

12 MS. CRUM: We got -- you're correct. We'll be happy
13 to take out the Lexington Medical Center one,
14 but Ms. -- Ms. Murdock testified about
15 Lexington Medical Center costs. There was
16 absolutely no objection then when they
17 testified the Lexington Medical Center costs.
18 Yesterday, Ms. Smith ---

19 THE COURT: Well, that wasn't in evidence or ---

20 MS. CRUM: It is evidence.

21 THE COURT: You're telling me now that it is in
22 evidence.

23 MS. CRUM: Well, while Ms. -- Ms. -- the document
24 itself, Your Honor, is not in evidence.

25 THE COURT: Okay.

1 MS. CRUM: Ms. Murdock testified as to the -- that
2 it was the highest project cost and it was over
3 -- I can't remember what she said, but she
4 testified to the project costs and it was more
5 expensive than MUHA Berkeley. So, that's in
6 evidence. So, they didn't object to that. And
7 yesterday, Ms. Smith testified that the -- if
8 I remember correctly, that the inflation costs
9 is about four percent. So, you know, I think
10 that is in evidence and I -- I think you know
11 if I can go ahead and get him to go through and
12 inflate these or you know, we can just do the
13 math.

14 MR. THOMAS: Well, I don't think Ms. -- Ms. Smith
15 ever testified. I think she said that the four
16 percent construction inflation costs from 2008
17 going forward from 2007 going forward, 2009
18 going forward. I can go through the whole
19 list. So, you know, that's -- that's not what
20 Ms. Smith testified. She didn't say since 2008
21 RS Means and Cummings construction inflation is
22 five percent. We don't want it is because it's
23 not in evidence and Mr. Levitt's not an expert
24 in construction costs inflation. I think it's
25 improper, Your Honor.

1 THE COURT: Well, at this point in time, it's not
2 offered into evidence.

3 MR. THOMAS: I just don't want it in the record, the
4 testimony.

5 THE COURT: Yeah. That's -- well, I'm -- unless
6 you're going to lay a further foundation, I'm
7 going to strike this evidence.

8 MS. CRUM: Your Honor, I -- I will lay a further
9 foundation.

10 THE COURT: Okay.

11 MS. CRUM: So.

12 **Q: As a health planner and as an expert in**
13 **healthcare financing when you're preparing CON**
14 **applications, do you review other applications**
15 **to find out, for example, what the costs are**
16 **for -- total project cost?**

17 **A: Yes.**

18 **Q: And is that something you rely on and look at**
19 **when you are developing new applications?**

20 **A: Yes.**

21 **Q: With the healthcare finance -- I'm sorry. As**
22 **a healthcare financing -- strike that. As a**
23 **healthcare planner, do you keep abreast of the**
24 **escalation costs of healthcare facilities?**

25 **A: Yes.**

1 Q: Why?

2 A: Because often times, we have to -- when doing
3 the project cost estimates, we take what the
4 architect gives us and we put in the either
5 inflation factor or we put in a contingency to
6 account of escalation. So, I -- I'm familiar
7 with them.

8 Q: Of these various documents in here, have you
9 reviewed the Trident Medical Center six-bed
10 expansion?

11 A: Yes.

12 Q: In fact, did you rely on some of that in your
13 testimony today?

14 A: I did. And I reviewed all of these
15 applications. I've worked on many of them and
16 obviously, I looked at all of them. I've
17 looked at them in the past.

18 Q: Which ones did you work on?

19 A: I worked on the -- I did work on the Trident
20 Berkeley and Roper Berkeley. Obviously, those
21 are in evidence in this case. I worked on the
22 MUSC new hospital.

23 Q: What about the Fort Mill Medical Center?

24 A: I worked on the Fort Mill Medical Center. I
25 worked on Palmetto Parkridge. I worked on the

1 MUSC 125-bed project. So, I didn't work on the
2 Trident Medical Center six-bed, but I've
3 obviously reviewed it and I think that's in
4 evidence already. So, Lexington is the only
5 one I didn't work on.

6 MS. CRUM: So, Your Honor, we would introduce --
7 well, I'm not going to move to introduce it
8 now. I -- I'll move to introduce them all at
9 the end. But I think his -- his testimony on
10 this is absolutely appropriate testimony given
11 his expertise as a healthcare planner and an
12 expert in healthcare financing.

13 MR. THOMAS: I disagree, Your Honor. He's not an --
14 they had an expert in -- in at least
15 architecture that would know about construction
16 inflation costs. And he just assumed the flat
17 five percent annual inflation. And that's just
18 -- you know, there's nothing in evidence ---

19 THE COURT: Well ---

20 MR. THOMAS: --- that can help us ---

21 THE COURT: At this point and time, although it's up
22 to you if you want more evidence, she's laid a
23 foundation to his -- I don't know to say
24 expertise. She asked if he normally uses
25 figures like this. She didn't ask if experts

1 in this field commonly rely on evidence such as
2 this in order to reach an opinion, which is how
3 you should have gone about it.

4 MS. CRUM: I -- and I'll be happy to do that, Your
5 Honor.

6 THE COURT: But I -- I'm not asking you too. But if
7 you want her to do that, I'll -- I'll sustain
8 your objection. But given what I've heard, if
9 I assume that he would also there's experts in
10 the field commonly rely upon this information,
11 the he can testify about this and you can
12 cross-examine him on the weight that it should
13 be given.

14 MR. THOMAS: Seeing this assumes 5 percent annual
15 inflation, there's just -- there's nothing in
16 evidence about that.

17 THE COURT: Well, he said that he normally as an
18 expert, makes assumptions as to the inflation.
19 So, he testified to that point, would that not
20 support what he's saying as far as his direct
21 examination?

22 MR. THOMAS: I don't think it does because he's not
23 an expert in construction costs, Your Honor.
24 But I -- I'll let it go.

25 THE COURT: Okay.

1 MR. THOMAS: Thank you. No, go ahead.

2 Q: Mr. Levitt, there's been testimony about the
3 difference between community bed need and
4 institutional bed need. Have you been here for
5 that?

6 A: Yes.

7 Q: Do you have an opinion on what the difference
8 is between community and institutional bed
9 need?

10 A: Yeah. I've heard -- I've heard Mr. Sullivan
11 make that argument on other projects. I've
12 heard him also make the other argument about
13 institutional bed need. But I think it's a
14 mistake in this case to say that the bed need
15 is institutional only because the institution,
16 MUSC or MUHA, is part of the community. So,
17 these are residents of the community that
18 choose care at MUSC and because of that,
19 there's a need for additional resources to
20 treat those people, the community. So, it's --
21 it's -- from a mathematical perspective and a
22 methodology and a plan, there's an institution
23 bed need, but it's part of the community. It's
24 contemplated in the regulations in the Health
25 Plan that if a facility has institutional need,

1 but the service area doesn't, that facility can
2 apply to meet the needs of the community
3 through their need generated. So, the
4 differentiation, I think is semantic. But the
5 insinuation is part of the community, so there
6 is a community need.

7 Q: Mr. Levitt, who uses the MUHA downtown campus?

8 A: Yes. Well, you saw the patient origin, people
9 from all over the state. About a little more
10 than half of the people in the tri-county area
11 are those that seek care in the all three
12 counties -- from all three counties at -- at
13 the hospital on the peninsula, as well as
14 surrounding counties and beyond.

15 MS. CRUM: Your Honor, at this point, I would like
16 to move ---

17 Q: Well, first of all, let me ask you this. Are
18 each one of the exhibits that I have asked you
19 about, did you on the bottom of your exhibit
20 include the source documentation of where you
21 got your information?

22 A: Yes.

23 Q: Okay. And you have already identified each one
24 of them as documents that you developed and
25 produced; is that correct?

1 **A:** **Yes. Some -- some of these are produced by the**
2 **other parties as exhibits.**

3 **Q:** **Yes, sir. Some of them are -- are exhibits,**
4 **but they were based on your documents, right?**

5 **A:** **They are. Yes.**

6 **Q:** **Okay.**

7 MS. CRUM: Then, I would move the introduction, Your
8 Honor, of all of the exhibits that we have just
9 gone through. And if I remember correctly,
10 there were only objections to two of those all
11 the way along.

12 THE COURT: Well, could we -- could we identify
13 those?

14 MS. CRUM: Yes, sir. I -- I can go through and
15 identify each one of them. I had -- know that
16 I can through and identity each one of them,
17 Your Honor.

18 MR. THOMAS: Your Honor, I think the issue is is
19 that, you know, first of all, not all of them
20 are summary documents. And some of the ones
21 that are don't have the underlying documents
22 that they're reporting to summarize in
23 evidence. You know, I give the -- the one we
24 were just looking at, the Lexington Medical
25 Center saying it's got, you know, just a price

1 tag there and ---

2 THE COURT: Well, I'm going to sustain your
3 objection on that one.

4 MR. THOMAS: Yes, sir. Thank you.

5 THE COURT: But that's the -- but there's -- as Ms.
6 Crum says, there's only two of them you've
7 really object to.

8 MR. THOMAS: Yeah. Well, I thought because she -- I
9 thought she was using these as a -- a lot of
10 them as just demonstrative.

11 THE COURT: Demonstrative.

12 MR. THOMAS: Yeah.

13 THE COURT: Well, here. Let me get the numbers of
14 them and then, I ---

15 MS. CRUM: Right here.

16 MR. THOMAS: Thank you, Your Honor. Like maps and
17 drive times, I think that's demonstrative.
18 They -- they objected to me bringing in any
19 maps. So, I'm just -- I'm adding -- I'm doing
20 the goose -- goose-gander parody situation
21 here, Your Honor. So, any -- any type of drive
22 time analysis that they did is just based on a
23 Google map, we would ask that not come in and
24 be only demonstrative. We'd ask that -- oh
25 gosh, Roper 119-25 ---

1 THE COURT: Well, let ---

2 MR. THOMAS: --- has a map.

3 THE COURT: I tell you what.

4 MS. CRUM: Your Honor, let me just ---

5 THE COURT: --- let me just ---

6 MS. CRUM: --- go through the exhibits.

7 THE COURT: Yeah.

8 MS. CRUM: I'm happy ---

9 THE COURT: Let's just get -- get the numbers and
10 then let ---

11 MS. CRUM: I'll just list them, Your Honor.

12 THE COURT: Okay.

13 MS. CRUM: It's Roper Saint Francis 118-1. Roper
14 Saint Francis 119-1, Roper Saint Francis 119-3,
15 Roper Saint Francis 118-2, Roper Saint Francis
16 119-2, MUHA 38-J.

17 MR. THOMAS: Can I -- I stop for a second, Your
18 Honor?

19 THE COURT: Okay.

20 MR. THOMAS: I'm seeing some things that say -- like
21 under Roper Saint Francis in the 118s. I'm
22 seeing things MUSC internal data. And to the
23 extent it's been produced, it's a summary of
24 that production, I -- I wouldn't have any
25 problems with that.

1 MS. CRUM: Well, and -- and ---

2 THE COURT: I tell you what, to make this more
3 simple for me, how about if she lists the
4 number that she seeks, can y'all tell me if you
5 object?

6 MR. THOMAS: Yeah. But I'd like her to at least go,
7 so I can go through and ---

8 MS. HOLLINGSWORTH: Yeah.

9 MR. THOMAS: --- look at the exhibits. I -- I
10 thought she was doing all these demonstrative.
11 That's what I thought.

12 MS. CRUM: I -- I -- Your Honor, I never said
13 anything about demonstrative.

14 THE COURT: I know.

15 MS. CRUM: They're on the exhibit list.

16 THE COURT: I -- I agree.

17 MS. CRUM: In fact, they produced them.

18 MS. HOLLINGSWORTH: So, Your Honor, just if I may.

19 I agree with Mr. Thomas in that what happened
20 in the Petitioner's case and the limitation of
21 some of the expert's evidence in terms of it
22 coming into the record, that is really the
23 basis of the majority of -- of this position
24 here. I mean, it would -- it would be
25 fundamentally unfair to say that Mr. Sullivan's

1 information such as maps and other summaries
2 and his opinions, his planning opinions as
3 applied to data, those were kept out. He was
4 allowed to testify about them, but when they
5 were offered into evidence, they were
6 strenuously objected and -- and they had to be
7 pulled out. And so, I think that that same
8 applies.

9 THE COURT: What ones got pulled out? I'm ---

10 MS. HOLLINGSWORTH: Maps were ---

11 MR. THOMAS: Maps.

12 MS. HOLLINGSWORTH: Maps had to be pulled out.

13 MR. THOMAS: Narratives.

14 MS. HOLLINGSWORTH: And then ---

15 THE COURT: All right. I remember that coming out.

16 MS. HOLLINGSWORTH: -- where he was providing his --

17 -

18 THE COURT: The narratives were pulled out. I don't

19 -- if y'all ----

20 MS. HOLLINGSWORTH: And maps, Your Honor.

21 THE COURT: --- pulled the maps out, I don't ---

22 MS. CRUM: There -- there were some maps that were

23 actually in the DHEC record.

24 THE COURT: I don't ---

25 MR. THOMAS: Yeah.

1 THE COURT: That's must have been with ---

2 MR. THOMAS: The maps.

3 MS. CRUM: Your Honor, we're -- we're happy -- we'll
4 pull the maps out. That's not a problem.

5 THE COURT: Okay.

6 MS. CRUM: I mean, there are some maps that are
7 actually in the DHEC record.

8 THE COURT: Yeah.

9 MS. CRUM: So, but other than that if there are
10 other maps ---

11 THE COURT: Well, I never ruled on the maps. I
12 ruled -- I was going to kick out ---

13 MS. HOLLINGSWORTH: It was my agreement, Your Honor.

14 THE COURT: Yeah. I know.

15 MS. HOLLINGSWORTH: And we did not pull out any
16 charts or table from your department.

17 MR. THOMAS: That's true.

18 THE COURT: All right.

19 MR. THOMAS: But we had summary documents underneath
20 them.

21 THE COURT: All right. So, with all that said,
22 then, let's go through the numbers.

23 MR. THOMAS: All right.

24 THE COURT: And -- all right. So, start again, if
25 you don't mind.

1 MS. CRUM: Yes, sir. This is RSF 118-1; it is the
2 updated CON ---

3 THE COURT: No. You don't need to explain it. Just
4 give the number.

5 MS. CRUM: All right. So, I don't ---

6 THE COURT: And I want to hear their objections.

7 MR. THOMAS: No objection.

8 MS. CRUM: I thought that might help. That's for --
9 -

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

11 (Roper Exhibit Number 118-1 was admitted into
12 evidence.)

13 MS. CRUM: All right. RSF 119-1.

14 MR. THOMAS: No objection.

15 MS. HOLLINGSWORTH: No objection.

16 THE COURT: Admitted.

17 (Roper Exhibit Number 119-1 was admitted into
18 evidence.)

19 MS. CRUM: RSF 119-3.

20 MS. HOLLINGSWORTH: No objection, Your Honor.

21 MR. THOMAS: 3?

22 MS. CRUM: 3.

23 MR. THOMAS: No objection.

24 THE COURT: It's admitted.

25 (Roper Exhibit Number 119-3 was admitted into

1 evidence.)

2 THE COURT: And Mr. Wicevic, you're being quiet on

3 us. I assume you're not objecting.

4 MR. WICEVIC: No objection.

5 THE COURT: All right. I will have as a continuing

6 non-objection.

7 MS. CRUM: RSF 118-2.

8 MS. HOLLINGSWORTH: No objection.

9 MR. THOMAS: No objection, Your Honor.

10 THE COURT: Admitted.

11 (RSF Exhibit Number 118-2 was admitted into

12 evidence.)

13 MS. CRUM: RSF 119-02.

14 MS. HOLLINGSWORTH: No objection.

15 MR. THOMAS: No objection.

16 THE COURT: Admitted.

17 (RSF Exhibit Number 119-2 was admitted into

18 evidence.)

19 MS. CRUM: MUHA 38-J -- 38-J.

20 MR. THOMAS: No objection.

21 MS. CRUM: MUHA ---

22 THE COURT: Woah. Woah.

23 MS. HOLLINGSWORTH: No objection, Your Honor.

24 THE COURT: It's admitted.

25 (MUHA Exhibit Number 38j was admitted into evidence.)

1 MS. CRUM: MUHA 38-K.

2 MR. THOMAS: Wait. I think I do have a -- I'm
3 sorry, Your Honor. 38-J, I'm -- I'm good with
4 this. You know, obviously, it's a
5 demonstrative, but these are his opinions
6 regarding the redirection percentages. So,
7 that's -- that's all opinion. That's what he
8 thinks is going to be redirected. That's the
9 same as a narrative if Mr. Sullivan were to
10 say, I'm -- I believe that these -- that it's
11 just charts that were based on summaries, Your
12 Honor. This is not based on a summary. This
13 is Mr. Levitt's redirection percentage. That
14 is his opinion that he believes will be
15 redirected. So, I would not -- he's -- he's
16 testified to it. He's -- you know, it's --
17 it's a demonstrative.

18 MS. CRUM: Your Honor, this is exactly what came in
19 with Mr. Sullivan's charts. We didn't object
20 to those. We had an agreement to those. They
21 were his opinions, also. So, Your Honor, I --
22 this is -- I think is absolutely appropriate in
23 the exhibit.

24 THE COURT: Anything else?

25 MS. HOLLINGSWORTH: And, Your Honor, I -- my

1 position would be, I -- if all of this material
2 comes in then, all of Mr. Sullivan's materials
3 should come in. I just think we should have
4 parody in -- in the experts.

5 MR. THOMAS: We tried to do this and Janie said,
6 let's let her slides come in because you're --
7 it's Your Honor and you ---

8 THE COURT: Yeah.

9 MR. THOMAS: --- take it. Good. We noticed this or
10 ---

11 THE COURT: Well, I -- see, my struggle is here on
12 the goose and the gander thing, number one, I
13 got to rule on the evidence. And then, number
14 two, since I didn't participate in -- in your
15 -- y'all's agreement, I don't know specifically
16 how his slides came down. On this, I'm going
17 to ---

18 MS. HOLLINGSWORTH: And Your Honor, just to assist
19 with that concern of yours, the -- I think the
20 point that Mr. Thomas is trying is trying to
21 make, to the extent that Mr. Sullivan has a
22 slide that says I don't believe that 30 percent
23 is reasonable as a redirection, that is the
24 equivalent to here where Mr. -- Mr. Levitt
25 takes that information and applies various

1 percentages.

2 THE COURT: Yeah. He ---

3 MS. HOLLINGSWORTH: It -- so, it -- it ---

4 THE COURT: All this -- the only thing you're

5 objecting to is he's got all the data. It's

6 just he comes up with a conclusion and you

7 don't want the conclusion to come in, correct?

8 MR. THOMAS: Yeah. He's testifying to it.

9 MS. HOLLINGSWORTH: I just -- I just want parody,

10 Your Honor, in the evidence. So, I mean, I

11 think ---

12 THE COURT: Well, I -- if we got back and have to do

13 parody later, that's fine with me.

14 MS. HOLLINGSWORTH: I mean, that would be my

15 position on ---

16 THE COURT: Okay.

17 MS. HOLLINGSWORTH: --- this is the equivalent to

18 what was kept out for Mr. Sullivan's health ---

19 MR. THOMAS: In some respects, we can handle this

20 under rebuttal.

21 THE COURT: Yeah. Well, I -- I'm going to allow

22 parody to occur. I'm going to let this

23 overrule and let this come in and if I have to

24 turn around and let other exhibits come in that

25 y'all agree to not let come in, I'll reconsider

1 that down the road.

2 MR. THOMAS: All right. Thank you.

3 MS. CRUM: Okay. We just ---

4 THE COURT: So, we're at MUHA 38-J.

5 MS. CRUM: 38-J.

6 THE COURT: I've allowed to be admitted.

7 MS. CRUM: And MUHA 38-K, Your Honor.

8 MR. THOMAS: We would have the same objection, Your

9 Honor.

10 THE COURT: Same thing.

11 MS. HOLLINGSWORTH: We'd ask for the same ruling on

12 that issue.

13 THE COURT: Okay. Same ruling.

14 (MUHA Exhibit Number 38k was admitted into evidence.)

15 MS. CRUM: RF -- RSF 118-4.

16 MR. THOMAS: No objection.

17 MS. HOLLINGSWORTH: No objection.

18 THE COURT: It's admitted.

19 (RSF Exhibit Number 118-4 was admitted into

20 evidence.)

21 MS. CRUM: RSF 118-15.

22 THE COURT: Your slow to the drawing, Mr. Bupp.

23 MR. THOMAS: It's 118-15?

24 MS. CRUM: It's the updated Figure 16 in the

25 application.

1 MR. THOMAS: I've got my -- my RSF 118 goes to 12.

2 MS. CRUM: I've got 118 -- it's 118-5 or 118-11. I

3 can't remember where it was.

4 MR. THOMAS: Not 15.

5 THE COURT: All right.

6 MR. THOMAS: So ---

7 MS. HOLLINGSWORTH: Was this 119-15? Are you sure

8 it's ---

9 THE COURT: Yeah. This is ---

10 MS. CRUM: It -- I -- okay. We just did RSF 118-4.

11 MR. THOMAS: Yes.

12 MS. CRUM: The next one is RSF 118-5.

13 MR. THOMAS: No objection.

14 THE COURT: It's submitted. Oh, there it is.

15 (RSF Exhibit Number 118-5 was admitted into

16 evidence.)

17 MS. CRUM: RSF 118-11.

18 MS. HOLLINGSWORTH: Your Honor, if we could go back

19 -- I'm sorry. I didn't get a chance to

20 respond. I would object to the slide because

21 it provides a number for licensed that's

22 inconsistent with the number of licensed bed --

23 beds that MUHA has to have, 656 licensed beds.

24 MS. CRUM: I -- I'm sorry. I'm having a really hard

25 time hearing you. I apologize.

1 THE COURT: All right. She said that the licensed
2 beds listed in this exhibit is inconsistent
3 with MUHA's licensed beds currently.

4 MS. CRUM: No, sir. They're just -- it's not
5 inconsistent with the licenced beds. The
6 existing beds are different, not the licenced
7 beds. You can take judicial notice of the DHEC
8 website as to the number of licenced beds.
9 They have more existing beds because they have
10 beds that have not been implemented.

11 THE COURT: Ms. Hollingsworth.

12 MS. HOLLINGSWORTH: Your Honor, it certainly I think
13 would go to the weight that you would give
14 this.

15 THE COURT: Okay. Well, I'm ---

16 MS. HOLLINGSWORTH: That's fine.

17 THE COURT: I'll stick with the prior ruling and
18 keep on going.

19 MS. CRUM: RSF 118-11.

20 MS. HOLLINGSWORTH: No objection

21 MR. THOMAS: No objection, Your Honor.

22 MS. CRUM: RSF ---

23 THE COURT: It's admitted.

24 (RSF Exhibit Number 118-11 was admitted into
25 evidence.)

1 MS. CRUM: Thank you, sir. RSF 118-12.
2 MS. HOLLINGSWORTH: No objection.
3 MR. THOMAS: No objection.
4 THE COURT: Admitted.
5 (RSF Exhibit Number 118-12 was admitted into
6 evidence.)
7 MS. CRUM: RSF 118-7.
8 MS. HOLLINGSWORTH: No objection, Your Honor.
9 MR. THOMAS: No objection.
10 MS. CRUM: RSF ---
11 THE COURT: It's admitted.
12 (RSF Exhibit Number 118-7 was admitted into
13 evidence.)
14 MS. CRUM: Thank you.
15 THE COURT: Give me time to admit it.
16 MS. CRUM: I'm sorry, Your Honor.
17 THE COURT: Give me time to admit it.
18 MS. CRUM: Yes, sir. I will. RSF 118-8.
19 MR. THOMAS: No objection, Your Honor.
20 THE COURT: It's admit -- oh, no.
21 MS. HOLLINGSWORTH: No. I mean, MUHA internal
22 data's is the source, Your Honor. I mean, if
23 it was the representation as to this is what
24 was produced in discovery, I -- I would have no
25 objection.

1 THE COURT: It's admitted.
2 (RSF Exhibit Number 118-8 was admitted into
3 evidence.)
4 MS. CRUM: RSF 118-9.
5 MR. THOMAS: No objection.
6 MS. HOLLINGSWORTH: No objection.
7 THE COURT: Yeah. That's admitted.
8 (RSF Exhibit Number 118-9 was admitted into
9 evidence.)
10 MS. CRUM: RSF 118-10.
11 MS. HOLLINGSWORTH: No objection.
12 MR. THOMAS: No objection.
13 THE COURT: It's admitted.
14 (RSF Exhibit Number 118-10 was admitted into
15 evidence.)
16 MS. CRUM: RSF 118-6.
17 MS. HOLLINGSWORTH: No objection.
18 MR. THOMAS: No objection.
19 THE COURT: It's admitted.
20 (RSF Exhibit Number 118-6 was admitted into
21 evidence.)
22 MS. CRUM: RSF 119 -- 119-90.
23 MR. THOMAS: 119-90?
24 THE COURT: It's on the screen.
25 MS. HOLLINGSWORTH: No objection to it.

1 MR. THOMAS: No objection, Your Honor.

2 THE COURT: It's admitted.

3 (RSF Exhibit Number 119-90 was admitted into
4 evidence.)

5 MS. CRUM: RSF 119-4.

6 MR. THOMAS: No -- no objection, Your Honor.

7 MS. HOLLINGSWORTH: No objection.

8 THE COURT: It's admitted.

9 (RSF Exhibit Number 119-4 was admitted into
10 evidence.)

11 MS. CRUM: RSF 119-5.

12 MS. HOLLINGSWORTH: No objection.

13 MR. THOMAS: No objection.

14 THE COURT: Admitted.

15 (RSF Exhibit Number 119-5 was admitted into
16 evidence.)

17 MS. CRUM: RSF 119-07.

18 MS. HOLLINGSWORTH: No objection.

19 MR. THOMAS: No objection.

20 THE COURT: Admitted.

21 (RSF Exhibit Number 119-7 was admitted into
22 evidence.)

23 MS. CRUM: RSF 119-6.

24 MR. THOMAS: Is it -- is this already in the CON
25 application?

1 MS. CRUM: I think it's updated.

2 MR. THOMAS: Oh, okay. I have no objection.

3 MS. HOLLINGSWORTH: No objection.

4 THE COURT: It's admitted.

5 (RSF Exhibit Number 119-6 was admitted into
6 evidence.)

7 MS. CRUM: RSF 119-8.

8 MR. THOMAS: No objection.

9 MS. HOLLINGSWORTH: No objection.

10 THE COURT: Admitted.

11 (RSF Exhibit Number 119-8 was admitted into
12 evidence.)

13 MS. CRUM: RSF 119-09.

14 MS. HOLLINGSWORTH: No objection.

15 MR. THOMAS: No objection, Your Honor.

16 THE COURT: Admitted.

17 (RSF Exhibit Number 119-9 was admitted into
18 evidence.)

19 MS. CRUM: RSF 119-17.

20 MR. THOMAS: Yeah. So, I do have an objection to
21 this one. So, this his opinion, I believe,
22 based on if the service areas were separated
23 and in this case the service area under which,
24 Your Honor, is reviewing the application in
25 saying tri-county service area and the tri-

1 county service area, you know, the beds per
2 thousand population are actually higher than
3 2.41. So, I -- I think is more of an opinion
4 piece and he testified to it in that way.

5 MS. CRUM: Your Honor, I don't think this opinion.
6 I think it's math. It's take -- it's using the
7 number of beds in the -- in the State Health
8 Plan and it's using the population data for the
9 tri-county area and just flat math.

10 MR. THOMAS: That's not -- those aren't the service
11 areas.

12 THE COURT: But it's -- you can argue about whether
13 -- on cross about whether it's the service area
14 whether it should be utilized, but it does
15 appear to be ---

16 MR. THOMAS: Well, we have a State Health Plan ---

17 THE COURT: --- math.

18 MR. THOMAS: We have a State Health Plan that's
19 already telling us that.

20 THE COURT: Yeah.

21 MR. THOMAS: So, I -- I just think this is kind of
22 his opinion not -- you know ---

23 MS. HOLLINGSWORTH: And -- and Your Honor, the 2017-
24 2018 Health Plan is not separated. In fact, it
25 is a tri-county service area. Because if it

1 were separated by county, then this project
2 couldn't approved. I mean, so it's -- it's
3 taking it both ways. It -- it is a tri-county
4 service area. So, to represent that the source
5 of the 2017-2018 State Health Plan that's an
6 inconsistent description of the service area in
7 that plan.

8 THE COURT: All right. I see ---

9 MS. HOLLINGSWORTH: It's as -- it's his planning
10 opinion, but ---

11 THE COURT: Well, I see your point on that as far as
12 it's relevancy. I think it's enough -- it's
13 probative enough to support ---

14 MS. CRUM: And -- and Your Honor ---

15 THE COURT: --- his testimony.

16 MS. CRUM: If I might be heard on that ---

17 THE COURT: Yeah.

18 MS. CRUM: --- for just a second. In Trident's pre-
19 hearing statements and it might -- in their
20 regional and amended pre-hearing statement,
21 they relied on the 2018-19 State Health Plan.
22 And we've had the discussion as to whether or
23 not you plan in affect, which you do and you
24 can consider the -- any new plan that was
25 adopted in between in the 2018 ---

1 THE COURT: But ---

2 MS. CRUM: --- '19 plan divides it by county.

3 MR. THOMAS: Yeah. But this is a back -- they're
4 trying to backdoor the draft State Health Plan
5 is what they're trying to do, Your Honor.

6 THE COURT: They're just trying to make a different
7 argument that does -- that's inconsistent with
8 the State Health Plan.

9 MR. THOMAS: Well ---

10 THE COURT: And I will take ---

11 MR. THOMAS: --- we can address this -- we can
12 address this on cross and rebuttal, Your Honor.

13 THE COURT: Yeah. On that, I'm going to -- you've
14 got a point. It's just is it a point that's
15 going to keep me from allowing the exhibit to
16 come in.

17 MR. THOMAS: I understand.

18 THE COURT: I'm going to lev -- I'm going to allow
19 the exhibit to come in, but allow the fruit to
20 ripen on your objection.

21 (RSF Exhibit Number 119-17 was admitted into
22 evidence.)

23 MS. CRUM: RSF 119-18.

24 MR. THOMAS: No objection on this one, Your Honor.

25 MS. CRUM: RSF ---

1 THE COURT: Woah. Woah. Woah.

2 MS. CRUM: Oh, I'm sorry.

3 MS. HOLLINGSWORTH: Your Honor, I would just have --
4 it would be the same objection as the prior
5 because again, it's relying on the 2017-2018
6 Health Plan, but not defining the service area.

7 THE COURT: Yeah. That same population data.

8 MS. HOLLINGSWORTH: But I -- it would just be the
9 same objection.

10 THE COURT: Okay. I admit it.

11 (RSF Exhibit Number 119-18 was admitted into
12 evidence.)

13 MS. CRUM: RSF 119-19.

14 THE COURT: Same population.

15 MS. HOLLINGSWORTH: Yeah, Your Honor. I mean, I --
16 I would -- I think this one even goes a step
17 further by describing a bed need by county
18 using the State Health Plan from 2017 that
19 there is not a -- a bi-county bed need under
20 that plan. And so, I think this even takes it
21 a step further in terms of it's kind of -- the
22 prejudicial impact without weighing any
23 probative value. Again, as a -- as an exhibit
24 in evidence.

25 MR. THOMAS: And I would also add, Your Honor, and

1 just as SC Revenue and Fiscal Affairs, is --
2 has that data been produced to us because if
3 it's a summary of -- of whatever we've
4 produced, I understand and I -- I would not
5 have a problem with it, but if we hadn't gotten
6 that data from Mr. Levitt or -- or MUHA, then
7 I would object to this.

8 THE COURT: Have they got the data?

9 MS. CRUM: Well, Your Honor, I -- they've got equal
10 access to the RS -- RSF data. It's equally
11 available. Their experts testified about it.
12 They have the contract to get it. So, it is
13 equally available to them, as it is to us. It
14 is publically available data if you have a
15 contact with the -- with the State. And they
16 do because they -- they -- most of their
17 exhibits relied on it. So, it -- Your Honor,
18 I would also say that to the extent that Your
19 Honor considers the 2018-19 Plan, then this is
20 incredibly relevant to that because the 18-19
21 plan changes the service area from the Tri-
22 County service area to the individual counties.
23 Well, that's the plan in affect now.

24 MR. THOMAS: But it doesn't calculate bed need by --
25 in the way Mr. Levitt is doing here.

1 THE COURT: I'm gonna admit it.

2 (RSF Exhibit Number 119-19 was admitted into
3 evidence.)

4 MS. CRUM: And, Your Honor, I might just note for
5 the record that these were produced as part of
6 Mr. Levitt's exhibits in a motion to lift the
7 stay.

8 THE COURT: Well that doesn't persuade me one way or
9 the other.

10 MS. CRUM: Just information.

11 THE COURT: Okay.

12 MS. CRUM: RSF 119-20.

13 MS. HOLLINGSWORTH: No objection.

14 MR. THOMAS: I would just have the same objection I
15 made earlier, Your Honor.

16 THE COURT: Okay. It's admitted.

17 (RSF Exhibit Number 119-20 was admitted into
18 evidence.)

19 MS. CRUM: RSF 119-23.

20 MR. THOMAS: No objection here, Your Honor.

21 MS. HOLLINGSWORTH: I mean, Your Honor, this to me
22 is a demonstrative. I mean I don't see how
23 this is evidence. I mean CON update reports
24 and ---

25 THE COURT: Well unless you've got a better argument

1 I'm gonna sustain the objection.

2 MS. CRUM: No, sir, Your Honor. I'm not gonna fight
3 over it. RSF 119-24.

4 MS. HOLLINGSWORTH: Your Honor, I have no problem
5 with the testimony and look forward to cross
6 but I don't think that this is evidence. I
7 think it should just be a demonstrative to
8 support the testimony.

9 THE COURT: Why is that?

10 MS. HOLLINGSWORTH: Well, Your Honor, it's making
11 representations that -- about peninsula versus
12 off the peninsula and claiming it's supported
13 by plans. I just think it's -- again, it's his
14 opinion about various activity and I think he's
15 entitled to it, I'll certainly cross on it but
16 I'm not sure how it's evidence and should be
17 admitted.

18 MS. CRUM: Your Honor, this is compilation of the
19 State Health Plan data.

20 THE COURT: I'm gonna admit this.

21 MS. HOLLINGSWORTH: Fine, Your Honor. Thank you.
22 (RSF Exhibit Number 119-24 was admitted into
23 evidence.)

24 MS. CRUM: RSF 119-25.

25 MR. THOMAS: I object to this. It's just a

1 demonstrative, Your Honor.

2 THE COURT: If the other maps aren't coming in than
3 this one won't.

4 MR. THOMAS: Thank you, Your Honor.

5 MS. CRUM: That's fine, Your Honor. RSF 119-26.

6 MS. HOLLINGSWORTH: No objection.

7 MR. THOMAS: No objection.

8 THE COURT: It's admitted.

9 (RSF Exhibit Number 119-26 was admitted into
10 evidence.)

11 MS. CRUM: RSF 119-27.

12 MR. THOMAS: No objection, Your Honor.

13 MS. HOLLINGSWORTH: No objection.

14 THE COURT: Admitted.

15 (RSF Exhibit Number 119-27 was admitted into
16 evidence.)

17 MS. CRUM: RSF 119-28.

18 MR. THOMAS: No objection.

19 MS. HOLLINGSWORTH: No objection.

20 THE COURT: Admitted.

21 (RSF Exhibit Number 119-28 was admitted into
22 evidence.)

23 MS. CRUM: RSF 119-29.

24 MR. THOMAS: No objection.

25 MS. HOLLINGSWORTH: No objection.

1 THE COURT: Admitted.

2 (RSF Exhibit Number 119-29 was admitted into
3 evidence.)

4 MS. CRUM: RSF 119-36. I think this was one that
5 you objected to earlier.

6 MR. THOMAS: Yeah. I've got written by it, no
7 admission.

8 THE COURT: Well that settles it.

9 MR. THOMAS: Just let me make the decisions, we'll
10 be out of here by, you know, 2:00 o'clock.
11 Yeah, Your Honor, this is demonstrative. He
12 took my witness's work and then he kind of
13 retooled it and really actually took only two
14 categories of it. So it think this is
15 demonstrative. This is all his opinion.

16 MS. CRUM: Your Honor, it's not just a
17 demonstrative. As you said earlier, this
18 should be subject to cross-examination.

19 THE COURT: I'd probably go along with Mr. Thomas
20 but I really don't see the prejudice it would
21 have to me. But it is -- the top of it says,
22 unrealistic increase in MUHA draw. Based upon
23 that I'm gonna sustain the objection.

24 MR. THOMAS: Thank you.

25 THE COURT: 'Cause of the commentary.

1 MS. CRUM: I'm sorry, sir.

2 THE COURT: Because of the commentary.

3 MS. CRUM: All right, sir. RSF 119-37.

4 MR. THOMAS: Same objection, the unrealistic
5 increase. I think Mr. Hiott, this is based on
6 his analysis. I don't believe his document is
7 in evidence. I used that as a demonstrative.
8 So he's basing a demonstrative on a
9 demonstrative I guess.

10 THE COURT: Any response?

11 MS. CRUM: Your Honor, we're happy to redact the
12 unrealistic increase or the unrealistic if that
13 would -- but I'm not gonna fight over that,
14 Your Honor.

15 THE COURT: Okay. Sustained. I've heard his
16 testimony.

17 MS. CRUM: Yes, sir. RSF 119-38.

18 MR. THOMAS: Yeah, this is one I would object to,
19 Your Honor, 'cause it's demonstrative based on
20 maps.

21 THE COURT: That aren't in evidence?

22 MR. THOMAS: That aren't in evidence.

23 MS. BAKER: We let their compilation based on maps
24 in.

25 THE COURT: Ah.

1 MS. BAKER: We took your maps out but left your
2 charts in.

3 MR. THOMAS: The drive-time chart?

4 MS. BAKER: Yes.

5 MR. THOMAS: Okay.

6 MS. BAKER: We didn't take any charts out.

7 MR. THOMAS: Then I withdraw, Your Honor.

8 THE COURT: It's admitted.

9 (RSF Exhibit Number 119-38 was admitted into
10 evidence.)

11 MS. JONES: And we're going to review those, you
12 know, over the lunch break for the parody
13 presentation.

14 MR. THOMAS: Thank you, Celeste.

15 MS. CRUM: RSF 119-39.

16 MS. HOLLINGSWORTH: No objection.

17 MR. THOMAS: No objection.

18 THE COURT: Admitted.

19 (RSF Exhibit Number 119-39 was admitted into
20 evidence.)

21 MS. CRUM: RSF 119-40.

22 MR. THOMAS: No objection.

23 MS. HOLLINGSWORTH: No objection.

24 MS. CRUM: RS- ---

25 THE COURT: Admitted.

1 (RSF Exhibit Number 119-40 was admitted into
2 evidence.)

3 MS. CRUM: I'm sorry, Your Honor. RSF 119-41.

4 MR. THOMAS: No objection.

5 MS. HOLLINGSWORTH: I guess my only question -- no
6 objection.

7 THE COURT: Admitted.

8 MS. CRUM: R- -- I'm sorry, MUHA 38.

9 MR. THOMAS: Ms. -- can we go back, Your Honor? I'm
10 sorry.

11 THE COURT: No.

12 MR. THOMAS: You know it's not that big a deal.

13 MS. CRUM: RSF -- MUHA 38.

14 THE COURT: I'm an invoking the wedding principal.
15 You know what that is?

16 MR. THOMAS: What's that?

17 MS. CRUM: No, sir.

18 THE COURT: Speak now or forever hold your peace.

19 MS. CRUM: MUHA 38.

20 MS. HOLLINGSWORTH: No objection, Your Honor.

21 MR. THOMAS: No objection.

22 THE COURT: It's admitted.

23 (MUHA Exhibit Number 38 was admitted into evidence.)

24 MS. CRUM: MUHA 38-A.

25 MR. THOMAS: No objection.

1 MS. HOLLINGSWORTH: No objection.

2 MS. CRUM: MUHA 38-B.

3 THE COURT: Well 38-A was admitted. So now we're at
4 38-B.

5 (MUHA Exhibit Number 38a was admitted into evidence.)

6 MS. CRUM: Yes, I'm sorry. 38-B.

7 MR. THOMAS: Yeah. Your Honor, I don't -- this one
8 is one that I did raise a pretty vociferous
9 objection to. And it's because it is much --
10 this is his opinion, this is much more
11 prejudicial than probative. It leaves out all
12 the beds in the service area that actually
13 service these individual counties. So, you
14 know, service area, bed need left unserved by
15 Trident and Summerville 1,077. That is his
16 opinion and it is just -- yeah, it's contrary
17 to the State Health Plan, Your Honor.

18 MS. CRUM: Your Honor, this is based on the State
19 Health Plan -- excuse me, Your Honor. This is
20 based on the zip codes that Trident Medical
21 Center defines for their acute care service
22 areas. And it is the population data. If you
23 look under the 2019 population data, and it
24 says what county each one of the zip codes are
25 in. And that's factual, Your Honor. And then

1 he performed mathematical calculations.

2 MR. THOMAS: Your Honor, we've got down here in red,
3 service area bed need left unserved by Trident.
4 Well, Your Honor, there's over I think 1,700
5 beds in the tri-county service area. So this
6 makes it look like there's this bed need
7 sitting here 1,203 beds. And that's his
8 opinion, and he said it somehow suggests this
9 is left unserved by Trident. Well Trident's
10 not the only hospital in the service area.

11 MS. CRUM: Your Honor, this is specific to the zip
12 codes. It doesn't purport to be the tri-county
13 service area.

14 MR. THOMAS: But many other hospitals serve this --
15 these zip codes. I mean you've got Roper St.
16 Frances, you've got East Cooper. He's got
17 29464 and that's Mount Pleasant. Well East
18 Cooper Medical Center sits in there, that's got
19 over 100 beds. I mean it just ...

20 THE COURT: I recognize your vociferousness but I'm
21 -- based on the fact that it's out of the State
22 Health Plan then draws a conclusion from that
23 I'm going to admit it subject to cross-
24 examination.

25 MR. THOMAS: Your Honor, we can just address this in

1 cross and on the rebuttal, Your Honor.

2 THE COURT: Okay.

3 (MUHA Exhibit Number 38b was admitted into evidence.)

4 MS. CRUM: Your Honor, and I just want to make a
5 point for the record that we will be objecting
6 to rebuttal.

7 THE COURT: Well I'm shocked.

8 MS. CRUM: I think Ms. Jones already said that.

9 MS. HOLLINGSWORTH: On new material.

10 MR. THOMAS: This looks like new material to me,
11 Your Honor.

12 MS. CRUM: The next one ---

13 THE COURT: This one or ...

14 MR. THOMAS: Every slide we've seen.

15 THE COURT: Oh.

16 MS. CRUM: It's interesting that they're new
17 material since they produced them all. But
18 that's ...

19 THE COURT: Well this says, MUHA.

20 MS. CRUM: MUHA 38-C.

21 MR. THOMAS: First of all, Your Honor, wait a
22 second. Just for the record, all of the quote
23 unquote Roper exhibits were all MUHA documents,
24 Your Honor.

25 THE COURT: I get that.

1 MR. THOMAS: Okay. So, you know, I just think it's
2 a fundamental misunderstanding of what rebuttal
3 is on the other side of the isle.

4 THE COURT: I think I know what rebuttal is.

5 MR. THOMAS: I know you do, Your Honor. You've
6 given it to me before.

7 MS. CRUM: Now MUHA 38-C.

8 MR. THOMAS: I have no objection, Your Honor.

9 MS. HOLLINGSWORTH: No objection.

10 THE COURT: It's admitted.

11 (MUHA Exhibit Number 38c was admitted into evidence.)

12 MS. CRUM: MUHA 38-D.

13 MR. THOMAS: No objection, Your Honor.

14 MS. HOLLINGSWORTH: No objection.

15 THE COURT: It's admitted.

16 (MUHA Exhibit Number 38d was admitted into evidence.)

17 MS. CRUM: MUHA 38-G.

18 MR. THOMAS: No objection.

19 MS. HOLLINGSWORTH: No objection.

20 MS. CRUM: MUHA 38-H.

21 THE COURT: G is admitted.

22 (MUHA Exhibit Number 38g was admitted into evidence.)

23 MS. CRUM: I'm sorry. I'm trying ...

24 THE COURT: To keep it moving. I know.

25 MS. CRUM: MUHA 38-H.

1 MR. THOMAS: Let me ask you this. Is your 38-H only
2 like four pages?

3 MS. CRUM: Yes, sir.

4 MR. THOMAS: Yeah. So we would object to that
5 'cause this is only like four pages of the CON
6 application.

7 MS. CRUM: Your Honor, we would be very happy to put
8 the entire thing in. This was the subject of
9 my demon exhibit, the demonstrative exhibit and
10 we'll be happy to put the whole thing in.

11 MR. THOMAS: Okay.

12 MS. CRUM: Exclusive of the support letters.

13 MR. THOMAS: Yeah, I would just say sections A
14 through D is all I would want.

15 MS. CRUM: I'm sorry, A through ...

16 MR. THOMAS: D.

17 MS. CRUM: D.

18 THE COURT: All right. So we're gonna let A through
19 D of the demon come in.

20 (MUHA Exhibit Number 38h was admitted into evidence.)

21 MS. CRUM: All right. MUHA 38-J.

22 MR. THOMAS: I thought we already did this.

23 MS. CRUM: Oh, we may have. It might have been in
24 there twice.

25 MR. THOMAS: J and K we've done.

1 MS. CRUM: Okay. MUHA 38-I.
2 MR. THOMAS: No objection.
3 MS. HOLLINGSWORTH: No objection.
4 THE COURT: It's admitted.
5 MS. CRUM: MUHA 38-M.
6 MR. THOMAS: I just want my map to come in.
7 MS. CRUM: We'll be glad to take it out, Your Honor.
8 THE COURT: Either take it or -- I'm not going to
9 admit it unless the other maps come in. So ---
10 MR. THOMAS: Thank you, Your Honor.
11 THE COURT: --- we're doing goose/gander.
12 MS. CRUM: Your Honor, I might say we are all for
13 the goose/gander. That's one thing we all
14 agree on. MUHA 38-N.
15 MR. THOMAS: No objection, Your Honor.
16 MS. HOLLINGSWORTH: So, Your Honor, this is some
17 material that the sort of new analysis that was
18 produced on the date that we actually exchanged
19 exhibit lists. But I think the Court will
20 handle it ---
21 THE COURT: Okay.
22 MS. HOLLINGSWORTH: --- through testimony.
23 THE COURT: Thank you for the vote of confidence.
24 It's admitted.
25 (MUHA Exhibit Number 38n was admitted into evidence.)

1 MS. CRUM: MUHA 38-O.
2 MR. THOMAS: No objection.
3 MS. HOLLINGSWORTH: No objection, Your Honor.
4 THE COURT: Admitted.
5 (MUHA Exhibit Number 38o was admitted into evidence.)
6 MS. CRUM: MUHA 38-P.
7 MR. THOMAS: No objection.
8 MS. HOLLINGSWORTH: No objection, Your Honor.
9 THE COURT: Admitted.
10 (MUHA Exhibit Number 38p was admitted into evidence.)
11 MS. CRUM: We will remove MUHA 38-Q.
12 MR. THOMAS: Thank you.
13 MS. CRUM: MUHA 38-R.
14 MR. THOMAS: No objection.
15 MS. HOLLINGSWORTH: No objection.
16 THE COURT: Admitted.
17 (MUHA Exhibit Number 38r was admitted into evidence.)
18 MS. CRUM: MUHA 38-S.
19 MR. THOMAS: No objection.
20 MS. HOLLINGSWORTH: No objection.
21 MS. CRUM: MUHA 38 ---
22 THE COURT: Admitted.
23 (MUHA Exhibit Number 38s was admitted into evidence.)
24 MS. CRUM: --- T.
25 MR. THOMAS: Yeah, I have no objection to the rest

1 of the exhibits in the 38s.

2 MS. CRUM: Well let me call them out so that we have
3 them, Your Honor.

4 THE COURT: Okay.

5 MS. CRUM: 38-U, 38-W, 38-V, 38-X, 38-Y.

6 THE COURT: Are all admitted. Ms. Hollingsworth?

7 MS. HOLLINGSWORTH: Yes, sir. No objection.

8 (MUHA Exhibit Number 38, u, v, w, x and y were
9 admitted into evidence.)

10 MS. CRUM: The Berkeley County map, I can't remember
11 if that is in the CON application or not. But
12 if it's not in the application then it's that
13 -- oh, I didn't even put that up. Okay. Let's
14 get through those. And then Trident 94.

15 MR. THOMAS: I didn't have a problem.

16 MS. HOLLINGSWORTH: No objection.

17 THE COURT: It's admitted.

18 (TMC Exhibit Number 94 was admitted into evidence.)

19 MS. CRUM: So all of the rest of those were
20 admitted, Your Honor?

21 THE COURT: Yes.

22 MS. CRUM: Okay, sir.

23 THE COURT: Sounds like a good time to take a lunch
24 break.

25 MS. CRUM: Yes, sir. Now's a fine time. I think

1 I've got about 30 more minutes. I hadn't
2 anticipated this much time on the objections
3 and I apologize for that.

4 THE COURT: Lots of things I didn't anticipate. All
5 right. What time are we gonna come back?
6 2:30?

7 MS. CRUM: Yes, sir.

8 THE COURT: Oh, okay. My clock says 1:29. Is that
9 wrong?

10 MR. THOMAS: 1:39.

11 THE COURT: Huh?

12 MR. THOMAS: It's 1:39.

13 THE COURT: It's 10 minutes behind. You want to
14 make it 2:45 then?

15 MS. JONES: Yes.

16 MS. CRUM: Yes, sir.

17 THE COURT: Okay. All right. Thank y'all.

18 (A break was taken from 1:39 p.m. until 2:47 p.m.)

19 THE COURT: All right.

20 MR. LEVITT - CONTINUED DIRECT EXAMINATION BY MS.

21 CRUM:

22 **Q: Mr. Levitt, we are on the home stretch of your**
23 **Direct, I just have a few more questions for**
24 **you. Look at -- we're gonna ask some questions**
25 **about the State Plan and the Regulations now.**

1 MS. CRUM: And if you could pull up, Mr. Bupp,
2 Regulation 61-15 801.

3 Q: I can just ask you. Is it your understanding
4 that in order to be approved, the MUHA
5 application has to comply with every project
6 reviewed criteria?

7 A: It does not.

8 Q: Okay. Let's look at -- you're familiar with
9 Standard 5 in the State Health Plan, are you
10 not?

11 A: Yes.

12 MR. THOMAS: Your Honor, that ball may be coming to
13 me sooner than I think, but I would just ask
14 that the same objection -- I'm making the same
15 objections they made regarding a legal
16 conclusion by an expert.

17 THE COURT: About the State Health Plan.

18 MR. THOMAS: Yeah, I mean, it's -- and the
19 Regulation. She's asking the Reg- ---

20 MS. CRUM: I didn't even ask a question yet, Your
21 Honor.

22 THE COURT: No, he's objecting to your previous
23 question and answer about does the State Health
24 Plan require that you comply with every
25 criteria.

1 MS. CRUM: I think I said, no, Judge, in 61-15.

2 THE COURT: Oh, okay.

3 MS. CRUM: Yes, sir.

4 MR. THOMAS: So, I just make the same objection and,
5 to the extent that she's ---

6 MS. CRUM: That's fine.

7 MR. THOMAS: --- gonna ask him about the
8 Regulations. Same thing that they made ---

9 THE COURT: Well, I think my previous ruling was he
10 can't express a comment on the law, but he can
11 utilize his understanding of the law in making
12 his evaluation.

13 MS. CRUM: Yes, sir.

14 MR. THOMAS: Yes, sir, and I just wanted to make
15 sure ---

16 THE COURT: So, I'll stick with that.

17 MR. THOMAS: Thank you.

18 **Q: All right. So, Mr. Levitt, let's turn to**
19 **Regulation 61-15 802.1, please, sir.**

20 **A: I'm there.**

21 **Q: What is your understanding, as an expert in**
22 **healthcare planning -- excuse me, what is your**
23 **opinion, as an expert in healthcare planning,**
24 **whether MUHA's application can be approved**
25 **unless it complies with the State Health Plan?**

1 **A:** The application must comply with the State
2 Health Plan to be approved.

3 **Q:** Let's go to 802.2. Mr. Levitt, let's see. Mr.
4 Levitt, is 802.2, is that the community need
5 project review criteria in Regulation 61-15?

6 **A:** Yes.

7 **Q:** Okay. It's got a number of parts. I'm gonna
8 go down each one of these and ask you your
9 opinion as an expert in healthcare planning and
10 healthcare finance if you have an opinion
11 regarding whether or not MUHA's application
12 complies with the project review criteria,
13 okay?

14 **A:** Yes.

15 **Q:** Would you look at A: the total -- the target
16 population should be clearly identified as to
17 the size, location, distribution, and
18 socioeconomic status.

19 **A:** Yes.

20 **Q:** What is your opinion as a healthcare planner
21 and expert financial feasibility with regard to
22 whether the MUHA application complies with
23 that?

24 **A:** We've demonstrated compliance with that, we've
25 identified the population, the demographics in

1 the area, and where we plan on proposing to put
2 the hospital.

3 Q: All right, sir. And look at B: Projections of
4 anticipated population changes should be
5 reasonable and based on accepted demographic or
6 statistical methodologies, with assumptions and
7 methodologies clearly presented in the
8 application. The application must use
9 population statistics consistent with those
10 demonstrated by the State Demographer, the
11 Budget and Control -- and the State Budget and
12 Control Board. What is your opinion as an
13 expert in health planning and healthcare
14 finance as to whether or not MUHA's application
15 complies with that subparagraph?

16 A: So we presented the Claritas population, we
17 identified in the application it's consistent
18 with the Budget and Control Board projections
19 and we comply with that Standard.

20 Q: And 2C: The proposed project should provide
21 services that meet an identified (documented)
22 need of the target population. The assumptions
23 and methodologies used to determine the level
24 of need should be specified in the application
25 and based on a reasonable approach as judged by

1 the reviewing body. Any deviation from the
2 population projections used in the South
3 Carolina Health Plan should be explained. As
4 an expert in healthcare planning and financial
5 feasibil- -- I'm sorry, and healthcare finance,
6 do you have an opinion as to whether MUHA's
7 application complies with 2C?

8 A: I do. We documented the population that we
9 used that was different from health planning
10 was the zip code information from Claritas, was
11 consistent with State Demographer, we talked
12 about population growth, we talked about the
13 target population area. That target
14 population, we looked at the non-tertiary DRGs
15 served at MUHA, the zip code from which they
16 live, applied a methodology that I believe Ms.
17 Murdock accepted, since the application was
18 approved, as a reasonable approach, the
19 redirection approach, so we complied with that
20 Standard as well.

21 Q: And D is, does this project involve the
22 redirection, relocation, reduction, relocation
23 and elimination of a healthcare facility?

24 A: It does not.

25 Q: So is it applicable?

1 **A:** **No.**

2 **Q:** **Okay. And under 2E: The current and/or**
3 **projected utilization should be sufficient to**
4 **justify the expansion or implementation of the**
5 **proposed service. As an expert in healthcare**
6 **planning and healthcare finance, do you have an**
7 **opinion regarding whether or not MUHA's**
8 **application complies with this subpart?**

9 **A:** **I do. We projected somewhere around 50 to 55**
10 **percent utilization by the third year. That's**
11 **consistent with the state-wide average of all**
12 **hospitals in the state; might be a little**
13 **higher. I think it's conservative and it**
14 **justifies the proposed project in Berkeley.**

15 **Q:** **Let's look at Regulation 61-15, Section 802.3,**
16 **distribution. Mr. -- well, let's look at A**
17 **first. Duplication and modernization of**
18 **services must be justified. Unnecessary**
19 **duplication of services and unnecessary**
20 **modernization of services will not be approved.**
21 **As an expert in healthcare planning and**
22 **finance, do you have an opinion regarding**
23 **whether or not MUHA's application complies with**
24 **3.A?**

25 **A:** **I do.**

1 Q: And what is that?

2 A: That we have demonstrated compliance with that.
3 We've justified the need, there's a need to
4 plan for 147 beds, the current plan shows 57
5 beds. So the need for the additional beds have
6 been justified. Through our utilization
7 information, we've shown it be not unnecessary
8 duplication. Whenever there's another hospital
9 added, it's a duplication in some degree, but
10 not an unnecessary duplication. MUHA needs the
11 resources to be able to treat its patients.
12 Therefore, I think we -- my opinion is we
13 comply with that Standard.

14 Q: If you'd look at 3.C. The location of the
15 proposed service should allow for the delivery
16 -- I'm sorry, I missed B. 3.B: The proposed
17 service should be located so that it may serve
18 medically underserved areas (or an underserved
19 population segment) and should not
20 unnecessarily duplicate existing services or
21 facilities in the proposed service area. Do
22 you have an opinion as an expert in healthcare
23 planning and financing as to whether MUHA's
24 application complies with that subsection?

25 A: I do. I feel that we have demonstrated

1 compliance with that. It's located in an area
2 substantially closer to a large portion of the
3 patients that must travel all the way down the
4 peninsula for care at MUHA. It doesn't
5 duplicate existing services. Those facilities
6 have a strong utilization ---

7 Q: When you say, those facilities, what facilities
8 are you talking ---

9 A: The existing facilities, Trident and
10 Summerville and a strong utilization, with a
11 need for additional beds in the plan. The
12 newly opened Roper Berkeley Hospital relied on
13 redirection of their own patients. They felt
14 as though the population growth would offset
15 any other volume they needed for their
16 facility. We're proposing to redirect our
17 patients; doesn't duplicate the existing
18 resources.

19 Q: All right, sir. And now, 3.C, the location of
20 the proposed service should allow for the
21 delivery of necessary support services in an
22 acceptable period of time and at a reasonable
23 cost. As an expert in healthcare planning and
24 finance, do you have an opinion regarding
25 whether the MUHA's application complies with

1 this subsection?

2 **A:** Yeah, this is, I think, an old Standard. The
3 support services I think, you know, the
4 hospital is going to have a full array of
5 support services to be located on the site, so
6 we comply with that Standard as well.

7 **Q:** And 3.D: The proposed facility should not
8 restrict admissions. If any restrictions are
9 applied, their nature should be clearly
10 explained. As an expert in healthcare planning
11 and finance, do you have an opinion regarding
12 whether MUHA's application complies with this
13 sub- -- this subparagraph?

14 **A:** We've demonstrated compliance with this. We --
15 you heard testimony MUHA does not restrict
16 admissions, take all comers, non-discrimination
17 policy. Both Dr. Cawley said on an inpatient
18 basis, obviously, we comply with EMTALA, the
19 emergency requirements, but also the non-
20 emergency requirements. Outpatient services,
21 clinic visits, we treat all patients regardless
22 of their ability to pay.

23 **Q:** And 3.E: The applicant must document the means
24 by which a person will have access to the
25 services, e.g. outpatient services, admission

1 by house staff, admission by personal
2 physicians. In your opinion as a healthcare
3 planner and -- expert in healthcare planning
4 and finance, do you have an opinion with
5 whether MUHA's application complies with this
6 criteria?

7 A: Yes. We comply with that, obviously, it sort
8 of ties to D, but we treat all patients. So
9 residents have access to the services as needed
10 and only a physician can admit someone to a
11 hospital, obviously.

12 Q: 3.F: The applicant should address the extent to
13 which all residents of the area, and in
14 particular low income persons, racial and
15 ethnic minorities, women, the elderly,
16 handicapped persons, and other medically
17 underserved groups, are likely to have access
18 through the services being proposed. As your
19 -- as an expert in healthcare planning and
20 finance, do you have an opinion regarding
21 whether MUHA's application complies with this
22 sub-criteria?

23 A: We do; I do. We do comply with that. The
24 population, again we talk about a non-
25 discrimination policy, non-insurance

1 discrimination. We treat all patients
2 regardless of their ability to pay and the
3 history of MUHA's indigent care I think is a
4 strong one that shows access to that population
5 as well.

6 Q: What about disproportionate share?

7 A: Again, that would be as the name implies, they
8 treat a disproportionate share of Medicaid and
9 indigent patients; therefore, it is accessible
10 to that population.

11 Q: And 3.G: Facility providing the proposed
12 service should establish provisions to insure
13 that individuals in need of treatment as
14 determined by a physician have access to
15 appropriate services regardless of ability to
16 pay. Mr. Levitt, as an expert in healthcare
17 finan- -- planning and finance, do you have an
18 opinion regarding whether MUHA's application
19 complies with this substandard?

20 A: Yeah, I think for the reasons we've discussed,
21 it complies with this Standard as well.

22 Q: And finally, 3.H: Potential negative impact of
23 the proposed project upon the ability and/or
24 resources of existing providers to serve
25 medically underserved groups must be

1 considered. Mr. Levitt, as an expert in
2 healthcare planning and finance, do you have an
3 opinion regarding whether MUHA's application
4 complies with this substandard?

5 A: We do. Our payer mix is projected based on our
6 actual experience. So it's the patients that
7 MUHA traditionally treated, assuming the same
8 payer mix. It's not as though we assumed we
9 would be getting more commercial patients and
10 less indigent patients than we would have
11 otherwise gotten having a negative impact on
12 existing providers. It's the same patients,
13 same payer mix.

14 Q: Let's look at project review criteria in 802.4,
15 acceptability, A: The proposal and applicant
16 should have the support of affected persons
17 (including local providers and the target
18 population). The lack of opposition should not
19 be considered support for the propose --
20 purposes of these criteria. As an expert in
21 healthcare planning and finance, do you have an
22 opinion regarding whether MUHA's application
23 complies with this project review criteria and
24 subpart.

25 A: We do. We demonstrated that through the

1 letters of support and submitted with the
2 application.

3 Q: And the letters -- you said the letters of
4 support in the application?

5 A: Yes.

6 Q: Okay. Thank you. B: Where the documented
7 opposition exists to a proposal, such
8 opposition will be considered along with the
9 application. I'm not sure that's anything we
10 have to comply with, is it?

11 A: Well, I think we're here today to do that.

12 Q: All right. Then look at C: Possible transfer
13 agreements should be confirmed and an intent to
14 negotiate these arrangements should be
15 documented by all parties. As an expert in
16 healthcare planning and finance, do you have an
17 opinion regarding MUHA's application complies
18 with this project review criterion and subpart?

19 A: Yeah. I think MUHA's in a unique position. It
20 has transfer agreements with, I would imagine,
21 every hospital in the state. We demonstrated
22 through the ATC data that other hospitals
23 transfer patients, so obviously we have
24 agreements with other parties.

25 Q: Okay. And, excuse me, D: The applicant should

1 document the initiation of any required reviews
2 or agency check-offs. Have we -- does the
3 application comply with that based on your
4 experience, your expertise in healthcare
5 planning and finance?

6 A: Yes.

7 Q: Let's skip to 6, projected revenue. 802 6,
8 projected revenues, subpart A: The proposed
9 charges should be comparable to those charges
10 established by other facilities for similar
11 services within the service area or state. The
12 applicant should document how the proposed
13 charges were calculated. In your opinion as a
14 healthcare planner and finance, do you have an
15 opinion regarding whether MUHA's application
16 complies with this Standard?

17 A: I do. We've demonstrated that through our
18 application and the assumption of the pro
19 forma.

20 Q: And B, 6B: The project levels of utilization
21 should be reasonable, consistent -- reasonably
22 consistent with those experienced by similar
23 facilities in the service area and/or state.
24 In addition, projected levels of utilization
25 should be consistent with the need level of the

1 target population. As an expert in healthcare
2 planning and finance, do you have an opinion
3 regarding whether MUHA's application complies
4 with this standard?

5 A: Again, I think some of these overlap with one
6 another, so this would -- yes, we comply with
7 it and it relates to about the 50 percent
8 utilization projected. I think that's
9 consistent with levels with other providers.

10 Q: I'm sorry, your voice dropped at the end, I
11 couldn't hear it.

12 A: With other providers.

13 Q: Okay. Let's look at C: The projected
14 collection and reimbursement rates should be
15 reasonably consistent with those
16 experienced/utilized by other similar
17 facilities. As an expert in healthcare
18 planning and finance, do you have an opinion
19 regarding whether MUHA's application complies
20 with this project review criteria subpart?

21 A: I do. We've demonstrated that in the
22 information submitted in the application. I
23 think you heard some testimony from Ms.
24 Goodlett about that as well.

25 Q: And D: Failure to provide contingency plans for

1 any known factor which would jeopardize the
2 stability of the revenue projections should be
3 a grounds for rejection of the budget. As an
4 expert in healthcare planning and finance, do
5 you have an opinion regarding whether MUHA's
6 application complies with this?

7 A: I do. We looked at some of the Exhibits where
8 we did the sensitivity for outpatient
9 percentages and things like that and other
10 fixed and variable costs. The projections I
11 presented before lunch show that using some
12 sensitivity analysis, it's still projected to
13 be financially feasible.

14 Q: Let's look at 7, 802.7, projected expenses.
15 Projections of construction costs, start-up
16 costs, operating costs, debt service,
17 depreciation, manpower costs, etcetera, should
18 be consistent with those experienced by similar
19 facilities offering a similar level and scope
20 of services (with proper consideration given to
21 such factors as inflation, cost of capital,
22 etcetera). As an expert in healthcare planning
23 and finance, do you have an opinion regarding
24 whether MUHA's application complies with 802.7?

25 A: Yeah, the total projected costs I think are

1 reasonable. We projected two-and-a-half
2 million dollars per bed compared to 2.3, 2.4
3 million for Roper Berkeley and Trident
4 Berkeley. I think those would be the two
5 comparable facilities. Shows that our
6 projected cost per bed are consistent with
7 those. Overall costs, I think you heard some
8 other witnesses talk about some contingencies
9 that were in there, but I think we've
10 adequately covered any projected expenses for
11 the project.

12 Q: 802.8, beginning cash flow. The applicant must
13 have documented the availability of resources
14 or sources of funding sufficient to cover
15 capital requirements and start-up costs. The
16 schedule of utilization and net revenues must
17 be detailed with assumptions explicitly
18 presented. Do you have an opinion, as an
19 expert in healthcare planning and finance as to
20 whether MUHA's application complies with this
21 project review criteria?

22 A: I do. We have presented the information, I
23 think it's available in the application as well
24 as presented in the hearing. The projected
25 revenues and expenses are reasonable. We

1 talked about the source of funding for the
2 project and I think Ms. Goodlett talked about
3 \$450 million in cash that MUSC has in the bank
4 today, or they did at June 30th. So they could
5 pay cash for the project if they needed to.

6 **Q:** Let's look at 10, 802.10, debt service, A: Debt
7 service (interest cost plus payment toward
8 principal) should not be so large as to cause
9 a negative net income. As an expert in
10 healthcare planning and finance, do you have an
11 opinion regarding whether MUHA's application
12 complies with this criteria?

13 **A:** They do. Again, sort of, not on an EBITDA
14 line, but on the bottom line after depreciation
15 and interest has a positive net income by the
16 third year, so we demonstrate compliance with
17 that Standard.

18 **Q:** Let's look at 802.11, method of financing. A:
19 Possible alternatives should be identified. Do
20 you have an opinion as a healthcare planner, as
21 an expert at healthcare planning and finance
22 regarding whether or not MUHA's application
23 complies with this section?

24 **A:** It does. We talking about, again, some of
25 these overlaps, we talked about the fact that

1 they have cash in the bank that could pay for
2 the project as well as Ms. Goodlett talked
3 about other sources of funding for the project.

4 **Q:** And ---

5 OBJECTION:

6 MR. THOMAS: I need to object, Your Honor. I think
7 I just heard something that's not in evidence.
8 I don't think Ms. Goodlett ever said that they
9 could pay cash for the 325 million dollar
10 project. That has never been said at all in
11 this litigation. In fact the lender land
12 report, Your Honor, so that's just wrong.

13 MS. CRUM: Your Honor, I wasn't here for that
14 portion, but it's my understanding that Ms.
15 Goodlett testified they had 450 million dollars
16 in the bank.

17 MR. THOMAS: That's -- but she never said that we
18 could pay cash for this project.

19 THE COURT: Well ---

20 MR. THOMAS: That's the big difference.

21 THE COURT: She never said she'd pay cash, but if
22 you say you got 450 million dollars in the bank
23 and the project costs 325 million, you got the
24 cash to cover it.

25 MR. THOMAS: That's a big difference, Your Honor,

1 because they have to have a certain amount of
2 days cash on hand just to satisfy the HUD
3 obligation, so. She just didn't say that, I
4 mean, I'm fine with the -- we got 400 million
5 dollars in cash ---

6 MS. CRUM: 450.

7 MR. THOMAS: 450.

8 MS. CRUM: 50 million in cash.

9 THE COURT: Well, I'll sustain the objection that
10 she never said that specifically, so.

11 MR. THOMAS: Thank you.

12 **Q: Mr. -- I want to go back where we were and that**
13 **was method of financing. It -- as an expert on**
14 **healthcare planning and finance, do you have an**
15 **opinion regarding whether or not MUHA's**
16 **application complies with 11A, possible**
17 **alternatives should be identified?**

18 **A: Yes. So she talked about they were going to**
19 **pursue HUD financing, but she, Ms. Goodlett,**
20 **also talked about other avenues of funding that**
21 **were available to the University Hospital**
22 **Authority.**

23 **Q: And 11B: Reasons for the selection of the**
24 **proposed funding method should be stated and**
25 **reasonable. As an expert in healthcare**

1 planning and finance, do you have an opinion
2 regarding whether MUHA's application complies
3 with 11B?

4 A: Yes. So I think she testified that three
5 percent interest rate is a pretty good rate for
6 a lot of money.

7 Q: What was that interest rate -- what project was
8 that interest rate for?

9 A: That was for the refinancing project, I
10 believe, for the CHS hospitals.

11 Q: Okay.

12 A: 3 percent from HUD, that's a great rate.

13 Q: Let's see. 12, 802.12: The application should
14 demonstrate an ability to obtain the desired
15 capital. The applicant must provide at least
16 conditional commitments from an appropriate
17 institution. As an expert in healthcare
18 planning and finance, do you have an opinion
19 regarding whether MUHA's application complies
20 with this project review criteria?

21 A: Yes. They demonstrated through experience,
22 their experience to get HUD financing on a
23 number of occasions, they've identified that's
24 the source that they are going to seek this
25 funding. And as you can see in the Standard,

1 it doesn't say it has to be a -- an iron-clad
2 commitment, just a conditional commitment. And
3 they've demonstrated that.

4 Q: Was there a letter in the application that gave
5 a conditional commitment, in your opinion?

6 A: Yes. The letter from Mr. Pack.

7 Q: Let's go to cost containment, 802.16. 16A: The
8 applicant should have identified and sought
9 alternative sources and/or methods of funding
10 and demonstrated the methods chosen was the
11 most feasible option. Mr. Levitt, as an expert
12 in healthcare planning and finance, do you have
13 an option -- an opinion regarding whether
14 MUHA's application complies with this criteria?

15 A: Yeah, so that ties back to the low rate of
16 funding -- or financing from HUD, source of
17 funding. And so I think it identifies that
18 that's the most feasible option.

19 Q: Mr. Levitt, we earlier talked about the number
20 of MUHA projects you had been associated with
21 over almost 20 years, is that correct?

22 A: Yes.

23 Q: Do you know of a single instance where MUHA was
24 not able to obtain funding for one of its
25 projects?

1 **A:** No, it doesn't exist.

2 **Q:** Let's look at ability to complete the project,
3 802.14: The applicant should have demonstrated
4 that the project can be initiated and completed
5 within the proposed time frame specified in the
6 application. Mr. Levitt, as an expert in
7 healthcare planning and finance, do you have an
8 opinion regarding whether MUHA's application
9 complies with this project review criteria?

10 **A:** Yes, the time line in the application, I think,
11 is conservative. I believe the architect
12 witness yesterday talked about the
13 reasonableness of the time line; 36, 38 months
14 to build the hospital. Based on other projects
15 I've been involved in, it's a reasonable amount
16 of time.

17 **Q:** And B: The finance -- financial schedules and
18 time frames contained in the application should
19 be consistent with those usually experienced in
20 the development of similar facilities or
21 services. As an expert in healthcare planning
22 and finance, do you have an opinion regarding
23 whether MUHA's application complies with this
24 project review criteria?

25 **A:** Yes. I think for some of the reasons I just

1 talked about that they comply with that as
2 well.

3 **Q:** Financial feasibility, 15, 802.15: The
4 applicant must have projected both immediate
5 and long-term financial feasibility of the
6 proposal. Such projection should be reasonable
7 and based upon accepted accounting principal --
8 procedures. Mr. Levitt, as an expert in
9 healthcare planning and finance, do you have an
10 opinion regarding whether MUHA's application
11 complies with this project review criterion?

12 **A:** Yes, we comply as demonstrated in the financial
13 projections in the application, the long-term
14 financial feasibility is demonstrated by the
15 positive net income by the third year and the
16 ability to fund the project has been
17 demonstrated as well for the immediate
18 financial feasibility.

19 **Q:** 802.17, efficiency.

20 THE COURT: Are all of these issues contested?

21 MS. CRUM: Yes, sir. That's why I'm going through
22 each one of them. They were all raised.

23 THE COURT: Okay.

24 **Q:** Let me go back to cost containment -- I didn't
25 do B and C. 16 -- 802.16.B: If the applicant

1 had the option of lease or purchase, with all
2 other factors being equal, he should
3 demonstrate that his choice is the best -- is
4 the least costly in the long run. As an expert
5 in healthcare planning and finance, do you have
6 an opinion regarding whether MUHA's application
7 complies with this project criteria?

8 A: Yeah, I think this would be more related to a
9 smaller project buying equipment versus a new
10 hospital. So purchasing a new hospital versus
11 leasing one makes more sense.

12 Q: Would there be anywhere in Berkeley County that
13 one could lease a hospital?

14 A: Not that I'm aware of, no.

15 Q: 16C: The impact of the project upon the
16 applicant's cost to provide services and the
17 applicant's patient charges should be
18 reasonable. The impact of the project upon the
19 cost and the charges of other providers of
20 similar services should be considered if the
21 data are available. As a healthcare and as an
22 expert in healthcare planning and finance, do
23 you have an opinion regarding whether MUHA's
24 application complies with this project review
25 criterion?

1 **A:** Yes. So we heard some testimony from Ms.
2 Goodlett, I believe, about our charges. The
3 charges in the CON application are based on the
4 actual experience, both charges and net revenue
5 are based on the actual experience at MUHA.
6 That's an existing provider in the market and
7 it's consistent with those numbers.

8 **Q:** Let's look at efficiency, 802.17: The proposed
9 project should improve efficiency by avoiding
10 duplication of services, promoting shared
11 services, and fostering economies of scale or
12 size. As an expert in healthcare planning and
13 finance, do you have an opinion regarding
14 whether MUHA's application complies with this
15 project review criterion?

16 **A:** I do. We comply with that criteria
17 particularly in the economies of scale or size,
18 building 128-bed facility in an area that's
19 growing as rapidly as that area is, obviously,
20 the need exceeds a smaller facility. So being
21 able to offer services and not disrupt services
22 by trying to add more beds shortly after
23 opening, or just a few years after opening,
24 makes sense.

25 **Q:** Let's look at staff resources, 802.20, A: The

1 applicant should have a reasonable plan for the
2 provision of all required staff (physicians,
3 nursing, allied health and support staff,
4 etcetera). Do you have an expert opinion, have
5 an opinion as an expert in healthcare planning
6 and finance as to whether MUHA's application
7 complies with this criteria?

8 A: Yes. They've identified in the application and
9 you've heard through testimony that they have
10 recruitment plans, they graduate a large number
11 of nurses and physicians and other services
12 from the Medical University to meet the needs
13 of the future staffing requirements.

14 Q: 20B: The applicant should demonstrate that
15 sufficient physicians are available to insure
16 proper implementation (e.g. utilization and/or
17 supervision) of the project. As an expert in
18 healthcare planning and finance, do you have an
19 opinion regarding whether MUHA's application
20 complies with this project review criterion?

21 A: They do. We heard testimony from two
22 physicians from MUSC as well as we had an
23 Exhibit that showed almost a thousand
24 physicians on staff at the hospital.

25 Q: 20C: If the applicant presently owns existing

1 facilities or services, he/she should
2 demonstrate a satisfactory staffing track
3 record. As an expert in healthcare planning
4 and finance, do you have an opinion regarding
5 whether or not MUHA's application complies with
6 this project review criterion?

7 A: I do. I think that MUHA has demonstrated a
8 satisfactory staffing track record.

9 Q: D: Alternative uses of resources for the
10 provision of other healthcare services should
11 be identified and considered. As an expert in
12 healthcare planning and finance, do you have an
13 opinion regarding whether MUHA's application
14 complies with this project review criterion?

15 A: They comply with that criteria I think for all
16 the reasons we've discussed.

17 Q: All right, sir. And two more. Distribution,
18 22: The existing distribution of health
19 services should be identified and the effect of
20 the proposed project upon that distribution
21 should be carefully considered to functionally
22 balance the distribution of the -- to the
23 target population. As an expert in healthcare
24 planning and finance, do you have an opinion
25 regarding whether MUHA's application complies

1 with this project review criterion?

2 A: I do. I think we've demonstrated that through
3 the -- some of the information we've presented
4 as far as the bed distribution among the
5 population and the target population being
6 those patients seeking care at MUHA. This
7 provides resources closer to a number of those
8 patients.

9 Q: Does it help -- would the project help correct
10 the maldistribution of beds in the Tri-County
11 ---

12 OBJECTION:

13 MR. THOMAS: Objection. Leading, Your Honor.

14 MS. CRUM: Counter, I said, would it?

15 THE COURT: Would it -- she hadn't even completed
16 the question. You said would it help?

17 MR. THOMAS: All right, Your Honor. It's -- leading
18 question is one that suggests the answer.

19 THE COURT: The answer, yeah.

20 MR. THOMAS: Yeah. And that certainly did.

21 Q: Do you have an opinion, Mr. Levitt, as to
22 whether or not putting the 128-beds in Berkeley
23 County would help with the distribution of beds
24 in the Tri-County area?

25 A: Yes, I think that putting them in the proposed

1 site better distributes the beds within the
2 three -- Tri-County area versus putting them on
3 the peninsula.

4 Q: And last but not least, project review
5 criterion 802.23, adverse affects on other
6 facilities, A: The impact of the current and
7 projected occupancy rates or use rates of
8 existing facilities and services should be
9 weighed against the increased accessibility
10 offered by the proposed project -- I mean,
11 proposed services. Do you have an opinion as
12 an expert in healthcare finance and healthcare
13 planning regarding whether MUHA's application
14 complies with this project review criteria?

15 A: I do. We are not going to have a material
16 impact on any of the existing providers, so it
17 won't affect their occupancy. It will
18 positively affect MUHA's occupancy. We have
19 need for these beds because the hospital is
20 full. This will help relieve that.

21 Q: Do you have an opinion as to whether the
22 project would help alleviate the constraints
23 regarding taking patients who are being
24 transferred?

25 A: Yes. So, as either Dr. Cawley or Dr. Warr

1 talked about we have patients we cannot accept,
2 transferred patients we can't accept because
3 we're full, so it will help with that; being
4 able to accept more of the transfer patients.

5 **Q:** And B, 23B: The staffing of the proposed
6 service should be provided without
7 unnecessarily depleting the staffing of
8 existing facilities or services or causing an
9 excessive rise in staffing costs due to
10 increased competition. As an expert in
11 healthcare planning and finance, do you have an
12 opinion regarding whether MUHA's application
13 meets that project review criteria?

14 **A:** I do. I think we heard testimony that it was
15 single-digit staffing loss from Trident to the
16 new hospital that opened in Berkeley. I don't
17 imagine that the MUHA hospital would have any
18 different of an impact. Heard a lot of
19 testimony about nursing shortage. There's been
20 a nursing shortage since the '80s, maybe the
21 '50s, so there's always been this nursing
22 shortage, but every hospital's been able to
23 hire and staff. We also heard a lot of
24 testimony about travelers, traveling nurses.
25 And again, that started in 1980, so it's not a

1 new thing. I would imagine every hospital in
2 the country has some traveling nurses; it's the
3 way they operate. When I was part of Cross
4 Country Consulting, we had a nurse -- traveling
5 nurse staffing division; was what we did. They
6 offered those services. It's a service needed,
7 it's provided, and it's not a new thing.

8 MS. CRUM: And I have one last question, Your Honor.

9 Q: And this has to do with Section 501, Findings
10 of the Department. And since there are five
11 sections, it will be a five-part question, but.
12 In the case of proposing institutional health
13 service ---

14 THE COURT: That's cheating.

15 MS. CRUM: Sir?

16 THE COURT: That's cheating.

17 MS. CRUM: Well, I can just ask him.

18 Q: Why don't you just tell me whether or not you
19 have an opinion as a healthcare planner and --
20 as an expert in healthcare planning and
21 healthcare finance, whether or not MUHA's
22 application complies with Section 501, Findings
23 of the Department?

24 A: I do. I think the Department found that we
25 complied with that. I agree our proposed

1 project won't have any impact on patient
2 charges. Their superior alternatives do not
3 exist, this is the best alternative and in the
4 absence of this, we talked about there's a need
5 for 147 beds, 157 beds, depending on which plan
6 you look at, and MUHA in the absence of that,
7 we're full. We saw the transfer data, can't
8 admit some of the transfer patients because
9 beds are full, so this will alleviate that and
10 I think we comply with the standard.

11 Q: What about in the case of new construction?

12 A: I think we talked about that. There would be
13 no alternative but new construction to fit 147
14 beds somewhere in the Tri-County area.

15 MS. CRUM: Your Honor, at this point, I don't have
16 any additional questions and I'm sorry it took
17 so long to go through those, but each one of
18 those was raised by one or the other of the
19 Petitioners in their pre-hearing statements.

20 MR. WICEVIC: No questions from the Department.

21 MR. THOMAS: I might have a couple.

22 THE COURT: Okay. Do we need to take a break?

23 MR. SUMMER: Let me address -- I have just one issue
24 with the Court. In the 25 years I've been
25 appearing over here I have never once not been

1 able to put a rebuttal case nor have I ever
2 asked the Court not to allow a petitioner to be
3 able to put up a rebuttal case. It does affect
4 how much and what we do on cross if we're not
5 going to get rebuttal. I think the case law in
6 South Carolina is pretty clear and it's within
7 your sound discretion as to whether or not we
8 get it and it is appropriate for testimony that
9 is arguably contradictory and in reply to that
10 offered by the Defense here is admissible.

11 THE COURT: What case is that? There's about only
12 one really recent case.

13 MR. SUMMER: This is the Prather case.

14 THE COURT: Yeah.

15 MS. CRUM: And it consolidates a lot of -- it's got
16 a good cite and it is that replied testimony
17 should be limited to that which refutes or
18 rebutts testimony presented by the Department.
19 So, you know, we've always had it and I'm a
20 little bit confused about where we're going
21 with this, but it does affect what we do with
22 this witness and how long we need to do it and
23 that's why I'd like some clarification.

24 THE COURT: I can't give you any more clarification
25 than what the case law states. And the fact

1 that, number one, you know, you use rebuttal,

2 but you were correct in what the Court said.

3 They called it reply testimony.

4 MR. SUMMER: They do.

5 THE COURT: But I think when you offer the

6 testimony, if somebody does not believe that

7 it's reply testimony, then they would have to

8 make an objection at that point in time, would

9 be the proper way of determining it and I'm not
10 going to just make some overarching ruling ever

11 ---

12 MR. SUMMER: I think ---

13 THE COURT: --- that somebody cannot do -- except, I

14 mean, there was one case that I had here in

15 Kiawah, they came in and offered some rebuttal

16 that was clearly something they should have

17 raised in their case in chief.

18 MR. SUMMER: It was new matter.

19 THE COURT: It was new matter. It was clearly a new

20 issue. The way that the expressed it was that

21 it was a new issue that they failed to bring up

22 and their own offering convicted them.

23 MR. SUMMER: Right.

24 THE COURT: But ---

25 MR. SUMMER: If Your Honor is saying that we will be

1 allowed to call witnesses and put them on the
2 stand and then it will be an issue of objection

3 ---

4 THE COURT: Yeah.

5 MR. SUMMER: --- then I'm fine with that. I just
6 needed ---

7 THE COURT: That's what it's gonna be.

8 MR. SUMMER: Okay.

9 THE COURT: Unless you've got ---

10 MS. JONES: No, Your Honor, I -- you know, the -- I
11 agree with the Court. Reply is limited to --
12 the purpose for the reply is to allow a
13 litigant to respond to new matter that we
14 raised that was not previously, previously put
15 forward that they didn't know about so that
16 there is no trail by ambush. That's the
17 purpose of reply.

18 THE COURT: I don't know if it's new matter. Is
19 that -- the case law doesn't say anything about
20 new matter.

21 MS. JONES: New matter injected for the first time
22 in a case.

23 MR. SUMMER: No, that is not the law, Your Honor. I
24 completely disagree on that. We'll have cases
25 we'll be able to do, but it's the notion of we

1 have an opportunity to respond to testimony
2 from their case in chief. We must limit our
3 questions to were you present when Ms. Burdock
4 testified; yes, I was. Do you remember when
5 she said X, Y, Z; yes, I do. Did you agree or
6 disagree with that proposition?

7 THE COURT: Yes. Because that testimony was not
8 offered before you presented your case in
9 chief.

10 MR. SUMMER: Thank you, Your Honor.

11 MS. JONES: Well, Your Honor, the law that I would
12 call to the Court's attention is Daniel versus
13 Tower Trucking, 32 S.E.2d 5, and it clearly
14 says that reply testimony should be limited to
15 rebuttal of matters raised in the defense for
16 the first time and it cannot be used to
17 complete the plaintiff's case in chief. If the
18 reason they're calling them is to try to
19 complete their case 'cause they didn't do it
20 when they had the opportunity to do it, that
21 would be improper.

22 THE COURT: And I would agree with you on that.

23 MS. JONES: Thank you.

24 MR. SUMMER: Well maybe we'll handle this on a
25 question-by-question basis in reply as long as

1 we know that we had the opportunity to seat a
2 witness and start that examination. We'll take
3 it question-by-question.

4 MS. JONES: Well, and Judge Anderson, you know, I
5 don't know what they intend to call and I think
6 the whole purpose ---

7 THE COURT: And neither do I.

8 MS. JONES: --- of their reply is to try to pull
9 some surprise and trial by ambush. If they're
10 gonna offer some new opinions that they haven't
11 previously disclosed and new evidence that they
12 haven't previously disclosed because they
13 didn't want to put it up in their primary case
14 and they want to try to ambush us, that is
15 absolutely fundamentally improper reply
16 testimony.

17 MR. SUMMER: You know, I can't, as we stand here
18 right now, think of anything that would rise to
19 that level. I would, however, say that the law
20 does not require us to anticipate every single
21 argument that they may make in their case.
22 Great example, we for the very, very first time
23 on the 25th of October got all of these MUHA
24 slides 38A through the rest of the alphabet.
25 Until he testified ---

1 MS. JONES: That's not correct.

2 MR. SUMMER: --- we would not know exactly what he
3 was going to say. So we do have that ability
4 to respond to that, but there's no reason for
5 me to take their trial Exhibits and try to get
6 my people to guess at what they would say. So
7 I agree we should not be able to come in and do
8 by ambush, but we should be able to do what the
9 four-letter word is and that is reply.

10 MR. THOMAS: Okay. And I would just add to that --
11 and I don't think it's been motioned so I'm not
12 complicating, Your Honor, I'm not trying -- I
13 know Ms. Jones can handle it herself, but the
14 prejudice ---

15 THE COURT: I'm sorry. Hold on a second.

16 MR. THOMAS: Yeah.

17 THE COURT: Can we get back with you said four-
18 letter word reply and I was happy to deal with
19 that.

20 MR. THOMAS: The prejudice is is that what Mr.
21 Levitt got to do is he got to rebut our expert.
22 So he got to put up his expert opinion, rebut
23 our expert opinions and then -- so if we didn't
24 get the same, then he got the second bite of
25 the apple that we never got.

1 THE COURT: Okay. I'm gonna -- even you're
2 concerned about if they try to create trial
3 ambush. I think that's what the case law
4 explains all that ---

5 MS. JONES: It does.

6 THE COURT: --- and I think I can deal with it.

7 MS. JONES: Okay.

8 THE COURT: But I can't deal with it sitting here
9 right now when you say you don't know what
10 they're gonna present. I got less idea of what
11 they're gonna argue than you do.

12 MS. JONES: I agree. We are both in the dark.

13 THE COURT: Well, so, I can't make a ruling until
14 the light has shed.

15 MS. JONES: Well the only reason I stood up was
16 because the issue was raised and we absolutely
17 do not think that there is any -- the
18 information that Mr. Levitt testified to was
19 all given to the other side. The basis of the
20 information was produced long ago. The actual
21 slides were given to them before they took his
22 deposition, so I'd like to see them lay a
23 foundation and a basis for putting up reply
24 testimony to any of that.

25 THE COURT: I'll tell you what, when it comes time,

1 we're gonna roll that ball in here to me and
2 you can bounce of that thing as quick as you
3 can.

4 MS. JONES: Thank you, Your Honor.

5 MR. THOMAS: You know the interesting thing, Your
6 Honor, to me is that had we put up all of Mr.
7 Levitt's slides and told Mr. Sullivan to start
8 opining on them, we probably would have gotten
9 an objection that they weren't his slides, he
10 didn't know the basis for a lot of the things,
11 and that he couldn't make those opinions.

12 THE COURT: Well ---

13 MR. THOMAS: But, of course, that's neither here nor
14 there. Can I start me cross, Your Honor?

15 THE COURT: Yeah. Or do we need to take a break?
16 What was that case you cited?

17 MS. JONES: It is Daniel versus Tower Trucking
18 Company, 205 S.C. 333, 32 S.E.2d ---

19 THE COURT: I just needed the first one.

20 MS. JONES: Okay.

21 MR. THOMAS: What's the year on that, Celeste?

22 MS. JONES: 1944.

23 MR. THOMAS: We got a 2017 that's a good case, Your
24 Honor.

25 MS. JONES: And it's all right here in the trial

1 handbook. Right there.

2 THE COURT: I think I've got it all under my notes,
3 I need some applied cases.

4 MS. JONES: You probably do.

5 THE COURT: But just want to make sure. All right.
6 Do we need to take a break or not?

7 MR. THOMAS: I don't think so, Your Honor. I don't,
8 but I'm not speaking for everybody.

9 THE COURT: All right.

10 MR. THOMAS: Okay.

11 THE COURT: We're going.

12 MR. THOMAS: May it please the Court, Your Honor.

13 MR. LEVITT - CROSS-EXAMINATION BY MR. THOMAS:

14 Q: How are you today, Mr. Levitt?

15 A: I'm great.

16 Q: Okay. I want to ask you some questions. You
17 may be going backward in order, but I think
18 you'll be able to handle that. In terms of
19 the, with the Roper Berkeley bed, those are
20 beds, 50 beds that transferred from downtown
21 out to Roper Berkeley, correct?

22 A: Yes.

23 Q: Okay. And do you know whether the staff
24 transferred with those beds to Roper Berkeley;
25 is that something you looked into?

1 A: That would be unknowable.

2 Q: Okay. So you don't know, right?

3 A: It would be unknowable, so I don't know.

4 Q: Okay. Let's go to the CON application, if we
5 could, and let's go to DHEC record, I'll get to
6 the page here.

7 (DHEC Exhibit Number 1 was referenced at this time.)

8 Q: And we'll put it up on the screen for you,
9 David -- or Mr. Levitt.

10 Q: If we could go to DHEC CON 592.

11 THE COURT: I've got it.

12 Q: Ms. Crum read to you, I believe, Financial
13 Feasibility, one of the many project review
14 criterias that she read it into the record and
15 I believe that one of the criteria regarded the
16 method of financing, do you recall that?

17 A: Yes.

18 Q: And you would agree with me that the method of
19 financing -- and actually, I'd like you to go
20 back to CON 591 -- the method of financing here
21 was two FHA loans, correct? A GNMA loan and a
22 HUD loan, is that correct?

23 A: Yeah, either.

24 Q: Okay. They're both federally-backed
25 governmental loans, is that right?

1 **A:** Yes, they're two different sources of funding
2 and two different options, but yes.

3 **Q:** Okay.

4 **A:** It wouldn't may be both, it was or.

5 **Q:** All right. And let's go to B12: The applicant
6 should demonstrate an ability to obtain the
7 desired capital. And then it says: The
8 applicant must provide at least conditional
9 commitment from an appropriate institution. Do
10 you recall that?

11 **A:** Yes.

12 **Q:** If we could go to 592.

13 MR. THOMAS: Put that up.

14 **Q:** Do you recognize this letter from Mr. Pack?

15 **A:** Yes.

16 **Q:** Okay. Is Armadale Capital a lending
17 institution?

18 **A:** Yes.

19 **Q:** It is a lending institution maybe?

20 **A:** Yes.

21 **Q:** They lend money.

22 **A:** Yes. It's in the first sentence there.
23 Armadale Capital, a licensed FHA multi-family
24 lender, it's a lending institution.

25 **Q:** And how much of the money is Armadale Capital

1 lending to MUSC in this project?

2 A: I think they're facilitating the loan.

3 Q: They're facilitating the loan, correct.

4 They're not actually lending the money, is that
5 right?

6 A: Right.

7 Q: Okay. You mentioned a revised Attachment N and
8 I think that's at TMC94, we don't need to go
9 there.

10 (TMC Exhibit Number 94 was referenced at this time.)

11 Q: The question I have for you is, with respect to
12 the revised Attachment N, which is the
13 redirection model, when did you realize that
14 was -- when did you realize that the CON
15 application needed to be corrected?

16 A: Some time during the preparation for the trial.

17 Q: Okay. And you also cited a 5 percent
18 inflation, do you recall that? We had a little
19 discussion about the 5 percent inflation of the
20 different projects?

21 A: Yes.

22 Q: Do you know what source that came from?

23 A: It was my assumption, and it was just based off
24 my experience, and it was just used for
25 illustrative purposes.

1 Q: Okay. But it didn't come from RSMeans, did it?

2 A: Not specifically, but it was pretty close to
3 that if you look over the time period.

4 Q: All right. And it didn't come from Cummings,
5 the construction company, did it?

6 A: No.

7 Q: Okay. And it didn't come from any other, any
8 of the other, like, Turner, the inflation,
9 construction outfits that do these type of
10 things?

11 A: Well, Turner's a construction company, I don't
12 know that they do inflation projections, but,
13 no, it didn't come from Turner.

14 Q: Okay. And do you know what the cost of the
15 central energy plant was in the LMC project in
16 TMC95?

17 (TMC Exhibit Number 95 was referenced at this time.)

18 A: I don't.

19 Q: Okay. Do you know how many beds that central
20 energy plant was going to actually be
21 applicable to?

22 A: No.

23 Q: Okay. 'Cause that's not something you looked
24 into, right?

25 A: Wasn't relative when I was looking at cost per

1 bed.

2 Q: Okay. And I think Ms. Crum asked you several
3 times about patient origin and that the MUHA
4 project was based on patient origin, correct?

5 A: Yes.

6 Q: And MUSC's historic patient origin, right?

7 A: Yes.

8 Q: Okay. But it certainly wasn't based on
9 historic patient origin from MUHA Nexton within
10 a 15-mile radius, was it?

11 A: Well there would be no historical patient
12 origin for MUSC Nexton.

13 Q: Right, because it doesn't exist.

14 A: Correct.

15 MR. THOMAS: Can we put TMC41 up, please?

16 (TMC Exhibit Number 41 was referenced at this time.)

17 MR. THOMAS: Okay. Can we go to the next page, page
18 2? Can you blow up that top line or not the
19 top line, but maybe the top half there?

20 Q: Okay. Can you read that?

21 A: Yeah.

22 Q: What does, in the MSDRG name, what does MCC
23 stand for, Mr. Levitt?

24 A: Major complicated conditions.

25 Q: Was it major complications or comorbidity?

1 A: I think it means the same thing, so it could
2 be.

3 Q: Okay. And then, let's look at MSDRG code,
4 intracranial hemorrhage or cerebral infarction
5 with major complications and comorbidities. Is
6 that typically a tertiary care or a non-
7 tertiary care MSDRG?

8 A: It's a stroke, so it would be non-tertiary.

9 Q: Okay. An intracranial hemorrhage is not -- is
10 a stroke, but it's a much different kind, a
11 more serious kind of stroke, isn't it?

12 A: More serious than what?

13 Q: Than, say, an infarction.

14 A: Yes.

15 Q: Okay.

16 A: But infarction wouldn't necessarily be a
17 stroke, so. This is a stroke. Every hospital,
18 they should -- everybody has a stroke, shows up
19 at a hospital. Lots of hospitals, not just ---

20 Q: And a lot of times they get transferred out ---

21 A: Let me finish. Not just tertiary care
22 facilities or quaternary care facilities.

23 Q: And a lot of times you get transferred out,
24 correct?

25 A: Well, no, 'cause we looked at the transfer, it

1 -- at Tidal Health, they don't get transferred,
2 they get a consult and then they stay at that
3 original facility.

4 Q: Mr. Levitt, is your testimony that they're
5 gonna do open -- like brain surgery for
6 intracranial hemorrhages at MUHA Nexton?

7 A: I didn't say that.

8 Q: Okay. You understand intracranial hemorrhage -
9 - I know you're not an expert in medicine, but
10 intracranial hemorrhage oftentimes requires an
11 actual brain surgery, cap removal, going in.

12 A: Not any more. Not in two thousand -- they
13 pluck it out just like they don't with a heart
14 infarct.

15 Q: Let me ask you this. Do you know if they're
16 going to do intracranial hemorrhage surgery at
17 MUHA Nexton?

18 A: I don't think they are, but that's not what
19 this DRG is, so ---

20 Q: Okay. Well it is, it is. It says intracranial
21 hemorrhage or cerebral infarction with major
22 complications or comorbidity ---

23 OBJECTION:

24 MS. CRUM: Your Honor, he is arguing with the
25 witness. This is truly argumentative.

1 MR. THOMAS: I thought I could do that on cross, but
2 I'll object if I can't, Your Honor.

3 THE COURT: Well, you can't argue with the witness,
4 but I didn't perceive that as ---

5 MR. THOMAS: Thank you, Your Honor.

6 THE COURT: --- at this point, that was arguing.

7 MR. THOMAS: We'll move on, Your Honor.

8 THE COURT: He did disagree with the answer.

9 Q: You would agree with me that Goose Creek is
10 within -- parts of Goose Creek are within two
11 miles of Trident Medical Center, correct?

12 A: Probably.

13 Q: Okay. Do you know or not?

14 A: Well, depends on what parts of Goose Creek
15 you're talking about and what you're defining
16 as Goose Creek, but, generally, yes.

17 Q: Okay, thank you. And you would agree with me,
18 TMC is a tertiary care hospital with high level
19 services?

20 A: I mean, sort of. I mean, I don't know what the
21 -- I don't know if there's a -- I know there's
22 not a bright-line definition of a tertiary care
23 hospital. TMC has some tertiary care services.
24 They have trauma now and they have open-heart
25 surgery which are generally considered tertiary

1 services.

2 Q: Okay. And it's a Level II trauma center,
3 correct?

4 A: I said that, a trauma.

5 Q: Okay. Well, there's also a Level III trauma
6 which is a lower level, correct?

7 A: They are a Level II trauma center in open-heart
8 surgery.

9 Q: Okay. Wouldn't you think that Trident Medical
10 Center would have a broader draw of patients
11 than, say, a smaller community hospital like
12 Summerville Medical Center?

13 A: Well, as an example, yeah, sure, because
14 Summerville mostly does women's services. So
15 and that's a different population than a full-
16 service hospital. So, yeah, it would be
17 broader than that facility.

18 Q: Okay. Now I objected to one of the questions
19 Ms. Crum asked you, but I believe it was let
20 in. But you stated that the testimony has been
21 that nobody would go up to the area where MUHA
22 Nexton is going to be located, correct?

23 A: Um ---

24 Q: Do you ---

25 A: I said that and you objected and you pointed

1 out and that's probably an over-exaggeration,
2 but there was a lot of criticism that it was
3 not thought that people south of the Broad
4 would go up there.

5 Q: Okay. And you showed some documents that
6 Trident actually had some folks to go up there,
7 correct?

8 A: Yes.

9 Q: But you would agree with me, what the testimony
10 was, was that it was not the some people
11 wouldn't go up to Trident or some people
12 wouldn't go down to other places, it was that
13 the percentage, that 35 percent of MUHA's non-
14 tertiary care patients from, say, 29401 would
15 travel necessarily all the way up 28 miles away
16 to MUHA Nexton. Wasn't that the testimony that
17 Mr. Sullivan offered?

18 A: Right, but Mr. Sullivan never offered the
19 testimony of how many people that is, so that's
20 what I did and maybe you missed it, but -- so
21 I wanted to say, look, we're projecting less
22 people from their ZIP Code ---

23 MR. THOMAS: Your Honor, Your Honor ---

24 A: I'm answering your question.

25 Q: No, you're not. I asked you ---

1 THE COURT: You can respond to that.

2 MR. THOMAS: I asked, I asked a yes or a no
3 question. Isn't that what Mr. Sullivan did and
4 that's a yes or no. If the answer is yes, than
5 yes; if he didn't do that, that's fine, but I
6 didn't ask for an explanation.

7 MS. CRUM: Your Honor, I think he gets to explain
8 what -- his answer and that's all he was doing.

9 THE COURT: All right. You know, this rule has
10 always frustrated me a little bit because when
11 I was a trial lawyer, I thought we should be
12 able to ask a yes or no question and judges
13 would say, ah, yeah, but he can explain his
14 answer, which defeats your -- the object of
15 leading questions, and I always thought the
16 other side was more incapable of asking
17 redirect. What I will instruct him is -- you
18 need to answer his question directly. If the
19 yes or no answer will not answer the question,
20 then say set forth, I cannot answer that with
21 a yes or no question and then we'll proceed
22 from there.

23 **A: Okay.**

24 THE COURT: All right. I said with a yes or no
25 question, with a yes or no answer.

1 THE WITNESS: I understood.

2 MR. THOMAS: Let's pull up TMC140 and we're named
3 this A.

4 (TMC Exhibit Number 140 was referenced at this time.)

5 MR. THOMAS: This is a document that was produced to
6 the Court in native format, Your Honor, and so
7 we had to go out and break out that part of the
8 ...

9 Q: Now, Mr. Levitt, you pointed out I believe some
10 Trident inpatient data from -- that we had
11 produced, correct, to show the ZIP Code 29401
12 had so many patient encounters, correct?

13 A: Yes.

14 Q: Okay. You would agree with me that Trident
15 offers services that MUHA Nexton is not going
16 to offer, correct, like open-heart, high-level
17 catheterizations at Level II trauma and that
18 type of thing?

19 A: Yes.

20 Q: Okay. Did you ever look at the inpatient pivot
21 table for Summerville Medical Center patient by
22 origin ZIP Code?

23 A: Yes.

24 Q: Okay. Can we go to the third page of this
25 document which is, we're gonna call is 140A.

1 **And how many patient did ---**

2 MR. THOMAS: Okay. This is not the correct one?

3 **A: It is. That's my name.**

4 **Q: Oh, okay, all right. Well, I was talking about**
5 **Summerville, but let's do Trident. How many**
6 **inpatients did Trident get from 29401 in 2018**
7 **from the months of January through November?**

8 **A: I want to understand. So are we talking about**
9 **Summerville or are we talking about Trident?**

10 **Q: We're talking about Trident. That's the wrong**
11 **Exhibit, but I was going to Trident next. This**
12 **is the inpatient origin for Trident and 29401,**
13 **how many patients were seen in January to**
14 **November 2018?**

15 MS. CRUM: Can I just ask, is this 140, Trident 140
16 ---

17 MR. THOMAS: It is ---

18 MS. CRUM: --- C? I thought you said A and that's
19 why I'm just confused.

20 MR. THOMAS: Yeah. Let me explain for the record.
21 So, this was a native Exhibit produced to the
22 Court in native format and the others are?

23 **A: Yes, sir.**

24 MR. THOMAS: And so it's got something in here
25 called pivot table so it allows you to do

1 inpatients, outpatients and then all patient
2 encounters, Your Honor. So this is part of the
3 Exhibit, but it's nothing but inpatients and
4 it's already in evidence, so.

5 **Q: So Trident Medical Center, 29401, do you see --**

6 -

7 THE COURT: Well, she was asking is it 140A or C.

8 It's 140C.

9 MR. THOMAS: Yeah. We're just gonna mark it as 140A
10 for -- so the record is clear.

11 MS. CRUM: I am so confused.

12 MR. THOMAS: Yeah, I can give you a copy.

13 THE COURT: Well, it ---

14 MR. THOMAS: You actually do have a copy; you have a
15 native copy of it.

16 MS. CRUM: Your Honor, I'm real confused about it
17 being marked 140C and now we want to change it
18 to 140A.

19 MR. THOMAS: That's the technician's and it will not
20 come out as 140C.

21 THE COURT: Okay.

22 **Q: All right. Let me do this. Trident Medical**
23 **Center is -- what is the 29401 ZIP Code for**
24 **patient origin for inpatients in 2018 for**
25 **January through November?**

1 A: 10.

2 Q: Okay. How many did MUHA assume, if you recall
3 from your testimony, from 29401 for your base
4 year and it's in 38 -- if you need to find it,
5 it's in 38J and I'll represent that it's 53.

6 A: Correct.

7 Q: Okay. So five times what Trident did from that
8 same area.

9 A: Correct. That would be the math.

10 Q: All right. In Summerville -- I'm just gonna
11 hand this to you. Summerville Medical Center,
12 if we go to page 3, this is also the inpatient
13 pivot for Summerville, 29401, how many patients
14 did they get January to November 2018?

15 A: One.

16 Q: Okay. And how many beds is MUHA Nexton gonna
17 have?

18 A: 128.

19 Q: Okay. Now, do you dispute that most of the
20 population of southwestern Berkeley County has
21 access ... Did you look at -- did you rely on
22 any Trident -- or Summerville's data when you
23 were forming your opinions?

24 A: I'm not sure I understand your questions.

25 Q: Well, when you looked at the Summerville

1 Medical Center ZIP Code data, you looked at it
2 and you actually used it when your presentation
3 show. Did you use Summerville or Trident?

4 A: I don't think we did.

5 Q: You used Trident.

6 A: Just Trident, yeah.

7 Q: Okay. That's fine.

8 MR. THOMAS: It's good, Your Honor.

9 Q: Do you know what the overall percentage is of
10 patients that travel from 29401 as inpatients
11 are as a percent of Trident's total inpatient
12 discharges?

13 A: I can calculate it, but not off the top of my
14 head.

15 Q: Okay.

16 A: Small percentage.

17 Q: All right. Do you think it's less than 5
18 percent?

19 A: Yes.

20 Q: Okay. Do you dispute that -- I need to get
21 this question out, Mr. Levitt. Do you dispute
22 that patients who live in southwestern Berkeley
23 County can get inpatient community healthcare
24 services within, generally, within 15 minutes
25 or where they live?

1 **A:** I think generally, depending on how you define
2 southwest Berkeley County, but generally, but
3 not at an MUHA facility.

4 **Q:** Not at an MUHA facility. Fair enough. Now we
5 had the map of Berkeley County up earlier.

6 MR. THOMAS: Let's go to DHEC 497 if we could 'cause
7 I like that map.

8 (DHEC Exhibit Number 1 was referenced at this time.)

9 **Q:** Mr. Levitt, it's 497 if you want to look at a
10 binder. In DHEC Exhibit 1. Do you recall this
11 map, it's on the screen now?

12 **A:** Yes.

13 **Q:** Okay. And you would agree with me, I believe
14 you said that most of the population is in
15 that, for lack of a better term, A area when it
16 comes to Berkeley County?

17 **A:** Yeah, I assumed that's what you meant by
18 southwest Berkeley County.

19 **Q:** Okay. And all this green here, very sparsely,
20 the green and light green is very sparsely
21 populated? Fair?

22 **A:** Yes.

23 **Q:** Okay. So you would agree with me that the
24 population of Berkeley is maldistributed within
25 the southwestern portion; is that a fair

1 statement?

2 A: Yes.

3 Q: And without putting up a map, are you familiar
4 with Dorchester County in terms of where the
5 population is generally?

6 A: Yes.

7 Q: Okay. It's also kind of in the southern
8 portion of Dorchester County with a lot of
9 rural in the Saint George area; fair statement?

10 A: I thought -- oh, yeah, Saint George, yeah.
11 Yes. So it would be -- since Berkeley County
12 is here and Dorchester is here, it would be
13 sort of the opposite would be southeast
14 Dorchester County, but yes.

15 Q: Okay. And also kind of the same thing, kind of
16 the population itself is now distributed within
17 Dorchester County, kind of like Berkeley, but
18 maybe not as much?

19 A: Correct.

20 Q: Okay. I saw a slide earlier that said, it was
21 Roper Saint Francis 119-3 and it had 4,091
22 Berkeley County discharges to MUHA. Does sound
23 about right to you, again, for the year of
24 2018, fiscal year end?

25 A: Yeah. That sounds about right.

1 Q: All right. And about 32,000 discharges total
2 for the year. And here we go.

3 MR. THOMAS: Thank you.

4 Q: Let's see here.

5 A: No.

6 Q: Yeah, we're looking for one -- maybe I wrote it
7 down, 119 dash -- is there any other chart on
8 there but that?

9 A: I'm sorry, you said 32,000?

10 Q: Yeah, I thought for MUHA ---

11 A: Yes, that's correct.

12 Q: Okay. All right. We don't -- may not have to
13 find it. So my math is -- my math it'd come
14 out to about almost 13 percent ---

15 A: Yes.

16 Q: --- from Berkeley County? All right. Have you
17 seen any updated figures of the number of in --
18 MUHA patients that are coming out of Berkeley
19 as inpatients?

20 A: 2018 is the most recent data I believe I looked
21 at.

22 Q: Okay. Fair enough. And in terms of the 2018
23 JAR, there were, I believe there were about --
24 and we can pull it up certainly for MUHA, but
25 I think there were, when you backed out psych

1 and substance abuse, we're talking about
2 189,243 patient days. Is that something you've
3 looked at?

4 A: I don't have those numbers memorized, but ...

5 Q: Go to page -- I think it's going to be page 23,
6 yeah. You got a calculator up there?

7 A: I do.

8 Q: Do a little math. Okay. Can you read it,
9 David, on the screen?

10 A: Yes.

11 Q: All right. The total, I guess the total -- the
12 grand total down here at the bottom is 228,832,
13 correct, for 2018?

14 A: Yes.

15 MR. THOMAS: And for the record, do you know what --
16 this is TMC150-165.

17 Q: If you backed out the psych and substance
18 abuse, what -- how many patient days would you
19 get?

20 A: 189243.

21 Q: Okay. What's the ADC on that, Mr. Levitt?

22 A: 518-and-a-half.

23 Q: All right. Do we round?

24 A: Depends on who you are.

25 Q: Okay. 518 divided by -- is it you have 608

1 licensed med surg beds, correct?

2 A: Yeah, I believe that's correct, uh-huh.

3 Q: So 518 divided by 608, what do I get in terms
4 of my midnight occupancy?

5 A: 85.3.

6 Q: Okay.

7 A: And that was in a Exhibit we showed earlier.

8 Q: Okay. Well a lot of Exhibits, so I was just
9 trying ---

10 A: Sure.

11 Q: As long as you got your calculator out. If SMC
12 had a grand total of 26,376 patient days in
13 2018, what would the ADC be?

14 A: 72.3.

15 Q: Okay. And if it had 124 beds set up and
16 staffed, what would it's occupancy be?

17 A: 58.3.

18 Q: Okay. How many, do you know, how many beds
19 MUHA is licensed and set up and staffed for
20 today? Is it 608?

21 A: Acute care.

22 Q: Okay. And the rest are psych and substance
23 abuse?

24 A: Yes.

25 Q: Okay. And ---

1 A: And they have some approved, but not
2 operational beds, licensed beds.

3 Q: That's where we're going next. So if they have
4 50 -- is it 52?

5 A: No, 48. So they got four of those implemented
6 in Ashley River Tower.

7 Q: Okay. So it's the 608 -- is that in the 608?

8 A: That's in the 608.

9 Q: Okay. So what's it gonna be, 48 plus 608?
10 656?

11 A: Yes.

12 Q: Okay. And you add the 29 to that and where are
13 they -- what they can implement those beds?

14 A: We haven't been approved for that yet.

15 Q: Assuming they are. Do you know if anybody's
16 challenged those?

17 A: I've been busy for the last couple of weeks.

18 Q: You, too, huh? But if they're approved for
19 that, what's that bed calc gonna be?

20 A: 685.

21 Q: Okay. All right. And what's your
22 understanding -- and the 29 are going on the
23 fifth floor, I think we've already talked about
24 that with the backfill, is that right?

25 A: That's the plan currently, yes.

1 Q: Okay. So we got 685 beds and let's assume,
2 I'll ask you to do a hypothetical here, that
3 the Children's Hospital can find a way to
4 backfill another 40 beds and that would give us
5 725 beds downtown, right?

6 A: Yes.

7 Q: Okay. And if MUHA, hypothetically, were able
8 to build the twin towers and they have 404
9 beds, what's the total there?

10 A: My understanding is the 404 would be
11 replacement beds, they would be ---

12 Q: Fair enough, but ---

13 A: It wouldn't change, it was the 725.

14 Q: Okay. Well, if they're not replacement beds,
15 what would it be, hypothetically?

16 A: Well, there couldn't be a need for 404
17 additional beds.

18 Q: Hypothetically, if you added 404 beds, what are
19 we talking about?

20 A: Well that would be 1129.

21 Q: Okay. Now do you recall -- let's go to DHEC 1,
22 page 725. And -- you there? This is a letter
23 that you wrote to Maggie Murdock, correct, with
24 respect to the Level III NICU bassinet, right?

25 A: It appears to be, yes.

1 Q: Okay. If you want to, you can turn over and
2 look at 730 and ---

3 A: I trust you.

4 Q: Okay. You signed it, all right. Let's go to
5 DHEC CON 729. And it says, flooding has a
6 barrier to care, do you see that?

7 A: Yes.

8 Q: Okay. I'm gonna read this into the record. It
9 says, SMC continues to raise false concern
10 regarding MUSC's ability to provide care during
11 weather emergencies and flooding. The design
12 of the Shawn Jenkins Children's Hospital (SJCH)
13 clearly contemplated and planned for such
14 conditions. Did you write that?

15 A: Yes.

16 Q: Okay. Would you agree with me that the
17 emergency department is an important source of
18 admissions for most hospitals?

19 A: Some more than others, yes.

20 Q: Okay. Do you know what the admissions rate is
21 at Trident?

22 A: Like 90 percent. I'm sorry, admission rate as
23 a source of admissions or ---

24 Q: Yes.

25 A: --- ER -- yeah, like 90 percent, which is

1 abnormally high.

2 Q: Well now, it's -- didn't Mr. Gallati say that
3 90 percent of his inpatients came through the
4 ED?

5 A: I asked you as a source of admissions, yes.

6 Q: It's not that 90 percent of ---

7 A: The emergency visits ---

8 Q: Yeah.

9 A: --- were admitted.

10 Q: Okay. Just want to get that clear for the
11 record 'cause that means that we'd be very
12 busy.

13 A: Yes.

14 Q: All right. Four people -- I think you said
15 four people every day who have surgery are
16 boarding, was that correct on average?

17 A: On average, the average daily census of OR
18 boarder is four.

19 Q: Okay. You said some days that could be as high
20 as 12, right?

21 A: Yes, based on what Dr. Cawley has told me.

22 Q: Okay. But that would mean then that other days
23 it would have to be zero, right?

24 A: Correct.

25 Q: Okay. Let's look at Roper Saint Francis 119-

1 009, hopefully I wrote that down correctly.

2 (RSF Exhibit Number 119-9 was referenced at this
3 time.)

4 Q: All right. Do you recall this document?

5 A: Yes.

6 Q: Okay. And this one is the ED boarding and
7 boarding average daily census of 8 on average,
8 correct?

9 A: Yes.

10 Q: Okay. How many of those are psychiatric
11 patients?

12 A: None.

13 Q: Okay. Did you -- you pulled those out?

14 A: Yes.

15 Q: Did you know how many of them are normal
16 psychiatric patients?

17 A: I'm not sure I understand your question.
18 Meaning in addition to those, what would the
19 psychiatric patients be?

20 Q: Yeah.

21 A: I don't know, I didn't look at it.

22 Q: Okay. You did a bed distribution exercise in
23 119. Let's look at 119-17, please. Actually,
24 let's go to -- yeah, 119-17, that's right. All
25 right. Do you recall this slide that you did?

1 A: Yes.

2 Q: Okay. And of course, the 2017, 2018 State
3 Health Plan uses a Tri-County service area,
4 correct?

5 A: It does.

6 Q: All right. Can you compute the Tri-County beds
7 per 1,000 population for me real quickly?

8 A: I think it's like 2.5.

9 Q: Is it 2.57?

10 A: Sure.

11 Q: Okay. Let's go to the next page. And that's
12 gonna be Roper Saint Francis 119-018. And
13 where would that put us on the chart? That
14 would put us right up there in the Tri-County
15 area right up there with Greenville, correct?

16 MR. THOMAS: Come down a little bit.

17 A: No.

18 Q: Beds per thousand population, 2.57?

19 MS. CRUM: Greenwood?

20 MR. THOMAS: I said Greenville.

21 A: Oh. Can you stop doing that?

22 Q: Yeah.

23 A: Well ...

24 Q: Is the beds per thousand per population ---

25 A: Yes.

1 Q: --- for Greenville 2.57?

2 A: It is.

3 Q: Okay. And you would agree with me that the
4 population in the Tri-County area is not evenly
5 distributed throughout?

6 A: Correct.

7 Q: Okay.

8 A: But the -- can I explain?

9 Q: No.

10 THE COURT: Well ---

11 MR. THOMAS: I just asked him a question if it's
12 maldistributed.

13 THE COURT: I mean, I recognize he's a witness, just
14 -- there may be times when he -- you remember
15 my prior instruction?

16 A: Yes.

17 THE COURT: In this instance, go ahead.

18 A: Well, I think it was asked in the context of
19 this Exhibit and so the population, that's why
20 we did a bed of population ratio to adjust for
21 the maldistribution of both beds and
22 population. That normalizes that
23 maldistribution of population. So, the
24 population is maldistributed, but this
25 justifies it.

1 Q: Let's see here. Let's look at 38H, 38H Exhibit
2 if we could.

3 A: MUHA 38H?

4 Q: Correct.

5 (MUHA Exhibit Number 38 was referenced at this time.)

6 Q: And this is the 6-bed application?

7 A: It's part of it, yes.

8 Q: Yeah. Well the portion I want is actually in
9 here. In terms of the distribution of these
10 patients, this patient origin -- and this is
11 for Trident, correct?

12 A: Yes.

13 MR. THOMAS: And if we look at the second page of
14 this Exhibit, yeah, there we go.

15 Q: You would agree with me that for the first, I
16 don't know, the seven or eight zip codes there,
17 most of those patients originate from about a
18 10-mile radius around Trident, with the
19 exception of Moncks Corner?

20 A: Generally, yes.

21 Q: Okay. Now, you didn't assume a similar type of
22 distribution for MUHA Nexton in terms of, you
23 know, saying that based on proximity that
24 you're gonna get more and less as you go
25 outside, correct?

1 A: Generally, no.

2 Q: All right. Let's look at -- I know we can get
3 to my XYY. Let's look at TMC28, if we could.

4 (TMC Exhibit Number 28 was referenced at this time.)

5 Q: Okay. Have you seen a document that looks like
6 this before, Mr. Levitt?

7 A: Yes.

8 Q: Okay. And this is 2014, 2015. Do you know if
9 these have been updated at all?

10 A: You mean is more recent data available?

11 Q: Yes.

12 A: Yes.

13 Q: Okay. do you know what the most recent data
14 available would be?

15 A: I believe it's 2018.

16 Q: Okay. Have -- did you look at it with respect
17 to this case?

18 A: I think it was in my Exhibits.

19 Q: Okay. And in terms -- and I'm sorry, this is
20 the one I had and couldn't find to put my hands
21 on -- but what does it generally show to -- if
22 you could ask -- tell the Court?

23 A: You mean this report?

24 Q: Yes.

25 A: So it shows the patient origin ...

1 Q: For who?

2 A: For, well in this case, this would be MUSC.

3 Q: Okay.

4 A: This is available for all hospitals in the
5 state.

6 Q: All right. And have you done any analysis, Mr.
7 Levitt, to determine what the redirection of
8 patients would be from communities who live
9 much closer to the MUHA-branded non-tertiary
10 care hospitals in Lancaster, Florence, Marion
11 and Chester? Is that something you've looked
12 at?

13 A: Say that again?

14 Q: Yeah. Have you done any analysis to determine
15 if there would be patient redirection from the
16 communities who live much closer to the new
17 MUHA-branded non-tertiary hospitals in
18 Lancaster, Florence, Marion and Chester from
19 the downtown peninsula? I should have added
20 that in there.

21 A: Oh. No.

22 Q: Okay. And would you agree with me that a non-
23 tertiary patients who sought out MUHA's
24 downtown hospital from these areas sometimes
25 travel up to three hours away?

1 A: Yes.

2 Q: Okay. In Lancaster, for instance?

3 A: Correct.

4 Q: Okay. And I know this is older data, but this
5 is more kind of demonstrating a hypothetical.
6 MUHA downtown gets a fair number of patients
7 from Florence correct?

8 A: Yes.

9 Q: Okay. Now, at your deposition, you testified
10 that up to 80 percent of MUHA's patients living
11 outside of the Tri-County service area who seek
12 services at MUHA downtown, are of the non-
13 tertiary patient type, correct?

14 A: Well, we got -- you and I got there with some
15 estimates. I told you I didn't know. I thought
16 it was more than half and you kept asking well,
17 how much more than half. I said it could be
18 60, 70, maybe up to 80 percent.

19 Q: Okay.

20 A: So ---

21 Q: Let's take the average, let's do 70.

22 A: But it's not. I went back and looked ---

23 Q: Okay.

24 A: --- and it's a little over 50.

25 Q: Okay. It's a little over 50. Fair enough.

1 That'll work too. So how many patients did
2 MUHA, during this time period, get from
3 Florence?

4 A: 566.

5 Q: Okay. So if half of those are -- half of those
6 are non-tertiary, how much of that number would
7 you expect to redirect to MUHA Florence since
8 that brand is now in their backyard?

9 A: Yeah, so what we relied on in the model was 2
10 percent.

11 Q: Okay.

12 A: So that would be one or two patients.

13 Q: Well, I guess maybe I'm not saying it right.
14 Not to Nexton, I'm talking about, let's say I
15 live in Florence. Let's say 20 people live in
16 Florence, they're non-tertiary, all of them.
17 They generally would go all the way down to the
18 MUSC peninsula hospital, correct?

19 A: I'll assume that ---

20 Q: Okay. Just assume that. Now that they have
21 MUHA brand and physicians in their backyard,
22 what would you expect the number, just on a
23 percentage basis, would stay in Florence as a
24 non-tertiary patient and use that hospital
25 rather than traveling two and a half hours down

1 the peninsula?

2 A: I don't know; I haven't looked at that.

3 Q: Do you have any type of estimation with that?

4 A: I would imagine the majority would stay.

5 Q: Okay. What do you mean by majority?

6 A: More than half.

7 Q: All right. And by stay, you mean they would
8 instead use MUHA Florence?

9 A: Yes.

10 Q: All right. And there are many communities,
11 right, where some patients may decide to stay,
12 I mean, Sumter and Chester, Lancaster?

13 A: Not Sumter. I mean, there's no MUHA facility
14 in Sumter.

15 Q: Yeah, but isn't it right next to Florence
16 County and much closer to Florence than it
17 would be to downtown Charleston?

18 A: So would -- you're asking me would people from
19 Sumter redirect ---

20 Q: Yeah.

21 A: --- to Florence? I don't know.

22 Q: Okay.

23 A: I haven't looked at that.

24 Q: All right. What would your instinct tell you
25 based on your redirection analysis in the Tri-

1 County area?

2 A: I guess -- I haven't at it by zip code or where
3 they're going or what their mix is, so I can't
4 tell you.

5 Q: Okay. Would you generally expect a non-
6 tertiary care patient to go to a closer MUHA
7 facility than the further one away so that --
8 for just proximity and convenience sake?

9 A: I think there would be a portion of those
10 patients, yes.

11 Q: Okay. Because isn't that a big part of
12 healthcare in terms of proximity and location?

13 A: Yeah, and that's the underlying assumption in
14 our MUHA Nexton is that a portion of those
15 patients that are closer would go to that
16 facility versus going to the peninsula.

17 Q: Right. So 55 percent of the people who live in
18 North Charleston would decide to save 20
19 minutes would go to MUHA Nexton rather than,
20 say, drive downtown, right? Wouldn't you
21 expect 95 percent of the patients in Florence
22 and surrounding counties to stay up there so
23 they don't have to make a three-hour drive?

24 A: Well, I think it would depend on the level of
25 services offered. So the ---

1 Q: It's non-tertiary.

2 THE COURT: Well, let him finish his answer.

3 MR. THOMAS: Okay.

4 A: I mean, it depends on the level of services
5 offered. So having 900 or almost a thousand
6 physicians, 16,000 employees, whatever Dr.
7 Culley said on the peninsula 30 minutes away,
8 I think is going to afford Nexton, MUHA
9 Berkeley, Nexton, whatever you want to call it
10 -- our proposed hospital in Berkeley County a
11 lot more resources than MUSC Florence or
12 certainly more than MUSC Lancaster just three
13 hours away. So those guys, and girls, women,
14 on the peninsula would have to drive three
15 hours to serve patients in Lancaster versus
16 service 30 minutes to serve patients in
17 Berkeley. So I think it would be different.

18 Q: Okay. But you didn't do any analysis or
19 redirection analysis associated with the new
20 MUHA CHS purchases, correct?

21 A: I think we started there. No, I did not.

22 Q: Okay. And you would agree with me that there
23 are no patients who you are aware of in the
24 Tri-County area who have actually been denied
25 a choice with respect to their healthcare

1 provider, correct?

2 A: Well, I think I said that in my deposition, but
3 I think what we talked about today was patients
4 have been -- there's been transfer requests to
5 MUHA that haven't been able to be fulfilled
6 because we didn't have beds available.

7 Q: Do you know what percentage that is?

8 A: I don't.

9 Q: Okay. Let's go to DHEC 1 598. And these are
10 the pro formas. And this would be the private
11 pro forma. And I'm interested in just you
12 remembering the inpatient revenue number there,
13 if you could. Well, the inpatient, outpatient
14 revenue. Yeah, you write it down.

15 A: I'll write it down, yes.

16 Q: That would be great.

17 A: Which year?

18 Q: Let's do 2025.

19 A: Okay.

20 Q: Okay. Now I want to go to TMC 38.

21 (TMC Exhibit Number 38 was referenced at this time.)

22 Q: Yeah, 38. Okay. Have you seen this draft
23 before, Mr. Levitt, it's 11/30/2017 draft of
24 the -- or this is the full pro forma, if we
25 could go over, I think, three pages maybe --

1 yeah, there we go. This is the 11/30/17 draft,
2 do you recall seeing this?

3 A: Yeah, I think in my deposition.

4 Q: Okay. Did you ever see this pro forma during
5 the time you were actually preparing the
6 application?

7 A: I don't recall if I saw this or not. I think
8 that's what I said in my deposition as well.

9 Q: Okay. And then the inpatient revenue number
10 there is how much?

11 A: Four million -- 413 million 805.

12 Q: Okay. And what's the outpatient number?

13 A: 146 million 049.

14 Q: Okay.

15 THE COURT: Where I can understand.

16 MR. THOMAS: Yes, sir.

17 THE COURT: It says Nexcare Hospital budget?

18 MR. THOMAS: Yeah.

19 THE COURT: What is ---

20 MR. THOMAS: That is ...

21 Q: Is it your understanding the Nexcare Hospital
22 budget is the MUHA Nexton budget?

23 A: Yes.

24 THE COURT: Oh, Next.

25 MR. THOMAS: I'm sorry. It's still on there saying

1 that I had another sale.

2 THE COURT: Oh, okay.

3 Q: And this is an earlier pro forma than the one
4 that appears in the CON application, correct?

5 A: It is; it's an earlier draft.

6 Q: Okay. What is the percentage of outpatient
7 revenue to the total revenue there?

8 A: 26 percent.

9 Q: Okay. And what's the net income there when 26
10 percent of the outpatient revenue is
11 \$146,049,000?

12 A: Well the loss of \$536,000?

13 Q: Negative \$536,000?

14 A: A loss of 536,000.

15 Q: Okay. I'm sorry, I didn't hear you say that.
16 Okay. And this was an internal type of
17 document, right? I think you said at your
18 deposition you hadn't seen it previously?

19 A: Yeah, I don't remember seeing it. It's a
20 draft. Yes.

21 Q: Okay. Let's go to TMC22, if we could.

22 (TMC Exhibit Number 22 was referenced at this time.)

23 Q: All right. Have you ever seen this document
24 before, Mr. Levitt? And if you need to get it
25 out in the ---

1 **A:** I think you showed this to me in my deposition,
2 maybe, or I've seen it at the trial.

3 **Q:** Yeah. Have you -- what do you understand it to
4 be, if you do?

5 **A:** I think this is part of the need model for the
6 hospital.

7 **Q:** Okay. And is this another internal planning
8 document?

9 **A:** Yes.

10 MR. THOMAS: Beg the Court's indulgence.

11 **Q:** Aren't these some of the underlying work papers
12 that -- going to the Nexcare pro forma; is that
13 what you recognize them as?

14 **A:** Yes.

15 **Q:** Okay. And there was little discussion about
16 outpatient services and it was just assumed as
17 a percentage of the net revenue, is that right?

18 **A:** When?

19 **Q:** What's that, the ---

20 **A:** When was this discussion? I don't know what
21 you're talking about.

22 **Q:** So the pro forma in the application, my
23 understanding is that the assumption was it was
24 just going to be 35 percent of the total net
25 revenue, is that right?

1 A: No.

2 Q: Okay. That's not right. Was -- is there a
3 utilization backing up the outpatient revenue
4 number in the pro forma?

5 A: Yes.

6 Q: Okay. That's not what you said in your
7 deposition though, right?

8 A: Until you showed it to me, right.

9 Q: Okay.

10 A: And then when you showed it to me, I agreed.

11 Q: All right. Okay. That's where we're going.
12 So if we could go to page 21 of TMC 22.

13 A: I guess to be clear, Ms. Hollingsworth showed
14 it to me in my deposition.

15 Q: All right.

16 A: Yeah.

17 Q: All right. Fair enough. And you would agree
18 with me that this page actually sets out the
19 outpatient utilization for the Nexton project,
20 correct?

21 A: Yeah. Do you have a clearer version or ...

22 Q: We can get the one in the book if you can't
23 read that.

24 A: I got it with my glasses.

25 Q: All right. Okay. As you recall the third year

1 of operations, did you write that down for
2 2025?

3 A: I did.

4 Q: Okay. What did you get?

5 A: 222 million 244.

6 Q: 249 maybe?

7 A: Maybe, yeah.

8 Q: In the pro forma? Okay. And in TMC 22, you
9 would agree with me that the total gross
10 outpatient revenue for outpatient services in
11 2025 is 222,248,595. You see that? Let me
12 blow it up for you.

13 A: I do.

14 Q: Okay. So that would be rounded up to 222,249
15 correct?

16 A: Yeah, but, so -- yes.

17 Q: All right.

18 A: That's all right.

19 Q: Okay. And one of the line items is, it is the
20 freestanding ED net patient revenue of 8.5
21 million dollars in that 2025 column, do you see
22 that?

23 A: Yeah.

24 Q: Okay. All right. So there were utilization
25 projections done for the outpatient services in

1 the CON application, correct, that underlie the
2 pro formas in the CON application?

3 A: There were some, yes.

4 Q: All right.

5 A: There's also some assumptions in here, so.

6 Q: All right.

7 A: So that there were imaging volumes, looks like
8 ER volumes, M-surg volumes and then sort of a
9 ...

10 Q: Okay. Fair enough.

11 A: But that doesn't have volumes in it.

12 Q: And were you shown these prior to your
13 deposition at any given time?

14 A: I didn't remember seeing them.

15 Q: Okay. Your assumption was that it was a --
16 just a 35 percent markup of the total revenue
17 for outpatient services, correct?

18 A: Yes, because that's how I would have done it.
19 It's a perfectly round number, 35 percent. It,
20 I guess it works out that way based on these
21 series of assumptions.

22 Q: Right.

23 A: You know, that this level of, what they call,
24 granularity isn't normal in a new hospital.

25 THE COURT: What do you mean by that?

1 **A:** That normally, a new hospital wouldn't project
2 all -- and just as they do here. So they've
3 done some projections. They say here's our MRI
4 volume, here's our CT volume, you know, some
5 modalities. They say here's our M-surg volume,
6 here's our ER volume, radiation therapy volume
7 is blank, but then they have another category,
8 it says -- and then they're giving you lots of
9 other stuff that's gonna be outpatient revenue,
10 too. And they did, I think a 25 percent
11 adjustment there. So, that's -- I mean, that's
12 the way you normally would do it is because
13 it's very difficult to project with any level
14 of specificity what -- how many MRIs we're
15 gonna do at this new hospital in five years.
16 So normally you would just say, we've done a
17 detailed analysis on the inpatient admissions
18 and then normally a hospital like this would
19 have 50 percent outpatient revenue or 40
20 percent outpatient revenue and then that's how
21 you project that. Not specifically, here's the
22 charge for an MRI and here's a contractual
23 adjustment and all that for hundreds of
24 thousands of different outpatient visits.

25 **Q:** But somebody went to the trouble to do a

1 utilization analysis for the outpatient in the
2 planning department at MUHA, correct?

3 A: For some of the outpatient, yeah.

4 Q: Well, for ED, correct?

5 A: Yes. Well, the things I said.

6 Q: Okay.

7 A: Those imagings identified, ED and M-surg.

8 Q: Right.

9 A: And then there's another, sort of, plug
10 category.

11 Q: Right. And that would be the lab, pharmacy and
12 that type of thing?

13 A: And others, yes.

14 Q: If you -- you would agree with me if
15 redirection does not occur at the level of 100
16 percent, then there could be the possibility
17 for market share pickup given MUHA's location
18 and TMC's PSA, is that a fair statement?

19 A: Yes.

20 Q: Okay. Did you, Mr. Levitt, did you participate
21 in al the different iterations of the
22 redirection model that were produced to
23 Trident?

24 A: I believe so.

25 Q: Okay.

1 A: But let me qualify that. I'm not sure what was
2 produced to Trident, but I believe I -- I mean,
3 I've been working on this project since it
4 started.

5 Q: Okay. Fair enough. So what's at DHEC 1 at
6 425, that's Attachment N, that is not the
7 correct model that y'all eventually employed
8 and that we were shown today, correct?

9 A: Um ...

10 Q: The Attachment N in this ---

11 A: I'm questioning the shown today part.

12 Q: Well we got, it's one of the Exhibits, I'm not
13 sure exactly where it is, but it's the one that
14 y'all produced to us kind of late in the game
15 prior to the trial that ---

16 A: And this was -- we talked about this in my
17 deposition.

18 Q: I understand that. Which we had another
19 document -- let me find it for you. Go to TMC
20 94.

21 (TMC Exhibit Number 94 was referenced at this time.)

22 Q: All right. This is what I'm talking about.
23 This was the correct version, correct, that we
24 received very late in discovery and it's got
25 MUHA RFP 29,333.

1 A: Isn't it the same?

2 Q: You're saying it's the same as Attachment N?

3 A: Yeah.

4 Q: Okay. Let's go back to Attachment N. It's
5 right at 94. You said this was the corrected
6 version of the CON version of Attachment N was
7 wrong, didn't you?

8 A: I'm confused what you're asking me, so.

9 Q: What I'm asking you is, Attachment N in the CON
10 record, okay, is it the same as what we got
11 that says corrected redirection of secondary
12 and tertiary service area?

13 A: Of course not. That's -- the corrected is the
14 right number that we talked about today and we
15 talked about in my deposition.

16 Q: All right. So Attachment N is not the
17 corrected -- correct version, correct?

18 A: Which Attachment N? In the CON application?

19 Q: Yes, in the CON ---

20 A: No.

21 Q: All right. That's the original question I
22 asked you.

23 MS. CRUM: Your Honor, this has been asked and
24 answered.

25 MR. THOMAS: I don't think it has.

1 THE COURT: I figured it out.

2 MR. THOMAS: All right.

3 Q: All right. Let's go to TMC 45.

4 (TMC Exhibit Number 45 was introduced into the record
5 at this time.)

6 Q: Now those are two versions of the redirection
7 model there.

8 A: Where? What?

9 Q: Well we just saw Attachment N ---

10 A: No.

11 Q: --- in the CON application and the corrected
12 Attachment N. They're the same?

13 A: No, they're not two versions of the model. The
14 numbers in the Attachment N and the CON
15 application were wrong.

16 Q: So they're not the same as what is in the
17 corrected version.

18 A: I was disagreeing with the two models. They're
19 not two models. The numbers are wrong in the
20 attachment. It's a simple error.

21 Q: Okay.

22 A: It's not a different model.

23 Q: All right. This is MUHA RFP, this is Trident
24 45, this is MUHA RFP 13895. Now is this
25 version correct?

1 **A:** **I don't know. I'd have to look at each of the**
2 **ZIP Codes. It appears to be, it's got the 2**
3 **percent in there.**

4 **Q:** **Okay. Well, let me ask you this. Is the**
5 **percent shift from the Berkeley County zip code**
6 **29461 65 percent in the application?**

7 **A:** **I don't believe so.**

8 **Q:** **Yeah. From Moncks Corner it's 35 percent,**
9 **isn't it?**

10 **A:** **Yeah, so that this would be a different version**
11 **that wasn't used.**

12 **Q:** **Right. This is a version that wasn't used.**
13 **Okay. Let's go to TMC 59.**

14 **(TMC Exhibit Number 59 was introduced into the record**
15 **at this time.)**

16 **MR. THOMAS:** Oh, yeah. Your Honor, I'd like to
17 enter into evidence TMC 45, the version that
18 Mr. Levitt participated in that wasn't used.

19 **MS. CRUM:** First, Your Honor, I didn't hear any
20 foundation laid that he participated in this
21 version, so ---

22 **MR. THOMAS:** It was the first question I asked him,
23 if he participated in the redirection modeling
24 and the percentages and he said yes.

25 **MS. CRUM:** Your Honor ---

1 THE COURT: That doesn't mean he participated in the
2 redirection modeling of this Exhibit, does it?

3 MR. THOMAS: Well, he said he participated ---

4 MS. CRUM: It's easy enough to ask him.

5 MR. THOMAS: All right.

6 **Q: Did you participate in the redirection, the**
7 **different redirection modelings that were done**
8 **for this project?**

9 **A: I don't know that I've seen all of this. I**
10 **participated in the entire project, so we would**
11 **have talked about different scenarios and**
12 **different redirection percentages. I don't**
13 **know what the results of this model, as you're**
14 **calling it, are. These are just a series of**
15 **assumptions and I don't know what the results**
16 **are.**

17 **Q: Okay.**

18 MR. THOMAS: Your Honor, on that basis, I mean, he
19 participated in this redirection analysis.
20 These are MUHA's documents and I would like to
21 show that there are different versions than
22 what appears in the application and what
23 appears in the corrected version throughout
24 time and this is much different. So, it's a
25 MUHA document, Your Honor.

1 THE COURT: Any objection?

2 MS. CRUM: No, sir, Your Honor.

3 MR. WICEVIC: No objection.

4 **Q: And up in the top you have ---**

5 THE COURT: Well, let's say ---

6 MR. THOMAS: Oh, I'm sorry.

7 THE COURT: Well ---

8 MR. THOMAS: Sorry, Your Honor.

9 THE COURT: If you want it admitted, I need to make
10 the statement to admit it. It's admitted.

11 (TMC Exhibit Number 45 was admitted into evidence.)

12 MR. THOMAS: Okay, thank you.

13 **Q: Who -- do you know who the initials are up**
14 **there in the corner, CC and EP?**

15 **A: Are you saying that those are people?**

16 **Q: Well, is there someone in the planning**
17 **department at the time that had initials CC?**

18 **A: Yes.**

19 **Q: Okay. Who was that?**

20 **A: Carolyn Cotter.**

21 **Q: Okay. And was there someone in the planning**
22 **department with initials EP at the time you**
23 **were working on this application?**

24 **A: Yes.**

25 **Q: Who was that?**

1 **A:** Elizabeth Player.

2 **Q:** Okay. You think this might be their initials?

3 **A:** It could be, yes.

4 **Q:** Okay. Let's go to TMC -- so this -- take a
5 look at it, David, and if you want to get out
6 the corrected version at TMC 94, you can, but
7 you would agree with me that this is not the
8 same -- these are not the same redirection
9 percentages and assumptions that are in the
10 ultimate corrected version?

11 **A:** Correct.

12 **Q:** Okay. We got a lot of .2s, we have some .5s in
13 there as well, right?

14 **A:** On the first page, yeah.

15 **Q:** Right. And I don't think there were any .5s in
16 the actual net -- in the corrected version that
17 we received, correct?

18 **A:** No.

19 **Q:** Okay. Let's go to the TMC 59-002.

20 MR. THOMAS: Okay, if you can keep 94 up there, that
21 would be helpful.

22 **Q:** All right. Now, this is another version that
23 was produced to us and this one if you look,
24 Mr. Levitt, you have many values in the, it
25 looks like the first, I don't know, 10 or 11

1 there are 75 the percent shifts, correct?

2 A: Yes.

3 Q: And then, another 10, maybe a 60 percent shift?

4 A: Yes.

5 Q: Okay. And then some of the Nexton 20 and then
6 we've got a secondary -- a lot of Orangeburgs
7 and even Horrys, we got 15 percent shifts,
8 correct?

9 A: Yes.

10 Q: Okay. Is it your understanding that when it
11 says Nexton-10 that means 10 miles?

12 A: Yes.

13 Q: Okay. But this version didn't appear -- isn't
14 the one that is applicable, correct?

15 A: Correct.

16 Q: Okay. Let's go to TMC 61 102.

17 (TMC Exhibit Number 61 was introduced into the record
18 at this time.)

19 MR. THOMAS: Oh, yeah, I did. I'd like to admit
20 that previous Exhibit, Your Honor. That was
21 TMC 59. A MUHA document that ---

22 THE COURT: Any objection? I'll take silence as no.

23 MR. THOMAS: All right. Go to page ---

24 THE COURT: He's moved to admit.

25 MS. CRUM: No objection, Your Honor, that's what we

1 were talking about.

2 THE COURT: Oh, okay.

3 MR. WICEVIC: No objection.

4 THE COURT: It's admitted.

5 (TMC Exhibit Number 59 was admitted into evidence.)

6 MR. THOMAS: Thank you, Your Honor. I'm sorry, it's
7 012. All right.

8 **Q: This is another version, Mr. Levitt, that**
9 **appeared -- I think we're getting closer.**
10 **Would you have participated in this version?**

11 **A: I don't recall specifically. And if it was**
12 **done during the process, I was involved.**

13 **Q: And if you look at, say for instance, 29437 in**
14 **this document and compare it -- let's see here,**
15 **29437 would be in this Orange. You've got**
16 **Dorchester ---**

17 MR. THOMAS: Will you blow that up for me a little
18 bit?

19 **A: Well, you can do the first one. It's 75 versus**
20 **65, so they're different.**

21 **Q: Okay. Fair enough. All right, thank you, that**
22 **will move us along. All right. So TMC 94,**
23 **that was the final version, right? Version**
24 **6.0?**

25 **A: What was the final version?**

1 Q: TMC 94 which is the corrected.

2 A: Yeah, so that was the methodology we described
3 in the application. These other versions were
4 previous versions. When we got input and
5 feedback from the members of the committee, we
6 come up with a consensus on the final version.

7 Q: Okay. Thank you.

8 MR. THOMAS: I'd like to move the last one into
9 evidence, Your Honor, that's 61.

10 MS. CRUM: I'm sorry, can I see that one again,
11 right there? I'm sorry.

12 MR. THOMAS: Yeah, TMC 61 and it's 012. That's the
13 first few pages of it, but it's attached to
14 this document. All I want in is the
15 redirection analysis.

16 MS. CRUM: TMC 61-12? What part of the page
17 numbers?

18 MR. THOMAS: Yeah. 12 through 21.

19 MS. CRUM: No objection.

20 MR. WICEVIC: No objection.

21 MR. THOMAS: Thank you.

22 THE COURT: It's admitted.

23 (TMC Exhibit Number 61 was admitted into evidence.)

24 Q: Mr. Levitt, you've seen the radius that --
25 within MUHA's proposed site there of 456 med-

1 surg beds, you've seen that little map radius?

2 A: Yes.

3 Q: Okay. Now, let's look at ---

4 MR. THOMAS: Let's put up DHEC 1 at 47, please.

5 (DHEC Exhibit Number 1 was referenced at this time.)

6 Q: Okay. Are you familiar with figure 30?

7 A: Yes.

8 Q: Okay. And just a couple questions on this. In
9 this particular -- and there's some notes
10 underneath that, and am I correct that this
11 assumed for this imaging modality portion of
12 the application assumes 50 percent of the
13 volumes of MUHA inpatient and outpatient MRI
14 and CT patients within origin zip codes within
15 10 to 15 miles radius of the site location;
16 that would be the redirection?

17 A: That's what the assumption says, yes.

18 Q: Okay. The inpatient -- I mean, the inpatients
19 are gonna be in the hospital, right?

20 A: Yes.

21 Q: And they'll need an MRI, they're not gonna --
22 they're gonna get the MRI at the hospital, is
23 that a fair statement? Regardless of where
24 they live within the radius of the hospital?

25 A: That once in the hospital, they'll get the MRI

1 in the hospital.

2 Q: Okay. But you did assume for imaging services,
3 a 10 to 15 mile radius of the site location
4 rather than a percentage, just a percentage
5 redirection from an individual zip code, is
6 that fair?

7 A: That was the assumption for this, yes.

8 Q: Okay.

9 MR. THOMAS: Crossing things off, Your Honor.

10 Q: Let's look at -- just out of curiosity, why was
11 128 beds chosen for the size of the hospital,
12 if you recall?

13 A: Based on the volume of patients we identified
14 and then the mix of beds, we identified a 12-
15 bed ICU, OB beds and then sort of a economic
16 size medical-surgical units resulted in 128
17 beds.

18 Q: Okay. So it's just kind of the unit planning
19 for the hospital?

20 A: Combined with the volume planning, yes.

21 Q: Okay. Let's look at DHEC page -- DHEC 1 at 39.
22 And a little bit more on redirection, Your
23 Honor, and I'll move away. Figure 17 down
24 there at the bottom. Now, so if you're 56 to
25 70 minutes, that's 10 percent redirection, is

1 that right?

2 A: Yes.

3 Q: Okay. But if you're -- if a county line
4 happens to intercede between that 56 and 70
5 minutes, that's going down to 2 percent, right?

6 A: Yes.

7 Q: Okay.

8 MR. THOMAS: So do you have the TMC demo

9 Cottageville ro MUHA?

10 Q: I'm just gonna show you a couple of maps. All
11 right. This is Cottageville and Nexton. I did
12 this this morning. Does that look about right
13 to you in terms of where Nexton -- the MUHA
14 Nexton facility is?

15 A: Generally, yeah.

16 Q: Okay.

17 A: I think as long -- does the blue line cover up
18 17?

19 Q: Yes.

20 A: Yeah. Yes.

21 Q: Okay. And Cottageville, that's where you
22 understand Cottageville to be?

23 A: Yes, I know where Cottageville is.

24 Q: Okay. All right. And that's about a 40-minute
25 drive, but 26.9 miles, do you see that, that's

1 just done on the Google maps, right?

2 A: Yes, on the Google, yes.

3 Q: All right.

4 MR. THOMAS: Let's go to the Saint -- Trident demo

5 Saint George MUHA next.

6 Q: Now this is where Saint George is, right?

7 Saint George is in Dorchester County, correct?

8 A: Yes.

9 Q: Okay. And Saint George is about 31 miles away
10 and 36-minute drive time, is that right?

11 A: Yes.

12 Q: Okay. So a little bit, you know, Saint George
13 and Cottageville, about the same travel time,
14 maybe within 5, 6 minutes; fair?

15 A: Yes.

16 Q: Okay. But because Saint George is in
17 Dorchester County, you're gonna get 30 percent
18 redirection from there, right, according to the
19 redirection model?

20 A: Yes.

21 Q: Okay. But Cottageville is about the same
22 distance away. That's only gonna be 2 percent,
23 right?

24 A: Correct.

25 Q: Okay.

1 MR. THOMAS: Now, let's do the TMC demo Moncks
2 Corner to MUHA Nexton. All right.

3 Q: Here's Moncks Corner. I chose the quickest
4 route of 15.1 miles, 21-minute drive time to
5 MUHA proposed Nexton site, you see that?

6 A: I do.

7 Q: Okay. Do you recall what you assumed for the
8 redirection for Moncks Corner?

9 A: Not off the top of my head, but maybe 35.

10 Q: 35 percent. You nailed it.

11 A: Hey.

12 MR. THOMAS: Now, can we put in Moncks Corner to
13 MUHA downtown?

14 Q: So you would agree with me that Moncks Corner
15 to MUHA downtown, according to this
16 demonstrative, is a 57-minute drive and this
17 was this morning when I did it at 7:45 in the
18 morning.

19 A: Uh-huh.

20 Q: And it's 32.3 miles, correct?

21 A: It is.

22 Q: But according to your model, 65 percent of the
23 patients are gonna drive from Moncks Corner all
24 the way downtown and only 35 percent would
25 redirect to the Nexton hospital 15 miles away.

1 Is that -- do I got that right?

2 A: Yes.

3 Q: Okay. Do you agree with me that despite
4 flooding, way finding traffic and parking
5 issues that MUHA is a well-utilized facility?

6 A: Yes.

7 Q: I think you said this morning it was full,
8 right?

9 A: It is.

10 Q: Would you agree with me that as of your
11 deposition, you had not seen the master
12 facilities phasing plan that has a patient
13 tower where the wellness center is today?

14 A: I hadn't seen the rendering of it, no.

15 Q: And you hadn't also seen the master plan
16 rendering showing the parking garage at Beach
17 Street, right?

18 A: I have not seen a rendering.

19 Q: Okay. And were aware, prior to yesterday --
20 were you here for Ms. Goodlett's testimony?

21 A: I was.

22 Q: Okay. Were you aware, prior to yesterday, that
23 six banks had turned down MUHA for a 38 million
24 dollar loan for the consolidated service
25 center?

1 **A:** I think you might have asked or somebody asked
2 me during my deposition about that document
3 perhaps?

4 **Q:** Right.

5 **A:** So I think I had seen it in a document.

6 **Q:** Oh, you had seen it in that document. How
7 about before then?

8 **A:** Not specifically, no, and I'm not sure that
9 that's accurate, but no.

10 **Q:** Okay. Well -- we'll let the document speak for
11 itself. Now do you -- how often do you attend
12 board of trustees meetings at MUHA?

13 **A:** I try not to. So rarely I guess I would say.

14 **Q:** How many have you attended in the last two
15 years?

16 **A:** I think maybe one.

17 **Q:** Okay. With respect to the 29-bed CON
18 application, are you aware of any additional
19 parking spots being added for those beds for
20 the staff for those beds?

21 **A:** Not specifically, no.

22 **Q:** Okay. Home stretch. Mr. Levitt, you didn't
23 submit a response to DHEC with respect to Mr.
24 Richardson and Mr. Sullivan's letters of
25 opposition, did you?

1 **A:** **No.**

2 **Q:** **Okay. Do you -- you normally do submit**
3 **response in CON applications when there's**
4 **opposition, correct?**

5 **A:** **I would say usually, sometimes we don't.**

6 **Q:** **Okay. You did for the NICU application, is**
7 **that fair?**

8 **A:** **I did. There's other applications where I**
9 **haven't, but, yes, I did for that. Now, well,**
10 **yes.**

11 **Q:** **And in terms of the CHS purchases, you weren't**
12 **asked to, by MUHA to model any utilizations for**
13 **those facilities, correct?**

14 **A:** **Not at the time of purchase, no.**

15 **Q:** **Okay. And you didn't create -- just for the**
16 **record, you didn't create the pro formas in**
17 **this case, but you reviewed them, right?**

18 **A:** **Correct.**

19 **Q:** **All right.**

20 **MR. THOMAS:** Celeste, you need to come over here and
21 do that for me.

22 **MS. JONES:** Well, you've got these outside.

23 **Q:** **You're obviously familiar with Standard 5 in**
24 **the State Health Plan, correct, Mr. Levitt?**

25 **A:** **I am.**

1 Q: Okay. And you would agree with me that simply
2 because you satisfy Standard 5 doesn't
3 necessarily mean the Department can ignore the
4 other project applicable project review
5 criteria, is that fair?

6 A: In the Regulations, you mean?

7 Q: Yes.

8 A: No, they can't ignore them.

9 Q: Do the answer is you would agree with that; it
10 cannot ignore the applicable project review
11 criteria?

12 A: I think I agree with that, yes.

13 Q: You're not sure?

14 A: I'm not sure what you're asking, so.

15 Q: Well, just because you may be able to satisfy
16 Standard 5 in the State Health Plan for
17 inpatient beds, right, to create a new
18 hospital, that doesn't mean that you're through
19 with the approval process. There's still
20 applicable project review criteria, correct?

21 A: There are, but the Regs say that you have to
22 comply with the Plan. You can't get approved
23 unless you comply with the Plan.

24 Q: Correct.

25 A: But you don't have to comply with all the

1 review criteria and you can still get approved.

2 Q: Right. But you have to comply with some, don't
3 you?

4 A: I guess, but I guess it's unclear whether it
5 says you don't have to comply with all of them,
6 so.

7 Q: Well, why did you and Ms. Crum just go through
8 the exercise of going through 12 or 13 project
9 review criteria, Mr. Levitt?

10 A: Well because you guys said we didn't comply
11 with them and I was demonstrating how we did.

12 Q: Are there applicable project review criteria to
13 this case?

14 A: Why I think you and Roper felt that those were
15 so that's why we went through those 'cause
16 those were the applicable to this.

17 Q: Did the State, did the Department feel that
18 there were applicable project review criteria?

19 A: They did. They identified those that were the
20 most applicable and put them in the complete
21 letter.

22 Q: Okay. And so there were applicable project
23 review criteria, correct?

24 A: Yes.

25 Q: All right. And when I deposed you, you didn't

1 know why the Department chose not to apply
2 three project review criteria that were
3 designated as the most important in the State
4 Health Plan, correct?

5 A: Correct.

6 Q: All right. You would agree with me that the
7 Nexton site chosen for MUHA was based on
8 demographics of the area, for one?

9 A: Yes.

10 Q: Okay. The projected growth in the area?

11 A: I think those put together, but yes.

12 Q: Okay. Access to residents in the area?

13 A: Yes.

14 Q: And increase access to MUHA patients in the
15 area, correct?

16 A: Well I think 3 and 4 are the same, so yes.
17 Increased access to area residents that seek
18 care at MUHA.

19 Q: Okay. Let -- I didn't want to do it, but we
20 will. Let's go to page 68 of your deposition.

21 MR. THOMAS: Do you have his ...

22 Q: Mr. Levitt ---

23 A: Why have I got to open it?

24 Q: Let's go to page 68 of the deposition, if we
25 could. All right. And go to line 13.

1 **A:** Yes.

2 **Q:** All right. I'll read the question. And it's
3 -- what's your understanding of why this
4 particular site was chosen?

5 **A:** I'll read the answer. It was chosen based on
6 the demographics of the area, the projected
7 growth in the area, access to residents, and to
8 increase access for MUHA patients.

9 **Q:** All right. So you had two separate categories:
10 access to residents and to increase access for
11 MUHA patients, correct?

12 **A:** That's not what you asked me. You asked me if
13 it was to increase residents of Nexton and I
14 didn't say that. It's the increased access to
15 residents of South Carolina and increase access
16 to MUHA patients.

17 **Q:** That's exactly what I asked you because I read
18 off my paper, but the record will speak for
19 itself. You would agree with me that even
20 though the CON application states the
21 freestanding ED would close upon the opening of
22 Nexton, that is no longer the case, correct?

23 **A:** Yes.

24 **Q:** All right. And TMC 22 that we looked at
25 earlier which was the, kind of, the work papers

1 for the pro forma, do you recall that?

2 A: Generally.

3 Q: Okay. Did you see the asterisk that said that
4 the volumes for the Nexton hospital were from
5 the freestanding ED project? And I can pull it
6 back up if you ---

7 A: Is this the one that had the outpatient volumes
8 and ---

9 Q: Yes.

10 A: Yes.

11 Q: Okay. When I deposed you a month ago, you
12 didn't know the reasons why patients were being
13 transferred from Trident Health to MUHA,
14 correct?

15 A: I didn't know the specific reasons, correct.

16 Q: And one of the reasons that, for instance, that
17 Trident Health may need to send a patient
18 downtown is for Level III NICU services,
19 correct?

20 A: That could be a reason, yes.

21 Q: And that's because Trident doesn't offer those,
22 right?

23 A: Correct.

24 Q: Okay. And there are also many pediatric
25 services that MUHA offers that it's specialized

1 pediatric hospital downtown that Trident Health
2 does not offer, correct?

3 A: I agree with that.

4 Q: Okay. And those may also be a source of
5 transfer, correct?

6 A: Yes.

7 Q: Okay. And you'd agree with me that the overall
8 number of MUHA transfer denials has been cut in
9 half in the period from 2011 to 2017, correct?

10 A: Yes.

11 Q: Okay. And you don't know who the north area
12 primary care physicians are who primarily refer
13 to Trident ancillary services and Trident
14 inpatient services, correct?

15 A: Not specifically. I think I heard Mr. Gallati
16 name some, but I don't know. That would be
17 something that you guys would know, not me.

18 Q: Okay. That's not something you knew or looked
19 into, correct?

20 A: No.

21 Q: Okay. And when I deposed you, you didn't know
22 what the capacity of the CT and MRI units of
23 the downtown campus were, correct?

24 A: Correct.

25 Q: Okay. To develop the average length of stay

1 assumptions for the applications, you spoke to
2 a pediatrician named Dr. Sure, correct?

3 A: No. So it sort of dawned on me later, after my
4 deposition, I said Dr. Sure and everybody
5 thought I meant Mr. Dr. Sure and I believe I've
6 talked to Mrs. Dr. Sure.

7 Q: Okay.

8 A: It's a woman who's not a pediatrician.

9 Q: Okay. What does she do?

10 A: She does quality.

11 Q: All right. And ---

12 A: And also to clarify, I said I wasn't -- I
13 couldn't remember exactly what physicians I
14 spoke to and I think I said it was a woman.

15 Q: Right.

16 A: That was one and then there was ---

17 Q: Dr. Boylen?

18 A: Yes.

19 Q: Okay. And Dr. Boylen, she's an intensivist
20 pulmonologist, correct?

21 A: That's her specialty, but she's an IC chairman,
22 chairperson.

23 Q: All right. She works in the ICU, right?

24 A: Well she's the head of the IC that has more
25 than has more than just ICU.

1 Q: Okay. When she's practicing clinical services,
2 does she practice in the ICU as a
3 pulmonologist?

4 A: I would assume as well as on the med-surg floor
5 and other areas.

6 Q: Okay. So how many people did you talk to for
7 the ALOS, two?

8 A: Two physicians that I can recall because I
9 think in my deposition you were asking me what
10 physicians did I speak to.

11 Q: Right.

12 A: So, but the group, there are -- there was what,
13 20 people on that -- in that group including
14 Matt Wayne, who was the COO of a hospital. He
15 had a lot of input into the operations and the
16 expected operations of the hospital and what
17 the expected length of would be.

18 Q: You didn't mention his name in your deposition,
19 though, did you?

20 A: Well, you asked for me for a physi- -- he's not
21 a doctor.

22 Q: Okay.

23 A: So I believe you asked me what physicians did
24 I talk to.

25 Q: In your deposition.

1 **A:** I believe so and those were who I talked to.
2 The group came up with those -- that assumption
3 and those are the physicians I can recall
4 speaking to.

5 **Q:** And it's Dr. Sure, the female?

6 **A:** I believe so.

7 **Q:** Okay. And the average length of stay in 2018
8 fell from 6.1 to 5.8, correct?

9 **A:** Depending on the source. On the JAR data
10 that's what it showed, but the internal data
11 didn't show that.

12 **Q:** But you didn't make any adjustments as to
13 average length of stay on your slides, correct,
14 that ---

15 **A:** I didn't.

16 **Q:** --- we saw today? Okay.

17 MR. THOMAS: Can you pull up TMC demo Goose Creek to
18 TMC?

19 **Q:** What's the largest city in Berkeley County, Mr.
20 Levitt, by population, if you know?

21 **A:** I don't know off the top of my head.

22 **Q:** Is Goose Creek one of the largest?

23 **A:** In Berkeley County?

24 **Q:** Berkeley County.

25 **A:** Uh ...

1 Q: What city would be larger?

2 A: I'd have to look at the population for ---

3 Q: Okay. Do you know of a larger population are
4 than Goose Creek?

5 A: Well I don't know what Goose Creek's population
6 is, so I can't -- I don't have a starting point
7 to see which is higher or lower.

8 Q: How about Ladson, do you know the population of
9 Ladson?

10 A: Parts of that are in Dorchester and Charleston
11 Counties, too.

12 Q: Sure. How about the part in Berkeley County?

13 A: I don't know that that's even knowable. The
14 portion of Ladson that's in Berkeley County,
15 what the population is, I don't know where I
16 would get that.

17 Q: Do you know the population of Moncks Corner?

18 A: No, I told you, I don't know the population off
19 the top of my head.

20 Q: Okay. Do you know what the population is for
21 Daniel Island?

22 A: Again, I don't know off the top of my head, I
23 was thinking it was -- somewhere we saw 20,000.
24 Again, I haven't committed these to memory.

25 Q: Okay. Did you look and do any analysis of the

1 various municipalities and what their
2 populations were when you were doing your
3 analysis for the CON application?

4 A: Not necessarily the populations because it
5 doesn't matter how many people live there. We
6 looked at the number of people from that area
7 that were treated at MUHA. That's the volume
8 we relied on.

9 Q: So you didn't do any analysis of the cities,
10 the individual municipalities in Berkeley
11 County, correct?

12 A: I said no, that we didn't look at that because
13 we're looking at the utilization.

14 Q: All right. And here's another Google map.
15 Goose Creek is -- and that's the Town of Goose
16 Creek, 2.8 miles from Trident Medical Center?

17 A: I mean, that's what it says, I assume that's
18 what the dot on the map is, but, yeah, I trust
19 you.

20 Q: All right.

21 MR. THOMAS: And let's do the Goose Creek demo to
22 MUHA Nexton.

23 Q: All right. Goose Creek to MUHA Nexton will be
24 12.2 miles and 22-minute drive away, roughly
25 the same time of morning; fair statement?

1 A: I don't know when you did this.

2 Q: Okay. I'll represent that I did it this
3 morning, but at the end of the day, where does
4 -- where does somebody from Goose Creek --
5 don't they have to drive right past Roper
6 Berkeley to get to Nexton Parkway?

7 A: If they went that route, yes.

8 Q: Okay.

9 A: If they went 26, they wouldn't.

10 Q: Right.

11 A: And you didn't show how far it was on the other
12 route.

13 Q: Right. Well, this is the information they gave
14 me. And the population ---

15 A: Oh, but the other one shows both and this one
16 doesn't.

17 Q: I know. Can't make it do what I can't make it
18 do. In terms of Ladson, the population of
19 Ladson is very proximate to Summerville Medical
20 Center and Trident Medical Center, correct? Do
21 you see Ladson on the screen there?

22 A: I do.

23 Q: Okay. Is it -- would you agree with the
24 proposition that Ladson is very proximate to
25 Trident Medical Center and Summerville Medical

1 Center? If you know where Summerville Medical
2 Center -- which I assume you do since you did
3 the analysis.

4 A: I'm trying to look here.

5 Q: Yes. Well how about we just say Trident
6 Medical Center then?

7 A: Yeah, oh, yeah. I -- yes, it is.

8 Q: Okay. And Hanahan, too, you see on the left
9 side there? Hanahan is actually a little bit
10 south of Goose Creek. That's very proximate to
11 Trident Medical Center?

12 A: Yes.

13 Q: Okay. And Moncks Corner is pretty proximate to
14 Roper Berkeley, is that fair? It's closer to
15 Roper Berkeley than it is to Trident Medical
16 Center?

17 A: Yes.

18 Q: Okay. All right.

19 MR. THOMAS: I beg the Court's indulgence here, Your
20 Honor.

21 .THE COURT: Well you're his BF?

22 Q: Yeah. Let's go to 38, MUHA 38B.

23 (MUHA's Exhibit Number 38 was referenced at this
24 time.)

25 Q: Mr. Levitt, I'll just start by saying that what

1 this Exhibit is, and it will pop up here in a
2 second, this is the Trident Medical Center
3 self-described acute care service area bed need
4 based on the State Health Plan that has a
5 population, right here. You familiar with that
6 slide? There it is. And this is the one that
7 says, service area bed need left unserved by
8 Trident 1,203; and then service area bed need
9 left unserved by Trident Summerville 1,077;
10 right?

11 A: Yes.

12 Q: Okay. You would agree with me that many other
13 hospitals serve the zip codes that you have set
14 up top, correct?

15 A: Yeah.

16 Q: Okay. That would include Roper downtown, MUHA,
17 Roper Mount Pleasant, East Cooper Medical
18 Center, Saint Francis and even Colleton Medical
19 Center, correct?

20 A: Sure, they probably all serve those ZIP Codes.

21 Q: Okay. And they have -- over a thousand beds
22 amongst all those hospitals, correct?

23 A: Approximately. I'd have to add them up, but
24 sure.

25 Q: Okay. And this planning area, Trident Medical

1 Center's self-described planning area, also
2 includes its secondary service area. So from
3 the SSA, only 20 percent of its patients come
4 from that -- those various ZIP Codes, correct?

5 A: I don't know how they defined it. It was 80
6 percent and 20 percent or how they defined it
7 in the 14-bed application this came from.

8 Q: Okay. And you would agree with me that this
9 planning area here is not a planning area
10 defined in the State Health Plan, correct?

11 A: No.

12 Q: Okay.

13 A: It's not.

14 Q: And you would agree with me that you don't use
15 hospital individual service area for community-
16 wide bed need plan, correct?

17 A: Well it's an element of it, but not the sole of
18 it.

19 Q: Right. Okay. And you would agree with me that
20 not every hospital serves the same type of
21 patient, correct?

22 A: Some hospitals have other capabilities and
23 specialties, but hospitals serve all patients
24 that they're capable of serving.

25 Q: Fair enough. I'll go with that to move on.

1 **Let's look at MUHA 38E, if we could real**
2 **quickly. Let's see here.**

3 **(MUHA Exhibit Number 38i was referenced at this**
4 **time.)**

5 MR. THOMAS: Bear with me, Your Honor. We'll move
6 along.

7 **Q: Yeah, 38I, I'm sorry. This is your ALOS by**
8 **discharge type. Do you see this -- you're**
9 **familiar with this slide, correct?**

10 **A: I don't think we talked about that today.**

11 **Q: Okay. Well it's -- this was the one moved into**
12 **evidence.**

13 MR. THOMAS: Liz, do you recall?

14 MS. CRUM: I don't think so. I don't think that's
15 one of them I talked about.

16 MR. THOMAS: Okay. Yeah. Your Honor, I'm sorry.

17 MS. CRUM: It was? It was. Sorry.

18 MR. THOMAS: It was.

19 MS. CRUM: It was, yeah.

20 MR. THOMAS: Okay. All right. I thought it was.

21 **Q: You grouped the ---**

22 MR. THOMAS: I just wanted to get that for the
23 record.

24 **Q: You grouped all of the HCA healthcare**
25 **facilities together, correct, for purposes of**

1 this -- the average length of stay analysis?

2 A: Both of them, yeah.

3 Q: Okay. So CMC is not in here? That's the
4 question.

5 A: Correct, no.

6 Q: Okay.

7 A: Trident and Summerville.

8 Q: Okay. And for Roper Saint Francis, that's
9 three hospitals within that grouping, correct?

10 A: Yes.

11 Q: Okay. And so you didn't, you didn't look at
12 the hospital's average length of stay
13 individual, fair statement?

14 A: Well, no, I looked at it, it's not showing on
15 this figure, but, yeah, I looked at it.

16 Q: Okay. But you didn't present that to the
17 Court, right?

18 A: Well, I didn't present this to the Court.

19 Q: Okay.

20 THE COURT: Your response was you didn't present
21 this to the Court?

22 A: Yeah. I don't think we talked about this
23 Exhibit.

24 Q: Okay.

25 MR. THOMAS: I think you're right, Your Honor, and

1 that was one of the issues that -- and I'd like
2 to, if we could and if MUHA would agree to it
3 because it wasn't spoken about although I think
4 Ms. Crum maybe mistakenly put it in the line.
5 We'd ask that it be removed from the admitted
6 Exhibits.

7 MS. CRUM: We don't have any problem with that at
8 all, Your Honor. I didn't realize I had done
9 that, so, no problem.

10 MR. THOMAS: It was my mistake, Liz.

11 THE COURT: All right. I'll remand it and we move
12 on.

13 MR. THOMAS: Thank you.

14 THE COURT: TMC 38i is hereby remove.

15 MR. THOMAS: Thank you.

16 **Q: If we could look at ---**

17 THE COURT: One second.

18 MR. THOMAS: Oh, I'm sorry.

19 MS. CRUM: He said TMC 38I and it's MUHA.

20 MR. THOMAS: Oh, yeah, it's MUHA 38I, Your Honor.

21 THE COURT: Well, I saw on the screen it said TMC.

22 MS. CRUM: That's his computer.

23 THE COURT: Oh.

24 MR. THOMAS: Oh, I'm sorry.

25 THE COURT: Oh, TMC MUHA.

1 MR. THOMAS: Yeah. The Exhibit sticker is MUHA 38I.

2 THE COURT: Okay. Well MUHA 38I is removed.

3 (MUHA Exhibit Number 38i was removed from evidence at
4 this time.)

5 Q: Okay. In terms of your alternative service
6 area definition -- and I think I'll probably
7 make a quick work of this, Mr. Levitt. You
8 assumed, although you did various iterations
9 and various assumptions within migration, you
10 did assume the 4.7 overall average length of
11 stay for each iteration, fair statement?

12 A: Yes.

13 Q: Okay. And in some these, the smaller the
14 service area got, the discharges actually went
15 up, correct?

16 A: Yes, because the assumption we made was 2
17 percent of the areas beyond and if you take
18 that out and replace that with a new migration
19 percentage, that's a higher number.

20 Q: Okay. But you didn't do that originally, fair
21 statement? Because these are all altered,
22 right?

23 A: I did not do that originally in the CON
24 application, correct.

25 Q: Okay. And pretty much, you did many, many

1 different scenarios, and if we go -- look at
2 38V, this is I believe where you summarized it.
3 And you're familiar with this, correct?

4 A: Yes.

5 Q: All right. And one of these actually just
6 includes a straight flat out 55 percent
7 redirection of all the service area zip codes,
8 correct?

9 A: Of all the service area Mr. Sullivan identified
10 as our service area.

11 Q: All right. Did you do any analysis where you
12 didn't assume patient redirection at all, but
13 rather patient market capture?

14 A: No, you'd get to the same spot. So we assume
15 that the market share wouldn't change, so you
16 get to the same spot.

17 Q: You get to the same spot if you're -- yeah.
18 Because you didn't do a scenario that actually
19 contemplated any market capture, right, because
20 it's 100 percent redirection, fair?

21 A: Any shift in market share, correct.

22 Q: Yes. All right. Let's go to 38X. And this is
23 the comparison to the volume income statement.
24 And I just want to get this straight. Does the
25 total based on year one cost, total discharge

1 is 4106 include OB?

2 A: I don't know, this is Sullivan's projection.

3 Q: Okay. Well, so how many, if you recall, total
4 discharges did you have in the CON application
5 in year one? Do you recall?

6 A: It's like ---

7 Q: Black leading binder.

8 A: --- 23,000 or 2,000 something.

9 Q: Did that include OB?

10 A: It was like 2500 -- it was 2564 maybe med-surg.

11 Q: Okay.

12 A: I'll be impressed if that's the right number.

13 Q: What did you say it was?

14 A: 2564?

15 Q: I think you had -- one was medical-surg, 2457.

16 A: 2457, yes.

17 Q: And the OB, 678, correct?

18 A: That sounds right.

19 Q: Okay. And so based on the year one cost here,
20 the 4106, which is a little bit less than what
21 I think the numbers we threw out was about the
22 same?

23 A: It's more.

24 Q: The 4106 is more?

25 A: Yes.

1 Q: Okay. Do you know what you had? I'm sorry.
2 And -- for year three, you had 4467 inpatient
3 med-surg, right?

4 A: I think that's right.

5 Q: And then 1233 OB, so about 5700?

6 A: Yes, 5700.

7 Q: Okay. And at 5700, your operating income, do
8 you recall what it was in year three? It was
9 about 14 million dollars?

10 A: It was 14 million dollars.

11 Q: Okay. But at 4106, your operating income is
12 gonna be 19,387,000?

13 A: Yes.

14 Q: Okay.

15 A: So -- can I explain?

16 THE COURT: Yes.

17 Q: Have at it.

18 A: So I don't think you understood. So this is
19 Mr. ---

20 Q: Oh, I didn't. I didn't understand the model.

21 A: Yeah.

22 Q: Because ---

23 A: So this is Mr. Sullivan's model. So I'm sure
24 we're gonna hear tomorrow what he thinks this
25 means, but so what he did was he took our year

1 three costs and assumed fixing the variable
2 assumptions and said if we have 4,106
3 discharges, we'd lose 2 million dollars.
4 Because he -- in 2027, which is what he thought
5 our volume would be in 2027 4,106. So instead
6 of basing that projection off year three, if
7 you base it off year one expenses, the
8 relationship in year one assume Mr. Sullivan's
9 assumed fixed and variable percentages
10 projected forward to 2027 with 4,106
11 admissions, it would say that we would make 19
12 million dollars. So when he said in his
13 testimony we erroneously -- or I think he said
14 it was an error -- projected our expenses based
15 on 100 percent variability, the effect of that
16 is to overstate our expenses or understate our
17 net income. So if you assume his assumptions,
18 we'd make more money off his volume.

19 Q: Okay, sir. Let's go to MUHA 38Y. You're
20 right, we may hear something about that. Do
21 you recall what the operating income was, and
22 I believe we can pull it up if we have to, but
23 for MUHA the total ---

24 A: No

25 Q: --- thing? 35 million dollars? No, you don't

1 remember that?

2 A: That sounds right for a certain year, but I
3 don't recall.

4 Q: Well let's go -- let's pull up TMC 1 then
5 first. 'Cause I just want to have a bearing.

6 (TMC Exhibit Number 1 was referenced at this time.)

7 Q: All right. Let's turn over to -- this is TMC
8 1. This is the 2019 audited financial,
9 correct?

10 A: It is.

11 Q: Okay. And the audited financial, if we could
12 go to page -- this is Trident Exhibit 001-009.
13 Okay. So MUHA's operating income there is
14 what, Mr. Levitt, in the middle of the page?
15 2019?

16 A: On this page it shows 35 million.

17 Q: Okay. 35,254,000. And that's off of what, 1.4
18 billion in revenue? Does that look about
19 right?

20 A: Um ...

21 Q: That side there?

22 A: Net revenue.

23 Q: Yeah. 1.46 billion in total operating revenue?

24 A: No, you're on the wrong column. 1.6.

25 Q: You're right. Thank you. Actually, is the

1 **total operating revenues of 1.7?**

2 **A: Including other revenue, yes.**

3 **Q: Okay. So that's 35 million dollars of 1.7**
4 **billion, right?**

5 **A: Yes.**

6 **Q: Okay. And let's go to 38Y. Just got one more**
7 **question for you. Break it out in two, 37**
8 **subparts.**

9 MR. THOMAS: Kidding, Your Honor.

10 THE COURT: I was wondering how much longer your
11 one-hour cross-examination is gonna go.

12 **A: Me, too.**

13 MR. THOMAS: Well, we didn't realize what we were
14 getting today, Your Honor.

15 MS. JONES: Objection.

16 THE COURT: Would that be y'all didn't realize it or
17 I didn't realize it?

18 MR. THOMAS: Both.

19 **Q: All right. So in 2025, Mr. Levitt, I'm just**
20 **going off of your assumption here, if MUHA were**
21 **to make 50 percent -- if 50 percent of their**
22 **revenue were outpatient revenue, is it your**
23 **calculation here it's gonna make 29.9 million**
24 **dollars in operating income?**

25 **A: Yes.**

1 **Q:** Almost as much as the downtown facility is
2 making?

3 **A:** Yes.

4 **Q:** Okay.

5 MR. THOMAS: I've got no further questions, Your
6 Honor.

7 THE COURT: We're gonna take a break. I ask this,
8 but how long do you think you'll take?

9 MS. HOLLINGSWORTH: Your Honor, with respect, I just
10 don't think it is -- I don't think we should
11 start my cross. I'm -- it's already, it's 5:28
12 at night. I mean, I just, I feel certain -- I
13 don't know how long it'd be, but it could very
14 well be an hour to two hours or more. I -- and
15 I just think ---

16 THE COURT: Okay.

17 MS. HOLLINGSWORTH: --- it's difficult to start it
18 at 5:30 at night.

19 MS. CRUM: First thing, we didn't actually ask to
20 start at 9:00 this morning and Mr. Thomas
21 wanted to start ---

22 MR. THOMAS: 9:30. 30 minutes ---

23 THE COURT: Yeah.

24 MS. CRUM: Okay. 30 minutes. Well, then Your
25 Honor, I think we need to finish this witness

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1 tonight. It is not fair to my client to get
2 halfway through him and I can tell you right
3 now, I have no redirect right now. None.

4 THE COURT: Okay.

5 MS. CRUM: And we have gone this way before and --
6 it's kind of like I used to work for the
7 Legislature and it's kind of like if you let
8 them go home, they came up with a whole lot
9 more amendments and it's gonna take a whole lot
10 longer the next day.

11 THE COURT: And sometimes they get a more efficient,
12 too. I want to take a break, I'll think about
13 that. I'll tell you I'm leaning toward
14 breaking, but let me just think about it.

15 MS. CRUM: Your Honor, I really wish we could finish
16 today because it just is -- I just -- okay.

17 (Off the record)

18 THE COURT: With all due respect, I'm going to break
19 for the day. We've actually, it was a
20 unanimous vote. It was a unanimous vote
21 although I'm the one that gets to make the
22 call.

23 MS. CRUM: But I think Ms. ---

24 MS. JONES: We have one housekeeping matter.

25 THE COURT: Okay.

1 MS. JONES: We have agreed that Mr. Thomas can
2 depart our company in the morning and ---

3 THE COURT: Oh, I'll bet that was a difficult
4 decision.

5 MS. JONES: And his compadre can take over, if need
6 be, with this witness. And I do have a copy of
7 the Praker case and my request, 'cause it is
8 Praker, the Court said that it was, you know,
9 an abuse of discretion to let the testimony on
10 reply that was not limited to replying to
11 specific testimony, but was general testimony.
12 And my request is that we be given notice of
13 the specific testimony that they're going to
14 try to offer in reply, since we're taking the
15 night off.

16 MR. SUMMER: A couple things, Your Honor. Number
17 one is, is that I found it constructive and
18 humorous at the same time when Mr. Levitt said
19 we'll hear from Mr. Sullivan tomorrow about
20 what he thinks it means, I know what it means.
21 We do this a lot and both -- all of these
22 experts understand this, the slides primarily
23 will be the focus of what we will be talking
24 about. They have those slides, they have their
25 witness, they're gonna be very well prepared

1 for tomorrow. I don't have any doubt about
2 that. But I can't sit hit and enumerate. I'm
3 sure that we will have a substantial list of
4 questions to clarify and refute testimony from
5 DHEC, from each of the MUHA witnesses, but I'm
6 not aware of any law that requires me to give
7 them notice of the questions I'm gonna ask.

8 THE COURT: You don't have to do that. I will say
9 the evidence you're going to offer is going to
10 be evidence that you could not have offered in
11 your case in chief?

12 MR. SUMMER: I wouldn't say that. Here's the issue.
13 I don't know until they take the stand and make
14 a statement what's going to come out of their
15 mouths. And so, to a large degree, I'm not
16 required to anticipate what every single one of
17 their witnesses may have said in a deposition
18 and refute that in my case before it's
19 presented. But what I am required under the
20 case law is, each of my questions should say,
21 you heard Ms. Murdock testify as to one, two,
22 three, do you agree with that or disagree with
23 that as a healthcare planner?

24 MR. THOMAS: And I would add to that, Your Honor,
25 too that there's a lot of that is in now, in

1 evidence now that was not in in our case and we
2 couldn't have gotten that evidence in our case
3 in chief. So that's evidence that they've
4 already gotten in through their witnesses,
5 various MUHA Exhibits, and then the expert. We
6 could not have gotten a lot of those in
7 especially if they objected. So, you know, we
8 get the bite at the apple with respect to their
9 evidence when we shouldn't have to anticipate
10 it. I've never experienced this before.

11 MS. JONES: Can I hand you up a copy of the Praker
12 case? I mean ---

13 THE COURT: I've got it.

14 MS. JONES: Okay. Well, it's in -- this is the
15 part, this is the ---

16 THE COURT: I've got the full section of it and I've
17 got ---

18 MS. JONES: If it's general testimony to try to
19 complete their case, that's improper. If it's
20 response to specific testimony that they didn't
21 have notice of ---

22 THE COURT: I know the ---

23 MR. SUMMER: No. There's nothing that says that I
24 did not have notice of. I must respond to
25 specific testimony, but it doesn't mean that I

1 have -- we take everybody's depositions. They
2 may or may not ---

3 THE COURT: I'm going to read it tomorrow morning
4 again before I come in here.

5 MS. CRUM: Your Honor, might I just say one thing?
6 They said we would be well prepared tomorrow,
7 well, and I understand the Judge ruling and I'm
8 not arguing about it, but we will not be able
9 to talk to our expert tonight since he's still
10 on the stand so that's gonna make it pretty
11 difficult to be well prepared.

12 MR. SUMMER: I don't have a problem with this, do
13 you have a problem with this?

14 THE COURT: I will try to follow the law as fairly
15 as I can, so I'm not ---

16 MS. JONES: As you always do.

17 MS. CRUM: As you always do.

18 THE COURT: And part of my breaking tonight is I
19 have a request that you pour over your
20 questions see ---

21 MS. HOLLINGSWORTH: I thought I was taking the night
22 off, Your Honor, but I guess if ---

23 THE COURT: Well, you can that tomorrow morning.
24 Tomorrow morning, look over your questions and
25 see ---

1 MS. HOLLINGSWORTH: Sure.

2 THE COURT: --- maybe you could be a little more
3 efficient.

4 MS. HOLLINGSWORTH: Frankly, Your Honor, that's one
5 reason we'd like to break tonight and might be
6 able to streamline those.

7 THE COURT: Okay.

8 MS. HOLLINGSWORTH: Thank you.

9 THE COURT: Thank y'all.

10 (DAY TEN of the hearing adjourned at 5:41 p.m.)

11 (DAY ELEVEN - THURSDAY, NOVEMBER 21, 2019. The
12 hearing reconvened at 9:03 a.m.)

13 CALL TO ORDER:

14 THE COURT: Y'all all set up, ready to go?

15 MR. LEVITT - CROSS-EXAMINATION BY MS. HOLLINGSWORTH:

16 Q: Mr. Levitt, if we could -- I wanted to, very
17 briefly, but we could do this very quickly,
18 just roll through -- you've worked for Med U
19 for a long time as -- doing health planning,
20 health consulting with them. Is that right?

21 A: Yes.

22 Q: Okay. And I certainly won't try to go through
23 the history of all of it, but it did just wanna
24 hit a few of the projects, and there's a couple
25 of the records I wanted to provide to the Court

1 and -- and offer into the -- the record. Going
2 back in time, a good bit, but -- and I think
3 it's -- we had proposed it as an exhibit, but
4 I don't think we need to pull it up. You
5 participated in the, what we call, the Ashley
6 River Tower Project, is that right?

7 A: I did.

8 Q: Okay. And so, you -- you assisted in the --
9 the planning and -- and efforts related to that
10 -- to what we've heard as Phase 1 of the, sort
11 of, master plan for downtown's campus?

12 A: Yeah. In the early 2000s. Uh-huh.

13 Q: Early 2000s. I think July 19th, 2003. Does
14 that sound right?

15 A: That's when we submitted the application ---

16 Q: Okay.

17 A: --- but we, obviously, worked on that four-
18 phase, or three-phase, plan a long time before
19 that, as well.

20 Q: Okay. And, roughly, do you recall the, at the
21 time, estimated project cost to be around 292
22 million?

23 A: For the Ashley River Tower CON, yes ---

24 Q: Yes.

25 A: --- that included the central energy plan,

1 parking ---

2 Q: Right.

3 A: --- structure.

4 Q: That's right. At some point, after it was
5 initially filed, there were some amendments to
6 include construction of that central energy
7 plan?

8 A: I -- I -- I don't know when that occurred, but,
9 yeah. That ---

10 Q: Kay.

11 A: --- that's included in that application.

12 Q: Okay. And you assisted and participated with
13 the Shawn -- what we call the Shawn Jenkins
14 Children's Hospital, right?

15 A: Yes.

16 Q: Okay. And I think that application is already
17 in evidence as Roper St. Francis 31. After
18 that, you assisted with the 52-bed addition, is
19 that right?

20 A: Yes.

21 Q: Okay. And, again, that was approved in
22 December of 2015. I think it was filed around
23 December of 2014. Does that sound right to
24 you?

25 A: Yes.

1 Q: Okay. And then, you assisted with some
2 projects in North Charleston. There was both
3 a pediatric imaging center and a pediatric
4 ambulatory surgery center, right?

5 A: Imaging and outpatient center and -- and an
6 ASC, yes.

7 Q: Okay. All right. As I understood it, it was,
8 sort of, three component overall project, but
9 two of them required certificate of need
10 approval, is that right?

11 A: Yes.

12 Q: Okay. And, I think, again, just for the
13 record, I believe the pediatric ASC documents
14 in at Roper St. Francis 137. And there was an
15 application -- you assisted with a project, the
16 Musculoskeletal Institute. Is that right?

17 A: Yes.

18 Q: Okay.

19 A: MSK.

20 Q: And we have documents in the record that Roper
21 St. Francis 28 for that. One that, I don't
22 think we have any, although we've talked about
23 is the Berkeley County free-standing emergency
24 department. Did you assist with that
25 application?

1 **A: I did.**

2 **Q: Okay. If we could pull up Roper St. Francis**
3 **26, please.**

4 **(RSF Exhibit Number 26 was introduced into the record**
5 **at this time.)**

6 **MS. HOLLINGSWORTH: And Adam will have to bear with**
7 **me because I am flying through a lot of the**
8 **material, I promise.**

9 **Q: And while we pull that up, Mr. Levitt, do you**
10 **recall that application was submitted -- oh,**
11 **there it is, June, I think that's 6th, 2017?**

12 **A: That was it says. I -- I don't recall when it**
13 **was, but that's right, yes.**

14 **Q: Okay. And looking at that document on the**
15 **screen, and can we flip, you know, to the next**
16 **page Adam? You -- you -- do you recognize that**
17 **as being the free-standing emergency department**
18 **outpatient?**

19 **A: I do.**

20 **MS. HOLLINGSWORTH: Okay. Your Honor, I would offer**
21 **Roper St. Francis 27 into evidence.**

22 **THE COURT: 27 or 26?**

23 **MS. HOLLINGSWORTH: Oh, I'm so sorry, yes, Your**
24 **Honor, 26. My apologies.**

25 **MS. JONES: No objection.**

1 MR. WICEVIC: No objection.

2 THE COURT: Mr. Summer?

3 MR. SUMMER: No objection.

4 THE COURT: It's admitted.

5 (RSF Exhibit Number 26 was admitted into evidence.)

6 MS. HOLLINGSWORTH: Thank you, Your Honor.

7 Q: Okay. And then, right around that same time,
8 Mr. Levitt, did you assist with the surgery
9 center in Mt. Pleasant?

10 A: Yeah. I -- I don't know if it was around that
11 time, but yeah, generally.

12 Q: Okay. Yeah ---

13 A: Specifically.

14 Q: --- yeah. Fair. Fair. Sometimes -- I'm not
15 trying to go too fast ---

16 A: Yes. Yeah.

17 Q: And -- and already in evidence at Roper St.
18 Francis 27 is portions of that application that
19 was -- I would represent to you as filed June
20 26th of 2017.

21 A: Okay. Yeah.

22 Q: Okay. All right. Then I -- I think, in the
23 time line, what I happen to be the Berkeley --
24 this hospital project, filed December 27th,
25 2017.

1 A: Yes.

2 Q: You're familiar with that?

3 A: I do remember that day.

4 Q: Good. And then, shortly after that -- well,
5 not shortly, about a year and a half after
6 that, did you assist with the 29-bed
7 application that you've heard referenced?

8 A: Yes. We filed that a few months ago.

9 Q: Okay. And, I think, it was July of 2019 and
10 that is in the record, I think, there's
11 Trident's 160 and Roper St. Francis 23. And
12 then, most recently -- let's pull up TMC 158,
13 please. Have you assisted MUHA with the most
14 recent application for a free-standing
15 emergency department?

16 (TMC Exhibit Number 158 was referenced at this time.)

17 A: The Sea Islands, yes.

18 Q: Okay.

19 A: Uh-huh.

20 Q: And what -- what are the Sea Islands? When you
21 use that phrase, what -- what area are you
22 describing, geographically?

23 A: Well I -- I guess you're asking what we mean in
24 the application, cause I -- I mean -- it means
25 something different to me than what it means to

1 them and their planning area ---

2 Q: Okay. Okay.

3 A: --- but when they call their -- the Sea Islands
4 planning area, those are the Kiawah, Johns
5 Islands, that area.

6 Q: Okay. What does it mean to you, when you --
7 when you, just geographically, what do you
8 think of as ---

9 A: I ---

10 Q: --- the Sea Islands?

11 A: --- I think of all the islands along the coast,
12 so not just, you know, the ones outside of
13 Charleston, but like, Beaufort and Hunting
14 Island and ---

15 Q: Okay. Okay. And looking at this document on
16 the screen, is this familiar to you as the --
17 that application that we were just speaking of,
18 the certificate of need for a free-standing
19 emergency department that was filed October of
20 2019?

21 A: Yeah. That's it.

22 Q: All right. And I do think we have some
23 material related to this application at Roper
24 St. Francis 135. Your Honor, I would ask that
25 we move Trident's 158 into evidence.

1 MS. CRUM: Is that just -- that's just part of the
2 application, I mean ---

3 MR. SUMMER: I think the it is already in evidence.

4 MS. CRUM: It is.

5 MS. HOLLINGSWORTH: Oh, the Trident one is? Okay.

6 THE COURT: It is.

7 MS. HOLLINGSWORTH: Thank you. I didn't have that
8 one on our notes so I appreciate that. Thank
9 you. Okay. If we could pull up Roper St.
10 Francis 119, slide 39.

11 (RSF Exhibit Number 119 was referenced at this time.)

12 **Q: And, Mr. Levitt, you had prepared some slides,**
13 **and we went through them a good bit yesterday**
14 **in your testimony, do you recall that?**

15 **A: I do.**

16 **Q: I wanted to ask you about the ATC database.**

17 **A: Okay.**

18 **Q: All right. So you have several slides related**
19 **to transfer information that was pulled from**
20 **the ATC database, is that right?**

21 **A: Yes.**

22 **Q: Okay. And were you familiar with the ATC**
23 **database information before this particular**
24 **case?**

25 **A: I knew it existed. I didn't really look a lot**

1 at -- at a lot of the detail, so, I wa- -- I
2 was familiar of it's existence and the
3 availability, but I hadn't gone into it, no.

4 Q: Okay. And ---

5 THE COURT: Can you refresh my memory of what ATC ---

6 A: Admission Transfer Center.

7 Q: And this slide that we have up on the screen,
8 this is one of the ones that you discussed
9 yesterday, is that right?

10 A: Yes.

11 Q: Okay. And this is an update to Figure -- CON
12 application, Figure 23, is that right?

13 A: Yes. It's FY18 compared to FY17, which was in
14 the application at Figure 23.

15 Q: And this particular exhibit is providing
16 transfer requests (all requests) volume by top
17 10 hospitals requesting FY2018, is that right?

18 A: Yes.

19 Q: And it does say at the top, ATC transfer
20 database ---

21 A: Yes.

22 Q: --- correct? Okay. And, I think, when you had
23 divided your slides during discovery, you had
24 some detailed documentation with that sort of
25 as the source support for the various numbers

1 that you've used, is that right?

2 A: Yes.

3 Q: Okay. All right. So, in terms of -- if we
4 could turn to 40 -- RSM 119 040. You discussed
5 this one yesterday, included information with
6 payer mix ---

7 A: Yes.

8 Q: --- and transfers.

9 A: Yes.

10 Q: Did you -- th- -- this -- this one that you
11 present here is transfer request, admitted
12 patients only. Primary payer percentage
13 distribution. Did you do a similar chart for
14 primary payer distribution for denied patients?

15 A: I did not.

16 Q: Okay.

17 A: No. I -- I -- and frankly, I didn't do -- you
18 can see at the bottom this was prepared by
19 Enterprise Business Intelligence. So, I didn't
20 prepare this chart, this was a chart that's,
21 sort of, what I would call off the shelf. This
22 is something that MUSC looks at all the time,
23 so I just used the chart that they had.

24 Q: And -- and tell me, what is off the shelf?

25 A: That they look at this on a monthly, weekly

1 basis, so this is a report that's generated for
2 them -- for the management to look at on a
3 regular basis, so I didn't see the need to
4 recreate the wheel. I just used the chart that
5 they had.

6 Q: And so, would the chart that they have had only
7 have these identified systems or ---

8 A: No. No. This is their chart, so this -- so
9 they ---

10 Q: Okay.

11 A: --- they had the data, they sent me the data,
12 but these are the charts that they normally
13 look at on a weekly or monthly basis.

14 Q: Sure. And -- and I might've asked that
15 inartfully. What I was curious was did the
16 selected hospitals, or systems, at the bottom,
17 did you -- did you have a greater size of
18 information and you picked those 10 or did it
19 -- does it come to them with top 10?

20 A: Those are the top 10 by volume.

21 Q: Okay. Okay. All right. All right. Let's
22 look at the next slide, 041. All right. And
23 you talked about this slide yesterday, is that
24 right?

25 A: I did.

1 Q: And this is volume by top 10 MUSC services and
2 -- and I appreciate some of those short hand,
3 I wasn't sure what they were, so that was very
4 helpful. I appreciate that. In -- you will
5 agree with me, though, that a significant
6 number of the transfer requests are for
7 consults only, is that right?

8 A: Well, yes, because it's neurology and that's a
9 consult only, so yes.

10 Q: Well and -- and not limiting it to consults, I
11 think, overall, would you agree that a -- a
12 significant portion of transfer requests are
13 for consults only?

14 A: Not -- not by volume, no.

15 Q: Okay. Let's take a look at -- and -- and these
16 are hard to read, Roper St. Francis 71, please.
17 Mr. Levitt, this was produced in discovery, do
18 you recognize this is as ATC database records?

19 (RSF Exhibit Number 71 was introduced into the record
20 at this time.)

21 A: I believe so, yes.

22 Q: Okay. And I wish I had a -- a better copy, but
23 I do not. So, as I -- from what I could see
24 when I looked at it on paper, these are the
25 FY2017 transfers and it appears there are

1 13,243 total requests.

2 A: Yes.

3 Q: You see that at the top.

4 A: For 2016, yes.

5 Q: I think it's 2017, but ---

6 A: No. See at the top, under years?

7 Q: Oh, okay. Oh, it's the fiscal year. It's
8 FY2017 for MUHA, right? July of 16 to June of
9 17.

10 A: Yes.

11 Q: The experts didn't get the screen set up.
12 Okay. Great. FY2017, does that sound right?

13 A: Yes.

14 Q: Okay. And so, do you see on there that 3,763
15 of the requests were for consults only? And it
16 is in the notebooks, if you'd like me to --
17 I'd be happy to get it. It's Roper St. Francis
18 71.

19 A: Yeah. I see that.

20 Q: Okay. You can take away that ---

21 A: And 7,000 were admitted.

22 Q: Yes, sir. So, of the -- well first, let me
23 back up, because if we go past my math
24 calculations then I'm lost, cause I had to do
25 them in advance. But we've got 13,243 total

1 requests, is that right?

2 A: Yes.

3 Q: And 3,763 were consults, right?

4 A: Yes.

5 Q: So do you -- would you agree with me that

6 that's 28 percent?

7 A: Yeah. It's right up there.

8 Q: Right. Yeah.

9 A: It's calculated up there for us.

10 Q: Yeah. There's still some more I wanna do, so

11 ---

12 A: Okay.

13 Q: --- I'm just trying to lay the foundation ---

14 A: Yeah.

15 Q: --- because the transcript won't say where I

16 just say it's up there, so ---

17 A: Yes.

18 Q: --- I just wanna put some of this in, if I

19 could. Thank you. So would you agree with me

20 that only 684 -- the denied requests of 684 is

21 only of 9,480 consults that -- or requests that

22 weren't consults ---

23 A: Yeah.

24 Q: --- right? Okay. So you agree with that

25 number, is that right?

1 A: Yes.

2 Q: So seven percent of requests that weren't for
3 consults were denied ---

4 A: Yes.

5 Q: --- is that fair? Okay. And then -- and --
6 and you gave us this number 7,157 were
7 admitted, which is 75 percent, right?

8 A: Of that, or 54 percent of the total.

9 Q: Right. But knowing that more than a quarter of
10 the requests were for consults, 28 percent is
11 the number we ---

12 A: Slightly more than a quarter, yes.

13 Q: Okay. All right. Right. And -- and the
14 telehealth, does that fall within the consult
15 ---

16 A: Yes.

17 Q: --- metric?

18 A: It does.

19 Q: Okay. So -- so that, you know, the higher
20 number that -- of these transfer requests that
21 represent consults is really reflective of the
22 success of the telehealth program, is that
23 fair?

24 A: Yes. And -- and that -- ye- -- yes. And now
25 that I say that, I'm not sure that all of the

1 telehealth is in here.

2 Q: Okay. So there might be additional telehealth
3 that ---

4 A: Yes.

5 Q: --- may not fall within this metric?

6 A: Correct.

7 Q: Okay. Okay. Well we did think that, at least,
8 telehealth would fall within what the consult
9 numbers are?

10 A: Yes.

11 Q: Okay. All right. And so, is my math sound
12 reasonable to you that, of the denials for no
13 floor bed available, there was only two -- just
14 under three percent of the total requests were
15 for that reason?

16 A: Yes.

17 Q: Okay. And just under four percent for the non-
18 consult denial. So, setting aside consults,
19 less than four percent was no floor bed
20 available. Would you agree with that?

21 A: I -- I -- I would. And again -- again, to be
22 clear on the consults, those are consults
23 asking should the patient be admitted, not --
24 that's why all -- and -- and that's, sort of,
25 why I wanted to say all the telehealth isn't in

1 there, so if it's just a telehealth visit where
2 -- the example would be a patient in Beaufort
3 is admitted in Beaufort and they have a
4 question, they may be telehealth to a doctor at
5 MUSC ---

6 **Q:** Right.

7 **A:** --- but they're not planning on sending the
8 patient to MUSC. These are only doc- -- these
9 are only patients they think might need to go
10 to MUSC, so they want a consult to see if MUSC
11 thinks they should come to MUSC.

12 **Q:** Okay.

13 THE COURT: So, when you say, 28 percent were for
14 consults ---

15 **A:** Yes.

16 THE COURT: --- it was consults to determine whether
17 they should come or not?

18 **A:** Correct. And then you can see on neurology,
19 all of those -- the majority of those, they --
20 they say, you don't need to come, here's what
21 you need to do, and the doctor at the
22 requesting facility says, great. So that's why
23 it's a consult to see if they need to be
24 admitted. That majority does not need to be
25 admitted because now they can do the assessment

1 video and not require to sending them all the
2 way up to MUSC to do the video or be admitted.

3 Q: Okay. Well, let me ask you this, the line item
4 on this on this database -- the document -- the
5 ATC database document, it says, requested
6 consult only, right?

7 A: Correct. For admission.

8 Q: Okay. But it was requested consult only? Is
9 that fair?

10 A: For admission, yes.

11 Q: Okay. Well, it doesn't say that though. I --
12 I ---

13 A: Well this is the admission transfer database,
14 so ---

15 Q: Right.

16 A: --- all of these patients are in the bucket of,
17 do they need to be admitted to MUSC. And so,
18 the question is if -- if a doctor says, I would
19 want to admit them to MUSC, then they would
20 follow one of these other categories. If the
21 doctor says, I don't know, I think they need to
22 go to MUSC, that's a consult.

23 Q: Uh-huh. Okay.

24 A: I think they need to go to MUSC, does MUSC
25 think they need to go to MUSC?

1 MS. HOLLINGSWORTH: Okay. And so -- and then here,
2 Your Honor, I would offer Roper St. Francis 71
3 and this is a sourced document to the transfer
4 data that we have in this case.

5 MS. CRUM: No objections, Your Honor.

6 MR. WICEVIC: No objections.

7 MR. SUMMER: No objections. Sorry. I apologize.

8 THE COURT: It's fine. It's submitted.

9 (RSF Exhibit Number 71 was admitted into evidence.)

10 Q: All right. And, Mr. Levitt, so -- and I think
11 you -- you mentioned this yesterday, but you
12 identified the DRGs that will be used to set
13 tertiary or non-tertiary for the community
14 hospital project, is that right?

15 A: Yes. I suggested them and they were accepted
16 by the -- the team -- the group.

17 Q: Okay. But that -- I think the -- what it -- in
18 -- in -- in your deposition, you testified that
19 you identified the DRGs for non-tertiary
20 services, is that right?

21 A: Yeah. That's -- that's what I just said. Yes.

22 Q: Okay.

23 A: Uh-huh.

24 Q: All right. Well you went a little further just
25 now. So you're saying that you proposed them

1 and they were accepted, cause we- ---

2 A: Yes. Those are the ones I normally use ---

3 Q: Okay.

4 A: --- I told them those are the ones I normally
5 use. They looked at them and said, okay.

6 Q: Okay. And who's they?

7 A: The -- the -- that whole team, the -- the
8 planning team ---

9 Q: Okay.

10 A: --- on -- MUSC's come up with these project
11 names, so on -- I guess it's Nexcare was the
12 name of this project ---

13 Q: Okay. We've seen that, yeah. Okay. All
14 right. Now, the Nexcare planning team, did you
15 discuss that your proposed DRG -- and maybe
16 it'd be better to say that you identified the
17 DRGs to exclude?

18 A: Yes.

19 Q: Okay. So the -- the DRGs that you exclu- -- or
20 proposed for exclusion, did you discuss them
21 with any of the physicians at -- at MUHA?

22 A: Yeah. And that -- that's -- that's what I'm
23 saying. So, these are the -- this is the --
24 the range I normally use, I've used on many
25 other projects ---

1 Q: Uh-huh.

2 A: --- presented to the group, including
3 physicians, and they all agree.

4 Q: Okay. And who were some of the physicians on
5 the planning group?

6 A: Yeah. You asked me that in my deposition. I
7 can't recall. It's on -- I think we have in
8 the -- I think you asked me in my deposition or
9 somewhere else I've seen the -- the -- the
10 agenda that has all the people on it and what
11 their responsibilities are and ---

12 Q: Okay.

13 A: --- and who attended, and all that is on there.
14 I can't remember, off the top of my head ---

15 Q: Okay.

16 A: --- I know Dr. Boylen was a part of it, I
17 believe Dr. Daniel was on it. Whoever the --
18 the Chief Medical Officer at the time, I'm sure
19 he was on it ---

20 Q: Dr. Handel, or Handell, maybe?

21 A: I don't know. Yeah.

22 Q: Okay. All right. But you didn't discuss them
23 with Dr. Warr, right? I don't ---

24 A: I don't think he was there, then.

25 Q: Okay. Or he wasn't the CMO ---

1 A: You ---

2 Q: --- at the time?

3 A: Yeah.

4 Q: All right. Let's look at Trident 041. And you
5 talked about this document, some, yesterday, do
6 you recall that?

7 (TMC Exhibit Number 41 was referenced at this time.)

8 A: Yes.

9 Q: Okay. And you clarified from some earlier
10 testimony, in terms of what these numbers
11 represent and -- and reminded us of the ICCE --
12 although, yesterday, you just used the -- the
13 shorthand ICCE, will you remind us what that
14 stands for?

15 A: Integrated Center of Clinical Excellence.

16 Q: Okay. All right. And as you pointed out
17 yesterday that children and women would include
18 DRG codes that are not just women and children
19 services?

20 A: Right.

21 Q: Okay. All right. Let -- can we take a look at
22 the next page of the document, so it'd be the
23 -- here we go, maybe just, right now blow up
24 just the top half so we can see the close up.
25 Thank you, sir. So, as I understood it, this

1 document is an identification by MSDRG code and
2 volume numbers that are proposed for, I think,
3 ultimately, maybe, year three is -- is the
4 number.

5 A: I believe that's right.

6 Q: Okay. But this would represent the analysis of
7 the DRG populations that may, or -- or would,
8 present to the community hospitals, is that
9 right?

10 A: Yes.

11 Q: And they're intended to be non-tertiary
12 community hospital-type care?

13 A: Generally. I -- I mean, I -- I -- I don't know
14 that there's a definition of community
15 hospitals, so these are the DRGs we would
16 expect to present at Ne- -- Nexton, yes.

17 Q: Okay. And these are the DRGs, certainly, for
18 year three that, based on the CON application
19 and the identification of certain proposed
20 services, you would expect would be treated at
21 the hospital.

22 A: Generally. I mean, so we -- we had to make --
23 we had to make an assumption, so the -- the
24 starting point was the -- the base population
25 at MUSC and so, you know, when we say,

1 redirecting patients, if -- if I got an
2 appendectomy at MUSC in 2017, I -- I'm not
3 gonna go back to Nexton and get another
4 appendectomy in 2025. So, I'm not gonna be a
5 patient that got redirected, but, generally,
6 that's the concept.

7 Q: Sure.

8 A: So, we could've done it another way. I think
9 Mr. Thomas asked me, well, you didn't do market
10 share. Well we could've done that way, too.
11 Hold the market share constant and it has the
12 same mathematical result. So it's not the same
13 person we're expecting ---

14 Q: Sure.

15 A: --- but, generally, the pool of patients.

16 Q: Well my question is specific to DRGs.

17 A: Yes.

18 Q: It -- it -- it is fair to say, isn't it, that
19 this is what is represented to the department
20 in the application as the types of DRGs that
21 would be appropriate for the community
22 hospital, right?

23 A: As a starting point, generally, yes.

24 Q: Okay. Will you agree with me that ---

25 THE COURT: If I could ---

1 MS. HOLLINGSWORTH: Oh.

2 THE COURT: --- cause when you say, starting point

3 ---

4 MR. LEVITT: Yeah.

5 THE COURT: --- I'm starting to ---

6 MR. LEVITT: Yeah.

7 THE COURT: --- see clearly that there is no

8 specific definition of community hospital

9 that's accepted out there ---

10 MR. LEVITT: Correct.

11 THE COURT: --- or a definition of tertiary hospital

12 that's spe- -- specifically defined. There's

13 general concepts?

14 MR. LEVITT: Correct.

15 THE COURT: Okay.

16 A: And so, the -- the -- the -- is -- the -- the

17 theory is -- and -- and it's also important to

18 know the way DRGs work. The DRG is assigned

19 after a patient is discharged. So, it's not as

20 though, you show up at the hospital and they

21 say, oh, you're DRG number one, which is a

22 craniotomy ---

23 Q: Okay.

24 A: --- we don't do that here. You've gotta go

25 somewhere -- to a tertiary hospital. Patient

1 shows up, they get treated, if they do a
2 craniotomy on that patient, when they get
3 discharged, a coder goes through the file and
4 says, oh, they did a craniotomy, they are DRG
5 1. So, that doesn't get assigned -- it's --
6 it's -- it's after the discharge that the DRG
7 gets assigned and so, this is a estimate of the
8 distribution of DRGs at the community hospital,
9 so I -- I can tell you, while it's a -- our
10 best guess, I know there are not gonna be --
11 well there may be -- may be coincidental, there
12 might be 168 patients in DRG 871 in year three.
13 If I had that kind of predicting power, I --
14 I'd probably be going to Las Vegas, or
15 something, because it's an estimate. So we
16 have a distribution of DRGs here, we have
17 numbers in those, our estimate for year three,
18 some will present, some won't present, some --
19 some of the ones we have zero's in here'll have
20 volume, some of the ones that have volume,
21 won't.

22 Q: Okay. Well let me ask you this, you have DRG
23 473, cervical spine fusion without CCMCC,
24 coming out of the cancer ICCE, but that's a
25 tertiary DRG identified in the application, is

1 that right?

2 A: I'm not sure. I'd have ---

3 Q: You can ---

4 A: --- to go back ---

5 Q: --- look at DHEC CON 41. DRG 473.

6 A: Yeah. 473. And then -- where was that on the
7 other exhibit you showed me?

8 MS. HOLLINGSWORTH: 473. There you go.

9 A: Yes. It's on here.

10 Q: Okay. Did you do any analysis of the CMI wait
11 of the DRGs that are identified as, sort of,
12 within the baseline, historical experience at -
13 - at MUHA to determine whether they'd be
14 appropriate using a, sort of, a CMI evaluation
15 of community hospitals?

16 A: You -- you know, that was in the data and we
17 started to look at it that way. I -- I -- I
18 don't advocate for that approach. I don't
19 think it's an accurate way of doing it. So, we
20 looked at it, but we didn't use it.

21 Q: Okay. So you wouldn't've -- you wouldn't have
22 evaluated whether there are included DRGs that
23 have CMI's of -- of 2.8 or average length of
24 stay is nine days, you wouldn't done any
25 analysis of that?

1 **A:** **No. Because ma- -- many hospitals treat**
2 **patients that stay much longer than that, so.**
3 **The CMI just relates to the resources provided**
4 **to the patient.**

5 THE COURT: CMI is?

6 MR. LEVITT: Case Mix Index.

7 THE COURT: Okay.

8 **A:** **So -- and it's -- it's -- it's a -- a factor**
9 **that -- that Medicare developed to determine**
10 **how much to pay you -- pay a hospital. So, if**
11 **a patient comes in and requires twice as much**
12 **care, services, resources, expenses, then the,**
13 **sort of, what Medicare calls the average**
14 **patient, they pay you twice as much. So it's**
15 **not as though a hospital can't treat a patient**
16 **that stays nine days and -- and has two and a**
17 **half times the average resources provided to**
18 **them because they're, what someone calls a**
19 **community hospital. It, you know, every**
20 **hospital in the country treats just about every**
21 **DRGs except for things they don't provide, so**
22 **they don't -- if they don't do open-heart, they**
23 **don't have any -- they shouldn't have any open-**
24 **heart DRGs. If they don't do therapeutic**
25 **cardiac cath, they shouldn't have any of those.**

1 But they'll have sick cardiac patients with a
2 CMI of three or four -- two or three or
3 whatever, because they're a community hospital
4 that treats patients. So it's -- it's not as
5 though, because you have a certain CMI, you
6 can't come to this hospital.

7 Q: Okay. You'd agree with me, Mr. Levitt, that
8 the -- that the Case Mix Index experience at
9 MUHA is, of the entire state, would be the most
10 unique with -- among hospitals, right?

11 A: No.

12 Q: Okay. Well, would you agree with me that MUS-
13 -- MUHA provides services that no other
14 hospital in this state provides?

15 A: They provide some services, right. And you
16 heard, I think, Ms. Goodlett say their Case Mix
17 Index was two. I think Roper -- Roper's is
18 pretty close to that. I think Richland's might
19 be even higher than that. I -- I was surpris-
20 -- I thought it'd be much higher than two.
21 That's not a very high CMI.

22 Q: Okay. So you -- you thought MUHA's CMI
23 would've been much higher?

24 A: Yes.

25 Q: Okay. But, my question to you was, you'll

1 agree with me that there are services provided
2 at MUHA that no other hospital in the state
3 provides, right.

4 A: I -- I -- I did agree with you. There's
5 transplant and pediatric cardiac surgeries that
6 they provide there that no other hospital
7 provides and I think that was all that, I
8 think, Mr. Sullivan identified as the unique
9 services.

10 Q: Okay. I mean, you -- you -- you don't dispute
11 the testimony of MUHA this week at the
12 uniqueness of a lot of their programs and the
13 high regard that their sub sub sub
14 subspecialists are held, right?

15 A: Yeah. No. MUSC does things that other people
16 don't do, they do it differently. So they
17 treat a sick pat- -- so they have the resources
18 to treat a patient with a certain diagnoses
19 differently than another hospital. The other
20 hospital still has the resources to treat that
21 patient, so the -- that pat- -- a patient
22 treated at Trident would receive certain
23 services and that same patient could be treated
24 at MUSC and receive different serv- -- same
25 services in a different way, and vice versa, so

1 someone at MUSC who got a sub sub subspecialist
2 treating them, could've gone to Trident and
3 just got a regular specialist treating them ---

4 Q: Okay.

5 A: --- but they still could've been treated.

6 Q: Or they might've been transferred to MUHA for
7 that care, right?

8 A: Sure.

9 Q: Okay. You reviewed the project review
10 materials -- well, the written project review
11 materials that were circulated by Roper St.
12 Francis and Trident on, or about, July 18th of
13 2018, right?

14 A: Yes.

15 Q: You reviewed those materials and you determined
16 you didn't need to respond to the issue that's
17 raised because you didn't feel that they were
18 material, is that right?

19 A: Generally, yes.

20 Q: Okay. And instead, you called Ms. Murdock and
21 you discussed with her whether there was any
22 information in the letters that she wanted you
23 to respond to, is that right?

24 A: Yeah. Whether she had any questions, yeah.

25 Q: Okay. And she identified two areas in your

1 discussion that she asked you to follow up on,
2 is that right?

3 A: Yes.

4 Q: Okay. And so, in that discussion you had with
5 her, that was after, on, or about July 18th,
6 2018, right?

7 A: Friday. Yeah.

8 Q: Okay. So after that discussion, you provided
9 her, I think -- and I think it's in the record,
10 there's two emails, that's the information that
11 Ms. Murdock requested of you in that
12 conversation, right?

13 A: I did. I heard her testimony. I thought there
14 were three emails, but yeah.

15 Q: Okay. Well we don't have the third one ---

16 A: Right. I didn't see it either. I couldn't
17 find it.

18 Q: Okay. But you were here for the testimony and
19 it's consistent with your recollection, isn't
20 it, that -- that the -- the email with some of
21 the patient zip code information was sent the
22 morning of the day of her decision, right?

23 A: Yes.

24 Q: Okay. All right. You'll agree with me that,
25 a hospital that has problems with patient

1 throughput and inefficiencies in patient
2 discharges, that those problems are an
3 automatic reason that a hospital should get
4 more beds, right?

5 OBJECTION:

6 MS. CRUM: Your Honor, I'm gonna object to that
7 question on -- a -- it's assuming facts that
8 aren't in evidence and they haven't been asked.
9 It's a hypothetical.

10 THE COURT: Can she not ask a hypothetical?

11 MS. CRUM: She can and I said it wasn't asked ---

12 THE COURT: Oh.

13 MS. CRUM: --- as a hypothetical.

14 THE COURT: Oh. Oh. I ---

15 MS. CRUM: Yes, sir.

16 THE COURT: --- I didn't hear correctly, but go
17 ahead.

18 MS. CRUM: Sure.

19 THE COURT: Respond -- did he respond?

20 MS. HOLLINGSWORTH: I mean, I'll rephrase, Your
21 Honor, but ---

22 THE COURT: Okay.

23 MS. HOLLINGSWORTH: --- he's an expert, I didn't --
24 I didn't accuse it -- any one particular
25 hospital, I'm just asking him his opinion with

1 that premise, you know, I think it's a
2 reasonable question, but I -- I'll rephrase it,
3 Ms. Crum, that's fine.

4 **Q:** Hypothetically, Mr. Levitt, if a hospital has
5 problems with patient throughput and
6 inefficiency in patient discharge, are those
7 problems an automatic reason that this
8 hypothetical hospital should have more beds?

9 **A:** I -- I don't think it's an automatic reason,
10 no.

11 **Q:** Thank you. And you'd agree with me that, the
12 reasons a patient chooses a particular hospital
13 includes geographic proximity or location,
14 right?

15 **A:** That's a factor.

16 **Q:** And a -- it includes availability of a specific
17 service, right?

18 **A:** Yes.

19 **Q:** Okay. It may include payer, or network,
20 requirements?

21 **A:** Yes.

22 **Q:** And it -- it may include reputation or patient
23 preference for a particular provider, right?

24 **A:** All of those are factors, yes.

25 **Q:** Okay. And you'll agree with me that, the two

1 main ways a patient accesses a hospital is by,
2 either physician admission or through the
3 emergency department, is that fair?

4 A: Ye- -- yeah. And, really, technically, through
5 the emergency department it's -- a physician
6 still has to admit them ---

7 Q: Okay.

8 A: --- so, really, the only way to admi- -- access
9 a hospital is through physician admission.

10 Q: That's that whole front door then, isn't it?
11 The emergency department is the front door of
12 the hospital?

13 A: Yeah. I mean, people say that. I call it the
14 back door, but yeah, it's -- that's one way --
15 -

16 Q: Okay.

17 A: --- and -- but then there's direct admissions
18 that don't go through the ER.

19 Q: Okay. Fair. So -- cause you certain --
20 certainly can have an inpatient admission that
21 is from a -- a direct admission by a physician,
22 right?

23 A: Not through the ER. Yes.

24 Q: Okay. But, generally, we agree with the
25 concept that it's either through a physician

1 admission or an emergency department?

2 A: It -- yeah. Emergency department then through
3 a physician, but, yeah, that's it. Yes.

4 Q: Okay. And you'll agree with me that, MUHA
5 doesn't have plans to transfer patients that
6 present to the ED downtown up to Berkeley
7 Hospital for treatment, right?

8 THE COURT: Say that again. Sorry.

9 MS. HOLLINGSWORTH: I asked Mr. Levitt, if he would
10 agree with me that, MUHA does not have plans to
11 transfer patients that present to the downtown
12 ED up to the Berkeley hospital for treatment.

13 A: I don't think that they have specific plans,
14 but I -- I would imagine that, if -- if the
15 alternative is to wait three days, or two days,
16 boarding at the peninsula, I think they would
17 offer the option to say, we've stabilized you,
18 we wanna send you -- we have -- there's a bed
19 available in Nexton, let's send you there.

20 Q: Okay. Let's take a look at Roper St. Francis
21 113, please. Mr. Levitt, is this image
22 familiar to you?

23 (RSF Exhibit Number 113 was introduced into the
24 record at this time.)

25 A: I -- I -- I know where it is, I -- I don't

1 recognize those stars, but, yes, I know ---

2 Q: Okay.

3 A: --- where that is.

4 MS. HOLLINGSWORTH: And -- and go back down. Let's
5 get the Bates Number off the bottom, for the
6 record, Adam. This is MUHA RFP 14028. All
7 right, go back.

8 Q: What does this -- what is the area being shown
9 on this map, if you know, Mr. Levitt?

10 A: So the big star is where we're proposing to put
11 the hospital.

12 Q: Okay. And this was the document produced in
13 discovery by MUHA, right?

14 A: It appears to be, yes.

15 Q: From the Bates label ---

16 A: Yes.

17 Q: --- on the -- that I just read. Thank you,
18 sir. And the -- that -- the star at the top
19 middle of the screen, just, sort of, near that,
20 kind of, half circle depiction, that's the
21 proposed location for the community hospital
22 that we're about now, is that right?

23 A: Yeah. The big star is where the community
24 hospital is proposed to be.

25 Q: Okay. And can you -- can you identify, on this

1 map, where Roper St. Francis's Berkeley
2 Hospital is located?

3 A: Down on the corner of 17 and 176.

4 THE COURT: You can touch the screen to mark it, if
5 you want.

6 MS. HOLLINGSWORTH: Okay.

7 A: Well, it's up a little bit.

8 Q: This cleared out area ---

9 A: Yeah. Uh-huh.

10 Q: --- right there. Okay. And you'll agree with
11 me, of course, that Roper St. Francis-Berkeley
12 is open today, right?

13 A: Yes.

14 Q: You're an existing hospital today, aren't you?

15 A: Today. Last month, or whenever we opened.

16 MS. HOLLINGSWORTH: Okay. Your Honor, I'd offer
17 Roper St. Francis 113 into evidence.

18 MS. CRUM: No objection.

19 MR. WICEVIC: No objection.

20 MR. SUMMER: No objection.

21 THE COURT: It's admitted.

22 (RSF Exhibit Number 113 was admitted into evidence.)

23 Q: Mr. Levitt, in terms of the services, we know
24 from testimony and discussion earlier, I think,
25 this week but I might be wrong about the

1 timing, that the services to be offered at the
2 proposed hospital are set forth in the CON
3 application, is that right?

4 A: Ye- -- generally, yes.

5 Q: Okay. Let's look at DHEC 1 page 14 of the DHEC
6 record, please.

7 (DHEC Exhibit Number 1 was referenced at this time.)

8 MS. HOLLINGSWORTH: And if you could blow up the,
9 sort of that, response and the bullet points,
10 please, Adam. Is that the area in the
11 application, Mr. Levitt, where the, sort of,
12 the service compliment is generally identified
13 for the department?

14 A: The -- this describe the physical plans, so, I
15 mean, sort of. I mean, this -- this isn't all
16 of the services that are provided there but,
17 generally, this shows the -- the areas that are
18 being built in the hospital.

19 Q: Okay. Well, you'd agree with me, too, that in
20 CON applications, this is where an applicant
21 would, generally, describe the nature of the
22 proposed project, in terms of the -- the
23 services to be offered, or the types of
24 services, med surge beds, ICU beds ---

25 A: Which question is this?

1 **Q: --- emergency department.**

2 MS. HOLLINGSWORTH: You can back it out. I think
3 it's four. Just at the very top of the
4 document. There you go.

5 **A: Yeah.**

6 MS. HOLLINGSWORTH: Uh oh.

7 **A: I saw -- I saw it enough. Yeah. That ---**

8 MS. HOLLINGSWORTH: Okay.

9 **A: It is.**

10 MS. HOLLINGSWORTH: Okay. I have a demonstrative,
11 Your Honor, if I may approach. There you go.

12 **Q: And, Mr. Levitt, I have provided you and**
13 **counsel with a demonstrative exhibit that is a**
14 **snippet of a -- a portion of MUHA's community**
15 **hospital application from, actually, the --**
16 **what we just looked at and the Roper St.**
17 **Francis-Berkeley hospital application and would**
18 **ask you -- of course, take a minute, feel free**
19 **to look at it. And for the record, the**
20 **information on these -- from these two**
21 **applications come from DHEC Exhibit 1 at record**
22 **page 14 and DHEC Exhibit 7 at record page 5.**
23 **But, Mr. Levitt, would you agree with me, and**
24 **consistent with the -- the testimony earlier**
25 **this week, that the services proposed for**

1 MUHA's community hospital are similar to the
2 services proposed at the Roper-Berkeley
3 hospital in Berkeley County?

4 A: They're -- they're similar, yes.

5 Q: And -- and would you agree with me that they
6 are consistent with a community hospital-type
7 setting?

8 A: Well -- well this doesn't really tell the --
9 the types of patients they're going to treat,
10 I mean, this has the services, the space
11 available for those patients, you know, but it
12 -- it doesn't identify specifically what
13 services are going to offer. I don't think the
14 bed compliment is what they built. I think it
15 changed, cause I thought doc- -- Mr. Voss had
16 said, I think, the OB unit was larger than
17 eight beds, so they have limited number of med
18 surge beds at the 50-bed hospital.

19 Q: Sure. I -- I agree a distinction -- an
20 important distinction is the Roper St. Francis-
21 Berkeley hospital is 50 acute care beds, and
22 the proposed MUHA community hospital's 128
23 acute care beds, is that right?

24 A: Right. And, obviously, with the larger chassis
25 you can do more services than in a smaller

1 chassis.

2 Q: Right. And -- but you'd agree with me that
3 both facilities will have med surge surfaces
4 and those types of beds, med surge beds, right?

5 A: Sure. Just as every hospital in the state has
6 ---

7 Q: Sure.

8 A: --- except for psychiatric or rehab hospitals.

9 Q: And they'll both have OB beds, right?

10 A: They will. A different number of resources.

11 Q: Sure. But they'll both have a nursery, and
12 they both have imaging and a lab. All the
13 things that you would expect in -- in, what I
14 heard described as, a typical community
15 hospital setting, is that fair?

16 A: Yeah. Every hospital in the state.

17 Q: And you're not aware of any access restrictions
18 at Roper St. Francis-Berkeley, are you?

19 A: Well, as we said, it has a very limited number
20 of med surge beds for an area that's growing
21 very rapidly.

22 Q: Okay. Are you aware of any access restrictions
23 or reasons that patients would not be permitted
24 to receive care at Roper St. Francis-Berkeley?

25 A: I -- I'm not aware of any, but I'm not aware of

1 what services they offer out there, what the
2 physician compliment is, what resources and
3 staffing they have out there.

4 Q: Thank you, Mr. Levitt.

5 MS. HOLLINGSWORTH: If we could turn to the pro
6 forma in the CON application at DHEC CON 598.

7 A: I'm there.

8 Q: Mr. Levitt, would you calculate for me the
9 gross revenue per discharge for -- and, I
10 guess, you can just do your one project. I
11 think the revenue doesn't change, right? And
12 for the record, could you describe to the Court
13 -- are -- you had -- are you turning to
14 somewhere else in the application for -- to
15 calculate it?

16 A: Yeah.

17 Q: Okay. Could you, just, tell us -- just for the
18 record so ...

19 A: I'm looking at Figure 18 and Figure 19.

20 Q: Okay.

21 A: 65,823.

22 Q: Okay.

23 THE COURT: 65 ...

24 A: 823.

25 Q: Mr. Levitt, you've been here just about the

1 entire trial, right?

2 A: I -- I think I've been here the -- the whole
3 trial and I want the record to reflect that I
4 stayed all the way that one night we stayed
5 til 7:30, or whatever it was. And I was the
6 only consultant that did.

7 MS. HOLLINGSWORTH: I think, if the Court will take
8 judicial notice of Mr. Levitt's attendance ...

9 THE COURT: I'll take notice of it. I don't know if
10 you get any credit.

11 MS. HOLLINGSWORTH: That's generally known among the
12 -- at least the -- the attendees here, well,
13 not Mr. Thomas, he went to Vegas, so, okay.

14 THE COURT: Mr. Thomas went to Vegas? I thought he
15 was going to soccer.

16 MS. HOLLINGSWORTH: I mean, that might need to be
17 off the record, Your Honor. Soccer in Vegas.
18 The soccer is -- his child is a lucky child who
19 gets to play soccer in Vegas.

20 THE COURT: Okay. Gambling tournament? Kick the
21 ball and you get a ...

22 MS. HOLLINGSWORTH: That might be the tournament Mr.
23 Thomas is hoping to attend.

24 MR. SUMMER: I cannot imagine taking -- I think he
25 was like 15, 14 year old boys in Las Vegas.

1 Can't be too much fun.

2 MR. LEVITT: Maybe betting on the game.

3 Q: Mr. Levitt, I've handed you and I -- I -- to
4 save paper, I don't know why, but I -- I have
5 ---

6 A: I see.

7 Q: --- two slides on there, but if we could pull
8 up demonstrative 1. And so, you were here when
9 Mr. Johnson -- or DM 1 -- DM 1, sorry. You
10 were here when Mr. Johnson, performed the
11 calculation. Do -- do you agree that his math
12 is correct and consistent with what you just
13 calculated?

14 A: Yeah. We got the same number.

15 Q: Okay. I -- I waited to make sure you had your
16 number first, before I put that up. So -- so
17 the gross revenue per discharge, year 1, for
18 the proposed community hospital, is \$65,823.
19 Is that right?

20 A: Yes.

21 Q: Okay. And so -- and -- and you testified to
22 your opinions yesterday, with regard to the
23 application -- the project review criteria, so
24 in your opinion, the 65- --- \$65,823 gross
25 revenue per discharge is comparable to other

1 community hospitals offering similar, non-
2 tertiary services in the service area?

3 A: Yes.

4 Q: Okay. And where -- where is the documentation
5 that shows how the proposed charges were
6 calculated?

7 A: I think they're identified down at the bottom
8 of the page there, isn't it?

9 Q: What -- what page are you referring to?

10 A: 598.

11 Q: Okay.

12 A: Third sentence, under assumptions. Inpatient
13 revenue based on average non-tertiary MUHA
14 charge per discharge.

15 Q: Okay. And -- now in terms of the line above
16 that, see volume schedules, you'll agree with
17 me that the volume schedules were not included
18 in the CON application, is that right?

19 A: Right. They were inadvertently excluded, but
20 -- but you saw it -- they're in the
21 application, I went back and found them and --
22 and calculated the same number that Mr.
23 Johnson, apparently, had trouble calculating
24 because he didn't have that page.

25 Q: Okay, Mr. Levitt. My -- my question to you

1 was, you'll agree with me that the volume
2 schedules ---

3 A: I agree.

4 Q: Okay. Let me get my question out, just so we
5 can be clear. You'll agree with me that the
6 volume schedules noted, under the assumptions
7 on the pro forma, were not included in the CON
8 record, right?

9 A: Well it says, see volume schedules, and I think
10 we found out in depositions that a page was
11 missing. The volume schedules could be
12 question 11 that shows the volume.

13 Q: Okay. But -- but Mr. Levitt, my question to
14 you is -- and if -- if inadvertent is the
15 answer, it's not a problem, but you do agree
16 with me that there's a budgeted beds in volume
17 document that accompanies this pro forma that
18 was inadvertently, as I understand your
19 testimony, left out of the record, correct?

20 A: I -- I agreed with that ---

21 Q: Thank you.

22 A: --- first and second time, yes.

23 Q: Thank you. Let's look at MUHA 38Y, please.
24 The first column that says -- this is one of
25 your opinion slides, right Mr. Levitt? Exhibit

1 slides?

2 (MUHA Exhibit Number 38y was referenced at this
3 time.)

4 A: Yeah.

5 Q: Okay. And I just -- I just want to ask you
6 about this -- the -- the first numerical column
7 that says 2025 CON.

8 A: Yes.

9 Q: And if you still have Bates 598 of the -- I'm
10 sorry, DHEC record 598 in front of you, is --
11 is that the same information that's presented
12 in the CON application?

13 A: In different order, but yeah. I think other
14 income's in a different spot, maybe. No. Same
15 spot.

16 Q: The operating income loss line on your 38Y.

17 A: Can you come back, I ---

18 Q: Sure. Go to -- pull up 38Y and, I think, he
19 has DHEC record 598 in front of him, on paper.
20 What is the ---

21 A: Yeah so, I have a different depreciation number
22 in there.

23 Q: Okay.

24 A: Slightly different.

25 Q: And MUHA RFP 14871, will you agree with me if

1 I -- if I represent to you that that was just
2 a different draft of the pro forma for the
3 project? The 15,333,000?

4 A: Yeah. It just has a different depreciation
5 number.

6 Q: Sure. So it's one of the -- one of the earlier
7 drafts of the pro forma, is that fair?

8 A: I -- I -- yes, I guess.

9 Q: Okay. Well, you'll agree with me your source
10 is a MUHA production number, right?

11 A: Yes.

12 Q: Your source is not, actually, the CON
13 application?

14 A: No.

15 Q: Okay. So that -- that -- just that bottom
16 number is just slightly different, right?

17 A: Yeah. Yeah. I'm not sure why. I'm -- I'm --
18 I don't know where we pulled that RFP, it
19 might've been from -- I think that might've
20 been what Mr. Sullivan used as his ar- -- his
21 source, or something. I'm not sure, but yeah,
22 the dif- -- the -- the -- the difference is the
23 depreciation number.

24 Q: So that -- your -- your column that says 2025
25 CON, it is or it is not the -- a replication of

1 what's in the CON application?

2 A: It's a replication, except for the depreciation
3 number's wrong, so ---

4 Q: So, just in the expense line, there's a slight
5 change in the final version, is that fair?

6 A: Yeah. The difference is the depreciation line,
7 yes.

8 Q: Okay. All right. You'll agree with me,
9 there's no average length of stay for an
10 academic medical center, right?

11 A: Well, every academic medical center has a
12 length of stay, there's no guideline, no.

13 Q: My question to you was, you will agree with me
14 there's no average length of stay for an
15 academic medical center, right?

16 A: I don't understand your question.

17 Q: Okay. Well, at your deposition, you were asked
18 that there's no average length of stay for an
19 academic medical center, and you agreed. Is
20 your testimony different?

21 A: Well, no, I guess I didn't understand your
22 question then. So, what I understand that
23 question to mean is, is there a standard, or
24 average, for all academic medical centers, and
25 no, there's not.

1 Q: Thank you. Now you'll agree with me that the
2 average length of stay that was used in the CON
3 application for the proposed hospital was
4 developed by you with input from the planning
5 team, would that be fair?

6 A: Well ---

7 Q: I think you identified them yesterday, that's
8 what I ---

9 A: Yeah. No, it was -- it was suggested by me, so
10 it -- it was -- I didn't develop it. It was
11 based on the actual MUSC experience and we
12 adjusted it, so, I guess, I developed the
13 adjustment.

14 Q: Okay. And -- but you did not review, or
15 analyze, the average length of stays for
16 similarly sized community hospitals in -- in
17 South Carolina, right? You developed it from
18 MUHA's experience, is that fair?

19 A: From our actual experience because it doesn't
20 matter what anyone else is doing.

21 Q: Okay. But you're aware, aren't you, from the
22 data that you've pulled that the Ber- --
23 Berkeley County average length of stay for
24 discharge is 16 years of age and older, is 3.78
25 in 2007, right?

1 A: At other facilities, yes.

2 Q: Well, my ---

3 A: Including MUHA, yes.

4 Q: That's right. It's Berkeley County discharges,
5 right?

6 A: It -- the majority of those go to Trident, but
7 yes.

8 Q: Okay. But you'll agree with me, and you have
9 the data and it's available to you and it's in
10 your documents, that the Berkeley County
11 discharge average length of stay in 2017 was
12 3.78, right?

13 A: Yes.

14 Q: Okay. And so, is it your testimony that you
15 propose the 10 percent discount that was used
16 for MUHA's downtown experience?

17 A: Ye- -- well, I think we've talked about it as
18 a group. I said that we would probably have a
19 lower length of stay at the community hospital
20 campus, and we came up with a 10 percent as --
21 as what we thought the length of stay would be
22 ---

23 Q: Okay.

24 A: --- the adjustment factor.

25 Q: And you testified both yesterday and -- and do

1 you recall in your affidavit that you provided
2 to the Court during the motion to lift the
3 automatic stay ---

4 **A:** Generally.

5 **Q:** --- briefing?

6 **A:** Generally.

7 MS. HOLLINGSWORTH: Okay. And -- and we can pull it
8 up on the screen, it's Roper St. Francis 120.
9 Sorry, Your Honor.

10 (RSF Exhibit Number 120 was introduced into the
11 record at this time.)

12 **Q:** Is this document familiar to you, Mr. Levitt?

13 **A:** Yes.

14 **Q:** Okay. Both yesterday and in your affidavit,
15 you testified to a maldistribution of beds in
16 the service area, is that right?

17 **A:** Yes.

18 **Q:** Okay. And -- and I think, maybe yesterday, but
19 in your affidavit at paragraph 13, you note
20 that Charleston County is over-bedded, is that
21 right?

22 **A:** Yes.

23 **Q:** You're familiar with that description that you
24 provided. And Berkeley County is under-bedded?

25 **A:** Yes.

1 Q: Okay. But you'll agree with me that MUHA's the
2 only provider in the Tri-County service area
3 that has chosen to accumulate all of their beds
4 all in the peninsula downtown, fair?

5 A: Well, that's the purpose of this project. We
6 -- it -- as of today, we want to -- we want to
7 move off the peninsula, not just accumulate all
8 our beds on the peninsula, yes.

9 Q: Okay. But, Mr. Levitt, my question to you is,
10 you'll agree with me that MUHA's the only
11 provider in the Tri-County service area that,
12 to this point, has accumulated and placed all
13 of their beds on the peninsula downtown, is
14 that fair?

15 A: I don't know I would -- I would say that it's
16 fair that we are the only provider that only
17 has beds on the peninsula, yes.

18 Q: Okay. And you'll agree with me that both Roper
19 St. Francis and Trident have distributed their
20 beds in other places around the service area,
21 is that fair?

22 A: Well Trident has never been on the peninsula,
23 so they didn't distribute them from the
24 peninsula somewhere else, they were never on
25 the peninsula, they were in Berkeley County,

1 they moved to Charleston County and Dorchester
2 County so, Roper moved their beds off the
3 peninsula, MUSC's proposing to move their beds
4 off the peninsula, Trident was never on the
5 peninsula.

6 **Q:** Thank you, Mr. Levitt, if you could first
7 answer the question I ask and then prod- --
8 provide your colored commentary, my question
9 was, both Roper St. Francis and Trident have
10 distributed ---

11 OBJECTION:

12 MS. CRUM: Your Honor ---

13 **Q:** --- their beds ---

14 MS. CRUM: I -- I -- I'm -- I'm -- he answered the
15 question and I'm gonna move to strike that
16 comment.

17 MS. HOLLINGSWORTH: He did not answer the question,
18 Your Honor. I didn't say downtown peninsula.

19 THE COURT: Well, I thought the answer was
20 responsive, but I -- I mean, I'm not gonna
21 strike the comment, I disagree with her
22 observation, but I just, at this point, kind
23 of, overrule your request.

24 **Q:** I'll -- I'll repeat my question, Mr. Levitt.
25 Both -- will you agree with me that both Roper

1 St. Francis and Trident have distributed their
2 beds throughout the service area?

3 A: I -- I guess I'm not sure what you mean by
4 distributed their beds across the service area.

5 Q: Where does ---

6 A: From where?

7 Q: --- where does Trident have their beds located,
8 Mr. Levitt?

9 A: They have -- their facility is in North
10 Charleston and they have Summerville and
11 Dorchester.

12 Q: Okay. And where are the locations of the Roper
13 St. Francis facilities with beds?

14 A: They have a facility on the peninsula, West
15 Ashley, East Cooper, and Berkeley.

16 Q: Okay. And you'll agree with me that the -- the
17 placement of those beds, by those two is --
18 health systems has been over a period of 20
19 plus years, will you agree with that?

20 A: More -- more than that, yeah. More than 20
21 years.

22 Q: 20 plus years, right?

23 A: Well, yes. I'd say much more than 20, but 30
24 or 40.

25 Q: Okay. And you don't disagree, do you, that

1 MUHA has had the opportunity to place beds or
2 bed needs, in area -- in areas of the Tri-
3 County service area other than peninsula,
4 right?

5 A: I -- I've -- say that again.

6 Q: You don't disagree, do you, that MUHA has had
7 the opportunity to place beds or bed need, in
8 areas of the Tri-County, other than peninsula?

9 A: I don't disagree. If I say yes, does that mean
10 I agree or I don't agree?

11 Q: I'll ask it better. Do you agree that MUHA has
12 had the opportunity to place beds or bed need
13 in the Tri-County service area other than on
14 the peninsula?

15 THE COURT: Can I ask a question so I can
16 understand?

17 MS. HOLLINGSWORTH: Sure. Of course.

18 THE COURT: How do you place bed needs?

19 MS. HOLLINGSWORTH: Well that's ---

20 THE COURT: I see how you can place beds, but there
21 is a bed need ---

22 MS. HOLLINGSWORTH: Right.

23 THE COURT: --- so how do you place a bed need?

24 MS. HOLLINGSWORTH: That's what's proposed here by
25 MUHA and that's how Tridents' Moncks Corner was

1 approved. It's taking need under the plan.

2 THE COURT: And placing beds?

3 MS. HOLLINGSWORTH: And establishing a satellite
4 hospital.

5 THE COURT: Well, okay. I guess I get the question.

6 Go ahead.

7 A: So, up until 2004, whenever Trident did it,
8 there was a question on whether you were able
9 to move bed need from the hospital it was
10 projected for to a different location, so prior
11 to that, MUSC didn't have bed need so there --
12 there wasn't even the opportunity. They could
13 have moved some of the existing beds, I
14 suppose, early on, you know, when they bought
15 Charleston Memorial, rather than build the
16 Ashley River Tower, I suppose they could've
17 moved those beds, so I -- I guess they could've
18 moved off the peninsula. They hadn't had a
19 demonstrated, substantial bed need until the
20 147 beds and that's when they proposed to move
21 the beds off the campus, well, the bed need to
22 -- so -- fulfill the bed need off the camp- --
23 of the peninsula.

24 Q: Mr. Levitt, you'll agree with me that Ashley
25 River Tower and Shawn Jenkins both could have

1 been established somewhere other than on the
2 peninsula?

3 A: I suppose they could've, yes.

4 Q: Okay. And you'd agree with me that the
5 concerns with flooding and parking capacity
6 haven't materially changed in downtown
7 Charleston in the last 5 to 10 years, is that
8 fair?

9 A: I think it's gotten worse in the last couple of
10 years, s- -- you know, before -- well, there's
11 Hu- -- Hugo -- Hurricane Hugo, prior to that,
12 I guess be- -- since Hugo and before Matthew,
13 I think -- whatever the next one was, there was
14 a 20 year period where there was -- a hurricane
15 never hit, so, now we had four major storms in
16 the last two years. I think it has changed in
17 the last two years, certainly. There's much
18 more flooding.

19 Q: Okay. And -- and -- and was that -- is -- was
20 that the response that you had to the
21 department in the NICU dispute?

22 A: The NICU dispute, I think, was before those
23 hurricanes hit.

24 Q: So, it's just those hurricanes that changes the
25 nature of your thoughts on flooding?

1 A: Well, it's a factual situation, so yeah.

2 Q: Okay. But is your -- it's your opinion that
3 the 128 beds being added in southern Berkeley
4 County will remedy the geographic
5 maldistribution in the area?

6 A: It will be a step in the right direction, yes.

7 Q: Okay. And -- in your affidavit though, and we
8 can pull that back up, it's Roper St. Francis
9 120. You'll agree with me that, at paragraph
10 13, the placement of the beds, all while
11 remedying the geographic maldistribution of
12 beds in the area, would you agree with me that
13 that might be an overstatement to say that that
14 is the remedy? What you consider
15 maldistribution.

16 A: Well I -- I -- I don't think it's the ultimate
17 remedy, but it is remedying the situation.

18 Q: Okay. And so it's your opinion that putting
19 128 beds within four miles of a new 50-bed
20 community hospital, and within 10 miles of four
21 -- more than 400 other additional acute-care
22 beds will remedy, or assist in remedying
23 maldistribution?

24 A: Yes.

25 Q: Okay. And so, the -- it -- it's -- you -- you

1 don't agree that, really, what that does is
2 just further cluster beds within a different
3 service -- different portion of the service
4 area?

5 A: I -- I -- I guess depending on what, sort of,
6 circle you draw, 5 miles, 10 miles, 20 miles,
7 50 miles, 100 miles, it -- it -- it -- there's
8 always going to be a cluster of resources
9 around a cluster of population. That -- that's
10 what you do. We wouldn't wanna build a -- a --
11 you know, you don't just look geographically
12 and say, okay, so within this 30 mile radius,
13 here's the dot in the middle, let's put
14 everything there, if no one lives there. You
15 put it where the people are, where the people
16 are going to be, and this is the area where
17 people are and going to be.

18 Q: Okay. You agree with me that there are acute-
19 care beds -- community hospital-based acute-
20 care beds within 5 miles of the proposed site
21 for MUHA's community hospital, right?

22 A: Yes.

23 Q: Okay. And you'll agree with me that there
24 there's substan- -- substantially more beds
25 within 10 miles of the proposed site?

1 **A:** Yes.

2 **Q:** Okay. And you'll agree with me that the
3 proposed project is to meet an identified need
4 of -- what -- in the plan MUSC Medical Center,
5 is that fair?

6 **A:** I'm sorry, say that again.

7 **Q:** And I just want to clarify, I'm going to use
8 MUSC Medical Center ---

9 **A:** I understand.

10 **Q:** Thank you. You agree with me that the proposed
11 project is to meet an identified need of MUSC
12 Medical Center?

13 **A:** Yes.

14 **Q:** And MUSC Medical Center and, certainly and
15 health -- state health plan that is the
16 downtown campus for MUHA, is that right?

17 **A:** Yes.

18 **Q:** Okay.

19 MS. HOLLINGSWORTH: And a couple other points that I
20 wanted to mention and last page, this is it,
21 Your Honor.

22 **Q:** We are -- we are there. If we could look --
23 well, in your affidavit, and it's at paragraph
24 9 -- Adam could you pull it up on the screen --
25 but, you state, Roper Berkeley stated that it

1 would transfer beds and existing patients from
2 its main campus and would have no impact on
3 existing providers. You'll agree with me that
4 in the application that is already in evidence
5 here, that Roper St. Francis proposed 50
6 percent redirection of its Berkeley County
7 patients, do you agree with that?

8 A: Yes.

9 Q: Okay. And proposed an additional market shift
10 -- market share of non-aligned patients, would
11 you agree with that?

12 A: I believe that's right, yes.

13 Q: Okay. So would you agree with me that Roper
14 St. Francis did, in fact, state that it would
15 impact the market but then identified and
16 discussed the market and said it wouldn't be a
17 material adverse impact, is that fair?

18 A: Well -- but you've highlighted where I said, no
19 -- no impact on existing providers. So I -- I
20 -- are we -- are we not talking about this or
21 are you talking about something else?

22 Q: Well I'm I'm I'm asking you. I want to
23 make clear, for the record, that in the
24 application -- and just in Roper Berkeley's
25 application, that we identified a change in

1 market share and we discussed the effect in our
2 application.

3 A: Yes.

4 Q: Do you agree with that? Great. Okay. And
5 since the approval of this application, would
6 you agree with me that MUHA has developed the
7 hub and spoke model of care delivery?

8 A: Say the beginning part again. It -- since the
9 development of this application?

10 Q: Since the approval of this application, would
11 you agree with me, that MUHA has developed, or
12 implemented, the hub and spoke model of care
13 delivery? Since this application was approved?

14 A: The -- the hospital application?

15 Q: Yes, sir.

16 A: Our hospital application?

17 Q: Yes, sir.

18 A: No. They -- they have had that approach --
19 they've been trying to do out that approach for
20 10, 15 years, so they -- you went through the
21 whole list of projects I've worked on. We've
22 developed the inventory surgery centers, in the
23 spoke fashion, we've developed outpatient
24 imaging centers in the spoke fashion, so -- so
25 I don't think MUHA has developed a spoke

1 approach since the approval of this
2 application, we've done that prior to that.

3 Q: Mr. Levitt, you wouldn't agr- -- you wouldn't
4 agree with me that, through the 133 million
5 dollar acquisition of four community hospitals
6 in Florence, Marion, Lancaster, and Chester
7 counties that MUHA has employed a hub and spoke
8 model of care and delivery?

9 A: That -- that would be the biggest spoke ever.
10 Three -- three hours away in Lancaster, that's
11 not a spoke to the -- the main hospital. It's
12 own by the same entity, it -- but that --
13 that's not a spoke.

14 Q: Okay. All right.

15 A: Florence is a stretch.

16 Q: You'll agree with me that MUHA is now a five-
17 hospital system, right?

18 A: Yes. They own five hospitals.

19 Q: All right. And there's been a lot of criticism
20 of Trident and Roper St. Francis for
21 challenging, or obstructing, MUHA's, what we
22 heard as efforts to move off the peninsula.
23 Have you heard that during the trial?

24 A: Well, mostly Trident, but yeah.

25 Q: Okay. Well, in your affidavit, in paragraph

1 30, you state that HCA, Care Alliance, or both
2 have filed as affected persons and filed
3 contested case hearings opposing a number of
4 MUHA's projects. Do you recall that in your
5 affidavit?

6 A: Yes. That -- that's accurate.

7 Q: Okay. Well, it's not true, is it, that Roper
8 St. Francis -- well, let me ask you this,
9 you'll agree with me -- isn't that a way to do
10 it? Roper St. Francis did not file a contested
11 case opposing the pediatric-ambulatory surgery
12 center application, right?

13 A: They did not.

14 Q: Roper St. Francis did not file a contested case
15 opposing the North Charleston linear
16 accelerated project, right?

17 A: Not -- no.

18 Q: Roper St. Francis did not file a contested case
19 opposing the pediatric outpatient imaging
20 center, right?

21 A: No. I -- I said it's mostly Trident.

22 Q: Just wanna clear this up for the record. You
23 agree with me Roper St. Francis did not file a
24 contested case challenging the approval of the
25 West Ashley ambulatory surgery center, right?

1 **A:** I don't think they did, no.

2 **Q:** And you'll agree with me that Roper St. Francis
3 did not file a contested case challenging
4 approval of the second North Charleston linear
5 accelerated project, right?

6 **A:** No.

7 **Q:** And you'll agree with me that Roper St. Francis
8 did not file a contested case opposing the
9 Berkeley County linear accelerator project, am
10 I right?

11 **A:** You know, I don't -- they didn't file a
12 contested case, no, but -- but the paragraph
13 above says, affected party too, so it did- --
14 it doesn't say that, but I agree, they did not.

15 **Q:** Okay. You'll agree with me that once that is
16 filed and file a contested case, that I just
17 wanna make it clear that Roper St. Francis has
18 not opposed the majority of these projects.
19 Isn't it true that Roper St. Francis opposed
20 and filed a contested case only on the
21 freestanding emergency department and the
22 community hospitals, both of which were
23 proposed to be located 3 to 5 miles from Roper
24 St. Francis's Berkeley hospital, will you agree
25 with that?

1 **A:** **On -- on this list, those are the two that**
2 **they've opposed, yes.**

3 **MS. HOLLINGSWORTH:** I have no further questions.

4 **MS. CRUM:** I -- I don't have very many at all, Your
5 Honor.

6 **THE COURT:** Go ahead. You want a break or we ready?

7 **MS. CRUM:** No, sir. I'm ready. It -- it's gonna be
8 short.

9 **MR. LEVITT - REDIRECT EXAMINATION BY MS. CRUM:**

10 **Q:** **Mr. Levitt, do you remember Ms. Hollingsworth**
11 **had you look at page 598 and asked you to**
12 **calculate the MUHA community hospital gross**
13 **revenue per discharge?**

14 **A:** **Yeah.**

15 **Q:** **Okay. Did you look up somewhere in the**
16 **application to find the information you needed**
17 **to char- -- calculate that discharge gross**
18 **revenue?**

19 **A:** **I -- I did. I went to Bates 40, Figure 18 and**
20 **19.**

21 **Q:** **And from the information in Figure 18 and 19,**
22 **we could calculate the gross pay per discharge?**

23 **A:** **Yeah.**

24 **Q:** **Okay. Now, are there minimum services required**
25 **to be offered by licensed acute hospitals**

1 contained in Regulation 61-16, The Licensing
2 Standards of Hospitals?

3 A: Yes.

4 Q: Does the MUSC Medical Center, downtown, does
5 that bed-need arise from patient utilization?

6 A: Yeah.

7 Q: Okay. And is that patient utilization coming
8 only from Charleston County?

9 A: No. No.

10 Q: Okay.

11 A: As we saw, the patient origin in the Tri-County
12 area and the, overall, the state.

13 Q: Okay. You were talking -- you were asked a lot
14 about the various type services offered at the
15 proposed Berkeley Hospital and oth- -- other
16 hospitals and I -- I think you were also asked
17 about, did you listen to the different sub and
18 sub subspecialties that MUSC had?

19 A: I remember that. Yes.

20 Q: Okay. Now, do -- do community hospitals or
21 Roper or Trident treat Parkinson's patients?

22 A: Yes.

23 Q: Does MUSC -- is MUSC a Center of Excellence,
24 nationally, for Parkinson's?

25 A: It is.

1 Q: Is that an example of where you would have a
2 patient treated both -- who could be treated in
3 MUSC and, with the same diagnosis, or DRG,
4 treated at Roper Community Hospital.

5 A: Yes. That's a good example.

6 Q: Okay. Does -- based on the information you
7 have in -- in -- in this -- in this case, does
8 the Roper-Berkeley hospital have access to the
9 same specialists and subspecialists -- sub
10 subspecialists that the MUHA-Berkeley hospital
11 would have access to?

12 OBJECTION:

13 MS. HOLLINGSWORTH: Your Honor, I object. Lack of
14 foundation that is far beyond the scope of
15 cross.

16 MS. CRUM: Your Honor, one ---

17 THE COURT: Well ---

18 MS. CRUM: --- one of his ---

19 THE COURT: --- I don't agree with the cross, but
20 the foundation, do you wish to respond to that?

21 MS. CRUM: Well, yes, sir, one of his exhibits he
22 put up was supplementing the medical staff of
23 MUSC that had a -- over -- had almost 1,000
24 physicians. That was one of his exhibits that
25 he put in.

1 MS. HOLLINGSWORTH: I didn't do that on cross, Your
2 Honor. And also, he's testified he doesn't
3 have specifics about what is being offered at
4 Roper St. Francis.

5 MS. CRUM: Y'all, I'm sorry, I have to ask you to
6 speak louder. My ears are stopped up and I'm
7 not trying to be difficult, I just can't hear
8 you.

9 MS. HOLLINGSWORTH: The witness testified he doesn't
10 know about the services, or details, about
11 Roper St. Francis-Berkeley, so that goes to the
12 foundation, and I didn't discuss that exhibit,
13 that she just referenced, on my cross.

14 THE COURT: Did you hear her all right?

15 MS. CRUM: I -- I did hear that, Your Honor. Thank
16 you.

17 THE COURT: And that was my concern.

18 MS. CRUM: Was ---

19 THE COURT: And that was my concern.

20 MS. Crum: Was the -- the exhibit?

21 THE COURT: The foundation.

22 MS. CRUM: The foundation. All right, sir. Your
23 Honor. All right. So I -- I'll -- I'll move
24 on.

25 Q: Would you look to DHEC Exhibit 1, the

1 application. Oh, 40, I'm sorry.

2 (DHEC Exhibit Number 1 was referenced at this time.)

3 A: I'm there.

4 Q: Okay. Look at the paragraph that begins, as
5 shown in Figure 18 below, the project wants a
6 need for a hundred medi- -- medical surgical
7 beds with a projected 57 percent occupancy in
8 year three. The analysis is based on current
9 MUHA non-tertiary, adult patients that will be
10 directed to the new hospital on -- based on
11 convenience of the location or preference to
12 receive MUHA care in a community hospital
13 setting. The tertiary DRGs excluded from this
14 analysis are listed in Figure 21 below. And --
15 and the DRGs is on page 41?

16 A: Correct. Figure 21.

17 Q: Doe- -- is MUHA going to provide the -- MUHA-
18 Berkeley going to provide the services
19 accepting those excluded tertiary DRGs?

20 A: Yes. And that -- as I said, you know, there
21 may be patients presenting in some of these
22 tertiary DRGs that are treated at Berkeley, but
23 it's not expected, or intended. Certainly not
24 open heart surgery, or some of the things we
25 don't have the equipment or resources to

1 provide, but sometimes a -- a patient may show
2 up and fall into this category.

3 Q: And -- and, I think you already said this but
4 just to be sure, are the -- is the estimate
5 based -- estimates -- utilization estimates
6 based on actual MUHA his- -- historic data?

7 A: Yes. Uh-huh. And -- and that -- that's, sort
8 of, implied in that sentence, based on current
9 MUHA non-tertiary patients. So, current at the
10 time, 2017.

11 Q: Thank you, sir.

12 THE COURT: So when you say, patients may show up
13 and fall into those categories, if they show up
14 and then -- will they present?

15 A: Yes.

16 THE COURT: And then -- and then, after you start
17 doing -- the community hospital begins
18 diagnosing the problems and treating those
19 problems, even though you've excluded them from
20 the DRG, they may end up falling in the DRG
21 because that's the -- the -- the development
22 that will occur in the treatment?

23 A: Correct. So -- so the example, you know, I've
24 just looked on here, female reproductive
25 malignancy. So, you know, we thought, we have

1 the Hollings Cancer Center so most people are
2 gonna go there. Someone shows up at the
3 hospital, they have abdominal pain or
4 something, they're treated at the hospital,
5 turns out they have some sort of the ovarian
6 cancer, the community hospital could treat that
7 patient, so that would be what we had
8 previously called a tertiary DRG, wouldn't be
9 treated there, but they were treated there.
10 But we don't know that until they're
11 discharged, after they've di- -- been diagnosed
12 and treated and discharged. So, some of those,
13 you know, if someone shows up and needs cardiac
14 cav, we say, we don't -- we -- we don't do
15 that, you've got to go to another hospital.
16 But someone shows up with a -- a abdominal --
17 a woman shows up with abdominal pain, we don't
18 say, you might have malignant ovary, go to a
19 tertiary hospital.

20 THE COURT: The other one, along those lines, I was
21 trying to understand is, and, I think, Ms. Crum
22 had touched all over the Parkinson's line of
23 questioning, but you testified that, services
24 proposed for Nexton and Roper-Berkeley are
25 similar, but the patients are not necessarily

1 the same. What did you mean by that?

2 A: Right. So -- so the patients, particularly the
3 elective admissions, so these are the MUHA
4 patients. These are patients that choose to go
5 to MUHA, they have prev- --

6 THE COURT: Downtown or ---

7 A: They had previously been going downtown,
8 correct. And so, if a physician who practices
9 downtown relocates to the north area, to -- to
10 -- to the medical office buildings that are
11 being built up there -- and there's other
12 things we've heard testimony about that are
13 owned by MUSC or occ- -- occupied by MUSC, they
14 may use that hospital, so -- so if a patient --
15 female malignancy could be a good one, if -- if
16 a oncologist -- surgical oncologist chooses to,
17 or OBGYN, chooses to practice near the MUHA-
18 Berkeley hospital, he's gonna use that -- he or
19 she's gonna use the hospital to treat their
20 patients. So they'll be admitted there and
21 surgery performed there. Those doctors aren't
22 on staff at -- at -- at Roper.

23 THE COURT: All right. Any follow-up questions,
24 other than what I had to ask?

25 MS. CRUM: No, sir.

1 THE COURT: You may step down.

2 MR. LEVITT: Thank you.

3 THE COURT: How bout let's take a short break. A
4 short, undefined break.

5 (Off the Record)

6 THE COURT: What's next? Have y'all rested or ---

7 MS. JONES: Yes, yes we do.

8 THE COURT: Well then, I know what's next.

9 MS. HOLLINGSWORTH: So, Your Honor, Roper St.

10 Francis will call Brett Johnson, in reply.

11 BRETT JOHNSON, having been duly sworn, testifies as
12 follows:

13 MR. JOHNSON - DIRECT EXAMINATION BY MS.

14 HOLLINGSWORTH:

15 Q: Mr. Johnson, just a few questions for you.
16 Finish out this very long proceeding. So, you
17 heard Mr. Levitt's testimony yesterday
18 regarding the non-tertiary DRGs that went into
19 the pro forma's, is that right?

20 A: Yes.

21 Q: Okay. And you -- you recall the testimony that
22 Mr. Levitt testified that the charges in the
23 pro forma's were reasonable and customary based
24 on what was included in the record of the CON
25 and Ms. Goodlett's testimony, did you hear

1 that?

2 **A:** **I did.**

3 **Q:** **Kay. What -- what, if anything, do you have**
4 **to offer in reply ---**

5 OBJECTION:

6 MS. JONES: Your Honor, I ---

7 **Q:** **--- to these assertions?**

8 MS. JONES: Sorry. The question is, what, if
9 anything, do you have to offer in reply
10 regarding the reasonableness of the charges.
11 We object to this. This is clearly not pop- --
12 proper reply testimony, the issue of the
13 charges was originally raised in -- by them, in
14 their challenge to the CON application and in
15 their -- their pre-hearing statements filed
16 with the Court. They raised the issue, they
17 have the burden of proof, they didn't offer
18 this testimony, whatever it is, or -- or either
19 it just repeating what he's already testified
20 to.

21 THE COURT: Okay.

22 MS. JONES: And they had the opportunity on direct
23 to do it ---

24 THE COURT: You can stop ---

25 MS. JONES: --- and they didn't do it. Okay.

1 THE COURT: --- you can stop now, because I get your
2 point. I get -- I -- I may have a different
3 concept of rebuttal testimony than Ms. Jones,
4 but then I will say, also, that your question
5 about the reasonableness of the charges doesn't
6 necessarily reply to Mr. Levitt, it -- it's an
7 open-ended question about what's the
8 reasonableness of the charges but it certainly
9 ---

10 MS. HOLLINGSWORTH: Right.

11 THE COURT: --- an issue that you presented in your
12 Case in Chief.

13 MS. HOLLINGSWORTH: No. It -- and I -- I apologize,
14 Your Honor, my question was inartfully worded.
15 It's -- the -- the re- -- the reply is to Mr.
16 Levitt's testimony in what he based his opinion
17 that -- he provided opinions, in direct, he was
18 asked about the pro forma's and the compliance
19 with the project review criteria, and he was
20 asked the basis of his opinion that he believed
21 the project was -- met the criteria, was
22 appropriate, was feasible, all those things.
23 His response was, based on the CON record and
24 Ms. Goodlett's testimony. That's -- that was
25 what Mr. Levitt testified to and then he had

1 his exhibit so, my question to Mr. Johnson is
2 to reply to the basis for his opinion and how
3 -- how he reached it. So, he was very specific
4 to what he testified to that, of course, I
5 didn't have until he was pro- -- produced in
6 the direct case of MUHA.

7 MS. JONES: My position is that the CON application
8 had the basis for the reasonableness of the
9 charges is how all this began. He's already
10 testified in their case in chief, that he
11 didn't think the charges were reasonable. In
12 fact, I think he wrote a letter to DHEC and
13 said he didn't think the charges were
14 reasonable. That was their opportunity to
15 address all of the information in the CON
16 regarding the reasonableness of the charges.
17 This is a general, open-ended, calling for a --
18 -

19 THE COURT: I sustain the objection at this point.
20 I -- I think you could answer it -- ask it
21 different, but it just seems very general to
22 me.

23 MS. HOLLINGSWORTH: Okay. Well, let me -- I'll try
24 it more specifically, and if we could pull up
25 DHEC 1 at page 57.

1 (DHEC Exhibit Number 1 was referenced at this time.)

2 Q: Mr. Johnson, do you have an opinion in response
3 to Mr. Levitt's testimony that the project and
4 the pro forma -- the revenues in the pro forma
5 are supported by the DHEC record in the case?

6 A: So ---

7 OBJECTION:

8 MS. JONES: Same objection, Your Honor.

9 THE COURT: I'm gonna overrule. I still don't see -
10 - I'm gonna overrule it because I'm gonna hear
11 it more, and I may, but my concept of the
12 rebuttal testimony is, you presented your case,
13 they present theirs. Their case -- their
14 expert presented something distinctly different
15 than your case and you -- now you want to
16 respond to their -- their explanation of why
17 the -- their viewpoint is different and now
18 this is information that was already presented
19 in -- in the case in chief, was it not.

20 MS. HOLLINGSWORTH: We- -- no, Your Honor, Mr.
21 Levitt -- what -- what we're replying to is the
22 basis for Mr. Levitt's analysis and opinion on
23 the project. He referred to the CON records
24 so, really, this is to ad- -- this is for Mr.
25 Johnson to address that basis. It was that and

1 Ms. Goodlett's testimony so ---

2 THE COURT: Okay. My problem, I thought, maybe I'm
3 wrong, I thought this DRG stuff was also
4 presented in the case in chief.

5 MS. HOLLINGSWORTH: --- so, the issue that we're
6 dealing with here, is -- is a financial issue.
7 We are not addressing, sort of ---

8 THE COURT: Okay.

9 MS. HOLLINGSWORTH: --- the DRGs ---

10 THE COURT: I'll let you ---

11 MS. HOLLINGSWORTH: --- that we were discussing on -
12 --

13 THE COURT: Well ---

14 MS. HOLLINGSWORTH: --- and things like that.

15 THE COURT: --- I said I was gonna overrule it at
16 this point in time, I'll see where it goes.

17 MS. HOLLINGSWORTH: Thank you, Your Honor.

18 **Q: Mr. -- Mr. Johnson, we pulled up DHEC 1, 57.**

19 **If you could tell us what your opinions are.**

20 **A: Okay. This is the average charge for the top**
21 **10, non-tertiary DRGs for MUHA, which -- which**
22 **should arguably support the charges for the**
23 **non-tertiary hospital that's proposed. And if**
24 **you look at these, and then do a -- I just did**
25 **a simple average, not a weighted average. If**

1 you do a simple added average of the charges,
2 it -- it comes out to about 34,500 per case, or
3 per DRG, which seems reasonable to me for --
4 for a non-tertiary discharge. That's very
5 similar to what Roper St. Francis's non-
6 tertiary average charges are for -- for non-
7 tertiary visits ---

8 Q: Okay.

9 A: --- so ...

10 Q: And in the application, this the information
11 that's provided for -- whose information is
12 this?

13 A: This is contained in the MUHA CON for the
14 Berkeley Hospital.

15 Q: And these are MUHA's FY2017 average top 10 DRG
16 codes and charges?

17 A: Correct.

18 Q: Okay. And so, what was that, just, general
19 average of those numbers that you reached?

20 A: 34,000 ---

21 OBJECTION:

22 MS. JONES: Your Honor, I'm ---

23 A: 500.

24 MS. JONES: --- gonna renew my objection and ask for
25 a continuing objection. This is information

1 that he already testified ---

2 THE COURT: He just ---

3 MS. JONES: --- to in his -- in their Case in Chief
4 and they just want to repeat it now.

5 THE COURT: Well, he -- he just said it was in the
6 application.

7 MS. JONES: It's in the application, it's been there
8 from the beginning.

9 MS. HOLLINGSWORTH: Your Honor, until Mr. Levitt
10 testified, in their case, this document -- this
11 information had not been identified that -- by
12 Mr. Levitt as the reason that he believed that
13 financials and the revenue projections were
14 appropriate. What he offered the Court
15 yesterday is -- it -- it's supported by the CON
16 application and Ms. Goodlett's testimony. So,
17 we are addressing and replying to the basis for
18 his position in this court. All we've -- we're
19 simply identify- -- we did not discuss this in
20 our direct case. We didn't have the benefit of
21 Mr. Levitt's opinion that this is where he
22 draws the -- his opinion that it was
23 reasonable, so we're simply replying to that.
24 Yes, we -- we think that the documents don't
25 support his position and within -- we won't

1 talk about Ms. Goodlett's testimony. They're
2 very specific, finite issues, Your Honor, I ---
3 MS. JONES: Judge Anderson, the -- the position that
4 is being addressed in the Court, or the issue's
5 been addressed in the Court. Is the
6 application by the medical university? This is
7 in the CON application, presented by MUHA, that
8 DHEC used in approving it. They've challenged
9 it and asked for a contested case. They had
10 the burden of proof and have the burden of
11 proof. This information has been there from
12 the get go. It says in the application this is
13 the basis of it and it -- it -- the application
14 shows how it was applied. If you look at the
15 -- at the other document, I mean, you know, I
16 hate to rehash all this, but it's all been in
17 there from the beginning. I don't know what
18 this procedure is in regards to how they think
19 this is proper reply, when it's just a general
20 observation about the CON application and its
21 legitimacy, which was supposed to be addressed
22 in their Case in Chief and then we defend it.
23 And I -- I object to it and I'd ask for a
24 continuing objection. I don't think any of
25 this is proper.

1 THE COURT: I'll grant you a con- -- continuing
2 objection, although I, honestly, would prefer
3 that you let me know when we move into a
4 different area ---

5 MS. JONES: I will, Your Honor.

6 THE COURT: --- but ...

7 MS. HOLLINGSWORTH : And, Your Honor, I'm happy to
8 just move on and ask the next question. I --
9 I -- I -- it's not ---

10 THE COURT: I wanted, you know, to me, rebuttal is
11 he -- he testified to something that -- that,
12 like I said, that was an issue that was raised
13 by MUHA and you're addressing that issue.

14 MS. HOLLINGSWORTH: Sure. I ---

15 THE COURT: Well ---

16 MS. HOLLINGSWORTH: --- I will -- I will ask the
17 next question, Your Honor, to see ---

18 THE COURT: Okay.

19 MS. HOLLINGSWORTH: --- if that meets the standard.

20 **Q: Mr. Johnson, you're aware of Ms. Goodlett's**
21 **testimony and assertion that MUHA assumed a 15**
22 **percent discount on MUHA's non-tertiary**
23 **experience in forecasting the proposed project?**

24 **A: Yes.**

25 **Q: Okay. Could you, please, tell us what -- what**

1 do you offer in reply to that assertion of a 15
2 percent discount on MUHA's non-tertiary
3 experience?

4 A: Well, if the ---

5 OBJECTION:

6 MS. JONES: Same objection, Your Honor. The 15
7 percent discount is set forth in the CON
8 application.

9 THE COURT: Well, I understand that, see, that this
10 is being applied specifically to her assertion
11 now with -- it wasn't in the Case in Chief. I
12 -- I'll overrule that one. Go ahead.

13 A: Okay. So, you would -- the -- the high volume
14 DRGs -- the average of the charge for the high-
15 volume DRGs should drive the pro forma. Just
16 intuitively, that should happen. You know, the
17 average of the -- of the detail containing the
18 CON was 34,500. The pro forma is more than
19 double that on a charge basis, so it doesn't
20 appear that the pro- -- that the pro forma is
21 supported by the detail in the CON and, since
22 the -- the actual charge in the pro forma is
23 double what the detail would indicate it should
24 be, I would say there is definitely not a 15
25 percent discount, that I can see, in those

1 numbers.

2 Q: Okay. And those numbers, is that the -- the
3 project pro forma's in the CON application, is
4 that you're referring to?

5 A: Correct.

6 Q: Okay. All right. And you are aware of Ms.
7 Goodlett's testimony about the financial
8 strength of MUHA, correct?

9 A: Yes.

10 Q: And you have -- you were provided a -- a
11 photograph of the -- took a cell phone picture
12 of a demonstrative that was used during Ms.
13 Goodlett's testimony, have you reviewed the
14 demonstrative photograph?

15 A: Yes.

16 Q: Okay. And looking at Ms. -- Ms. Goodlett
17 testified, her assertion was that there is a
18 current debt-capacity for MUHA of 1.4 billion.
19 Are you aware of that?

20 A: Yes.

21 Q: And do you see that number on her -- the
22 demonstrative?

23 A: Yes. I see it in the 2019 column.

24 Q: Okay. Would you, please, offer the Court your
25 reply to that assertion by Ms. Goodlett?

1 OBJECTION:

2 MS. JONES: Your Honor, I'd like to renew my
3 objection. The debt-capacity was addressed in
4 his -- in their Case in Chief and he testified
5 regarding it then and this is not proper reply.

6 MS. HOLLINGSWORTH: Your Honor, this is something we
7 had never seen before Ms. Goodlett took the
8 stand. This is absolutely new information and
9 we are replying directly to this demonstrative
10 and her testimony with regard to this document.

11 THE COURT: And her testimony was distinct from your
12 position in the Case in Chief how?

13 MS. HOLLINGSWORTH: Your Honor, we didn't have this
14 -- all of this information and this financial
15 forecast is completely different than anything
16 we've seen today, so this -- this is brand new.
17 We, actually, we weren't even allowed to ask
18 anything about debt-capacity, if you recall.
19 We were -- we were e- -- expressly limited to
20 that, so we had to wait until they presented
21 their case, so there -- there isn't any
22 information of the -- we didn't ---

23 THE COURT: Okay.

24 MS. HOLLINGSWORTH: --- we weren't able to. This is
25 a new document.

1 MS. JONES: This is a -- this is a summary of the
2 financial statements that were submitted and
3 have been produced all along. They're filed
4 every year with the Comptroller General.
5 They're public information. It was the review
6 of MUSC's financial statements upon which he
7 based his original testimony in their Case in
8 Chief. To call him back now and ask him to
9 talk some more about it again, is improper
10 reply testimony.

11 MS. HOLLINGSWORTH: Your Honor, it's not and, as we
12 will describe, this document is not consistent
13 with the financials and that's why we are
14 offering it as reply ---

15 THE COURT: I -- I'm gonna let you move forward. I
16 -- I see Ms. Jones's point, but I -- you're a--
17 -- you're asking in reply to her testimony and
18 I'll just hear it out and see where we go on
19 it.

20 MS. HOLLINGSWORTH: Thank you, Your Honor.

21 **Q: Mr. Johnson, if you could, and in looking at**
22 **the -- the demonstrative that you have in front**
23 **of you, what -- what do you offer in reply to**
24 **Ms. Goodlett's assertion that there is 1.4**
25 **billion capacity, or what -- what -- what do**

1 you reply, in response, to her demonstrative?

2 A: Well, I'll speak specifically to -- to the 2019
3 column and I -- I note that -- that the
4 increase in net position, I see where she gets
5 that from the audited financial statements for
6 2019. I have no way of verifying the non-cash
7 pension and OPBE, but the depreciation and
8 interest ties to the audited financial
9 statements. Debt services is where I -- I see
10 that some information, important information,
11 has been left out.

12 Q: Okay. Tell -- tell -- tell us about that.

13 A: Okay. And it's found in, I guess, in the
14 audited financial statements, but there is a --
15 a loan for 120 million dollars that is -- it
16 described in the footnotes of the financial
17 statements, it says due and payable in
18 September -- there's three tranches (ph) of
19 the 120 million due in September, October,
20 November of 2019. So this 37 million in debt
21 service is short 120 million.

22 Q: Okay.

23 A: And -- and if you read -- if you use Ms.
24 Goodlett's methodology and -- and, you know,
25 take the actual debt service described in the

1 audited financial statements and plug it in,
2 their debt-capacity is not 57 percent, it's 6
3 percent.

4 **Q:** Okay. All right. And is there anything else
5 about this -- this demonstrative document that
6 you want to comment on before ---

7 OBJECTION:

8 MS. JONES: Objection.

9 THE COURT: I'll sustain- --

10 MS. JONES: Calls for ---

11 THE COURT: --- I'll ---

12 MS. JONES: Okay.

13 THE COURT: --- sustain that objection.

14 **Q:** Mr. Johnson, do you have any opinion on the
15 recitation of increase in net position for
16 2019, as set forth on the demonstrative that
17 Ms. Goodlett testified to during direct
18 examination?

19 MS. JONES: Same objection, Your Honor.

20 THE COURT: I'll overrule that one.

21 **A:** That it's materially different from previous
22 information that has been put into evidence in
23 this case.

24 **Q:** Okay. And if you could be more specific. What
25 -- what are you referring to?

1 **A:** So the -- the Sea Island, I believe, the Sea
2 Island ED -- free-standing ED, we received a
3 pro forma on November 5th from -- from their --
4 that I testified to last time, and I know that
5 this -- that the projections for 20- -- I'll
6 just pick 2022 as an example, the projections
7 for 2022 in that two-week old pro forma, are
8 very, very different than was appear in this
9 pro forma.

10 **Q:** Okay. And just for the record, that was Roper
11 St. Francis Exhibit 135 and, if you could for
12 the Court, what numbers do you tie together
13 when you're making this analysis?

14 **A:** Okay. So, you can just go to the bottom line
15 of the slide that appears on the screen, you
16 know, net income is 23.5 million on the screen
17 and, you know, in the audited financial
18 statements of MUHA there is no performance
19 indicator called net income, it's called change
20 in net position or increase in net position, so
21 I assume that is synonymous with wh- ---

22 **OBJECTION:**

23 **MS. JONES:** Objection to an assumption, Your Honor.

24 **MS. HOLLINGSWORTH:** He's an expert witness, Your
25 Honor, and he is an expert in hospital

1 financing, and these financial statements are
2 exactly the type of documents that he reviews
3 regularly and, I think, the Court can give it
4 the way that you -- you want, but I -- I
5 absolutely think that it is reasonable for this
6 expert witness to identify how he connects ---

7 THE COURT: But there's ---

8 MS. HOLLINGSWORTH: --- this information.

9 THE COURT: --- there's a difference between saying,
10 I assume something based on facts that aren't
11 in evidence and this is my opinion based on my
12 review of that, which I have -- I have looked
13 at.

14 MS. HOLLINGSWORTH: Yeah. Well, Your ---

15 THE COURT: So, I'm gonna sustain him saying, I
16 assume, based on facts that just aren't clear
17 to me at this point in time.

18 MS. HOLLINGSWORTH: That's fine, Your Honor.

19 **Q: Mr. Johnson, in your opinion in reviewing the**
20 **Sea Islands freestanding ED pro forma and the**
21 **documentation provided to the Court in this**
22 **demonstrative, what is your opinion on how**
23 **these numbers relate to each other?**

24 **A: Well based on the construct of the income**
25 **statement on the screen, net income, in my**

1 opinion, is meant to be synonymous with
2 increase in net position.

3 Q: Okay. And then, if -- describe, for us, how
4 they're different ---

5 A: I ---

6 Q: --- on these two documents.

7 A: Okay. So, in a two-week old projection, the
8 net income, or change in net position from the
9 Sea Island freestanding ED application is 23.5
10 million and then I know on the calculation for
11 debt-capacity here, that number has improved to
12 104.6 million, so about an 81 million dollar
13 increase, almost a multiple of about four
14 times.

15 Q: Okay. And in your opinion, is that increase
16 within a two-week period surprising to you?

17 A: Very much. I -- I -- I'm getting ready to
18 present to our finance committee Roper St.
19 Francis's 2020 budget, and I've got between an
20 8 and a 9 million dollar increase over prior
21 year in -- in earned -- in operating earnings,
22 and I'm characterizing that to our committee as
23 a huge lift for our health system and it's
24 gonna be challenging to achieve that additional
25 8 or 9 million in earnings in such a -- in a

1 challenging earnings environment that we're in,
2 so an 81 million dollar increase in -- in
3 expected earnings two weeks apart would seem
4 unusual.

5 OBJECTION:

6 MS. JONES: Your Honor, I'm gonna move to strike all
7 that. The FSCB is for that one facility. It's
8 the projection for that one facility, the
9 financial statements, the audited -- outside
10 audited financial statements are for the entire
11 system and he knows that ---

12 THE COURT: Well then ---

13 MS. JONES: --- and that's improper.

14 THE COURT: --- you can ask that on cross.

15 MS. HOLLINGSWORTH: Yeah. And Your Honor, so I can
16 be clear, that's a misstatement. It says right
17 on the screen, projected revenue's and expenses
18 without project. Your Honor, this is the MUHA
19 entity without the project, so that would be a
20 mis-characterization of what's on the screen.
21 This is not the pro forma that includes, or is
22 only tied to, the freestanding ED project.

23 THE COURT: Okay.

24 Q: Mr. Johnson, you've -- you're aware of Ms.
25 Goodlett's testimony that MUHA's finances are

1 very strong and that, although HUD is their
2 financier of choice, they have the ability to
3 go to other banks in the market and get debt,
4 is that right?

5 A: I'm familiar with that testimony, yes.

6 Q: Okay. And you are familiar with her assertion
7 that MUHA has the equivalent Standard & Poor
8 rating of a low A to a high BBB, right?

9 A: My understanding is, her testimony was if they
10 sought such a rating, that that's where they
11 would land.

12 Q: Okay. And what, if anyth- -- what, if any,
13 opinions do you have on that assertion?

14 OBJECTION:

15 MS. JONES: I object, Your Honor. This was covered,
16 actually, in their letters and their
17 submissions to the Court initially. If they
18 wanted to offer testimony about -- and I think
19 they did in ---

20 THE COURT: They ---

21 MS. JONES: --- the case ---

22 THE COURT: --- they offered you ---

23 MS. JONES: Yeah. It's ---

24 THE COURT: --- y'all offered ---

25 MS. JONES: --- not reply ---

1 THE COURT: --- testimony already about ---

2 MS. JONES: --- or not reply.

3 THE COURT: --- whether the -- the bond ratings

4 would be junk bonds or, I forgot what phrase
5 y'all used, but that -- I've already heard all
6 that, she presented her version of it and now,
7 you're gonna just repeat your previous version
8 or -- I mean, I don't get the -- the reply to
9 her on this one.

10 MS. HOLLINGSWORTH: Well, that's fine, Your Honor,

11 she -- she -- Ms. Goodlett testified to
12 Standard & Poor, which is different than the
13 information that we provided the Court. It's
14 different letters, numbers and rating and so,
15 I simply asked him to address her assertion
16 using the Standard & Poor methodologies, but I
17 ---

18 THE COURT: Well, if you want to go on that, I -- I
19 don't think he cares a whole lot probative
20 value, but proceed on down that path.

21 MS. HOLLINGSWORTH: That's fine, Your Honor.

22 **Q: Mr. Johnson, let me ask you this, just -- just**
23 **backing it back up to the assertion that MUHA**
24 **would access capital outside of HUD financing**
25 **and need it -- if needed, and the discussion**

1 **about paying cash for this proposed project,**
2 **what is your opinion on the assertion that the**
3 **banks in the market would offer that type of**
4 **financing to MUHA?**

5 OBJECTION:

6 MS. JONES: Again, Your Honor, I renew my objection.

7 In fact, they objected to the testimony about
8 paying cash for the project and you sustained
9 that objection, so to have him offer reply
10 testimony to an objection they made is clearly
11 outside the scope.

12 MS. HOLLINGSWORTH: Your Honor, Mr. Levitt offered
13 the testimony, the objection was just related
14 to the assertion that Ms. Goodlett said it.

15 MS. JONES: You sustained the objection, she made
16 the objection, she can't turn around now and
17 then try to offer testimony to get around what
18 she objected to and you ruled out.

19 MR. SUMMER: Well, I -- I disagree on that one. If
20 the Court admitted the evidence, then it does
21 seem as appropriate ---

22 THE COURT: Yeah.

23 MR. SUMMER: --- for reply.

24 THE COURT: I'm gonna allow him to -- to respond to
25 that one.

1 MS. HOLLINGSWORTH: Thank you.

2 A: Do you -- repeat the question, please.

3 Q: Could you please -- what -- what are your
4 opinions in reply to Ms. Goodlett's assertion
5 that MUHA can go to the market and obtain
6 capital outside of HUD financing?

7 A: If, well, I think, the better -- better than my
8 opinion is the fact that the market has already
9 answered this question. MUHA does have access,
10 as they've demonstrated, to short-term debt and
11 they've recently been able to procure short-
12 term debt. When they sought long-term
13 financing for the 36 or 38 million dollar
14 project that was discussed in court, six banks
15 declined to provide financing and the -- and
16 the reason is it -- is that, once you have HUD
17 debt, then -- then HUD does not allow other
18 banks to be on par with you from a credit
19 perspective. You would be -- so, from a credit
20 perspective, you would be subordinate to HUD
21 and, because of that, banks -- banks will take
22 that risk with short-term. They're not gonna
23 provide long-term financing in a secondary
24 position that violates their -- their
25 underwriting guidelines. So, I think -- my

1 opinion aside -- I mean, the market has
2 answered this question, MUHA has access to
3 short-term debt, MUHA does not have access to
4 long-term debt and the -- the entity that did
5 finance that 36 million dollar project only put
6 a five year term on it.

7 Q: Okay. Wh- --

8 A: Which is -- which is common in real estate
9 partnerships, it's not common in healthcare.

10 Q: And what, if any, opinion do you have in reply
11 to Ms. Goodlett's assertion that MUHA's able to
12 access the capital outside of HUD financing, if
13 needed, for the 325 million dollar hospital
14 project?

15 A: So the banks decline ---

16 OBJECTION:

17 MS. JONES: Same objection, Your Honor.

18 THE COURT: Overruled.

19 A: So the banks declined to participate, so that
20 would leave the public market, and in the public
21 market she would be coming, in my opinion, with
22 a speculative rating and -- and that would mean
23 an exorbitant interest rate that would -- that
24 would not allow the project to be feasible. We
25 would be looking at a double-digit interest

1 **rate.**

2 MS. HOLLINGSWORTH: Your Honor, I have no more
3 questions.

4 THE COURT: All right. Mr. Summer?

5 MR. SUMMER: I think she has another witness.

6 MS. LIPHAM: We may have one other -- Your Honor ---

7 THE COURT: Oh.

8 MS. LIPHAM: --- may I have, like, two minutes to
9 consult with my co-counsel?

10 THE COURT: But you said you have no further
11 questions of him. Do you have any questions?

12 MR. SUMMER: I have no ---

13 MS. LIPHAM: Oh, well they've got cross. I'm sorry.
14 I'm -- I'm just leaving them out, sorry you all.

15 THE COURT: That will be an interesting rebut- --
16 rebuttal.

17 MR. SUMMER: No questions, Your Honor.

18 MS. LIPHAM: It would go faster, Your Honor.

19 THE COURT: Yeah. It would go faster. Ms. Jones?
20 Subject to your objections.

21 MS. JONES: I just have one question.

22 MR. JOHNSON - CROSS-EXAMINATION BY MS. JONES:

23 **Q: Can you name, for this Court, from the beginning**
24 **of time until now, one single debt MUHA hadn't**
25 **paid or one single bond that didn't get bought**

1 in a second?

2 A: Yeah. I think there's six banks that turned
3 them down recently. I'm not aware that they've
4 default- ---

5 Q: I didn't ask you about a bank turning em down,
6 I'd ask you about them not paying any debt that
7 was come -- that came due. You can't name any,
8 can you?

9 OBJECTION:

10 MS. HOLLINGSWORTH: Your Honor ---

11 A: I'm not aware of any debt that they've not paid.

12 Q: All right. And you're not ---

13 THE COURT: I ---

14 Q: --- aware of a ---

15 THE COURT: --- she's objecting.

16 MS. HOLLINGSWORTH: Your Honor, I -- I -- I object
17 to the treatment of the witness right now, and
18 the pointing, and approaching of the witness,
19 you know, and I also would submit that there's
20 no foundation for Mr. Johnson to have specific
21 knowledge about MUHA's finances. If they want
22 an opinion ---

23 THE COURT: I overrule ---

24 MS. JONES: Then I move to strike all of his
25 testimony.

1 THE COURT: Yeah ---

2 MS. JONES: On that ---

3 THE COURT: --- and I think that's ---

4 MS. JONES: --- on that stipulation.

5 MS. HOLLINGSWORTH: She's -- she has asked him what

6 bills they are, or are not, paying. If he has

7 an opinion, or experience, that's fine, but

8 she's modeling her question as if he should be

9 internal at their organization. I just -- I

10 think that her question ---

11 THE COURT: I overrule ---

12 MS. HOLLINGSWORTH: --- should be phrased

13 differently. That -- that's fine, Your Honor --

14 -

15 THE COURT: I overrule the objection.

16 MS. HOLLINGSWORTH: --- really it's just the

17 treatment is ---

18 **Q: Second part. You know of one, single solitary**

19 **bond of all the bonds the medical university has**

20 **issued over all the years that did not get**

21 **bought up in a minute?**

22 **A: I would -- I mean, they have limited avenues for**

23 **issuing those bonds ---**

24 **Q: Do you know of a single, solitary bond that was**

25 **ever issued by the medical university over all**

1 this history, in it's hundreds of millions of
2 dollars of bonds that they've issued, that did
3 not get bought up by the market quickly?

4 A: With the backing of the U.S. Government, they
5 get bought quickly.

6 MS. JONES: Thank you, that's all I have.

7 THE COURT: You may step down.

8 MR. JOHNSON: Thank you.

9 MS. HOLLINGSWORTH: Your Honor, if we could just have
10 a couple minutes to ---

11 THE COURT: Okay.

12 MS. HOLLINGSWORTH: --- but not long, just to confer
13 with ---

14 THE COURT: Do you need a break? Do you -- do you
15 need to take a break or do y'all just wanna
16 confer.

17 MS. HOLLINGSWORTH: We just wanna confer, Your Honor.

18 THE COURT: Oh, okay.

19 MS. LIPHAM: I don't think we need it. I don't --
20 if it -- if it pleases the Court, I don't think
21 we need a formal break.

22 THE COURT: Okay.

23 MS. HOLLINGSWORTH: Your Honor, that would be our
24 reply case.

25 THE COURT: Okay. Mr. Summer?

1 MR. SUMMER: Thank you, Your Honor. Trident,
2 Summerville and Colleton call Mr. Dan Sullivan.
3 And you're still under oath.

4 MR. SULLIVAN: I accept that.

5 MR. SULLIVAN - DIRECT EXAMINATION BY MR. SUMMER:

6 Q: Mr. Sullivan, I wa- -- and having lived around
7 the corner from you, South Broad, and being
8 fortunate enough to get rid of my house, I'd
9 like to -- I'd like to clear up an assertion
10 made by Mr. Levitt regarding flooding and
11 hurricanes, as it pertains to the statement
12 that's been made in the NICU application. Could
13 you correct that factual inaccuracy for the
14 Court?

15 A: Sure. I believe ---

16 OBJECTION:

17 MS. JONES: Your Honor, I have the same objection.
18 The NICU application was put in on -- in their
19 Case in Chief and they've already addressed this
20 once.

21 THE COURT: Oh.

22 MR. SUMMER: Well, listen, I'm -- we're explaining
23 specifically to this and I'll ask a question
24 this way ---

25 THE COURT: Yeah ---

1 Q: Mr. Levitt made an assertion that the NICU
2 application predated the -- the flooding that's
3 been going on in Charleston, do you remember
4 that assertion?

5 A: I do.

6 Q: Okay. Based on your own factual experience,
7 okay, do you agree or disagree with that
8 assertion?

9 A: I do not agree.

10 Q: And why?

11 A: Well the -- the NICU application was being
12 reviewed in 2018. There was a serious flood in
13 Charleston in 2015, where a system stalled off
14 the coast and -- same one that flooded Columbia,
15 and then, in 2016 and 2017, there were
16 hurricanes that hit Charleston, both of which
17 resulted in significant downtown flooding. So
18 the -- the NICU -- the comments that were made
19 about flooding in Mr. Levitt's letter regarding
20 the NICU would've come after these three major
21 flooding events in Charleston.

22 Q: Okay. All right. Let's -- let's start with Ms.
23 Maggie Murdock's assertions. I think you were
24 -- reviewed the testimony and the line of
25 questioning where Ms. Murdock took the position

1 that, if you have redirection, you have no
2 adverse impact. Do you remember that assertion
3 by Ms. Murdock?

4 **A:** Yes.

5 **Q:** As a health planner, what is your reaction to
6 that assertion?

7 OBJECTION:

8 MS. JONES: Your Honor, I'ma object to this. The --
9 the issue of redirection and adverse impact was
10 raised by them in response to the CON
11 application when it was filed, after it was
12 renewed, it was in there for hearing statement
13 to the Court. And the -- the -- the question
14 being asked of the witness is to try to complete
15 their Case in Chief and is not in regards to any
16 reply testimony.

17 MR. SUMMER: I -- I don't know how better I could've
18 phrased the question.

19 THE COURT: I -- I overrule the objection.

20 **A:** Yeah. I -- I -- I mean, the -- the problem with
21 that statement is that, you know, the -- the --
22 the assertion that redirection was gonna be 100
23 percent, which I think was -- and I'm not gonna
24 repeat my testimony from my direct case, which
25 I don't agree with, I think the -- the greater

1 likelihood -- and Ms. Murdock, I believe,
2 conceded, at some point, her testimony that
3 there's certainly a potential that this project
4 would result in redirection of patients away
5 from other providers. And -- and so, I -- I
6 believe that there was sufficient evidence that
7 other existing providers would be adversely
8 affected by this project.

9 Q: Okay. I also wanna -- if -- if we're gonna talk
10 about this issue and assertions, did you hear
11 Dr. Cawley's testimony regarding market capture?

12 A: I did.

13 Q: Okay. Did you hear Ms. Goodlett's testimony
14 regarding market capture?

15 A: I did.

16 Q: Did you hear Ms. Smith's testimony regarding
17 market capture?

18 A: I did.

19 Q: Okay. As a health planner, what -- what, if
20 any, opinion do you have regarding that
21 testimony regarding market capture as it
22 pertains to the reviewer's notion that
23 redirection does not equal adverse impact?

24 OBJECTION:

25 MS. JONES: Your Honor, I object. I don't think Ms.

1 Goodlett or Dr. Cawley testified about market
2 capture.

3 THE COURT: I just -- is this -- I think that
4 question needs to be a little more specific to
5 get to the rebuttal stage ---

6 MR. SUMMER: Okay.

7 THE COURT: --- that -- that was a pretty general --
8 -

9 MR. SUMMER: All right. Well, I -- I ---

10 THE COURT: --- did you hear testimony about market
11 capture or tell me about your ---

12 MR. SUMMER: Okay. Well ---

13 THE COURT: --- that -- that could go -- get us
14 right back into ---

15 MR. SUMMER: I -- I -- I'll make it a little more
16 pointed and I'll only use Dr. Cawley, since he's
17 a titular head of the organization.

18 THE COURT: Okay.

19 **Q: Do you remember Dr. Cawley's testimony where we**
20 **went through all the reports to the board that**
21 **had the phrases, market capture ---**

22 **A: I do ---**

23 **Q: --- in them?**

24 **A: --- I do recall that.**

25 **Q: Okay. So, when you look at that information**

1 that was presented in Dr. Cawley's testimony,
2 what, if any, opinion do you have regarding that
3 testimony and this assertion by Ms. Murdock that
4 there's not going to be any adverse impact?

5 MS. JONES: Same objection, Your Honor. Still in
6 non-specific.

7 THE COURT: I overrule that one.

8 A: Yeah. The documents that Dr. Cawley was shown,
9 I -- I think, indicated that at least one aspect
10 of this project was to capture additional
11 patients, beyond what the historical draw of the
12 medical university was from the areas that the
13 new hospital was proposing to serve. And so,
14 again, market capture means market share shift
15 and that's, sort of, the classic way in which
16 you measure adverse impact is by shifting market
17 share from one provider to another.

18 Q: Okay. Thank you. Now I'd like to go to the line
19 of questioning with Ms. Murdock. We're gonna go
20 to page 598. Do you remember the line of
21 questioning regarding the -- the fact that these
22 are, actually, incremental pro fo- -- pro
23 forma's?

24 A: I do.

25 Q: Okay. And do you remember my line of

1 questioning with Ms. Murdock which indicated
2 that there was -- and we're using here, for --
3 for 2022, excuse me, 2023 in the projections,
4 where there is 92 million dollars of new money
5 for MUHA, if they build this new hospital, do
6 you remember that line of questioning?

7 A: I do.

8 Q: Okay. Do you remember Ms. Murdock's assertion
9 that that's just growth?

10 A: I do.

11 Q: Okay. As a health planner, do you agree or
12 disagree with her assertion that that 92 million
13 dollars may be attributed to growth?

14 OBJECTION:

15 MS. JONES: Objection, Your Honor, pitting the
16 witnesses.

17 MR. SUMMER: Well, I think, by the nature of reply,
18 I'm required to do that.

19 MS. JONES: No, sir. That's an improper thing to
20 do. You cannot pit the witnesses. He can ask
21 him for a basis and an opinion, but he can't pit
22 the witnesses.

23 THE COURT: You can -- she's correct. You can't pit
24 the witnesses, but in reply you can draw his --
25 his attention to the testimonies ---

1 Q: Well I'll refrain -- I'll phrase the question
2 this way. Okay. Do you agree or disagree with
3 Ms. Murdock's assertion that the 92 million
4 dollars may be attributed to growth?

5 A: I disagree.

6 Q: And why?

7 A: Well, if you -- if you look at these three
8 components of the financial projections that are
9 included in this section of the application and
10 just, you know, to -- to -- to refer to this one
11 first, which is the incremental financial
12 projections for the project, we can see that the
13 net operating revenue, and you have to back out
14 the other income, so in the first year, it's
15 between 92 and 93 million dollars of -- of
16 incremental revenue ---

17 Q: New money?

18 A: New money. In the second year, it's about 124
19 million dollars of new money and in the third
20 year, it's about 170 million, roughly, in -- in
21 new money. And so, if we go to the financial
22 statement that's for the hospital without the
23 project, and I can't remember what page that's
24 on.

25 MR. SUMMER: That -- that would be the hospital

1 without the project would be on page 597. Can
2 we pull up 597, please? Okay. Can you just
3 blow that page up a little bit for us? Yeah.
4 597.

5 **Q: Okay.**

6 **A: The -- this -- this projection, if -- if we**
7 **look, you know, the easiest way to see it is to**
8 **look at the -- the total revenue line and what**
9 **we see, if we start in 2020, we see that the**
10 **total revenue is growing by about 400 million**
11 **dollars a year. So it's going up consistently**
12 **across this period of time, so the growth**
13 **associated with the -- with the volume of**
14 **patients that -- that the medic university is**
15 **currently serving is already baked in, if you**
16 **will, into the hospital projections without the**
17 **project. So the growth is already accounted for**
18 **in the, what I'll call, the baseline projection**
19 **without the project. In order for growth not --**
20 **I mean, in order for the -- the incremental**
21 **statement to reflect the growth, that would mean**
22 **that it would not be additive, you would not add**
23 **the incremental statement to the baseline**
24 **statement. But, in fact, with this -- what**
25 **these projections do is add the incremental to**

1 the baseline to come up to -- with -- through
2 the hospital with the project, so all of this
3 additional revenue is new revenue not associated
4 with redirecting patients from the downtown
5 facility. And so, all of this impact would be
6 associated with redirection of patients from
7 other facilities.

8 Q: So that 92 million dollars comes from the other
9 providers?

10 A: Right, and going up to 170 million.

11 OBJECTION:

12 MS. JONES: Your Honor, I object. This is exactly
13 what he testified to in the Case in Chief and
14 it's improper reply.

15 THE COURT: I don't remember that one way or the
16 other. I -- if it is, then it's redundant so,
17 but it -- since I don't remember it distinctly,
18 Ms. Jones, I'm gonna just overrule you.

19 MS. JONES: Thank you.

20 THE COURT: If you're right, you get kudos.

21 Q: All right. Let's move on to another assertion
22 by Ms. Murdock. Remember the testimony -- we --
23 we had the criteria that appears in the state
24 health plan. If we could go to the 17- 18
25 health plan, page 12, please. Yeah. Page 12.

1 17- 18 plan. All right. If we could just blow
2 up the relative criteria at the bottom of the
3 page. That's great. All right. Do you
4 remember the line of questioning with Ms.
5 Murdock about that these are the relative
6 criteria for hospitals in the state plan, do you
7 remember that?

8 A: I do.

9 Q: It's been approved by the planning committee and
10 the board.

11 A: Right.

12 Q: Okay. And specifically, I asked her whether or
13 not she had made a specific finding regarding
14 adverse impact, do you remember that discussion?

15 A: I do.

16 Q: And her assertion was that she had made no
17 specific finding about adverse impact, you
18 remember that?

19 A: I think she said that in -- in three or four
20 places in her testimony.

21 Q: I heard her say it a lot.

22 A: Okay.

23 Q: As a health planner, okay, what is your reaction
24 to Ms. Murdock's assertion that she made no
25 specific finding regarding an adverse impact?

1 OBJECTION:

2 MS. JONES: Objection. That's an improper question.

3 THE COURT: What is your reaction?

4 MS. JONES: What is your reaction.

5 Q: What is your opinion?

6 A: My -- my opinion is that, this was identified as
7 one of the important criteria in the state
8 health plan. I believe Ms. Murdock says that
9 even if it weren't, that she would review the
10 project under the adverse affects on other
11 facilities under criterion 23 and under 61-15
12 and, as I testified before, adverse impact in
13 the case of building a new hospital, there's no
14 project in -- in healthcare that has a bigger
15 impact than a -- the construction of a new
16 hospital. So to -- to not have made a finding
17 about adverse impact, I think is a -- is a
18 significant failing in the -- in the
19 department's review of this application.

20 Q: And I -- you -- you heard the testimony that --
21 or other criteria she admitted as well, you
22 heard that ---

23 A: I did.

24 Q: --- too? Okay. Well, I'll let the record speak
25 for itself on that. If we could go to the top

1 of page 13, please. And while we're still
2 talking about adverse impact, blow up the very
3 first paragraph, top of the page. Thank you
4 very much. We've seen this many times during
5 the case, but it -- in particular, I ask Ms.
6 Murdock about the benefits of improved
7 accessibility will be equally weighed with the
8 adverse affects of duplication in evaluating
9 certificate of need applications for these beds,
10 do you remember that?

11 A: I do.

12 Q: Do you remember her testimony about the thumb on
13 the scale and all that stuff?

14 A: Right.

15 Q: Okay. As it pertains to adverse impact and
16 duplication, she made an assertion -- she made
17 an assertion about the beneficial affects of
18 duplication, do you remember that phrase?

19 A: I do.

20 Q: Okay. As a health planner, what is your opinion
21 about beneficial affects of duplication as it
22 pertains to this section of the state health
23 plan?

24 A: My -- my opinion is that the duplication,
25 generally, is viewed as a bad thing. And with

1 this section of the state health plan, it's --
2 it's the classic balancing act of every CON
3 decision and that is, do the benefits associated
4 with approving this project, in terms of the
5 healthcare system benefitting from it, outweigh
6 the -- the negative effects of duplication,
7 cause duplication generally means that
8 someone's gonna lose something and someone else
9 gain something. And so, in this case, by not --
10 by not making a finding on adverse impact and
11 then saying that beneficial -- the duplication
12 would be beneficial -- and I -- I think she said
13 at another point that it -- this project could
14 have an impact on Trident and other providers
15 and -- and she hoped that it did and I've never
16 heard a CON regulator make that statement
17 before, either. And so, I -- I think that the
18 -- the analysis here should've been, is there --
19 is there a community benefit that far outweighs
20 the effects of duplication, which this case
21 would mean redirection of patients from existing
22 providers and, apparently, that -- that
23 particular balancing decision was not made.

24 MR. SUMMER: May the Court indulge us, I'm trying to
25 go slow or, I mean, go quicker ---

1 THE COURT: Yeah. Don't go slower.

2 Q: I wanna ask you next about a line of questioning
3 Ms. Murdock, she testified, I believe, it was,
4 actually, on direct, that, and I think this was
5 regarding her only view of cost containment, but
6 she said -- she used the phrase it's a red flag
7 for her if there's higher cost to patients, do
8 you remember that?

9 A: I do.

10 Q: Kay. Do you remember the testimony regarding
11 the net revenue per average discharge and the
12 questions that I asked Ms. Murdock regarding
13 that?

14 A: I do.

15 Q: Kay. Is this the red flag?

16 A: I mean, in -- in my view, it would be, I mean,
17 if the services could be provided by another
18 provider. In this case, the closest provider
19 Roper-Berkeley hospital at -- at a cost and --
20 and that revenue is the actual cash that the
21 hospital receives, char- -- charges are, sort
22 of, fictional. The -- the net revenue is what
23 is actually received and if the average patient
24 going to the -- to the MUHA facility in Berkeley
25 County is going to, ultimate- -- the -- the

1 patient and it's insurer, are ultimately gonna
2 pay twice as much for the same services, then
3 there's a -- that would be a red flag to me, as
4 well, and that does not contribute to cross-
5 containment.

6 Q: Well it's exacerbated, is it not, of the fact
7 that, as a governmental entity, MUHA gets to go
8 after people's tax returns if they haven't paid,
9 right.

10 OBJECTION:

11 MS. JONES: Objection, move to strike.

12 THE COURT: Well, I don't need to strike the
13 question ---

14 MS. JONES: All right.

15 THE COURT: --- let me hear the answer.

16 MR. SUMMER: Well we did have -- we -- we did have
17 testimony about the death setoff provision of
18 state law, which allows MUHA and -- and Dr.
19 Cawley acknowledged that, that they are allowed
20 to get people's tax returns if they haven't paid
21 their bills.

22 THE COURT: All right.

23 MS. JONES: That is not the testimony, number one,
24 and number two, that's their Case in Chief.

25 They didn't put it in to the Case in Chief ---

1 THE COURT: No, but ---

2 MS. JONES: --- this is not in reply to anything.

3 THE COURT: No, the debt setoff was brought up in
4 your case.

5 MS. JONES: It -- no, it was brought up by them. I
6 didn't bring it up. They brought it up.

7 MR. SUMMER: As I'm entitled to do.

8 THE COURT: I overrule that one.

9 A: Yeah, I mean, that's -- I mean, certainly the
10 medic university has -- has -- has -- has a
11 greater power to -- of collection than the
12 average not-for-profit community hospital or
13 for-profit community hospital by the death
14 setoff abilities that they have, so, I mean, it
15 does -- it does impose addi- -- additional
16 concern in that their -- their have
17 significantly higher expectations of collections
18 from its patients and then it has the ability to
19 enforce those collections.

20 Q: Thank you.

21 THE COURT: That's a concern in how?

22 MR. SULLIVAN: In -- in -- from a cost-containment
23 standpoint, you know, that a -- an existing ---

24 THE COURT: That they may actually collect their
25 debts?

1 MR. SULLIVAN: No. No. That they have an ability
2 to collect debts beyond what a -- a -- a not-
3 for-profit or for-profit private hospital would.

4 THE COURT: How's that cost-containment, that is,
5 though --another avenue of collecting their
6 debts.

7 MR. SULLIVAN: Well, they're extracting more money --
8 -

9 THE COURT: It's a debt, right ---

10 MR. SULLIVAN: It's -- it's -- it's extracting more
11 money from the patients.

12 MR. SUMMER: The -- the line of questioning, Your
13 Honor, was if the patient's now paying twice as
14 much to go to MUHA, and MUHA has the ability to
15 extract that even more so than the other
16 hospitals, it's adding insult to injury. That
17 was the -- the -- the purpose of the line of
18 questioning.

19 THE COURT: Okay.

20 Q: Let's go next to -- there was -- and I'm trying
21 to kill two birds, one stone. We had testimony
22 two places. We had this notion of the exploding
23 ED problem in Berkeley County from Ms. Murdock,
24 do you remember that?

25 A: I do.

1 Q: That, you know, that there's -- there's all
2 these people need to get into ED's and don't
3 have access and we also had the issue of Dr.
4 Cawley approaching that. What I'd like to do is
5 go to MUHA 38A, please. MUHA 38A. And just
6 have that up, because you can make reference to
7 that as you need to. Can you read that?

8 (MUHA Exhibit Number 38a was referenced at this
9 time.)

10 A: I can.

11 Q: Okay. So, the first thing I want to do is to
12 ask you what is your opinion regarding Ms.
13 Murdock's asso- -- assertion that there's some
14 kind of an ED access problem in Berkeley County?

15 OBJECTION:

16 MS. JONES: Objection, Your Honor, pitting the
17 witnesses.

18 MR. SUMMER: I'm asking what his opinion is as to --
19 as to her assertion.

20 MS. JONES: Pitting the witnesses.

21 THE COURT: Now, you've been -- you've been following
22 the right approach in the past, but you've been
23 saying this is what she said, this is what she
24 said, what's your opi- -- opinion regarding this
25 issue, this one, you're ---

1 MR. SUMMER: Well then I'll rephrase the question.

2 Q: Remember the line of questioning, with both
3 witnesses, regarding ED and potential ED
4 problems in Berkeley County?

5 A: I do.

6 Q: Okay. Okay. What, if any, opinion do you have
7 regarding problems for ED access in Berkeley
8 County?

9 A: Well, I -- I -- I think that Berkeley County is
10 probably in a unique position of having an
11 abundance of ED capacity. I -- Ms. Murdock, I
12 think, specifically addressed the fact that
13 there'd been tremendous growth in emergency
14 department volume at Trident Medical Center.
15 She -- she was concerned about their ability to
16 accommodate that additional volume. She may
17 not've been aware that -- but when Trident
18 reports their ED volume, they include two
19 freestanding emergency departments in their
20 report, so there was a Moncks Corner medical
21 center -- freestanding ED that's been around for
22 a long time, and then another one in North
23 Charleston called Center Pointe that just opened
24 about three years ago. And that -- that
25 facility has grown pretty rapidly, but it has

1 it's own separate capacity to accommodate space.
2 In addition, Trident undertook an expansion of
3 its emergency department three years ago. I
4 recently worked on a project, I think it was
5 last year, for Summerville to have a significant
6 expansion of its emergency department and -- and
7 then, in addition to that, Summerville Medical
8 Center was approved for a free-standing ED
9 located in close proximity to where the -- the
10 MUHA-Nexton hospital's gonna be. It's one exit
11 down, on I-26, from there. And, also, we have
12 a brand new hospital Roper-Berkeley opening up
13 with it's own ---

14 OBJECTION:

15 MS. JONES: Your Honor, I object. He's not
16 responding to anything. He's just giving a
17 lecture.

18 MR. SUMMER: Ms. Murdock testified that there was
19 some type of a critical shortage for ED access
20 in Berkeley County. It was one of the reasons
21 that she said, it's a good thing that she made
22 the decision she made. What this witness is
23 doing, is talking about the excess capacity that
24 exists for ED volume in that region of the
25 service area. I think it's in direct reply to

1 her erroneous assumption, and I think it's
2 appropriate for him to go through it. I know
3 she don't wanna listen to a laundry list of
4 projects, but there's -- and -- and she's
5 getting ready to testify about what the excess
6 capacity actually is.

7 MS. JONES: If he's done an analysis, then he can
8 lay a foundation about an analysis. That is
9 proper reply testimony. That's one thing, but
10 he can't do it because the witn- has -- witness
11 hadn't done an analysis.

12 MR. SUMMER: I -- I can lay that foundation, Your
13 Honor. Can I?

14 **Q: Did you testify earlier this year, in the free-**
15 **standing ED case?**

16 **A: In- -- involving MUHA, yes.**

17 MS. JONES: I object, Your Honor. The testimony in
18 another case?

19 MR. SUMMER: He's getting ready to tell about his
20 analysis.

21 THE COURT: Go ahead.

22 **Q: Okay. In the course of that case, did you**
23 **perform an analysis of the area EDs and their**
24 **potential volume in excess capacity?**

25 **A: I did, as well as another expert in the case.**

1 MS. JONES: And I object because of the surprise, it
2 hasn't been provided to me and you cannot use
3 reply to bring in new matter and try to sandbag
4 the other side.

5 MR. SUMMER: Number one ---

6 MS. JONES: That is improper.

7 MR. SUMMER: --- until Ms. Murdock testified, I
8 didn't appreciate the fact that there's some ED
9 shortage. In fact, I was shocked, cause she
10 was in the other case and I don't know why she
11 made that assertion, that's number one. Num- --
12 number two is, he's entitled to reply to it and
13 their witness testified in that case and he's
14 very well aware of it and what those ED volume's
15 were. So, I think it's appropriate for this
16 witness to say that he's set -- sat in this
17 courtroom for two weeks earlier this year, made
18 an analysis ---

19 THE COURT: Well, I don't know if he can -- he can
20 discuss his -- his analysis of her testimony, so
21 I overrule at this point in time.

22 MR. SULLIVAN: Yeah. I mean, in -- in that case,
23 you know, I did an analysis ---

24 THE COURT: Well, I don't wanna hear about the case,
25 I wanna hear ---

1 MR. SULLIVAN: Okay.

2 THE COURT: --- I'll allow you to testify to your
3 analysis ---

4 MR. SULLIVAN: Okay.

5 THE COURT: --- of -- of this subject.

6 A: The -- the analysis that I presented, and there
7 was also additional evidence that I relied on,
8 showed that there was ample emergency department
9 capacity to accommodate all of the projected
10 growth over the next five years in that portion
11 of the Tri-County area. And that there would be
12 sufficient capacity, such that another free-
13 standing emergency department such as MUHA
14 proposed in that case, would be needed and, in
15 this case, the -- the -- the approval of the
16 hospital would provide -- of the MUHA-Nexton
17 hospital would provide even additional capacity
18 beyond that which, in my view, is not necessary.

19 Q: Okay. Let's move on to this assertion by Ms.
20 Murdock. Do you remember her testimony that
21 Trident is full and people can't get in there
22 and that's why we need more beds in Berkeley
23 County?

24 A: I do.

25 Q: Okay. Do you have an opinion as to whether or

1 not Trident and Summerville is full and there's
2 no room for more?

3 A: I do.

4 Q: What is that opinion?

5 A: Well, let's take Summerville first, cause they
6 recently opened 30 additional beds and their
7 current occupancy rate is around 58 percent. I
8 think that testimony's come in at some point
9 during this hearing. And so, Summerville has
10 plenty of available capacity and it's a
11 community hospital just as the MUHA-Nexton
12 facility is being proposed. Trident's occupancy
13 is a bit higher, I think on the last joint
14 annual report that it filed for 2018 it was
15 around 80 percent occupancy, which is good
16 occupancy, but we recently got approval for six
17 additional beds and there's also been some
18 shuffling. I think there's been testimony about
19 that, where a lot of the -- the women's,
20 pediatrics, and the obstetrical services are --
21 have moved to the -- the Summerville facility
22 and Trident is reconfiguring a floor in order to
23 accommodate and different type of patient in the
24 facility. So, as -- as we sit here today, Trid-
25 -- you know, and I work with Trident on an

1 ongoing basis, they are not at a crisis
2 situation. They do not have problems admitting
3 patients to the hospital. They do have peak
4 occupancy during some days, where there might be
5 a bed-crunch during the middle of the week, but
6 on an average basis, they have, you know,
7 significant available capacity.

8 Q: Thank you. Ms. Murdock made the -- made it --
9 the -- the assertion that growth overshadows any
10 inaccuracies in a CON application, do you
11 remember that statement?

12 A: I do.

13 Q: Okay. As a health planner, does growth cure
14 all?

15 A: In my view, it does not.

16 Q: Okay. And why?

17 A: Well, I mean, the -- the purpose of filing a CON
18 application is to set forth the basis for the
19 project. It's to set forth the reasons why you
20 believe the project is needed and -- and, most
21 importantly, is how it fits in with -- with the
22 healthcare system and how it will impact other
23 providers. If the application is inaccurate in
24 its assumption that all the patients are gonna
25 be redirected from the MUHA facility downtown

1 and, in fact, it's gonna take patients away from
2 other providers, then -- then I think the
3 applicant -- application, from health planning
4 perspective, should not be approved. And in
5 terms of growth, if we think about the level of
6 growth, I believe Mr. Levitt testified, he
7 assumed 1.7 percent annual growth and
8 utilization for MUHA. That level of growth is
9 not sufficient to accommodate the additional
10 volume that was in the financial projections was
11 assumed to be incremental by it. And certainly,
12 even if we don't assume that 100 percent of that
13 volume will be incremental volume, we assume a
14 portion of that will be redirected from
15 downtown. There's not sufficient growth in the
16 market. Existing providers are gonna be at ---

17 THE COURT: I think he's going beyond answering
18 Murdock.

19 MR. SUMMER: We'll move on, Your Honor.

20 Q: I think Ms. Murdock also made this statement is
21 that, you need to put patients where the beds
22 are, okay. Is MUSC putting patients where the
23 beds are?

24 A: You mean putting ---

25 Q: I mean, putting -- putting beds where the

1 patients are, excuse me, it's a long trial.

2 A: They are putting beds where the patients are,
3 but -- so, I mean, in that sense it's, it's
4 true, but there are other beds, also, in that
5 same market.

6 Q: And where was their need generated?

7 A: Downtown.

8 Q: Okay. Let's move over to Dr. Cawley. Let's
9 continue talking about this notion, the ED and
10 the over-crowding. What -- what, if anything,
11 has MUSC done to your knowledge over the last 10
12 years, to address the -- the ED over-crowding?

13 OBJECTION:

14 MS. JONES: Objection, Your Honor, this is clearly
15 new matter that was part of their Case in Chief.
16 This isn't in reply to anything.

17 MR. SUMMER: Dr. Caw- -- I'm trying not to pit the
18 witness against each other, okay, so I'm walking
19 the rope.

20 Q: Dr. Cawley -- let me lay a little more
21 foundation, okay. Where -- did you hear all of
22 Dr. Cawley's testimony regarding ED over-
23 crowding and the boarders?

24 A: I did.

25 THE COURT: And the boarders?

1 MS. JONES: Boarders.

2 MR. SUMMER: Boarders.

3 THE COURT: Oh, boarders ---

4 MS. JONES: Boarders. Patients being held in the --

5 -

6 THE COURT: Boarded.

7 Q: So, you -- you recall that line of testimony?

8 A: I do.

9 Q: Okay. What, if anything, has MUSC done to deal
10 with that issue on the peninsula?

11 OBJECTION:

12 MS. JONES: Your Honor, I object. Dr. Cawley wasn't
13 asked what, if anything, has MUSC done to deal
14 with that on the peninsula. This is complete
15 new matter and it is -- I object.

16 MR. SUMMER: I think it's appropriate that we get to
17 respond to this assertion that it's a problem.

18 THE COURT: I understand your attempt to reply back,
19 but you've -- you're asking what has MUSC done
20 regarding that ---

21 MS. JONES: That's a question they should've asked
22 Dr. Cawley if they had it.

23 MR. SUMMER: Well we actually did discuss that, but
24 let's -- let's talk about -- let's talk about it
25 this way.

1 **Q: What did Trident do to deal with those over-**
2 **crowding issues?**

3 OBJECTION:

4 MS. JONES: I'm gonna object to that, cause that
5 really is outside the scope.

6 MR. SUMMER: Your Honor, it -- she -- the bottom
7 line is this -- and that is, is that they've
8 ignored that ED for a decade.

9 THE COURT: Well he can ask about boarding and how
10 that relates to health planning, but ---

11 MR. SUMMER: All right. I'll -- I'll make the
12 question more general.

13 MS. JONES: And my objection is more that this is
14 information that, if they wanted to put it in
15 the case, their obligation was to put it in
16 their Case in Chief, cause they're not replying
17 to anything, at this point, I don't think.

18 THE COURT: Their obligation is to present a Case in
19 Chief ---

20 MS. JONES: Right.

21 THE COURT: --- to -- to establish the issues
22 raised. If you, in your case, present issues
23 that shoot holes in their case, they can respond
24 to that, but I'm gonna let him respond to this.
25 I am limiting them, cause it -- I don't think

1 his approach has been pristine so far, but we'll
2 -- we'll see where we go now.

3 MR. SUMMER: I'll keep trying, Your Honor.

4 Q: So, having -- having ED through-put issues is
5 not unusual in the healthcare industry, is it?

6 A: It's not.

7 Q: Okay. And when you have those through-put
8 issues, as a health planner, how do you deal
9 with those?

10 A: Well, I mean, there's -- there's, sort of, two
11 ways. I mean, one is dealing with the physical
12 plan aspects of it by expanding the size of the
13 physical plan and the second is by improving
14 processes, so to -- to move patients through the
15 system faster.

16 Q: Okay. In contrast, to Trident, has MUSC done
17 anything to improve that physical plan?

18 A: Not to my knowledge. I -- I gained a fair
19 amount of knowledge about their emergency
20 department and the freestanding ED case six
21 months ago, and there had not been a significant
22 investment in -- in facilities, and I -- I did
23 not hear testimony about significantly different
24 approaches to processing patients through the
25 emergency department.

1 Q: And are you aware that there, for many years,
2 has been a plan to revamp that ED with a price
3 tag of 30 million dollars, but it hasn't been
4 done, has it?

5 A: It has not.

6 Q: Okay. Did you hear the testimony -- and we'll
7 try to get two witnesses at one time, Dr. Warr
8 and Dr. Cawley, both testified that the referral
9 patterns are now shifting and they are pulling
10 in new tertiary and quaternary patients from the
11 CHS acquisitions in Lancaster and Chester and
12 Florence and Marion, do you recall that
13 testimony by those witnesses?

14 A: I do.

15 Q: Okay. When you look at MUSC's mission,
16 education, research, and clinical care, what, if
17 any, concerns do you have about this increase in
18 demand for those services and what MUSC is doing
19 in terms of it's plan?

20 OBJECTION:

21 MS. JONES: Objection, Your Honor, that's an improper
22 question.

23 THE COURT: You wish to respond?

24 MR. SUMMER: I think it's appropriate.

25 THE COURT: Okay. It's not, from my perspective, a

1 reply, so I sustain that objection.

2 **Q:** You heard their testimony about the increase in
3 tertiary and quaternary referrals, correct?

4 **A:** I did.

5 **Q:** You heard the testimony by MUSC about their
6 unique mission and what they are supposed to be
7 doing for the state of South Carolina?

8 **A:** I did.

9 **Q:** Okay. What, if any, concerns do you have as a
10 healthcare planner about the CHS increase in
11 demand and their mission?

12 **OBJECTION:**

13 **MS. JONES:** I renew my objection.

14 **THE COURT:** Overrule that one.

15 **A:** Well, I think there -- there's a couple of
16 concerns. I mean, one is that, you know, I
17 think one of the -- one of the objectives is
18 healthcare is to provide services as close to
19 home as possible and -- and, hopefully, there,
20 in the long term, there would be a -- an effort
21 to retain more of those patients in the local
22 community. Secondly, if the demand -- if the
23 growth and demand in the future, is gonna be on
24 the tertiary and quaternary side, because of
25 this growth in their statewide network, they're

1 gonna need additional capacity downtown in order
2 to accommodate those patients.

3 Q: Were you here for Dr. Cawley's testimony
4 regarding the master facilities plan?

5 A: I was.

6 Q: Okay. Dr. Cawley indicated in his testimony
7 that there was a 100-page report that this
8 diagram is part of, do you remember that
9 testimony?

10 OBJECTION:

11 MS. JONES: Your Honor, I object to this. This was
12 not brought out by the defense. It was brought
13 out by them. This is improper reply. If he
14 wanted ---

15 THE COURT: Well I can understand. It's improper
16 reply -- to reply to something raised in cross-
17 examination ---

18 MS. JONES: Correct.

19 THE COURT: --- is that -- do you have a case cause
20 I don't know of any ---

21 MS. JONES: I don't have a South Carolina case on
22 it. I've only got, you know, you've got --
23 you've got the one case that -- that lays it out
24 here, or the most recent case which everybody
25 has looked at and -- and this goes to the whole

1 underlying issue of reply and the impropriety of
2 what, apparently's, been going on a long time
3 and what they're attempting to do in this case
4 that I object to. And I think it is error to
5 allow them to try to raise issues in cross-
6 examination and then offer reply testimony when
7 they failed and refused in their initial Case in
8 Chief to put anything on about it. They're the
9 ones who waived it and they can't be allowed to
10 come in after they waive it, when they know it's
11 an issue, they bring -- try to bring it on
12 cross-examination and do, and then they wanna
13 put up someone in reply so that the defense is
14 prejudiced, does not have an opportunity to
15 respond to it, and it was never given by this
16 gentleman in his pre-trial disclosures and
17 deposition testimony that he was going to cover
18 this. Although, it's obvious they been planning
19 it for a long time.

20 MR. SUMMER: May I respond?

21 THE COURT: Yeah. This is an interesting area.

22 MR. SUMMER: Okay. My turn to be righteously
23 indignant.

24 THE COURT: Okay.

25 MR. SUMMER: Okay. I've got a client that wants me

1 to pursue sanctions over this, and let me tell
2 you why. We didn't know this was valid until
3 Dr. Cawley testified to it. We found it on the
4 web site of the architect, all we have are these
5 four pages, Your Honor. It was never produced
6 to us in discovery. He didn't know about it
7 til Dr. Cawley testified about it. We found it
8 surfing on the internet. I'm furious. Why am
9 I furious? Because Dr. Cawley testified there
10 is a 100-page master facilities plan and that's
11 where these diagrams are from. And because it
12 mentions Imagine 2020 on there, and that's a
13 program that started in 2015, we know that it is
14 -- and he agreed -- a live and relevant plan.
15 Never produced, never given to my expert, and it
16 was res- -- and we shoulda had it in discovery,
17 okay, so there's no way for this witness to have
18 testified about it, because we couldn't verify
19 it until I had the CEO under oath.

20 THE COURT: All right. I'll allow it.

21 MS. JONES: That's not what Dr. Cawley testified to.

22 His transcript will show what he testified to.

23 THE COURT: Well, I'll allow him to pur- -- pursue
24 this and I -- I'll allow you to address it
25 either in cross or in ---

1 MS. JONES: Yes, sir.

2 THE COURT: --- well, in the -- in the surrebuttal,

3 I mean ---

4 MS. JONES: Okay.

5 THE COURT: --- if it's not in the -- if it's not

6 supported by the transcript, then you can

7 address ---

8 MS. JONES: Thank you, Your Honor.

9 THE COURT: --- it.

10 **Q: My recollection is Dr. Cawley refers to a 100-**

11 **page report that these diagrams are a part of.**

12 **What is your recollection?**

13 **A: Well, he said there was a ---**

14 THE COURT: No. I don't know if that's proper.

15 Asking him -- your recollection is Dr. Cawley

16 testified, what is his response from a health

17 planner standpoint.

18 **Q: As a health planner, what are your concerns**

19 **about learning of the existence of a 100-page**

20 **master facility plan that you weren't provided?**

21 **A: Well, it -- it's -- it's certainly hamstrung my**

22 **ability to be able to consider alternatives to**

23 **the proposed project in this case, so.**

24 **Q: When we look at their -- MUSC's tertiary,**

25 **quaternary mission, what's the relevance of**

1 phase three, in terms of their mission?

2 A: Well, the phase three would provide additional
3 clinical space on the -- on the downtown campus,
4 which would allow them to -- to serve an
5 additional number -- I -- I don't know how many,
6 additional number of patients who require the
7 highly specialized services that are provided at
8 that facility.

9 Q: Would you expect to find that kind of
10 information in that 100-page report?

11 A: I would.

12 Q: I got that. I got that. While we're sitting
13 here talking about facilities, let's jump over
14 to Dr. Warr.

15 A: Okay.

16 Q: Do you recall Dr. Warr explaining that, where
17 the children's hospital is now, will be vacated,
18 I assume, in a matter of weeks, to go into the
19 new Shawn Jenkins facility?

20 A: That's my understanding, yes.

21 Q: Okay. You indicated that was an eight-floor
22 building, is that correct?

23 A: Correct.

24 Q: Okay. I -- I know we have not been given enough
25 information to know exactly what that building

1 is gonna be repurposed for, but as a health
2 planner, are there opportunities to create more
3 capacity in that building by back-filling?

4 A: There are.

5 Q: Okay.

6 OBJECTION:

7 MS. JONES: Same objection, Your Honor. And -- and
8 I also would ask the Court to disregard, or
9 strike, the -- the commentary lead-in.

10 THE COURT: I -- I will strike the commentary lead-
11 in, but ---

12 MR. SUMMER: Then I'll ask some open-ended questions.

13 THE COURT: Okay. Well, go ahead.

14 Q: How many floors is the current children's
15 hospital?

16 A: It's eight -- eight floors.

17 Q: Eight floors. And other than the two floors
18 that Ms. Goodlett discussed -- excuse, Ms. Smith
19 discussed in her testimony, have you pre- --
20 been presented with any other information about
21 the repurposing of all those other floors?

22 A: I mean, other than the CON applications that've
23 been filed to -- to -- in a very limited sense,
24 to backfill some of that space.

25 Q: Okay. Is there more space available, in that

1 building, for backfilling?

2 A: There is.

3 Q: Okay. I -- I -- do you recall Dr. Warr's
4 testimony about the 45-bed, adult medicine unit?

5 A: I do.

6 Q: Okay. And do you also recall his testimony
7 regarding, he'd rather that be 90 beds?

8 A: I recall that.

9 Q: Okay. When we look at just the fact that --
10 that that's a 45-bed unit for adult general
11 medicine, what opinions do you have about that
12 unit as it might pertain to the need for a 128-
13 bed community hospital?

14 A: Well, the, I mean, the general medicine unit
15 would -- would be where many of the types of
16 patients who go to a community hospital would --
17 would be served. Now, at medic university, I'm
18 sure, some of the non-tertiary patients are
19 served in specialty units within the hospital,
20 but the focus of the medic university downtown
21 is on providing specialized treatment and, you
22 know, in, my opinion, it's been consistent
23 throughout this proceeding, is that the ability
24 to redirect as many patients as they assumed in
25 the application, it's -- it's probably

1 overstated in the application, but yeah, I think
2 there's a likelihood that a -- a significant
3 portion of the patients who they are counting on
4 will continue to go to the downtown facility.

5 Q: Okay. Dr. Warr testified regarding patients
6 that present downtown, that if they got tired of
7 boarding, they'd give them the option to drive
8 out to the new hospital in Berkeley County. As
9 a health planner, what is -- what is your
10 opinion about such a proposition?

11 A: Well it's always difficult to -- to transfer
12 patients. I mean, they're -- beyond the -- the
13 clinical risk associated with it, there's also
14 the issue of the family and the logistics of
15 them being able to -- to attend to the patient
16 while they're -- during the course of their stay
17 in the hospital. And so, I mean, typically, you
18 would want to accommodate patients, you know,
19 where they present, if at all possible, and so,
20 I mean, I understand what he was saying and I
21 agree the -- the interim measure, that might be
22 a -- a solution to allow patients to be
23 redirected to the community hospital, but I
24 think a better system would be to make sure that
25 there's ample capacity downtown to -- to see

1 those patients.

2 **Q:** Would that transfer add added cost to the
3 patient?

4 **A:** It potentially could, if a patient had to be
5 transported by ambulance and the patient would
6 have to bear the expense.

7 **Q:** Dr. Warr testified that, as chief medical
8 officer, it has not yet been determined who
9 would be treated at the new MUHA hospital in
10 Berkeley County. As a health planner, what
11 opinion do you have regarding that assertion?

12 **A:** Well, that, you know, that's a concern I've had
13 all along is that there's been this, sort of,
14 general statement that non-tertiary and ob
15 patients are gonna be served at the new
16 hospital, but there was never really any cled-
17 -- clear demarcation about, you know, which
18 categories the patients would -- would go to the
19 new hospital and which would come downtown. And
20 there's also the problem that the -- the
21 patients have a choice and they may continue to
22 go downtown, regardless of what the intention of
23 what the new hospital is.

24 **Q:** Did you hear Dr. War's testimony regarding the
25 29-bed application?

1 **A:** **I did.**

2 **Q:** **Okay. And he seemed to be more familiar with**
3 **the 33-bed backfill than the 29-bed, but that's**
4 **a total of how many beds?**

5 **A:** **62.**

6 **Q:** **Okay. And he indicated that he needed to have**
7 **90 instead of 45. Would those two projects give**
8 **him more than the beds he's looking for?**

9 **A:** **Well, I mean, certainly as it related to general**
10 **medicine.**

11 **Q:** **Okay. Did you hear Dr. Warr's testimony**
12 **regarding the fact that MUSC cares for the**
13 **sickest, most complex patients in South**
14 **Carolina. Did you hear that testimony?**

15 **A:** **I did.**

16 **Q:** **Okay. As a health planner, what opinion do you**
17 **have regarding that assertion and whether or not**
18 **it's appropriate for MUHA to be seeking to build**
19 **a community hospital 20-something miles away?**

20 **OBJECTION:**

21 **MS. JONES:** **I object, Your Honor, that's pitting the**
22 **witnesses again. It is improper -- proper reply**
23 **testimony. He's not a medical doctor. He**
24 **doesn't have the basis to offer any kind of**
25 **medical opinion and it -- and it's just, you**

1 know, this -- this idea of reply testimony has
2 -- is clearly being abused and it's outside the
3 realm. It's improper.

4 THE COURT: Response?

5 MR. SUMMER: I mean, it's appropriate question. If
6 they're caring for the sickest, most complex
7 patients in South Carolina, who's going be in
8 that other hospital? I think that's a fair
9 question.

10 THE COURT: Okay. You asked him as a health
11 planner's ---

12 MR. SUMMER: I did.

13 THE COURT: --- standpoint, so I will disregard
14 anything -- he will not have any medical
15 knowledge, he would just only be doing it from
16 health planning.

17 **A: Yeah. I mean, my concern from a health planning**
18 **standpoint, is that -- well there are, sort of,**
19 **two concerns. One is that the patients would go**
20 **to Nexton, who would be more appropriately**
21 **treated downtown, and then, secondly, that**
22 **significant number of patients would still need**
23 **to be treated downtown and therefore the only**
24 **way to fill up the Nexton hospital would be**
25 **through taking patients away from other**

1 providers in the local market.

2 Q: Let's jump over to -- to Ms. Goodlett's
3 testimony. She testified that they have -- that
4 MUSC, or actually, I should be careful, that
5 MUHA has a debt-capacity of 1.4 billion dollars.
6 Based upon your review of MUHA's financials,
7 what opinion do you have regarding that debt-
8 capacity?

9 OBJECTION:

10 MS. JONES: Your Honor, I object. He's not a
11 certified public accountant.

12 MR. SUMMER: He's been qualified as an expert in
13 healthcare finance, so I do believe he has the
14 ability ---

15 MS. JONES: Healthcare finance is paying for medical
16 facilities, it's not debt-capacity or -- or
17 analysis of a -- of a -- of a consolidated
18 capra.

19 MR. SUMMER: It's healthcare finance, Your Honor, he
20 testifies about this all the time.

21 MS. JONES: It is not healthcare finance. She was
22 not qualified as a healthcare planner, she is a
23 CPA, and the Chief Financial Officer of -- of --
24 of MUHA and she testified based on her expertise
25 as a ---

1 MR. SUMMER: No, she did not. She was a fact wit- -

2 --

3 MS. JONES: --- certified public accountant.

4 MR. SUMMER: --- she was a fact witness.

5 MS. JONES: Yeah. And -- and fact, because that's
6 part of her job. She does it in her capacity as
7 a CPA. That is -- this is outside the realm and
8 it's not, again, proper reply, and I would ask
9 for the continuing objection again.

10 THE COURT: Well, you're getting that but ---

11 MS. JONES: Yeah.

12 MR. SUMMER: I -- I just -- number one, she wasn't
13 an expert, she only testified as fact witness,
14 that's number one. Number two is, he -- he is
15 qualified in healthcare finance and that's
16 exactly what we're talking about.

17 THE COURT: You're asking him about what?

18 MR. SUMMER: Her assertion that MUHA has a 1.5
19 billion dollar debt-capacity. I'm asking him --
20 -

21 THE COURT: He's a healthcare planner, how ---

22 MR. SUMMER: He is -- he has be qualified in
23 healthcare planning ---

24 THE COURT: --- and that makes him ---

25 MR. SUMMER: --- and healthcare finance. He's been

1 qualified as both.

2 THE COURT: And that makes him a expert, though, in
3 debt-capacity?

4 MR. SUMMER: In terms of finance, yes, Your Honor,
5 because finance is about the dollars to run the
6 systems. That's what it's about.

7 THE COURT: Well, I don't know that at this point in
8 time, so if you wanna lay a foundation, fine,
9 but I -- I sustain the objection at this point
10 cause I don't ---

11 MR. SUMMER: I -- I'll ---

12 THE COURT: --- I don't know that he has that.

13 MR. SUMMER: I'll lay a foundation for it.

14 **Q: Let's go quickly over your educational**
15 **background. Where'd ---**

16 THE COURT: I don't need it all, I just -- if he's
17 got something in debt ...

18 **Q: Let's talk about healthcare finance for a few**
19 **minutes.**

20 **A: Okay.**

21 **Q: Okay. Explain to the Court what you routinely**
22 **do for your clients in terms of financing and**
23 **forecasting.**

24 **A: Well, in terms of financing, we oftentimes look**
25 **at historical financial statements and -- and**

1 when I first started doing healthcare consulting
2 work, a significant part of our work was in
3 doing debt-capacity analysis. During the early
4 80s -- I'm dating myself, but there was a
5 tremendous expansion going on in the healthcare
6 industry because of the payment system and so
7 forth, and hospitals were always concerned about
8 their debt-capacity and their ability to
9 undertake new projects and their -- and their
10 ability to be able to fund those projects and
11 also to maintain consistency with prior bond
12 covenants that they had and so, we would
13 frequently undertake debt-capacity analysis, you
14 know, for those clients. And we also prepared
15 financial feasibility studies that looked at
16 issues such as debt service coverage and some of
17 the things that Ms. Goodlett was discussing in
18 her testimony. So I -- I do have a background
19 in that and -- and from time to time I still
20 engage in that type of analysis and from time to
21 time we've been asked to look at whether the
22 performance of a particular hospital would be
23 consistent with achieving certain types of
24 ratings under -- under the various rating
25 agencies.

1 THE COURT: Ask your next question.

2 Q: Did -- were you present for Ms. Goodlett's
3 testimony regarding her opinion that MUHA had
4 the ability to borrow up to 1.4 billion in debt?

5 A: I -- I did hear that testimony.

6 Q: As an expert in healthcare finance, what is your
7 opinion regarding MUSC's debt-capacity?

8 MS. JONES: Same objection, Your Honor.

9 THE COURT: I overrule that one.

10 A: Okay. Well, there's sort of two different
11 issues here and -- and one is, what would HUD
12 allow them to do? And HUD has very -- very low
13 bar, if you will, in terms of financial metrics
14 that have to be satisfied. But from the
15 standpoint of a health planner that does
16 financial health planning, I would be very
17 concerned if the medic university were to
18 undertake a 1.4 billion dollar expansion of
19 their debt when they currently have negative
20 equity in -- in the entity. And as Mr. Johnson
21 testified to earlier, the numbers on the sheet
22 that she was looking at seemed to be
23 significantly different from some of the numbers
24 I had seen historically for the medic
25 university, in terms of their projections of

1 what their bottom-line cash flow was, so I -- I
2 mean, I think it would be in- -- incautious of
3 the medic university to undertake a -- a capital
4 spending program that would ramp up to 1.4
5 billion dollars.

6 Q: Let -- let's -- while we're on this topic, let's
7 talk about the notion -- we heard Ms. Goodlett
8 testify that they had 420 million dollars cash
9 on-hand, did you hear that?

10 A: I did.

11 Q: She also indicated that that's only 80-days cash
12 on hand.

13 A: Right.

14 Q: Okay. So what concern do you have as a health
15 planner and as an expert in healthcare finance
16 regarding those two numbers?

17 A: Well, I mean, in -- in the context of -- I think
18 the question was asked, could you pay cash for
19 this facility. That -- that gave me concern,
20 because if you were to take 325 million out of
21 the 400 plus million that they have, it would
22 leave a very small amount of cash relative to
23 the days cash on-hand metric. This is a -- a
24 multi-billion dollar operation and -- and you
25 need to have a cushion because strange things

1 happen in healthcare and -- and cash flow,
2 sometimes, doesn't go the way you think it does.
3 And so, 80 days cash is a better number than
4 what they had five years ago, but it's a pretty
5 average number in terms of looking at other
6 types of not-for-profit hospitals operating in
7 -- in the U.S. And so, I don't believe that
8 they are in a -- in a -- in a flush cash
9 position now, and I think that -- that they were
10 to tap down that cash any significant extent, it
11 would put them in a -- in a pretty significant
12 risk situation.

13 Q: Ms. Goodlett also testified about two other
14 issues. One she testified extensively about
15 HUD, but she also testified about the DSH. When
16 you look at cash on-hand and days cash on-hand,
17 and -- and you look at DSH and HUD as described
18 by Ms. Goodlett, what other concerns do you have
19 regarding the system?

20 A: Well, I mean ---

21 OBJECTION:

22 MS. JONES: Objection. Improper question.

23 THE COURT: You just asking him, in general, about
24 what other concerns do you have regarding the
25 system?

1 MR. SUMMER: Specifically as it pertains to Ms.

2 Goodlett's testimony regarding the

3 disproportionate share program and HUD.

4 THE COURT: Okay.

5 MS. JONES: There's no specifics in regards to any

6 of that, Your Honor. It -- it is a general,

7 open-ended, improper reply question.

8 MR. SUMMER: Yeah, well, if you gon' let me lead,

9 I'll do it.

10 MS. JONES: No. The rules are the rules.

11 THE COURT: Yeah.

12 MR. SUMMER: All right. Well I'll ask it this way.

13 **Q: You were present for the testimony regarding the**

14 **disproportionate share program and HUD offered**

15 **by Ms. Goodlett?**

16 **A: I was.**

17 **Q: Okay. All right. What, if any, concerns do you**

18 **have about those two issues and her testimony**

19 **regarding 80 days cash on-hand and 420 million**

20 **dollars?**

21 MS. JONES: Again, it's a -- is asking a general,

22 open-ended question about DSH, nothing specific.

23 THE COURT: I'll overrule that.

24 MR. SUMMER: Okay.

25 THE COURT: Some of this stuff, I'm not so sure

1 about the probative value of the last two
2 answers, but if you're -- go ahead, we'll just
3 ...

4 **A:** Well -- well DSH is disproportionate share of
5 payments. That's a -- an add-on payment that
6 certain hospitals receive for -- for treatment
7 of medically underserved groups, charity and
8 Medicaid patients. And those -- those programs
9 are -- are not long-term guarantees, I mean, the
10 federal government tinkers with DSH payments all
11 the time. And given that the hospital is -- is
12 not in a -- in a great situation, in terms of
13 cash availability, a significant reduction in
14 the DSH payments could have a, you know, a
15 material affect on the ongoing ability at the
16 hospital to be compliant with other -- other
17 standards -- I mean, other covenants that they
18 have under HUD.

19 **Q:** All right. Let's move over to Ms. Becky Smith,
20 please. I only have a couple of questions
21 regarding Ms. Smith's testimony. Do you recall
22 Ms. Smith saying that there's been no
23 comprehensive analysis, that she's aware of for
24 backfilling the children's hospital when it's
25 vacated?

1 A: Yes.

2 Q: Okay. Do you recall her responding to Ms.
3 Crum's question, saying that a study of how to
4 best use that building could cost 50 to 100,000
5 dollars, do you remember that?

6 A: I do.

7 Q: As a health planner, in your opinion, would that
8 be money well spent?

9 A: In my opinion, it would ---

10 Q: And why?

11 A: --- it -- it's a relatively small amount of
12 money, particularly in comparison to a 325
13 million dollar capital expenditure for a new
14 hospital so, I mean, I was, quite honestly, I
15 was surprised when it was that low a figure when
16 she -- when she said it, but I, you know, I
17 think that, you know, maybe the -- this
18 application, sort of, put the cart before the
19 horse in that there hasn't been a -- a detailed
20 analysis of what could be done on the campus,
21 before pursuing a -- a hospital in Nexton.

22 Q: Okay. Let's turn our attention to Mr. Levitt
23 and Mr. Levitt's testimony. Let's start with
24 TMC 41, please. If we can put that up.

25 (TMC Exhibit Number 41 was referenced at this time.)

1 Q: And you'll wanna go to the next page. Yeah.
2 We've been talking a lot about this, but you
3 heard Mr. Levitt's testimony about here --
4 here's who we're gonna be treating and these are
5 the appropriate patients. Would -- would these
6 be appropriate patients for a community
7 hospital?

8 A: In -- in some cases, yes. In some cases, no.

9 Q: And why?

10 A: Well if we look -- if we can blow up, maybe, the
11 top half of that, and it's -- and if we look at
12 the number three ranked DRG, heart failure and
13 shock with major complications or comorbidities.
14 You know, this hospital will not have cardiac-
15 cath lab, it will not have open-heart surgery
16 capability. I -- you know, there may be some
17 patients -- I -- I -- I'm not a clinician, I'm
18 not gonna get into that, but, typically, when
19 you have patients who are having serious cardiac
20 events, you want to get them to a comprehensive
21 center and this hospital will not be one. And
22 we could go down the list and -- and pick out
23 other things one here, but this just goes to the
24 issue of whether or not they're really gonna be
25 able to redirect as many patients as was

1 projected in the application to the new
2 facility.

3 Q: Okay. Thank you. Let's go next to Roper St.
4 Francis 119, please.

5 (RSF Exhibit Number 119 was referenced at this time.)

6 Q: And let's go to page 17, we'll start there.
7 Okay. Do you remember the testimony of Mr.
8 Levitt regarding the Tri-County hospital
9 compared to the state of South Carolina?

10 A: I do.

11 Q: Okay. Is that a valid comparison?

12 A: In my view, it's not.

13 Q: And why?

14 A: Well, first of all, under the state health plan
15 that we're operating under in this particular
16 proceeding, the Tri-County area is one planning
17 area, one -- one service area for purposes of
18 bed need. And two, the state of South Carolina
19 average really doesn't have any relevance to a
20 particular planning area because use rates vary
21 dramatically from one part of the state to the
22 other. And so, just making an assumption that
23 the whole state oughta have some sort of ratio
24 that's exactly equal to the state-wide average
25 really doesn't make any sense. Another concern

1 is that, services are developed in urban areas
2 in a different way than they would be, say, in
3 a suburban county.

4 Q: Does that have to do with critical mass?

5 A: It -- it does. Critical mass and -- and
6 tertiary services that need to be regionalized.
7 And so, typically, you're gonna have -- large
8 urban counties are gonna have more beds than the
9 surrounding counties because they're gonna serve
10 those broader needs of the population, those
11 highly specialized services. So, a bed to pop-
12 -- a bed to population ratio really doesn't
13 capture the nuance of that. And then the -- the
14 third concern I have -- I have is that, this
15 doesn't really give you -- this type of analysis
16 doesn't give you any information about where the
17 beds are located, relative to the county
18 boundaries. And so, I -- I think this -- this
19 analysis really doesn't add much to the -- to
20 the discussion of -- of whether or not it's
21 appropriate to develop this hospital.

22 Q: Okay. Let's -- if we could pull up page 497 in
23 the DHEC record, please. Do you remember Mr.
24 Levitt's testimony about maldistribution?

25 A: I do.

1 Q: Okay. And -- and I -- I'm gonna ask you in the
2 context of Berkeley County as part of a region
3 and not an island, but do you view that -- there
4 to be a maldistribution problem here?

5 A: I -- I don't. You know, I think that what we
6 have is, we have downtown facilities that are
7 tertiary facilities and then we have other
8 facilities that are located outside of the
9 downtown area. The facilities are generally
10 located in areas relatively close to the
11 population concentration, you know, for example
12 Mt. Pleasant has two hospitals and that's a high
13 growth, densely populated area. West Ashley has
14 a hospital with St. Francis. And then we have,
15 now, three hospitals located in the north area
16 of Charleston. You've got one at Trident and,
17 if we look at this map, I mean, I -- I think
18 it's already been testified to that the -- the
19 yellow, or light colored areas, are where the
20 population is most concentrated and we have
21 hospitals, like, right in the notch here where
22 -- where Trident would be and we got Summerville
23 over here and then we've got the -- the new
24 Roper Hospital -- that's not exactly where it
25 is, but -- up here. And so, we got that

1 population concentration pretty well covered by
2 -- by three existing facilities as well as a
3 number of freestanding emergency departments in
4 that area. In the southern part of Berkeley
5 County, down here, which is Daniel Island and --
6 and areas surrounding that are very close to the
7 Mt. Pleasant areas, so as it relates to the
8 population that's an issue in this case, there
9 isn't a maldistribution of beds. The beds are
10 very proximate to the -- to the population
11 concentration.

12 Q: Now, Ms. Murdock testified that she just didn't
13 think Mt. Pleasant was a good proxy for what
14 could happen in Berkeley County, do you agree?

15 A: I do not.

16 Q: And why?

17 A: Well, I think -- I think she -- one of the
18 things she mentioned was that Mt. Pleasant
19 didn't have the kind of growth that was going on
20 in Berkeley County and -- and I -- I guess I
21 take issue with that because Mt. Pleasant was,
22 very recently, I think it was in October there
23 was an article in the local paper that the
24 Census Bureau said that Mt. Pleasant was the
25 second fastest growing community in the United

1 States. It's got a population base of over
2 80,000, just in the city of Mt. Pleasant,
3 without counting the surrounding areas. So
4 you've got a large, critical mass of people in
5 that area. You had a situation similar to
6 Berkeley County where a fair number of people
7 were traveling downtown historically to receive
8 their services, either at Medical University or
9 at Roper Hospital. And the idea was, by putting
10 additional beds in Mt. Pleasant, when Mt.
11 Pleasant hospital was -- was approved, would
12 reverse that out-migration to the downtown area.
13 It didn't happen. And -- and I think we have a
14 very similar situation going on now in Berkeley
15 County. We -- we do you have a growing area,
16 I'm not denying the growth in the area, but
17 we've got available capacity, as they did in Mt.
18 Pleasant, at East Cooper Medical Center. We
19 have patient's going downtown and there's no
20 guarantee that those referral patterns are gonna
21 change dramatically as a result of the approval
22 of this. So I -- I think -- I think the analogy
23 is -- is valid and I -- I think Ms. Murdock,
24 maybe, wasn't aware of -- of the level of growth
25 that was going on in Mt. Pleasant.

1 Q: Okay. Let's start going through MUHA 38, if we
2 could start there. Let's start with 38A.

3 (MUHA Exhibit Number 38a was referenced at this
4 time.)

5 Q: When we previously looked at this, but this was
6 a slide that doc- -- mis- -- Mr. Levitt
7 commented on in terms of -- of investment by
8 these two facilities. When -- when you look at
9 this, what does that investment indicate to you,
10 as a planner?

11 A: Well, that the existing hospitals ---

12 OBJECTION:

13 MS. JONES: Your Honor, I object. This is not any -
14 - this is, it you know information is been
15 plowed through for the last three weeks, it's
16 not reply.

17 THE COURT: What is -- Mr. Levitt may have testified
18 to it, her point is, y'all also offered evidence
19 regarding that so how -- how do you reply to
20 anything ---

21 MR. SUMMER: I'll move on from A and I'll go to B.
22 Let's go to B, please. I'll go to the ones that
23 Mr. Thomas objected to vociferously.

24 (MUHA Exhibit Number 38b was referenced at this
25 time.)

1 Q: Let's start with this -- this -- these
2 conclusions in red that Mr. Levitt made about
3 bed lea- -- bed need left unserved by Trident.
4 What is your opinion of -- of that conclusion in
5 the health plan?

6 A: Well I -- I don't think this particular analysis
7 would allow one to reach that conclusion, I
8 think, with the number of flaws and the way this
9 analysis is presented and I can discuss those,
10 if you want.

11 Q: I would like for you to, yes.

12 A: I mean, first of all, an individual hospital
13 service area is not a planning area for purpose
14 of bed need analysis. In South Carolina this --
15 the South Carolina health plan either defines
16 counties, or multi-county areas, as being the
17 appropriate planning areas for determining bed
18 need. So that's -- that's one concern I have,
19 you don't just take a hospital service area and
20 see how many beds are needed in that, you look
21 at a fixed planning area. Secondly, the zip
22 codes that are included in the service area for
23 Trident include zip codes that have other
24 hospitals in them, which were completely
25 ignored. For example, in Summerville there's

1 124-bed hospital and in Berkeley County, now, we
2 know that in those zip codes closest to the
3 Charleston County and Dorchester County lines,
4 we have a new 50-bed hospital that wasn't
5 accounted for. This goes into the area
6 approaching the downtown of Charleston, where we
7 know we have the Medic University with 656 beds
8 and Roper with -- I don't remember their exact
9 number of beds -- 246, or something like that.
10 So, I mean, the bottom line is that this
11 analysis doesn't really provide any -- any good
12 health planning information because we know that
13 in the Tri-County area, under the methodology,
14 in the South Carolina health plan, there's
15 actually an excess of 61 beds in the -- in the
16 -- in the relevant planning horizon that was in
17 the 2017 2018 plan.

18 Q: Well let's go over the 38C, please.

19 (MUHA Exhibit Number 38c was referenced at this
20 time.)

21 Q: What -- what, if any -- as a health planner,
22 what are your concerns about this betrayal of
23 drive times?

24 OBJECTION:

25 MS. JONES: Your Honor, again, the drive times have

1 been gone through ---

2 THE COURT: That was presented significantly in case

3 in chief ---

4 MR. SUMMER: I'll skip it.

5 THE COURT: Okay.

6 Q: Let's go over to G.

7 (MUHA Exhibit Number 38g was referenced at this
8 time.)

9 Q: But we don't have to spend a lot of time on
10 this, but how do hospitals get across the street
11 from each other?

12 A: Well, many of them were developed long before
13 certificate of need was around, you know, if you
14 look at the Charleston example and -- and I'm
15 old enough to remember that -- you used to build
16 hospitals around where doctors were. The
17 doctors wanted to have hospitals around them so
18 that they could just, easily, go from their
19 offices to the individual hospital, so when I
20 was growing up in Charleston we had St. Francis,
21 we had Roper, and we had Medic University, all
22 on consecutive blocks, the doctor's offices all
23 around there. Somebody figured out, maybe, it
24 was a better idea to put the hospitals where the
25 people are and we started taking a different

1 approach to that. And so, a lot of these
2 hospitals that were developed later had to show
3 some sort of geographic accessibility issue.
4 Now there are a couple on here, for example, the
5 St. Francis Eastside and Patewood Memorial,
6 where they're very close together and I have to
7 write that off as a poor health planning
8 decision in approving two hospitals so close
9 together.

10 Q: And -- and sometimes hospitals cut deals, don't
11 they?

12 A: They do. So, I mean, I -- I don't think this is
13 really any indication that indicates that,
14 because some hospitals are close together.
15 There's a need for MUHA-Nexton to be close to
16 the Roper-Berkeley Hospital.

17 Q: Let's jump over to 38H.

18 (MUHA Exhibit Number 38h was referenced at this
19 time.)

20 Q: And let's just take a look -- this is the six
21 bed -- this is excerpts from the six bed app,
22 and it appears in two places, I think, right
23 now. But if we go to 38H and go to the Exhibit
24 3, which is one, two, three, fourth page.
25 Exhibit 3, the map. Okay. Mr. Levitt was

1 critical of the service area and -- and why do
2 you believe this is an appropriate service area
3 for Trident?

4 A: Well, I mean, Tri- -- you know, as I recall, Mr.
5 Levitt's testimony talked about the fact that
6 this was a broad area and included areas that
7 came down to the peninsula and it went all the
8 way to the north side of the lakes and -- but,
9 I mean, Trident is a -- is a tertiary facility,
10 I mean, secondly it's been in place 46 years now
11 and it's developed referral networks over that
12 time. It -- it provides services that will not
13 be provided at the proposed Nexton hospital and
14 so, I mean, this service area is based on -- on
15 real, live data, I mean, this is actually where
16 patients come from, it's not a -- not a
17 theoretical assumption about where patients are
18 coming from. And -- and so, what this
19 recognizes that if you -- if you have a -- a
20 tertiary level of services, you have a critical
21 mass of beds, in this case more than 300 beds in
22 the facility, it you can have a larger drawing
23 area but you don't start off that way. That --
24 that would be my comment.

25 Q: Okay. Let's go to 38J, please, sir.

1 (MUHA Exhibit Number 38j was referenced at this
2 time.)

3 Q: Actually, I'm trying to remember. It is 38J
4 part of, just, this long set of iterations?

5 A: It's not.

6 Q: It's not. Mr. Levitt testified regarding these
7 discharges by zip code, is this probative?

8 OBJECTION:

9 MS. JONES: Your Honor, that is a completely improper
10 question. This whole -- this whole deal about
11 the patient origin data and the zip codes and
12 the actual historical information of MUSC has
13 been plowed through for three weeks. This is
14 not re- -- reply and it was an improper
15 question.

16 MR. SUMMER: I may have a question that resolves
17 that.

18 THE COURT: Okay.

19 MR. SUMMER: Is J in evidence?

20 MS. JONES: Court decides the ---

21 MR. SUMMER: 38J in ---

22 MS. JONES: --- probative value of testimony in
23 evidence. I didn't hear your question.

24 MR. SUMMER: I'm trying to find out if it's even in
25 evidence. Because we were trying to pull ---

1 THE COURT: Because then it won't be probative.

2 MR. SUMMER: It won't be probative. Our record
3 indicates it's not in evidence.

4 THE COURT: Yeah.

5 MR. SUMMER: Okay. I beg the court's indulgence.

6 We don't have it -- nobody on this side of the
7 court has it listed, but if the record reflects
8 it's in, it's in.

9 THE COURT: Well, the record is my staff attorney.

10 MS. BUCKNER: Yeah. I -- I have it came in, but
11 that it was in the middle of Rivers 118, 119.
12 We, sort of, started out of order before you got
13 into all of the MUHA exhibits, but it was
14 admitted, with objection, is what I have but I
15 could be wrong.

16 THE COURT: Plus, the question of whether it's
17 probative or not does pretty ...

18 **Q: All right. Let's look over, if you would Mr.**
19 **Sullivan, L through V, or all these various**
20 **iterations, are they not?**

21 **A: Yeah.**

22 **Q: So let's see if we can skip and go all the way**
23 **down to V, please.**

24 **(MUHA Exhibit Number 38v was referenced at this**
25 **time.)**

1 **A: Okay.**

2 **Q: I -- Mr. Levitt talked at length about all the**
3 **different iterations and it was, so what this**
4 **and so what that, and -- and basically said that**
5 **your computations were erroneous. Is this a**
6 **fair portrayal of what your opinions are?**

7 **OBJECTION:**

8 **MS. JONES:** Objection, your honor, pitting the
9 witness. Just asking him to bolster his
10 previous testimony ---

11 **MR. SUMMER:** Can I get ---

12 **MS. JONES:** --- it's not reply.

13 **MR. SUMMER:** This -- this is a -- if we want to go
14 through every one of these, I don't have a
15 problem, and I'll do it and we can fight over
16 it.

17 **MS. JONES:** The issue's bound. They presented him
18 to put this up, we said it's not so. The issue
19 is bound and it's been submitted to the Court
20 for determination. It's in reply.

21 **MR. SUMMER:** Your Honor ---

22 **THE COURT:** He ---

23 **MR. SUMMER:** --- it's factual ---

24 **THE COURT:** --- Mr. Levitt offered an opinion.

25 **MR. SUMMER:** He did.

1 THE COURT: Mr. Sullivan's already offered an opinion

2 ---

3 MR. SUMMER: Here's the ---

4 THE COURT: --- so, what ---

5 MR. SUMMER: --- here's the ---

6 THE COURT: --- what I want to know is, how is this

7 ---

8 MR. SUMMER: I -- I have a -- I can lay a better
9 foundation.

10 THE COURT: Okay.

11 MR. SUMMER: Let me do it this way.

12 **Q: All right. All of those iterations that Mr.**
13 **Levitt portrayed to the Court, are they**
14 **factually accurate?**

15 **A: It -- it's all based on supposition. So, I**
16 **mean, there's no -- I -- I don't know that it's**
17 **factual. It's -- it's all based on supposition,**
18 **but -- I don't know what else I can say to that.**

19 THE COURT: Well, isn't most of health planning based
20 on supposition?

21 MS. JONES: Right.

22 MR. SULLIVAN: It -- it -- it is, but some
23 suppositions are better than others.

24 MS. JONES: Well put.

25 THE COURT: And your's is the right one? Okay.

1 Q: All right. So -- so, let -- let's look at this
2 notion of, you know, the fluctuating in-
3 migration. Is there any basis, in fact, for
4 these variations?

5 A: There -- there -- there are not. And, I mean,
6 the -- the first -- the -- the -- let me just
7 point to the two. There's -- there's two
8 different alternate service areas that were
9 presented and -- but in -- in essence, what they
10 are is the same service area as was in the
11 application. He -- he -- he shortened the
12 number of ZIP Codes that he kept in the service
13 area, but then he added that the patient's who
14 he left out from what he had in the application
15 through the in-migration factor. So he didn't
16 change any of the underlying factors in the
17 analysis and so, you end up, basically, the same
18 place. There's just a small variation in these
19 numbers. And so, I -- I don't think that that
20 -- that really provides any sort of alternative
21 analysis to what was presented in the
22 application.

23 Q: Is it still based on redirection?

24 A: It's based on 100 percent redirection. It's
25 based on the same redirection rate that he

1 assumed in the application and it's based on the
2 same lengths of stay that he assumed in the
3 application.

4 Q: Thank you. Let's turn over to W, please.
5 (MUHA Exhibit Number 38w was referenced at this
6 time.)

7 Q: Now -- W. In this slide, Mr. Levitt basically
8 recasted some of your numbers to say that -- and
9 then foots them to say that they are in
10 accurate. Is this a factually accurate
11 depiction?

12 A: In -- in my view, it's not. It's really -- it's
13 really a two page exhibit, I mean, and this is
14 the first of two pages.

15 Q: Okay.

16 A: For a number of reasons.

17 Q: Why?

18 A: Well, first of all, let me -- let me just
19 address one thing that Mr. Levitt said. He --
20 he said that my projec- ---

21 OBJECTION:

22 MS. JONES: Objection. Non-responsive.

23 MR. SUMMER: He's answering my question. He -- he
24 said it was factually inaccurate and I asked him
25 why.

1 THE COURT: Well, then he said, first let me address
2 what Mr. Levitt said. Is that -- is that
3 necessary for you to respond to the -- whether
4 it's factually accurate or not?

5 MR. SULLIVAN: Yeah. It's one of the factual
6 inaccuracies, I think ---

7 THE COURT: All right. I'll overrule that.

8 A: Okay. When -- when he was first testifying
9 about this, he -- he pointed to the 4,106
10 discharges in my -- in year three from Sullivan
11 298 that's in the first line of this and he said
12 that that was more than the discharges that were
13 projected in the application, but he was looking
14 -- he was pointing to the 3,990 number, not the
15 5,700 number, which is the comparable number,
16 because that's the year three number. And so,
17 in fact, my projections were based on the fact
18 that there would be about a 1,600 discharge
19 reduction in the overall volume of patients and
20 so, the fact that I show a loss and he showed a
21 gain should not be surprising. So I -- I think
22 there was one -- one inaccuracy there. And so,
23 if we could turn to the second page ---

24 Q: You talking about X?

25 A: X.

1 MR. SUMMER: All right. Can we go to X, please? 38

2 X, for the record. Pull it up for us, please.

3 (MUHA Exhibit Number 38x was referenced at this
4 time.)

5 A: And -- and I won't go too far into weeds, in
6 terms of whether you use year three or year one
7 as your base cost, but let's look at the bottom
8 line. In -- in the CON application, Mr. Levitt
9 had projected with 5,700 discharges in the -- in
10 the third year that the project would make 14
11 and a half million dollars, roughly, in net
12 income. The way that he recast my projections,
13 he assumes with 1,600 fewer discharges, the
14 project would make more money and, I mean, I
15 think just from a, you know, from a standpoint
16 of -- of reasonableness, one would have to
17 question whether or not that's a reasonable
18 outcome. You know my projection that they would
19 lose 2.2 million dollars in the -- in the third
20 year with 1,600 fewer discharges, so a 30
21 percent reduction basically in the -- in the
22 overall level of volume, would seem to be much
23 more consistent with what one would expect with
24 a reduction in volume of that level. So, I
25 think, what Mr. Levitt did was he found a way,

1 by taking the year one as his base year and,
2 because of what I mentioned earlier on my other
3 testimony, that they assumed 100 percent fixed
4 cost, it creates a -- a distortion, if you will,
5 in projecting the numbers forward so, you know,
6 I think the result that comes out of his recast
7 of -- of my financial projections comes up with
8 a untenable result.

9 Q: Less pages for more money.

10 A: That's right.

11 Q: Okay. While we're on this more money, let's go
12 to -- over to Y. 38Y.

13 (MUHA Exhibit Number 38y was referenced at this
14 time.)

15 Q: What -- what -- compared to the entire downtown
16 hospital, is it -- is it legitimate to assume
17 that there is a scenario under which this small
18 hospital could make 30 million dollars in 2025?

19 OBJECTION:

20 MS. JONES: Object to the form. Is it legitimate.

21 THE COURT: Yeah.

22 Q: As a health care planner, do you have any
23 concerns about the reliability of a forecast
24 that shows this thing making 30 million dollars?

25 A: I -- I do.

1 Q: And why?

2 A: I mean, one, as a startup hospital I -- I've not
3 seen that in my experience a hospital achieve
4 that level of profitability in such a short
5 period of time. Two, the ability -- the ability
6 of this hospital to achieve a 50-50 split of
7 outpatient revenue when it's operating -- and
8 I'm looking at the fourth column here, Your
9 Honor. That's -- that shows the 29.9 million
10 dollar bottom line, and it was based on the
11 assumption that outpatient revenues would equal
12 the inpatient revenues, when they're going to
13 continue to operate a freestanding emergency
14 department about 4 miles away from the hospital
15 and the emergency department is one of the major
16 sources of outpatient revenue. I just don't
17 think it's reasonable to go there. And then, I
18 guess, the third comment would be that these
19 projections of profitability are based on the --
20 the flawed assumptions that Mr. Johnson
21 testified to earlier on.

22 Q: All right. Thank you. Let's -- let's turn our
23 attention to -- I think since Mr. Levitt walked
24 through every single project review criteria, or
25 a lot of them, I don't think it's necessary for

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1 us to go through all of those for the Court,
2 but, in particular, I want to turn your
3 attention to ---

4 THE COURT: Hold on a second.

5 Q: --- Mr. Levitt's testimony ---

6 THE COURT: Hold on the second. We'll take a short
7 break.

8 MR. SUMMER: Thank you.

9 THE COURT: About how much longer you gonna be?

10 MR. SUMMER: I think I can probably finish up in the
11 next 15, 20 minutes.

12 (Off the Record)

13 THE COURT: Okay.

14 MR. SUMMER: Thank you, Your Honor.

15 Q: Mr. Sullivan, I want to turn your attention now
16 to Mr. Levitt's testimony regarding 61-15,
17 Section 802, 1 through 33. Do you remember that
18 line of questioning?

19 **A:** **I do.**

20 Q: Okay. What I'd like to do is, just, hit a
21 couple high points. I'm not gonna walk you
22 through all of these regulations, but the one I
23 want to talk with you first is, obviously,
24 number one, which is the most important. Number
25 one, need, the proposal shall not be approved

1 unless it is in compliance with the South
2 Carolina health plan. So, my first question to
3 you is, is it your understanding that that is an
4 absolute requirement for the approval of
5 certificate of needs South Carolina?

6 A: Yes.

7 Q: Okay. Now what I'd like to do is turn you --
8 Mr. Levitt talked about the standard five. If
9 we could pull the standard five up on the
10 17 18 plan, and let's just -- it goes between
11 two pages. Let's blow that up. We probably can
12 recite this by heart now, but the -- the most
13 important sentence at the end there, the
14 applicant might justify, through patient origin
15 and other data, the need for a new hospital at
16 the chosen site and the potential adverse impact
17 a new hospital at the chosen site could have on
18 the existing hospitals in the service area. Do
19 you see that?

20 A: I do.

21 Q: And did you hear Mr. Levitt's testimony that
22 MUHA had complied with that requirement?

23 A: I did.

24 Q: Okay. And would you agr- -- well, let me ask it
25 this way, based upon your opinion as a

1 healthcare planner, has MUHA complied with that
2 standard?

3 A: My -- my opinion is that they have not.

4 Q: And why?

5 A: You know, after hearing Mr. Levitt's testimony,
6 I -- I -- I still hold to believe that they have
7 not demonstrated, through patient origin. And
8 while they did rely on patient origin, the way
9 that they applied it in this case was -- I -- I
10 don't believe, leads to a rational conclusion
11 about where their patients are gonna come from
12 and related to that is that the new hospital at
13 the chosen site is not needed and that there
14 will be an adverse impact on existing providers
15 in the service area.

16 Q: Okay. And so, again, I'm not gonna go through
17 your prior testimony, but you are consistent
18 today with your prior testimony?

19 A: I am.

20 Q: All right. Let's go now -- rather than walking
21 through each of the other individual criteria,
22 do you agree or disagree with -- let me rephrase
23 this again so we can get through it. Was there
24 any part of Mr. Levitt's testimony that changed
25 your opinion regarding the -- this project's

1 compliance with South Carolina criteria?

2 A: No.

3 Q: Okay. I -- I want to talk about -- do you
4 remember the testimony -- we've had a lot of
5 testimony in this case about 29401, correct?

6 A: We have.

7 Q: Okay. And what did MUHA assume about 29401 in
8 its application?

9 A: That they would have a 35 percent redirection of
10 patients from that zip code.

11 Q: Do you remember Mr. Levitt's testimony regarding
12 what Summerville's experience has been in
13 pulling people from 29401 up to Summerville?

14 A: I do.

15 Q: And what was that number?

16 A: It was one.

17 Q: One. In a single year?

18 A: Correct.

19 MR. SUMMER: I beg the Court's indulgence. All
20 right. Thank you, Your Honor.

21 THE COURT: That was a fast 15 minutes.

22 MS. JONES: Ready?

23 THE COURT: I'm ready if y'all don't need a break.

24 MS. JONES: No. I don't need a break. I'm ready.

25 MR. SULLIVAN - CROSS-EXAMINATION BY MS. JONES:

1 MS. JONES: All right. The first thing I wanna ask
2 you, Mr. Sullivan, is about your -- and I would
3 like to renew my objection. This is subject to
4 my objection.

5 THE COURT: Subject to your objection.

6 MS. JONES: Thank you.

7 Q: All right. You talked about you didn't think
8 Ms. Murdock had adequately addressed, or
9 reviewed, or done a study on adverse impact, is
10 that what you said?

11 A: I did.

12 Q: Okay. Where is your study on adverse impact?

13 A: Well, I think we've shown throughout ---

14 Q: I didn't ask you that. I asked you where your
15 study is.

16 A: Well, I mean, all of my analysis show that there
17 would be an adverse impact.

18 Q: Where is your study?

19 A: You're asking me, did I ha- -- do a specific
20 quantification of adverse impact?

21 Q: Yeah.

22 A: No.

23 Q: So, you don't know the amount, you don't know
24 the dollars, and you're not here to tell the
25 Judge any of those specifics, are you?

1 A: I'm not.

2 Q: Okay. Okay. You said that Ms. Murdock also
3 didn't adequately address that this was a
4 duplication of services, and you were coming
5 back up here to reply to that, right?

6 A: Correct.

7 Q: All right. So, when she says it's adding
8 additional, needed services, you consider that
9 a duplication?

10 A: Well I -- I consider it unnecessary duplication,
11 because I don't believe it's adding needed
12 services.

13 Q: So, when she says it's adding needed services,
14 you say it's an unnecessary duplication?

15 A: That's my opinion.

16 Q: That's -- that's it. Okay. Do you think that
17 the patients who, three days a week, are in the
18 hallways down in MUSC, with screens around them,
19 laying in beds, do you think they think it's an
20 unnecessary duplication?

21 OBJECTION:

22 MR. SUMMER: I'm gonna object to the form of that
23 question. I think it mischaracterizes the
24 testimony. I haven't heard anybody laying for
25 three days in a bed. We understand they're

1 boarders, but I think that's ---

2 MS. JONES: Dr. Warr clearly and unequivocally
3 testified that -- that three days a week they
4 have to go on EP3 status and they have patients
5 laying in beds in hallways with screens around
6 them.

7 MR. SUMMER: That's a little bit different ---

8 THE COURT: But your question was for three days,
9 but ---

10 MS. JONES: I'll rephrase it.

11 THE COURT: Yeah.

12 **Q: So, do you think that, for the patients down at**
13 **MUSC, three days a week, when they go on EP3**
14 **status, they're stuck in hallways on beds with**
15 **screens around them, you think they think it's**
16 **an unne- -- unnecessary duplication of services?**

17 **A: Well, I don't -- I don't think that they know**
18 **whether or not a hospital in Nexton is gonna**
19 **solve that problem. What they want is a bed and**
20 **there's other ways to -- to develop that**
21 **capacity ---**

22 **Q: That wasn't my question. I asked you if you**
23 **think those patients, laying in those hallways,**
24 **with the screens around them think it's**
25 **unnecessary.**

1 MR. SUMMER: Your Honor, I believe that was asked
2 and answered. She didn't like the answer.

3 MS. JONES: Oh, I -- he didn't -- he won't ---

4 THE COURT: Well ---

5 MS. JONES: --- answer the question ---

6 THE COURT: I ---

7 MS. JONES: --- he wants to answer a different
8 question.

9 THE COURT: I would ask it again.

10 A: Okay. Well, I mean, the only way I can answer
11 it is by refer- -- you said that -- is -- that's
12 an unnecessary duplication, I mean, the only way
13 I can answer is to say, there's more than one
14 way to address that particular problem that's
15 not just to develop the hospital in Nexton.

16 Q: But you would agree with me that those patients
17 are looking for a bed somewhere so they can get
18 their healthcare needs properly taken care of,
19 aren't they?

20 A: Sure. I mean, I -- I wouldn't want to be in a
21 hallway.

22 Q: No one would. All right. Then you talked about
23 how you think the emergency department that
24 there's an excess in Berkeley County?

25 A: Sure. When all of the capacity is open, yes.

1 Q: Okay. But HCA's spending millions to build a
2 new one at the same exact exit, right?

3 A: Yeah, I mean, that -- I ---

4 Q: And you did that CON application.

5 A: Right. I'm including that in the capacity ---

6 Q: And -- and -- and you didn't think it was an
7 excess when you were pushing that, did you?

8 A: No. Cause it was needed in Summerville.

9 Q: And you didn't think it was an excess when you
10 rad- -- and you did the CON application for six
11 new beds at 22 million dollars, right?

12 A: Well, the six -- it was more than six beds, but
13 I -- I did do that CON.

14 Q: And you didn't think that was an excess, did
15 you?

16 A: No. I mean, there was a documented need.

17 Q: So you think that the capacity that -- that --
18 that you are entitled to fulfill capacity, but
19 the medical university's not?

20 A: No. I think they are entitled to fill capacity,
21 it's just that they have chosen a -- a poor
22 location to -- to do that.

23 Q: All right. You testified -- oh, the picture.
24 The pi- -- picture that y'all put up here.
25 That's to replace existing facilities, isn't it?

1 A: I don't know. I haven't seen the plan.

2 Q: But you were testifying about it, but you don't
3 know?

4 A: Well, I know that it's -- it's -- there was some
5 testimony from Dr. Cawley that that would've
6 replaced existing bed capacity, but I don't know
7 what else was gonna go into those facilities.

8 Q: Okay. And then I wanna ask you about the space
9 that's being -- that you say's being vacated for
10 the Shawn Jenkins facility. Which floors are
11 being vacated?

12 A: Is -- I'm -- I'm trying to remember the exact
13 numbers, but it was something like 3 through 8,
14 or something like that.

15 Q: Which of those floors have patient beds on em,
16 which of em have OR's, which of em have
17 laboratories, whi- -- which of em have
18 radiology and pharmacy?

19 A: Sure. I mean, I know that some of the lower
20 floors have ancillary services and support
21 services on them.

22 Q: Okay. And -- and those ancillary and support
23 services are -- are on those floors?

24 A: Right. And some of those are moving to the new
25 facility.

1 Q: Based on what?

2 A: On the fact that they're -- they're building
3 OR's at the Shawn Jenkins facility, both for
4 women and for -- for peds ---

5 Q: What data, or information, do you have to
6 indicate that they're not gonna continue to use
7 those OR suites, the pharmacy, the laboratory,
8 and all of those shared services for the main
9 hospital?

10 A: I d- -- I don't know, cause I haven't seen the
11 plan.

12 Q: So you're just speculating?

13 A: I'm just saying that they have floors that
14 they're vacating that they -- they can utilize
15 that space, I just haven't seen a plan for them
16 to do it.

17 Q: You're speculating when you sit here and try to
18 testify that they're not gonna continue to use
19 all of those facilities, the OR's, the pharmacy,
20 the radiology, and everything else, for the main
21 hospital patients.

22 A: Well I don't know whether they are. I haven't
23 seen their plans.

24 Q: So you're speculating.

25 A: I'm not speculating, I'm just saying that's an

1 option for them. I'm not spe- -- that's not a
2 speculation.

3 Q: Now, you talked about you don't think the
4 medical university's got, you know, the
5 financial feasibility to -- to do the Nexton
6 project and that you -- you talked about HUD and
7 that they put on, I don't know, constraints on
8 borrowing money.

9 A: They did.

10 Q: Okay. All right. Well you do know that last
11 Friday, the medical university locked the loan
12 on the CHS purchases at 3 percent?

13 A: I heard that testimony, yes.

14 Q: Okay. And they've got 81 days cash on hand.

15 A: That's the testimony, yes.

16 Q: And the HUD requirement's 21 days?

17 A: Right. Which is very low.

18 Q: All right. 450 million dollars and this
19 project's what, 325 million?

20 A: Right.

21 Q: So that leaves a balance of 125 million?

22 A: Which would be a very low number of days of cash
23 on hand, yes.

24 Q: But it's 21 days cash on hand, isn't it?

25 A: Yeah. But, I mean, if you wanted to operate on

1 the margins, you could do that, yes.

2 Q: Okay. And the DSH money, that's an add-on for
3 care to medically underserved persons, isn't it?

4 A: It is.

5 Q: And it's been going on for 30 plus years, hasn't
6 it?

7 A: At various levels, yes. Some -- some years more
8 generous than others.

9 Q: Are you asking the Court to, after a 30 year
10 history, assume that the purpose of making the
11 decision in this case that -- that the DSH money
12 won't continue?

13 A: No. I'm just saying that that's why I wouldn't
14 wanna play it close to the edge, in terms of my
15 -- my borrowing, because DSH payments can be
16 reduced based on changes in federal and state
17 policy.

18 Q: But the fact of the matter is, is that, for 30
19 years that DSH money's been coming in to the
20 medical university cause they serve medically
21 underserved people, don't they?

22 A: That's true.

23 Q: And there is no expectation in -- with any
24 healthcare planner in this country that DSH
25 isn't gonna continue, is there?

1 A: Right. Just -- it may be reduced.

2 Q: Okay. But you don't even have a basis for
3 saying that.

4 A: Well, other than the fact that I am aware that
5 -- that there have been discussions in
6 Washington about changing the DSH program.

7 Q: That's just some hearsay or stuff you read in
8 the paper?

9 A: Well, stuff I read in -- in journals that I
10 receive.

11 Q: Okay. All right. I wanna ask you about this
12 maldistribution of beds. You say, you don't
13 think there is one.

14 A: No.

15 Q: Okay. All right. Were you here when Mr.
16 Wicevic walked through the percentages of where
17 the population is and where the beds are?

18 A: Sure. I did. I was here.

19 Q: And you just completely disagree with his math?
20 Did he do it wrong?

21 A: No. He just -- just the framework of the
22 analysis, I thought, was wrong.

23 Q: What specific framework or the mana- -- which --
24 which number do you think he got wrong? A
25 population number?

1 **A:** **No. I just think by -- by -- by boxing it in to**
2 **individual counties, it ignores where the**
3 **population is relative to the bed compliments in**
4 **-- in the -- in the Tri-County area.**

5 **Q:** **Well now, wait a minute. He did it multiple**
6 **ways. He even cre- -- grouped Berkeley and**
7 **Dorchester together on one of his sheets, didn't**
8 **he?**

9 **A:** **He did.**

10 **Q:** **And he -- he -- and he grouped together the beds**
11 **in those facil- -- in those counties, right?**

12 **A:** **He did that in one analysis ---**

13 **Q:** **Okay.**

14 **A:** **--- but ---**

15 **Q:** **And it ---**

16 **A:** **--- but ---**

17 **Q:** **--- did -- it didn't change the ---**

18 **MR. SUMMER:** **Excuse me, Your Honor ---**

19 **Q:** **--- bottom line, did it?**

20 **MR. SUMMER:** **--- he was not finished with his answer.**

21 **THE COURT:** **All right.**

22 **Q:** **Please finish.**

23 **A:** **Okay. I was just say -- but, he did not take**
24 **into consideration the fact that there was gonna**
25 **continue to be significant out-migration of**

1 patients to downtown Charleston.

2 Q: Based on what?

3 A: On the tertiary services that are offered there.

4 Q: Offered where?

5 A: The medic university and at Roper.

6 Q: At Roper and the medical university?

7 A: Right.

8 Q: Okay. So you think that you should clock out
9 that one number and hang everything on that and
10 ignore the rest?

11 A: No. I think -- I think you have to show that
12 patients don't have reasonable access to
13 services. Bed to population ratios are not the
14 be all and end all of healthcare planning.
15 That's the starting point, not the end point.

16 MS. JONES: That's all the questions I have. Thank
17 you, Your Honor.

18 MR. SUMMER: Sorry. She opened the door.

19 THE COURT: And I -- we opened the door in rebuttal,
20 I mean, that's -- that's a ---

21 MR. SUMMER: She -- I -- I get to redirect on what
22 she's crossed on?

23 THE COURT: I'll hear ---

24 MS. JONES: Only new matter. I didn't cross him on
25 any new matter.

1 MR. SUMMER: Well, that's not the way it works.

2 MS. JONES: Yes, it is. That's exactly how it
3 works.

4 THE COURT: Well, I wanna hear what you -- you got
5 to ask, but ---

6 MR. SUMMER: First, pull up standard 5, please.

7 MS. JONES: I didn't ask about standard 5.

8 THE COURT: You did ask about the standard 5.

9 MR. SULLIVAN - REDIRECT EXAMINATION BY MR. SUMMER:

10 **Q: Let's talk about adverse impact.**

11 MS. JONES: I asked about standard 5?

12 THE COURT: Hold on a second. I'm sorry.

13 MS. JONES: I didn't ask about standard 5.

14 MS. JONES: He did.

15 MR. SUMMER: I -- I -- she asked about adverse
16 impact and I wanna -- that's where the adverse
17 impact language is.

18 THE COURT: Okay.

19 MR. SUMMER: So I just wanna ---

20 THE COURT: Well let me just hear the questions.

21 MS. JONES: Okay. Yes, sir.

22 **Q: All right. On cross-examination you were asked**
23 **about adverse impact and whether or not you**
24 **performed an analysis, correct?**

25 **A: Correct.**

1 Q: All right. If we look at that second sentence
2 -- can we highlight that second sentence one
3 more time? Just one more, last, time. That
4 last sentence -- very last sentence. There we
5 go. All right. What are the first four words
6 of that standard?

7 A: The applicant must justify.

8 Q: All right. Whose burden is it to justify
9 adverse impact?

10 A: It's the applicants.

11 Q: Okay. And other than this redirection theory,
12 is there any adverse impact analysis in the MUHA
13 application?

14 A: There is not.

15 Q: Did Ms. Murdock a -- a specific finding as to
16 adverse impact?

17 A: She did not.

18 Q: Has anyone provided an adverse impact analysis
19 as MUHA's required to do in the course of this
20 litigation?

21 A: In my view, they have not.

22 Q: Okay. In fact, only a quantifiable number about
23 adverse impact came from Ms. Murdock in 92
24 million dollars, correct?

25 A: Correct.

1 Q: Okay. So if we need to quantify it, we know
2 that 92 million dollars is coming out of
3 somebody, correct?

4 A: Correct.

5 Q: All right. Then, again, the applicant must
6 justify where the hospital's gonna go, correct?

7 A: The specific location, yes.

8 Q: Okay. Let's talk about duplication -- we can
9 leave this up, please. Let's talk about
10 duplication. It was a great deal of -- of
11 testimony, or excuse me, just good leading
12 questions -- a great deal of questioning
13 regarding the situation downtown and the
14 borders and needing relief, remember that?

15 A: I do.

16 Q: Okay. If we look, for instance, at the
17 children's bed tower that's being vacated, as a
18 health planner, is it more cost-efficient and
19 effective to backfill there ---

20 OBJECTION:

21 MS. JONES: Objection. I didn't ---

22 Q: --- and build a hospital ---

23 MS. JONES: --- ask anything about cost-efficiency.
24 And the tower's not being vacated, and the
25 witness admitted it.

1 **Q: Let's talk about that. Do you remember Dr.**
2 **Warr's testimony regarding those eight floors?**

3 MS. JONES: I did not ask him about Dr. War's
4 testimony.

5 MR. SUMMER: I'm trying to verify something and this
6 is -- if I can't lay a foundation, I can't ask
7 ---

8 THE COURT: I don't ---

9 MR. SUMMER: --- questions.

10 THE COURT: --- I'll let him ask questions to link
11 it up and, if he fails to link it up, the
12 relevancy of the -- what's that, 106?

13 MS. JONES: 106, Your Honor.

14 THE COURT: Then -- or maybe 103(b), but one of em,
15 I'll -- I'll strike it.

16 MS. JONES: Thank you.

17 MR. SUMMER: Thank you, Your Honor.

18 **Q: Do you remember Dr. Warr's testimony about the**
19 **eight floors being vacated?**

20 **A: I do.**

21 **Q: And do you remember him saying that they just**
22 **don't have a plan for those floors yet?**

23 **A: Right. That they're looking at options.**

24 **Q: Okay. Would you agree with me that there is**
25 **capacity in that building for additional beds?**

1 **A: There is.**

2 **Q: Would it cost more or less to put em downtown?**

3 **OBJECTION:**

4 **MS. JONES: Objection.**

5 **THE COURT: I'll sustain that.**

6 **MR. SUMMER: Okay. I think that's all I got. Thank**
7 **you. Thank you, Your Honor.**

8 **THE COURT: You may step down.**

9 **MR. SUMMER: Thank you.**

10 **THE COURT: All right. We're through?**

11 **MR. SUMMER: We're through.**

12 **THE COURT: Okay. I know we got wit- -- exhibit**
13 **issues to supplement the exhibits and we'll have**
14 **to iron that out.**

15 **MR. SUMMER: Yeah. We can get all that ironed out.**

16 **THE COURT: I -- I will say, someone contacted the -**
17 **- my office about taking the exhibits -- y'all**
18 **taking the exhibits that -- they stay with the**
19 **Court. So, if we're gonna supplement them, they**
20 **gonna have to be supplemented.**

21 **MS. HOLLINGSWORTH: Yeah. So I -- I think what the**
22 **-- what the discussion was, to try to figure**
23 **out, you know, the paralegal been trying to**
24 **figure out what's -- because when we bring all**
25 **these notebooks, they have ---**

1 THE COURT: Yeah ---

2 MS. CRUM: --- all of those exhibits that weren't
3 offered.

4 THE COURT: --- that's great do to with the
5 paralegals, or whoever ---

6 MS. CRUM: And -- and -- and Your Honor, I think, I
7 personally just didn't have a chance to look at
8 them, but I think they were supplementing and
9 correcting some things from yesterday, and we'll
10 go back and look at that, I just didn't have a
11 chance to look at that this morning.

12 MR. SUMMER: Why don't we just agree that, by the
13 end of the month, or maybe the -- the end of the
14 first week of December, that we'll have that put
15 to bed?

16 MS. CRUM: Oh, no, come on. We can do that next
17 week. Well, Your Honor, our -- our concern is,
18 as -- as you know, we have -- and I don't know
19 what the Court's ruling is gonna be or not, but
20 we have been, at some -- we've been anxious to
21 get started, if we can, and everyday we delay
22 just puts us that much further back behind ---

23 THE COURT: I don't know how the exhibits are gonna
24 delay anything, but they said tomorrow, so, you
25 know ---

1 MS. CRUM: Okay. Tomorrow's great. That's great.

2 MR. SUMMER: Come over here and we'll get it done
3 tomorrow.

4 THE COURT: Oh, I see a thrilled person back there.

5 MS. HOLLINGSWORTH: Your Honor, if -- if I -- if I
6 may, with respect, and the transcript -- if --
7 if Your Honor is looking for proposed order, I
8 don't think we can do the proposed order without
9 the transcript despite the Court Reporter's
10 being amazing at getting us transcripts, I don't
11 think it'll be ready before next Wednesday, I
12 would like to not have to ask my office to --
13 she will have to do it -- to come tomorrow to do
14 that. Can we please have, to work it out among
15 the -- among our offices and we can get it done
16 early next week, Monday, Tuesday, or Wednesday
17 and we'll be happy to assist her. I just ---

18 THE COURT: Well that -- somebody said she can't be
19 here next week.

20 MS. HOLLINGSWORTH: Well, Your Honor, so, I guess, my
21 point would be at -- the transcript's going to
22 take longer than it would the first week of
23 December for us to have had that ironed out. I
24 -- I don't know what we can get done by
25 tomorrow's my -- my concern and, I think, it'd

1 be kind of difficult, but ---

2 MR. SUMMER: I don't think it's a long endeavor, I
3 just think it's getting all the people is the
4 issues.

5 MS. LIPHAM: Do -- do we all have to be in the room
6 at the same time?

7 THE COURT: Yes.

8 MR. SUMMER: Yes. We have to agree -- we have to
9 agree on what goes in. We have to have a
10 representative of every party in the courtroom.
11 So it's tomorrow.

12 THE COURT: Unless, you're gonna tell me that Mr.
13 Summer's gonna trust someone else is not going
14 to change the exhibits.

15 MS. CRUM: I -- I have a suggestion. Maybe we can
16 just get together and get a proposed list
17 amongst ourselves, and then get together and
18 then come ---

19 MR. SUMMER: We'll circulate electronic version by --
20 by noon tomorrow.

21 THE COURT: Yeah. If y'all can put everything
22 together electronically, then it would be a ---

23 MS. CRUM: Yeah.

24 THE COURT: --- when you say trust and verify, it'll
25 be real simple to come over here and -- and make

1 sure the exhibits are straight.

2 MS. CRUM: I would agree, Your Honor.

3 THE COURT: All right. That's a great day.

4 MS. JONES: Proposed orders. From the time we did
5 the transcript, how -- I mean, we've got part of
6 the ---

7 THE COURT: It's normally ---

8 MS. JONES: --- transcript already.

9 THE COURT: I normally say, 30 days from the day of
10 this hearing.

11 MS. JONES: Okay.

12 THE COURT: Or if a transcript's requested -- that
13 was a no brainer. 30 days from the day the
14 transcript was made available to you.

15 MS. JONES: Thank you, Your Honor.

16 THE COURT: This instance it'll be -- 30 days of the
17 complete transcript -- let's go off the record.

18 (There being nothing further, the hearing concluded
19 at 1:21 p.m.)